

1 INDEX TO EXAMINATIONS

2 WITNESSES PAGE

3 MARSHALL MAGRUDER

4 Direct Testimony Continued 733
Cross-Examination by Mr. Gellman 736

5

6

7 INDEX TO EXHIBITS

8 NO.	DESCRIPTION	IDENTIFIED	ADMITTED
9 O-1	National Register of Historic Places Registration Form	503	732
10 O-3A	Amended Map	813	814

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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, reconvening at
6 9:01 a.m. on the 15th of December, 2011.

7
8 BEFORE: JOHN FOREMAN, Chairman

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

16
17 APPEARANCES:

18 For the Applicant:

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

22 and

23 TUCSON ELECTRIC POWER
By Mr. Marc Jerden, Senior Counsel
24 One South Church Avenue, Suite 200
Tucson, Arizona 85710

25

1 APPEARANCES:

2 For the Tohono O'odham Nation:

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

7 For Marshall Magruder:

8 In Propria Persona
9 P.O. Box 1267
10 Tubac, Arizona 85646

11 For Rosemont Copper Company:

12 FENNEMORE CRAIG
13 By Messrs. Norman D. James and Patrick J. Black
14 3003 North Central Avenue, Suite 2600
15 Phoenix, Arizona 85012

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

19 LAWRENCE V. ROBERTSON, JR., ESQ.
20 Of Counsel to Munger Chadwick
21 P.O. Box 1448
22 2247 E. Frontage Road
23 Tubac, Arizona 85646

24 and

25 MUNGER CHADWICK
26 By Mr. Robert J. Metli
27 2398 East Camelback Road, Suite 240
28 Phoenix, Arizona 85016

29 COLETTE E. ROSS
30 Certified Reporter
31 Certificate No. 50658

1 CHMN. FOREMAN: Let's see if we can get started.
2 Let's go on the record.

3 The attorneys have approached me wanting to
4 start today by making a record on some of the unusual
5 procedural issues that occurred yesterday. So let me
6 first talk about the issue that came up with the
7 testimony of Ms. Fonseca.

8 When Ms. Fonseca testified that she was
9 authorized by Pima County to withdraw the official
10 limited appearance application that had been made by
11 Pima County there was a concern about just exactly what
12 had been authorized and what had not been authorized and
13 who had authorized it and who had not authorized it.
14 And so we are privileged to have two officials, public
15 officials of Pima County serve on our Committee. And so
16 some calls were made and the information provided by
17 Ms. Fonseca was confirmed.

18 And I think I tried yesterday to put that on the
19 record. I considered that to be a procedural matter
20 that avoided delaying the hearing for the rest of the
21 afternoon, or perhaps on into today in order to get
22 other confirmation of that.

23 Do any of the parties have any questions that
24 you -- or issues you feel need to be addressed with
25 regard to that issue? And it, of course, came up

1 because of the renewal by Rosemont of its motion to
2 preclude either the testimony of Ms. Fonseca or the
3 limited appearance that had been filed based on the
4 language that is contained in the line siting statute,
5 and so we needed information in order to be able to
6 rule, or I needed information in order to be able to
7 rule on that. And because of the confusion that was
8 evident at the time, we resorted to phone calls to try
9 and get information to resolve that procedural issue.

10 So any questions about that, any issues that
11 need to be raised?

12 Mr. Magruder.

13 MR. MAGRUDER: Mr. Chairman, I have no objection
14 to what I understand happened. But for the record, I
15 wasn't in the room when that happened. I left for about
16 20 minutes to the fax machine because I thought Pima
17 County might be faxing in a written response. And after
18 waiting about 20 minutes I came back and this had all
19 occurred when I was gone, so I wasn't here during the
20 time period. But I had no objection to what -- I
21 understand what happened.

22 CHMN. FOREMAN: I, honestly, I didn't notice
23 that you were gone.

24 MR. MAGRUDER: I thought getting the fax would
25 have been important because that could have kept us

1 going. That's why I ran away. I am a go-for. I
2 understand what that word means.

3 CHMN. FOREMAN: Okay. Any other party wish to
4 make a, any point to --

5 MR. BLACK: Chairman, members of the Committee,
6 thank you again. Rosemont Copper. I just wanted to
7 make sure that the record was clear that those
8 communications were made as a procedural matter, and no
9 substantive issues were discussed. That's all. Thank
10 you.

11 CHMN. FOREMAN: Yeah, I don't see how any
12 substance could have been discussed. The issue was who
13 was authorized to testify, who was authorized to
14 withdraw an evidentiary matter that had already been
15 submitted into the record. I do not believe that there
16 was any discussion amongst any member of the Committee
17 about the substance of the county's position, either
18 with regard to what was in the limited appearance
19 application or obviously with regard to Ms. Fonseca's
20 testimony, since we hadn't heard it.

21 MR. BLACK: And for the record, Chairman,
22 members of the Committee, we don't believe that any
23 substantive discussions were made either. We just
24 wanted the record to be clear in case this matter was
25 addressed by the Commission or on appeal. Thank you.

1 CHMN. FOREMAN: All right.

2 Member Noland.

3 MEMBER NOLAND: Mr. Chairman, I would like to
4 just clarify this a little bit. Both Ms. Rodriguez and
5 I thought that it was such a questionable and unusual
6 move from the county by a person who works for the
7 county to be able to withdraw a document that was
8 submitted by the county attorney, and we wanted to
9 verify that that was in fact okay, and that Ms. Fonseca
10 was in fact representing the county.

11 I called the county attorney, Barbara La Wall.
12 She was not in, but her next in charge, Amelia Cramer,
13 was. I put the question to her about did Ms. Fonseca
14 have the authority from the county attorney's office to
15 withdraw the limited appearance. Thank you. And she
16 said that she would have to check. I gave her Paula
17 Perrara's name as being on the filing, and she said she
18 would call me back, which she did.

19 At that time they said no, that Ms. Fonseca did
20 not have the authority to withdraw, but they needed to
21 check with Mr. Huckelberry. And so that's what they
22 did, and then called back. Ms. Perrera called me back
23 then and said that Mr. Huckelberry had authorized that
24 it was okay for Ms. Fonseca to withdraw that and so they
25 were okay with it.

1 And that was basically the whole conversation
2 back and forth. I was fine at that point. I
3 realized -- I know Ms. Rodriguez represents the
4 counties; I sat in that position previously. And it was
5 important for us to know that the correct
6 representations were being made in the very unusual move
7 that I think took all of us aback. So that's basically
8 what happened.

9 CHMN. FOREMAN: Ms. Rodriguez.

10 MEMBER RODRIGUEZ: Yes, Ms. Noland and I are
11 independent elected officials and no one from another
12 department can represent our offices except somebody
13 that is duly deputized by us. That's where we saw the
14 unusualness. Barbara LaWall does represent my office,
15 too. She has a deputy county attorney. So she is also
16 acting, the county attorney's office is actually acting
17 as legal counsel. So they are legal counsel for the
18 attorney.

19 But I thought the answer was too quick, too
20 fast, too much of an assumption, when I know lay people
21 don't understand the legal procedures that you can
22 assume that you can speak on behalf of the whole county.
23 I would never assume to speak on behalf of the whole
24 county. I could speak for my actual department. That's
25 why we needed clarification on that one.

1 In other documentation that was submitted, Julie
2 was supposed to be representing a different group of
3 individuals. And then the question came up now she
4 was -- that's why I asked the question, who are you
5 speaking for, as a private citizen or on behalf of Pima
6 County government. Because there was some conflicts
7 there. As some of the evidence that was submitted, she
8 was going to be really here, was noted that she worked
9 for Pima County but she was going to be testifying for
10 the -- for Mr. Metli's group. And then you subsequently
11 said she was not. So that's why we needed clarification
12 before we even began. I didn't want to start the
13 testimony and then find out after the fact.

14 MR. BLACK: Chairman and Line Siting Committee
15 members, and just so there is no misunderstanding, those
16 communications were appreciated and we feel that that
17 has helped the process. So thank you.

18 CHMN. FOREMAN: All right. Then the other issue
19 that the county had asked to make sure the record was
20 clear on was the rescindsion, recession of Ms. --
21 rescindsion is not a word, recession is an economic
22 term; I believe rescission is the term I am trying to
23 find -- of the authorization of Ms. Webb to appear as a
24 party in this matter. In that regard, I am not going to
25 try and reconstruct the record of all of the issues

1 concerning her attempts to comply with my procedural
2 order and attempts to comply with the ruling that I made
3 that was confirmed by the Committee with regard to this
4 hearing being about the impact of the transmission line
5 as opposed to the mine.

6 The precipitating incident before the vote was
7 that she had presented to me at the start of her
8 examination of Ms. Fonseca one set of exhibits, and no
9 other Committee member had a set of exhibits to be able
10 to follow along with the testimony that was being
11 presented. This was in direct violation of the
12 procedural order that I had entered early in this case
13 that was similar to procedural orders that have been in
14 effect in other cases where Ms. Webb has been a party.
15 And this is an issue that has been addressed before, in
16 her presence and with her directly.

17 This put us in the position of -- and I think at
18 this point I am beginning to question my own memory, but
19 I remember talking about the possibility that we would
20 have to at least stop for the day, perhaps continue
21 longer than that, and miss our window of opportunity to
22 conclude this hearing at a time when all of our
23 Committee members could be available, which means we
24 would have to go over into January at some time. It was
25 after that that a motion was brought and unanimously

1 passed to, as I said, withdraw the authorization that we
2 had previously given Ms. Webb to appear as a party.

3 She has tried, but frankly, being a party in
4 these proceedings is not easy. This is not a game
5 that's being played here today. It is an important
6 hearing that has significant potential impact for a long
7 period of time for the citizens of the State of Arizona.

8 The statute that authorizes the granting of
9 party authority to persons, even if they are
10 unrepresented as Ms. Webb is, is a completely
11 discretionary grant of authority contained in the
12 statute. There are no standards set by the legislature
13 as to how that discretion is to be exercised.

14 It is unfair to delay and confuse hearings of
15 importance like this unnecessarily. And there are, as I
16 have indicated before, ways in which the information
17 that particular persons would like to get into the
18 record can be placed in the record and considered by the
19 Committee and be available to the Commission and to any
20 court or reviewing body thereafter without forcing
21 someone who is untrained in the law to try and be a
22 sophisticated lawyer.

23 I am sure Mr. Magruder would agree that being a
24 pro per party in one of these proceedings is not easy.
25 And we simply cannot stop proceedings, delay

1 proceedings. And I cannot serve as a legal advisor to
2 folks who, however good intentioned, simply lack the
3 legal training and perhaps the support resources to
4 effectively act as represented parties in these
5 proceedings.

6 Now, is there any other record that --
7 Member Walker.

8 MEMBER WALKER: Thank you. Thank you,
9 Mr. Chairman. As the person who offered the motion to
10 exclude, or whatever the other word is, the party, let
11 me be clear on what my reasoning was. I tried to make
12 it clear yesterday, but let me go through a brief
13 explanation.

14 I think the Line Siting Committee and the power
15 plant and transmission line statutes are a big deal. I
16 think trying to balance the environmental impacts with
17 the economic benefits of projects that will last for
18 generations that will shape in fundamental ways the
19 water and land and air quality that our children and
20 their children grow up is a big deal. And I think there
21 is a relationship that exists between the Committee, the
22 Commission, and the parties themselves in furtherance of
23 that.

24 I believe the focus of this case, the issues
25 were made very clear to all the parties from the very

1 beginning. And yet after repeated instructions on that
2 point that were repeatedly ignored, one party continued
3 to avoid the issues in the case and try to offer
4 extraneous matters.

5 I believe as a nonattorney that parties in any
6 dispute have an obligation to identify the witnesses and
7 to be forthcoming as to the evidence they intend to
8 offer so that all the other parties can be prepared to
9 dispute or refute, question those witnesses and the
10 facts that they offer. The record in this process, as
11 it should be in all government processes, is the goal.
12 We want to create a record that is clear and
13 understandable and transparent, so that everyone from
14 this point forward can look at what happened here today
15 and understand why the decisions were made, how we came
16 to make those trade-offs and those decisions. And the
17 parties have an obligation to be part of that goal.

18 Again, we are part of something much, much
19 larger here, I think even larger than the power plant
20 and transmission line siting. We are part of the
21 experiment in democracy that is going forward. And it
22 is imperative that everyone play by the rules and play
23 fair.

24 You can have a different point of view, and you
25 can express that and litigate it and fight as hard as

1 you want in the process, and I think that's what it is
2 all about. The second you stop playing by the rules and
3 you start saying to Committee members on Monday that
4 this person is not representing the county, it is all
5 being done in a private role, and then that person shows
6 up a few days later, purports and apparently had the
7 authority granted to withdraw the motion offered by the
8 Pima County Attorney, and then was going to be entered
9 as a witness by a pro per litigant, that sort of
10 approach to the process befuddles the point of the
11 process.

12 You are supposed to play by the rules. You are
13 supposed to be honest. You are supposed to let people
14 know what you are trying to achieve and what you want
15 the Committee and the Commission to ultimately decide
16 when it weighs the impacts and the benefits.

17 I have no problem with anybody representing any
18 perspective. But you have to do as Mr. Magruder does,
19 play by the rules. Let people know what you are going
20 to offer and why you are going to offer it, and don't
21 try to play any sort of games and don't try to
22 continuously backdoor evidence into the record.

23 That's why I offered the motion, because I felt
24 that party had repeatedly demonstrated a desire to
25 befuddle the process.

1 CHMN. FOREMAN: All right. Any further record
2 that any of the parties feel needs to be made on these
3 issues?

4 MR. MAGRUDER: Mr. Chairman.

5 CHMN. FOREMAN: Yes, sir.

6 MR. MAGRUDER: You indicated Mr. Magruder found
7 it very challenging to follow the process, and I
8 absolutely agree. It is challenging. And I think that,
9 for example, I have Mr. Beck's testimony three times.
10 It is at least an inch thick. I need it once. I don't
11 need it three times. There has been a waste of money
12 giving me his testimony three times.

13 And I only -- and the process on the
14 documentation, I would like to, after we finish this
15 whole thing, if you don't mind, Mr. Chairman, meet with
16 you and let's work through it, see if we can streamline
17 the process for everyone so no one wastes time and
18 effort repro-ing documents that -- the mail yesterday
19 delivered me a document that I delivered to the
20 Corporation Commission last week, and they sent it back
21 to me. And I don't need it back. I think I know what I
22 wrote.

23 I think -- so this is -- there is some -- the
24 process, I don't want to say is broken, but it is not as
25 streamlined and as the way good procedures should be.

1 And I would offer my services to help work with you or
2 any Committee member or any party to see if we can make
3 it so that TEP doesn't spend the money reproducing 50
4 viewgraphs three times in color.

5 CHMN. FOREMAN: Well, there you and I agree
6 completely, Mr. Magruder. And everybody in this room
7 who has been to one of these before has heard me say
8 that we have problems with the statute and the
9 procedural rules that are associated with the statute.
10 They are old. They need to be revised. They are not
11 user friendly, especially for ordinary citizens, people
12 who try to represent themselves.

13 And one of my challenges is to try and make them
14 work in each successive hearing. That's one of the
15 reasons I generate the procedural orders I do, is to try
16 and make them work. And one of the problems is the
17 short time span that we have to work in, and that makes
18 it difficult to make sure that everybody who is
19 associated with the hearings has access to everything
20 that they need to have access to at the time they need
21 it.

22 And so you are absolutely correct that there are
23 too many copies made, there are too many copies flying
24 around, and unfortunately, some of the copies don't
25 arrive until a time when they are no longer needed.

1 So I am with you 100 percent. If we can get
2 something put together it would be great. And I am
3 happy to be a part of that.

4 Anything else that anyone feels needs to be
5 addressed?

6 (No response.)

7 CHMN. FOREMAN: Are there other procedural
8 matters that we need to address this morning?

9 MS. BERGLAN: Yes, Mr. Chairman. All the
10 Committee members should have passed around, this is
11 amended Exhibit O-1, the fully executed copy of the
12 registration form for the TCP.

13 CHMN. FOREMAN: Okay.

14 MS. BERGLAN: And I would like to -- everyone
15 have that?

16 CHMN. FOREMAN: All right. I received my copy
17 this morning. Does everybody got it? The top letter I
18 think is a letter from Jim Upchurch, forest supervisor,
19 dated October 13, 2011. Is that correct, Ms. Berglan?

20 MS. BERGLAN: That is correct, Mr. Chairman.

21 CHMN. FOREMAN: And then immediately beneath
22 that is the National Register of Historic Places
23 registration form that is signed by -- and can you give
24 us some help on it? Is it William Gillespie?

25 MS. BERGLAN: William Gillespie, yes,

1 Mr. Chairman.

2 CHMN. FOREMAN: All right. Now, I note that
3 there are some written interlineations on the copy that
4 you have provided to us. Are you or Mr. Steere aware --
5 and I notice that he is with us today -- aware of those
6 having a significance that's different than any of the
7 testimony that he gave yesterday, or is there any
8 explanation of those that's needed?

9 MS. BERGLAN: The explanation, Mr. Chairman, is
10 that this was obtained directly from the SHPO file. And
11 unfortunately he, Erick -- what is his last name --
12 Mr. Laurilla, who is in charge of this particular
13 project, had already made notes on the original.

14 They don't have any significance for this
15 particular -- for the exhibit. They are just his
16 personal notes as to what additional information he
17 would like, and, unfortunately, the original had those
18 notes on it.

19 CHMN. FOREMAN: Mr. Steere, you are still here,
20 you are still under oath.

21 MR. STEERE: Ms. Berglan's comments I think are
22 correct. When SHPO received this, they actually made
23 notes on the original.

24 CHMN. FOREMAN: So the copies of the written
25 interlineations are writings that were added after the

1 application was sent to the State Historic Preservation
2 Office?

3 MR. STEERE: Yes, sir.

4 CHMN. FOREMAN: Okay. Very good.

5 Any question from any Committee member on that?

6 (No response.)

7 CHMN. FOREMAN: All right. Thank you very much
8 for clearing that up.

9 Anything else?

10 MS. BERGLAN: With that I would like to admit
11 Exhibit O-1.

12 CHMN. FOREMAN: Any objection?

13 (No response.)

14 CHMN. FOREMAN: Without objection, then, and
15 good cause appearing, it will be ordered admitting
16 Exhibit O-1 to the record.

17 (Exhibit O-1 was admitted into evidence.)

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

19 And with respect to Exhibit O-3, the map, just
20 an update, the parties continue to confer to get
21 something agreeable. They just projected where we are
22 at currently with the draft with the Rosemont private
23 land excepted from the boundary, and we are just trying
24 to finalize among the parties something agreeable and
25 then that will be offered.

1 CHMN. FOREMAN: Okay, very good. Thank you for
2 bringing that up.

3 Any other procedural issues we need to address?
4 (No response.)

5 CHMN. FOREMAN: I know Mr. Magruder has been
6 excitedly waiting for the opportunity to withstand
7 cross-examination. So Mr. Magruder.

8 MR. MAGRUDER: I would like to make a minor
9 comment on my testimony yesterday which is a slight
10 correction.

11 CHMN. FOREMAN: Do you want to start by
12 cross-examining yourself?

13 MR. MAGRUDER: Well, I am trying to prevent it.

14 CHMN. FOREMAN: All right. Proceed.

15

16 DIRECT TESTIMONY CONTINUED

17

18 MR. MAGRUDER: I was fairly harsh on the five
19 years for final environmental impact statement in my
20 testimony yesterday. And upon review I would like to
21 revise it to indicate that the final EIS will be needed
22 to be reviewed to see if there are any unintended
23 consequences due to environmental changes if the project
24 has not been started five years after it was published.

25 If there have been, after having environmental

1 changes to the final EIS, then a supplemental or new EIS
2 may be ordered. And there may be public involvement
3 depending on a case-by-case basis. And I think that's a
4 little better statement than the one I had yesterday.

5 Thank you.

6 CHMN. FOREMAN: So your understanding is -- and
7 I assume you checked with some sort of official source,
8 is that true?

9 MR. MAGRUDER: A counsel checked with me.

10 CHMN. FOREMAN: All right. And your
11 understanding now is that there would be a review after
12 five years, and only if something came up as a part of
13 that review that indicated a need for a new EIS would a
14 new environmental impact statement be required, is that
15 correct?

16 MR. MAGRUDER: That's my understanding.

17 CHMN. FOREMAN: Okay. Very good.

18 MR. MAGRUDER: And as a nonattorney, I cannot
19 make a legal judgment on that type of an issue.

20 CHMN. FOREMAN: All right, very good. Those are
21 the clarifications you wanted to make?

22 MR. MAGRUDER: In cross I discussed the Santa
23 Cruz Valley national historical area. And I found it
24 displayed, the positions. In Committee Exhibit 3,
25 page 5 is a map of the Santa Cruz Valley national

1 historic area -- heritage area, excuse me, national
2 heritage area. And that's the only comment I wanted to
3 make on that.

4 CHMN. FOREMAN: That would be in
5 Mr. Pepper's --

6 MR. MAGRUDER: No, Mr. J.J. Lamb's, J.J. Lamb's
7 notice of limited appearance.

8 CHMN. FOREMAN: I think Mr. Lamb's notice of
9 appearance is Exhibit Committee 2.

10 MR. MAGRUDER: Committee 2? I would like to
11 make another correction, Committee Exhibit 2, page 5.
12 And there is a map. And that was just to clarify a
13 comment I made earlier. And that's -- I am ready for
14 cross-examination.

15 CHMN. FOREMAN: Very good. Now, let's see.
16 Let's go with Ms. Berglan.

17 Do you have questions?

18 MS. BERGLAN: No questions, Mr. Chairman.

19 CHMN. FOREMAN: Mr. Metli.

20 MR. METLI: No questions, Mr. Chairman.

21 CHMN. FOREMAN: Mr. Black, Mr. James.

22 MR. BLACK: With the corrections made we have no
23 questions.

24 CHMN. FOREMAN: Very good.

25 Mr. Gellman.

1 MR. GELLMAN: Just a few questions,
2 Mr. Chairman.

3

4 CROSS-EXAMINATION

5 BY MR. GELLMAN:

6 Q. Good morning, Mr. Magruder.

7 A. Good morning, Mr. Gellman.

8 Q. If the Committee were to select a route in this
9 case to approve or to grant a CEC, which route would you
10 recommend the Committee grant?

11 A. I believe my testimony indicated that if we had
12 to put in the transmission line, I would recommend the
13 preferred or Alternative 1.

14 Q. Okay. So that is consistent, or your
15 recommendation would be consistent with, for instance,
16 the University of Arizona, which administers the Santa
17 Rita Experimental Range?

18 A. That's my recommendation. They can have their
19 own recommendation.

20 Q. Okay.

21 A. I can't recommend for the experimental range.

22 Q. I understand.

23 Moving on to Exhibit MM-7, you addressed this
24 briefly in your direct testimony. Just turning to the
25 second page, I will give you a minute to get that in

1 front of you.

2 A. I got it. I have it.

3 Q. And below the table on the second page it says,
4 quote, based on the service availability index it
5 appears probable that the proposed Rosemont mine would
6 have reliable power at 99.8 percent of the time and thus
7 would need limited backup power during the expected life
8 of the project.

9 A. I am familiar with that sentence.

10 Q. Okay. The only other -- you introduced exhibit,
11 I believe it was, MM-14?

12 A. Let me come back to this last one. The
13 99.8 percent of a year is 17.3 hours.

14 Q. Okay. So 17.3 hours out of the year they might
15 need limited backup power?

16 A. That they might not have the transmission line.

17 Q. And that's out of 365 days a year and however
18 many hours are there in a year?

19 A. That's correct.

20 Q. Okay. Turning to exhibit --

21 A. I didn't do leap years.

22 Q. Understand.

23 Turning to Exhibit MM-14, this was an article
24 about the Arizona Trail.

25 A. Yes.

1 Q. And you indicated, I believe your testimony was,
2 that the Arizona Trail was not evaluated in the CEC
3 application?

4 A. I might have missed that section.

5 Q. Okay. So if I were to direct you to Exhibit F
6 of the application that has been marked and admitted as
7 TEP-1, I believe there is one to the far --

8 A. I have Exhibit F in front of me.

9 Q. Okay. And if I were to direct you to the second
10 sentence below the, I guess, the first paragraph below
11 the title, Preferred Route and Alternative Routes 1, 2,
12 and 3, do you see the second sentence there? It is
13 further down the page, Mr. Magruder, toward the last
14 paragraph on the page.

15 A. The last paragraph on the page?

16 Q. Right, second sentence.

17 A. The Arizona Trail and Farm Route 229.

18 Q. Correct. It states there that the Arizona Trail
19 and forest -- FR 229 would not be crossed by the
20 preferred route or Alternative Routes 1, 2, or 3?

21 A. I see that. I also indicated the Arizona Trail
22 would have visual impact from the transmission line.

23 Q. Right. But it is correct, or you understand now
24 that the Arizona Trail was evaluated as part of EPG's
25 overall analysis of the proposed routes?

1 A. Fairly short evaluation. But if I continue to
2 read that sentence, it also crossed Route 4.

3 Q. It would cross Route 4, but it was considered,
4 correct?

5 A. I guess you might say that's a consideration,
6 but not a very elaborate consideration.

7 MR. GELLMAN: Thank you, Mr. Magruder. No
8 further questions.

9 CHMN. FOREMAN: All right. Sounds to me like
10 you have already done your redirect, Mr. Magruder.

11 MR. MAGRUDER: I have no redirect.

12 CHMN. FOREMAN: Okay, very good. All right.
13 You may step down or resume your seat on the other side
14 of the table. And do you have any -- I take it that you
15 do not have any other witnesses to present, is that
16 true, Mr. Magruder?

17 MR. MAGRUDER: No, Mr. Chairman, I am my
18 witness.

19 CHMN. FOREMAN: Okay. All right. So after
20 Mr. Magruder, I think we go to Rosemont. Does Rosemont
21 have any testimony to present?

22 MR. BLACK: We do not have any testimony to
23 present.

24 CHMN. FOREMAN: All right. Then back to the
25 applicant. Do you have redirect examination? I am

1 sorry. Do you have rebuttal testimony?

2 MR. GELLMAN: We do not have any rebuttal
3 testimony. Our witnesses are available for any
4 additional Committee questions.

5 CHMN. FOREMAN: All right. Are there additional
6 questions by members of the Committee?

7 Member Rodriguez.

8 MEMBER RODRIGUEZ: This question is for
9 Rosemont. We have had various testimony regarding
10 private land, what are cultural things and availability.
11 Can you tell us approximately, when did Rosemont mine or
12 your subsidiaries purchase this property?

13 MR. JAMES: The property, I believe, was
14 purchased in 2006.

15 MEMBER RODRIGUEZ: Okay.

16 MR. JAMES: 2005. I apologize. It was right in
17 that time frame.

18 MEMBER RODRIGUEZ: And was the chain still owned
19 by private owners? The individuals that you purchased
20 it from, was it still a private individual?

21 MR. JAMES: Yes.

22 MEMBER RODRIGUEZ: So the chain, as far as you
23 know, has always been property, the property has been
24 held by private entities?

25 MR. JAMES: Yes. My understanding, Member

1 Rodriguez, is that for many years this property was
2 owned by mining companies. You have heard reference to
3 cultural surveys done by Anamax.

4 MEMBER RODRIGUEZ: Correct.

5 MR. JAMES: ASARCO owned it, and I apologize, I
6 am a little rough on the time, but they owned it for
7 roughly 10 years. In fact, I believe at one point it
8 was actually offered to Pima County. They declined to
9 purchase it. It was sold to another individual who
10 then, approximately a year later, as I indicated, late
11 2005, sold it to Rosemont.

12 MEMBER RODRIGUEZ: Okay, thank you.

13 CHMN. FOREMAN: All right. Very good. Now, I
14 think we are finished with testimony. We can take a
15 short break before closing.

16 And Mr. Metli, I guess I spoke to you yesterday.
17 Let me give you the opportunity today to place on the
18 record your intention with regard to calling witnesses.
19 You are not calling any, as I understand it.

20 MR. METLI: Mr. Chairman, that is correct. We
21 did submit exhibits under our offer of proof as Exhibit
22 S-1, S-2 and S-3.

23 CHMN. FOREMAN: Okay, very good. And those are
24 in the offer of proof booklet.

25 So let's take a short break. We will start

1 closings with the applicant. We will go to the Tohono
2 O'odham Nation. We will go to Scenic Santa Ritas, then
3 Mr. Magruder, then Rosemont. And if there is a need for
4 rebuttal, well, we will have the opportunity for
5 rebuttal for the applicant.

6 I know the members of the Committee would be
7 especially interested in you addressing in as concrete a
8 way as possible language proposals for the CEC. I
9 raised some specific language proposals yesterday in the
10 hopes that perhaps we could get some agreement on
11 language that was raised by the Nation. If there has
12 been progress on that, that would be great.

13 I will tell you that at the end of the closings,
14 we will begin our deliberations, and I would want
15 counsel and, if possible, some of the witnesses, to be
16 available to us as we go through the deliberations.

17 These deliberations I think are going to be a
18 little more complex than some that we have had before.
19 I also -- we had one member of our Committee express an
20 interest in perhaps looking at language that we have
21 previously put in CECs relating to the control of
22 noxious weeds. And I think we put language, a sentence
23 about that in the CEC in Case No. 161. And if anybody
24 has access to those CECs and could provide that
25 information to us, that would help us during our

1 deliberations also.

2 So I will, of course, expect you all to soar to
3 heights of advocacy during your closings. Let's have
4 the soaring be relatively short, and let's focus in on
5 concrete proposals with regard to language in the CEC.

6 We will take a 15-minute recess. We will begin
7 again at 10:00 a.m.

8 (A recess ensued from 9:42 a.m. to 10:01 a.m.)

9 CHMN. FOREMAN: All right. What was lost has
10 been found and we can now proceed. Let's see. I think
11 we have everybody back.

12 Counsel for the applicant, are you ready to
13 proceed?

14 MR. DERSTINE: I am, Mr. Chairman.

15 CHMN. FOREMAN: Then please do.

16 MR. DERSTINE: All right. Mr. Chairman, members
17 of the Committee, I will be brief. But I want to take
18 just a few minutes to highlight what I think are some of
19 the key points in terms of the testimony and the
20 evidence that you heard over these past few days.

21 Let me start by simply thanking you again for
22 your time, your careful review of the application, your
23 careful consideration of the testimony and the evidence,
24 your patience. TEP greatly appreciates your hard work,
25 your careful deliberation of this Committee. So thank

1 you again.

2 You have before you a CEC application for a
3 138kV transmission line that will be used to serve the
4 proposed Rosemont mine if and when the mine gains
5 approval through the ongoing NEPA process.

6 In my opening, I reminded you that as a public
7 service company, Tucson Electric Power is obligated
8 under its certificate of convenience and necessity to
9 serve customers in its service territory. The proposed
10 Rosemont mine is in Tucson Electric Power's service
11 territory. The mine has requested service. This
12 application was filed in response to that request.
13 Simply put, that is the purpose and need for this
14 project.

15 The testimony and evidence you heard from
16 Mr. Beck and Ms. Weinstein is that there was an
17 extensive public process that took place long before
18 this application was filed. That public process started
19 with the stakeholder group. It was very active. It
20 continued with public open houses, newsletters, website
21 information with an interactive map, telephone
22 information line, all intended to provide notice and get
23 input and feedback from jurisdictions, residents, anyone
24 with an interest in this project. And in that
25 notification and the process included a much larger

1 geographic area than the detailed study map, the
2 two-mile buffer that we have seen on the map that has
3 been projected throughout this hearing.

4 Through that process, the application brought
5 forward a preferred route and four alternative routes.
6 According to the testimony of Mr. Beck and
7 Ms. Weinstein, the preferred route is the best route.
8 It is the best route because it is overwhelmingly
9 supported by the largest landowner in the area, the
10 Santa Rita Experimental Range. It is one of the
11 shortest routes. The only shorter route was
12 Alternative 1 by .1 mile, I believe.

13 The preferred route also carries the support,
14 begrudging possibly, but if a route has to be approved,
15 the Nation has indicated that it supports the preferred.
16 Mr. Magruder in his testimony today indicated that he
17 supports the preferred. State Game & Fish through
18 admitted Exhibit S-8 supports the preferred route.

19 The preferred route is also the best because it
20 carries the least amount of ground disturbance, because
21 it follows the proposed water pipeline for the mine. It
22 collocates the distribution line that will be used to
23 serve that pipeline, a segment, a portion of this route.
24 And importantly, it also is able to use the access road
25 that will be constructed for the water pipeline, so no

1 new access road will be required for the transmission
2 line.

3 The next best route, according to the testimony
4 and the evidence, is Alternative 1. Alternative 1 does
5 have the benefit of being the shortest route by a small
6 margin. It also has the benefit of screening certain
7 residents from views of the transmission line. But as
8 you heard in the testimony, that benefit is limited,
9 given that many of these same residents will now have
10 views of the distribution line that would otherwise be
11 collocated on the double circuited poles along the
12 preferred route. Further, Alternative 1 creates more
13 ground disturbance by having to move the transmission
14 line around the hill, and therefore does not have the
15 benefit of utilizing the access road that's going to be
16 constructed for the water pipeline.

17 For these reasons, again, I think the testimony
18 and the evidence overwhelmingly supports the preferred
19 route.

20 As I mentioned in my opening, TEP understands,
21 and certainly you understand, that the Rosemont mine is
22 controversial. The same individuals and groups that
23 oppose the mine oppose the transmission line. But as I
24 indicated in my opening, the case, this case, the issue
25 before you is not the mine. It is the transmission

1 line, what is the best route, the most environmentally
2 compatible route to serve the mine, if and when it is
3 approved, and what are the appropriate conditions to
4 minimize other environmental impacts of the line once it
5 is constructed.

6 TEP has prepared a proposed form of CEC
7 contained in our exhibit book. And I want to just touch
8 on and highlight a couple of what I think are the key
9 conditions in that form of CEC.

10 Many have expressed concern over constructing
11 this line before the mine is approved. As you have
12 heard the testimony from Mr. Beck, TEP agrees and has
13 proposed a condition under Condition 25 that the line
14 will not be constructed until a record of decision is
15 issued by the U.S. Forest Service.

16 Further, in recognition of the fact that it may
17 take some time for a final decision from the Forest
18 Service, and there very well may be litigation that
19 follows that seeks to stay or prevent the implementation
20 of a final record of decision, TEP has proposed that the
21 CEC remain effective for 10 years. And that is proposed
22 Condition No. 7.

23 As to pole finish, the Forest Service
24 recommended in the draft EIS that visual impacts of this
25 line would be mitigated by the use of a dull finish,

1 dark brown poles. TEP believes that the Forest Service
2 is right, that the use of a Corten self-weathering pole
3 is the right choice for this rural setting, that using a
4 galvanized steel pole in this area is not appropriate,
5 and that using a galvanized pole or even a combination
6 of self-weathering and galvanized does not provide the
7 best visual impact.

8 Mr. Chairman.

9 CHMN. FOREMAN: Mr. Derstine, before we leave
10 the certificate area, Ms. Webb, before she left, I think
11 raised an issue with regard to whether or not there were
12 other federal permits that needed to be obtained before
13 construction could begin. The language in paragraphs 2
14 and 3 appears to address a need to comply with
15 applicable rules, regulations, and so on of the United
16 States, State of Arizona, and local governmental
17 agencies. But it doesn't say that -- and need to get
18 permits, but it doesn't say explicitly that construction
19 would not begin until the permit, appropriate permit was
20 obtained.

21 Would TEP plan to get whatever federal
22 permitting is needed before construction begins, or are
23 there some permits that TEP thinks it would try to get
24 after construction begins?

25 MR. DERSTINE: Mr. Chairman, this is probably an

1 area that Rosemont can speak to more directly, and
2 certainly with more knowledge and expertise. But my
3 view is, one, TEP would not be the applicant for these,
4 for the various permits that would need to be obtained.
5 I think what you are referencing are the various permits
6 required for the operation and final approval of the
7 mine through the ongoing EIS process.

8 CHMN. FOREMAN: Well, that was going to be my
9 next question, is separating out the line from the mine.
10 But let's focus specifically --

11 MR. DERSTINE: On the line.

12 CHMN. FOREMAN: -- on the line. And I guess
13 that's true, perhaps Rosemont needs to address this in
14 their closing, too. But I just wanted to see if you can
15 at this point factually tell us whether or not it would
16 be the plan to begin construction before all the permits
17 were obtained, whether that's something that's done in
18 the usual course of business or not, or whether the plan
19 would be to get all the permits at whatever level are
20 necessary before construction begins.

21 MR. DERSTINE: Thank you, Mr. Chairman. TEP's
22 position is that whatever permits are required for the
23 construction of the transmission line would be obtained
24 before construction would commence.

25 CHMN. FOREMAN: Okay. Very good. And I am

1 sorry for the interruption. I just didn't want to let
2 that issue pass.

3 MR. DERSTINE: No problem.

4 So I was touching on the pole finish. That's
5 addressed in proposed Condition 12, which provides for
6 nonspecular conductors and dulled surface transmission
7 structures.

8 Finally, the Nation has expressed its concern
9 over the line's potential impact on archeological sites.
10 There are a number of conditions contained in the
11 proposed CEC that address those issues, proposed
12 Conditions, 4, 5, 13, 24, 27. At the same time the
13 parties, at your urging, have been working behind at
14 breaks and at recess to come up with agreed-to language
15 addressing monitoring and how archeological sites will
16 be dealt with and addressed. I think we were still
17 working on revising some language at the last break, but
18 I think we are very close on that issue.

19 So in closing my closing, let me say that Tucson
20 Electric Power Company requests that you approve the
21 application, approve the application for the preferred
22 route.

23 And again, let me thank you for your time and
24 your attention and, again, your patience. Thanks.

25 CHMN. FOREMAN: Mr. Derstine, may I assume that

1 you would have no objection to including the Coronado
2 National Forest as an entity that would be noticed in,
3 for example, paragraph 8, or Condition 8, Condition 10,
4 Condition 13, along with other agencies when there is an
5 issue concerning extension of the certificate and so on,
6 whether there is a need to contact local landowners and
7 give them notice of an extension or whether there is a
8 need to contact agencies with regard to -- in paragraphs
9 4, 5, and 6 there are requirements of compliance when
10 there is the discovery of archeological sites, human
11 remains, or salvage requirements of the native plant law
12 in those areas. Because the Coronado National Forest is
13 going to be involved in sort of a joint jurisdictional
14 supervision of this area, I assume you do not have a
15 problem with making sure that there is a formal
16 requirement that you keep them in the loop?

17 MR. DERSTINE: You are correct, we have no
18 problem with that.

19 CHMN. FOREMAN: Okay. Good. Very good. Thank
20 you.

21 Okay. Let's move now to the Tohono O'odham
22 Nation, Ms. Berglan.

23 MS. BERGLAN: Thank you, Mr. Chairman. I would
24 first like to thank the Committee for allowing the
25 intervention and participation of the Nation in this

1 matter. The Nation appreciates the opportunity to
2 address the Committee regarding the significant cultural
3 sites of its members and ensuring the preservation of
4 those sites for future generations of the Tohono O'odham
5 Nation.

6 We believe the Committee should deny the CEC at
7 this time, as the applicant has failed to use the full
8 correct standard in performing the archeological
9 analysis in the application. Site analysis under the
10 National Historic Preservation Act was appropriate.
11 However, there is an additional requirement in the line
12 siting case, line siting statutes, and that requirement
13 is set out at A.R.S. 40-360.06.A.5. And that provides
14 that the Committee shall consider the following factors,
15 quoting, existing scenic areas, historic sites and
16 structures or archeological sites at or in the vicinity
17 of the proposed site, close quote.

18 While the majority of that requirement is
19 encompassed in the analysis under the National Historic
20 Preservation Act, as was indicated by Mr. Steere's
21 testimony, this concept of "in the vicinity" was not
22 included in the archeological survey that was performed
23 on this project site.

24 As was demonstrated in the testimony of
25 Mr. Steere, at least one site, Huerfano Butte, was not

1 analyzed in the archeological survey, despite it clearly
2 being an archeological site within the vicinity of the
3 project within the meaning of A.R.S. 40-360.06.A.5.

4 As you also heard from Mr. Steere, the Ce:wi
5 Duag traditional cultural property was also not
6 considered as a part of the archeological survey. The
7 Ce:wi Duag TCP is an historic and/or archeological site
8 at and in the vicinity of the project within the meaning
9 of A.R.S. 40-360.06.A.5. The TCP also should have been
10 considered in the archeological survey in this matter.

11 As you also heard from Mr. Steere, other
12 significant cultural resources which could be considered
13 historic within the meaning of A.R.S. 40-360.06.A.5 were
14 also not considered in the archeological survey. And
15 these sites include basket making collection sites, clay
16 collection sites, and plant collection sites. By
17 failing to identify and analyze these sites at or in the
18 vicinity of the project, the applicant has failed to
19 fully inform the Committee of factors set out in
20 A.R.S. 40-360.06.A.5.

21 As a result, the Nation believes the Committee
22 must deny the CEC application at this time. And the
23 Nation respectfully requests that the CEC be denied at
24 this time.

25 In the alternative, the Nation supports the

1 amendments to the CEC that we have been working toward
2 that encompass a lot of the Nation's concerns with
3 respect to the cultural resources.

4 In a nutshell, what we are looking at is the
5 cultural monitor on-site during site disturbing
6 activities or working in the location of any sites; the
7 avoidance, or mitigation in the alternative, of sites;
8 and the notification of the Tohono O'odham Nation if
9 there are any unanticipated discoveries while working on
10 the project.

11 I thank you, the Committee, again for allowing
12 intervention of the Nation in this matter.

13 CHMN. FOREMAN: Thank you, Ms. Berglan.

14 MEMBER PARKE: Mr. Chairman.

15 CHMN. FOREMAN: Member Parke.

16 MEMBER PARKE: Sorry to interrupt the closings,
17 but I had a question for Ms. Berglan.

18 It seems to be your assertion it is the
19 applicant's responsibility with regard to 40-360.06.A.5.
20 Is that your assertion.

21 MS. BERGLAN: Yes, Member Parke. It would be
22 our assertion that it is the applicant's responsibility
23 to ensure that all the information is presented to the
24 Committee so that you can make a decision within the
25 framework of the statute.

1 CHMN. FOREMAN: Ms. Berglan, are you aware of
2 any information that you did not present to the
3 Committee?

4 MS. BERGLAN: Any additional information?

5 CHMN. FOREMAN: Yes.

6 MS. BERGLAN: No, Mr. Chairman.

7 CHMN. FOREMAN: Okay. So the Committee has, at
8 least in general form, knowledge of all of the issues of
9 concern that the Nation has with regard to the sites
10 that have been under consideration, is that true?

11 MS. BERGLAN: Yes, Mr. Chairman, with the caveat
12 that I mean there could have been other sites out there
13 that the Nation isn't aware that would be in the
14 vicinity that we weren't able to bring forth just
15 because we don't have knowledge of them.

16 MEMBER PARKE: Thank you, Mr. Chairman.

17 Ms. Berglan, the way I read A, it says the
18 Committee may approve or deny an application and, in
19 doing so, shall consider the following factors.

20 As a proponent for the Nation, I think that you
21 have a responsibility as a party to this to bring those
22 issues and those factors to our attention. And the way
23 I read this, it is the Committee's responsibility to
24 consider the following factors.

25 Although I do appreciate the work that went into

1 TEP's archeological surveys, I feel that as a proponent
2 and as a party you had a responsibility to be more
3 specific, and you have an opportunity to be more
4 specific about those specific areas and those specific
5 concerns. And I questioned you during your presentation
6 about the identification of specific sites with regard
7 to medicinal plant collection, basket collections,
8 material collection sites, clay deposits, other areas of
9 concern with regard to the TCP, and I don't recall that
10 you had any specific concerns with regard to that area
11 within the TCP that you could identify.

12 Thank you, Mr. Chairman.

13 CHMN. FOREMAN: Okay. Thank you, Ms. Berglan.

14 MEMBER EBERHART: Mr. Chairman.

15 CHMN. FOREMAN: I am sorry. Mr. Eberhart.

16 MEMBER EBERHART: Thank you, Mr. Chairman.

17 Ms. Berglan, could you elaborate a little bit
18 about the wording or the proposed language that you and
19 TEP are working on as far as a cultural monitor during
20 construction, et cetera, and what would be acceptable to
21 the Nation as far as proposed language?

22 MS. BERGLAN: Thank you. I believe they are
23 going to bring it up on the screen.

24 MR. DERSTINE: One moment.

25 All that red is lawyering right there.

1 MS. BERGLAN: I believe that the parties are in
2 agreement with CEC Condition 28 with the exception of
3 all parties have agreed to insert the table up -- oh, I
4 am sorry, it is there.

5 So I don't want to speak for the rest of the
6 parties, but I was under the impression that 28 is -- we
7 are pretty much firm on at this point.

8 CHMN. FOREMAN: In any event, you find that
9 language acceptable?

10 MS. BERGLAN: Yes, Mr. Chairman.

11 CHMN. FOREMAN: Okay.

12 MEMBER EBERHART: Thank you.

13 CHMN. FOREMAN: Very good. And thank you for
14 working on that.

15 Any other questions?

16 (No response.)

17 CHMN. FOREMAN: All right. Very good. Then
18 let's go to saving the -- no, it is the Scenic Santa
19 Ritas. I keep wanting to say the Scenic Santa Ritas,
20 but I guess --

21 MR. METLI: Thank you, Mr. Chairman.
22 Mr. Chairman, fellow members of the Line Siting
23 Committee, I would like to echo Mr. Robertson's comments
24 yesterday in thanking the Committee for their time and
25 efforts in this matter. It is well appreciated and I

1 recognize it has been a very long week.

2 Mr. Chairman, I would also like to express my
3 thanks and gratitude for allowing the Scenic Santa Ritas
4 an opportunity to file its testimony and testimony
5 summaries in this case as an offer of proof to allow us
6 to preserve our rights of appeal.

7 Given our legal arguments in this case, we are
8 of the position that the CEC should be denied, and
9 that's set forth in our legal memorandums that were
10 attached. But if this Committee is inclined to grant a
11 CEC, given the testimony over the last few days, we do
12 have a couple of proposed recommended changes to the
13 conditions, two of them that I would like to just
14 briefly touch upon.

15 First goes to Condition No. 7. We agree with or
16 we concur with Mr. Magruder in his request that the time
17 frame for issuing the CEC be reduced to five years. Our
18 position is based upon the testimony of Mr. Beck, who
19 indicated that Rosemont intends construction to begin in
20 2013 and that construction of the transmission line will
21 only take eight months.

22 In addition, Mr. Beck testified that in previous
23 applications for extensions of CECs, the process was not
24 very onerous and not time consuming.

25 The second condition --

1 CHMN. FOREMAN: Mr. Metli, before you move on
2 there, my impression, and this was not directly said,
3 was that the 10-year window was sort of a tribute to the
4 lawyering skills of you and Mr. Robertson and the
5 anticipated legal appeals that would follow. Is there
6 anything about -- at what stage of the legal proceedings
7 do you believe it would be safe for the applicant to
8 proceed? Is it your thought that it would wait until --
9 they would be forced to wait until all appeals are
10 concluded, or do you have a position, or do you take no
11 position with regard to when it would be appropriate for
12 them to proceed?

13 MR. METLI: Mr. Chairman, that anticipates my
14 second condition. We recognize the contention of the
15 Rosemont mine, and this brings us to the point,
16 Mr. Chairman, that you raised today with respect to
17 Ms. Webb and her question regarding permits. And the
18 issue that I have, that our clients have, is for
19 Condition No. 25.

20 Our concern has always been having the line
21 constructed or commencement of the line constructed
22 before the mine is approved. Now, there is a
23 distinction between a record of decision being issued
24 and the mine actually obtaining all of its permits and
25 is able to be approved and running. Our concern is that

1 a record of decision can be approved, construction of
2 the line does commence, ultimately the mine does not get
3 constructed, and now we have the environmental impacts
4 associated with the construction of the line, not only
5 the construction of the line, but possibly the
6 deconstruction, if that's a word, of the line.

7 In that light, I have -- we have proposed
8 alternative language for paragraph 25. I had
9 consultation with Rosemont regarding this language.
10 Rosemont will speak for themselves, but I can say that
11 we did not get consensus on this. But I would like to
12 propose my alternative language: Applicant will not
13 commence construction on the project until all permits
14 required to allow construction and operation of the
15 Rosemont copper mine have been obtained and are no
16 longer subject to judicial review.

17 Now, to your question, Mr. Chairman, if the
18 Committee --

19 CHMN. FOREMAN: Wait, wait. I am still trying
20 to get my mind around the language there.

21 MR. METLI: Okay.

22 CHMN. FOREMAN: No longer subject to judicial
23 review. There are two things that leap to my mind. One
24 is the all deliberate speed of civil rights in the '60s.
25 And the second is judicial review of death penalty cases

1 that have lasted for 20 years.

2 So what -- there are processes in the area of
3 judicial review that allow for injunctive relief. Can't
4 appellate courts take care of themselves in that regard?

5 MR. METLI: Mr. Chairman, yes, they can.

6 CHMN. FOREMAN: All right. I -- define for me
7 as precisely as you can what further judicial review
8 means.

9 MR. METLI: It was --

10 CHMN. FOREMAN: What you mean by the term.

11 MR. METLI: What our intent was any legal
12 challenges to the construction of the mine and any
13 exhaustion of appeal associated with those challenges.

14 CHMN. FOREMAN: Well, suppose you, for example,
15 filed an appeal that relates to one aspect of the mine,
16 filed that all the way through the system to the end,
17 whatever that may be, and then you started with another
18 objection to the mine and followed it all the way
19 through to the end, and then you started with another
20 objection to the mine and followed it through to the
21 end. Would that be consistent with the language that
22 you are proposing?

23 MR. METLI: That would be, but that would also
24 be assuming there would somehow be an abuse of process
25 under that example.

1 CHMN. FOREMAN: Okay. All right. And I am just
2 trying to understand it. And you have answered directly
3 and I appreciate that. Thank you.

4 MR. METLI: And getting back and, in closing and
5 getting back to your question regarding the five-year
6 time frame, if the Committee was inclined to narrow or
7 tighten up paragraph 25 whereby it is reasonable that
8 TEP need additional time, we would have no objection to
9 withdrawing our request for the five-year time frame.

10 And with that, that would conclude my closing
11 statement, Mr. Chairman. Thank you.

12 CHMN. FOREMAN: Thank you.

13 Mr. Magruder.

14 MR. MAGRUDER: Good morning, Committee members
15 and Chairman. I would first like to thank you for
16 listening to this pro se, or whatever you call me,
17 amateur trying to present my case to the Committee. I
18 have learned a few things over the years, but I have
19 also learned a lot from you and thank you very much.

20 Most of my comments remain fairly similar to my
21 opening comments. However this line is built, my first
22 topic concerned an alternative energy approach, which I
23 still support.

24 And also I had two other general conditions that
25 concern no groundwater and filling in the hole. And the

1 draft EIS apparently has an alternative to help fill in
2 part of the pit. So that might go away.

3 I would just like to remind you that there are
4 denial letters from the local jurisdictional activities,
5 Pima County and the Town of Sahuarita, both of which
6 these transmission lines will pass. However, if there
7 is a mine, I haven't seen all the deficiency corrected,
8 so I have offered some recommendations in changing the
9 CEC.

10 Rosemont Copper is not liked in this community
11 by many, mainly because they are afraid that both sides
12 of the Santa Cruz Valley are going to look identical 50
13 years from now.

14 The 50-year right-of-way lease from the State
15 Land Department, combined with 400 to 500 megawatt
16 capability for this transmission line, plus the planned
17 mine growth in Exhibit A-3, makes obvious what Augusta
18 Resources wants to do. The proposed transmission line
19 without change provides a capacity way beyond the 120
20 megawatts now requested in this application. It became
21 clear, actually to me yesterday when testifying, that
22 the CEC must be modified to not grossly exceed 120
23 megawatts. That is expressed by TEP as its requirement
24 to meet the need for this one customer.

25 Therefore, the conductors or insulators are one

1 way this could be done to, for a 138 kilovolt line, to
2 require to match the requirement. The draft
3 environmental impact statement uses not 120 megawatts
4 but 133 megawatts as the electric demand required for
5 the mine. Using that number -- well, let me start over.

6 If the public knew and understood that this
7 Committee was authorizing a transmission line that would
8 last for 50 years and is being planned to serve the
9 additional mines that are being planned for the Santa
10 Rita area along the corridor that is involved with this
11 program, and granting 10 or more years to use the CEC,
12 then what you are doing is also granting permission to
13 build several more mines with this power line.

14 And therefore, in Condition 7, I would like to
15 add one sentence. And that would be, quote, the maximum
16 capacity of this transmission line shall be designed and
17 limited to not exceed 133 megawatts. I will read that
18 again if you want me to. The maximum capacity of this
19 transmission line shall be designed and limited to
20 transmit only up to 133 megawatts.

21 CHMN. FOREMAN: Mr. Magruder, have you
22 considered the potential implication of that for Fort
23 Huachuca?

24 MR. MAGRUDER: It has nothing to do with Fort
25 Huachuca, Mr. Chairman, because they are not connected

1 to this line on the preferred route.

2 CHMN. FOREMAN: Well, does it prevent or does it
3 make dramatically more expensive some day an attempt to
4 give redundancy to Fort Huachuca through that line?

5 MR. MAGRUDER: Only Alternative 4 impacts Fort
6 Huachuca. I am sorry, 2 or 3 might impact Fort
7 Huachuca.

8 CHMN. FOREMAN: You don't think that running a
9 line up along segments 160, 190, and 210 some day would
10 be a way to provide energy to Fort Huachuca, electrical
11 energy to Fort Huachuca?

12 MR. MAGRUDER: Presently Fort Huachuca is
13 receiving 115 kilovolts through a TEP line directly
14 through Cochise County to the east, and that's its
15 primary way of receiving power. The backup line is the
16 46 kilovolt line here rated at 20 megawatts.

17 Fort Huachuca, as was alluded to in the TEP
18 testimony, is looking at other ways of getting power.
19 Many military bases want to become independent of the
20 local electric companies and have its own capability.
21 Also, Sulphur Springs Valley Electric Co-op operates
22 most of that area around the fort. There is only one
23 TEP customer in Cochise County, and that is the fort.

24 And I really see limiting the line to the
25 Rosemont substation, which is the purpose of this

1 hearing today, has no direct or even indirect impact on
2 Fort Huachuca, unless the fourth alternative is approved
3 and that would be for potential expansion to Fort
4 Huachuca.

5 CHMN. FOREMAN: Okay.

6 MR. MAGRUDER: Continuing further, it is obvious
7 that this copper company will transmit 138 kilovolt
8 electricity. And that then appears to me, as a
9 nonattorney, that the company will then be defined as a
10 utility and, therefore, should have a CEC to operate a
11 transmission line system.

12 This hearing today focuses primarily on the
13 electrical issue, and so I won't talk about some of the
14 other subjects I had in my testimony.

15 Tucson Electric, or TEP, is a supplier. There
16 must be some reliability concerns as indicated by the
17 company, but my overall aim was to ensure that Rosemont
18 mine does not -- does receive reliable electricity on
19 this radial line. A true balance has not been
20 established based on application for 120 megawatts of
21 power at 138 kilovolts in this application and the
22 environment.

23 We have discussed a much smaller system that
24 could be discussed, could be constructed. First, a
25 radial system that the Forest Service is concerned about

1 that will need backup power will in all probability have
2 to be furnished on-site with diesels and will cause more
3 problems with its air pollution permit. But that's not
4 what we are looking at today.

5 Until I thought about what was being accepted on
6 the record yesterday, my concern about this transmission
7 line was just it has now become a gateway to a much
8 larger and nonstated development in the Santa Rita
9 Mountains. It has become much clearer and focused.

10 My second topic concerned reliability, which
11 involved flooding along -- that would prevent the radial
12 line from having electricity.

13 The third topic was water due to the fact that
14 several billion gallons a year will be required to
15 generate the electricity for this line.

16 TEP is just an agent. They are just protecting
17 their large potential addition to their local demands.
18 However, they don't have the power locally to meet this
19 efficiently. I realize that numbers aren't available to
20 predict, but higher demands, higher transmission losses,
21 more imported power and urgent capital costs in the next
22 few years to meet up to 39 percent additional demand
23 will be forthcoming for the Tucson area.

24 Only the -- TEP's only other customers other
25 than the mines are going to have to pay part of this

1 burden.

2 New subject. These utility poles will have an
3 impact on the habitat in the Santa Rita Experimental
4 Range as was discussed in terms of the changes that it
5 will make in the area, in particular for the studies
6 that look for changes occurring over long periods of
7 time. This is a unique biological area. The utility
8 poles are man-made, are not natural, and thus skewing
9 data with unknown consequences, especially the raptor
10 predications. I have Condition No. 11 that discusses
11 that item that I have submitted for review.

12 Further, lighting impacts may be so significant,
13 not hopefully from the transmission line, that
14 astronomical communities will leave a world class
15 part -- community in this area. And that is a major
16 concern of mine. And we have famous comet watchers,
17 such as astronomer Levy who is famous for the number of
18 comets that he has found in his amateur observatory in
19 Vail. See Magruder Condition No. 3 which makes a slight
20 change.

21 The Santa Cruz River Valley is a continuous
22 archeological site. However, the application thought
23 these were minor.

24 New subject. The utility pole finish should
25 make them hard to see based on the contrast between the

1 pole and the background outside of a national forest.
2 Looking at all but the fourth route, there is only a
3 short period of -- short number of miles that this line
4 goes through the national forest. Most of it is not in
5 the national forest. And that's the purpose of my
6 Condition No. 12 comments.

7 The sixth issue I discussed was the utility
8 status for Rosemont Copper. I believe the record of
9 this hearing is fairly clear. Rosemont will operate as
10 a utility and, therefore, should be an applicant.
11 Although my motion was not passed, I believe that
12 testimony by the applicant shows this issue remains.

13 My concerns about substations and switchyards
14 need to be resolved. TEP should comply with the Town of
15 Sahuarita's request for the Toro switchyard information.
16 Rosemont substation remains hidden behind mining laws
17 and other pseudo constraints to avoid letting us really
18 know its capabilities.

19 There are also transportation issues involving
20 the water and transmission collocation along Santa Rita
21 Road. A 14 foot wide super highway to be constructed
22 for off-road vehicles is not conducive to the mission of
23 the experimental range. I made some recommendations
24 about using short spurs. See my Condition No. 6.

25 These topics, plus a new issue which I will

1 bring up now, involves safety which was discussed but
2 not listed as a separate issue, which involves the
3 inducement of electricity into fences and pipes. See
4 Magruder Condition 18.

5 The present condition as presently worded in my
6 viewpoint makes no technical sense. And it has been
7 modified since I first was involved in the wording of
8 that over the last 50 CEC applications since it first
9 came up. So things do get changed with time. I sort of
10 like the words that I have used.

11 I also changed two wills to shalls in
12 Conditions 25 and 26. There are times -- and some of
13 you understand the difference between those two words.
14 Shall is a requirement. A will is an intention or a
15 hope or a wish. And you can't legally be certified for
16 not complying. Shall you can. So I think you might
17 want to look at those two other items.

18 Also, I added a new Condition in 26 to require
19 the application to report to the Corporation Commission
20 any new mitigation planned actions that were added in
21 the record of decision, including the estimated cost.
22 This is to protect the application, or the applicant,
23 from excessive changes caused by the record of decision,
24 and also to notify the Corporation Commission that the
25 applicant has been told to do something and tells the

1 Corporation Commission what this extra requirement is
2 that the Utility Director would not know about.

3 And I have just asked for a report to be
4 submitted to the Utilities Director so he would know
5 that extra actions are being carried out that might
6 someday be used in a rate case or some other means, at
7 least it is reported that extra action. I have tried to
8 write that in Condition 26.

9 Again, my goal is the best solution. I am an
10 engineer. I like to solve problems. Some attorneys --
11 I won't go into the rest of the sentence. But I believe
12 that getting the best is always the way we should always
13 strive. Some of my comments are extremely minor, and I
14 don't want to say are nitpicky, but I have tried to do
15 what I can do to make it what I consider the best. And
16 I hope that we can all say when we go home tonight and
17 to your grandchildren a couple decades from today that
18 we have done a good job today.

19 Thank you.

20 CHMN. FOREMAN: Thank you, Mr. Magruder.

21 Let's move down -- I am sorry. Member Eberhart.

22 MEMBER EBERHART: Thank you, Mr. Chairman.

23 Mr. Magruder, have you had a chance to discuss
24 during one of the breaks or after hours with the
25 applicant any of your proposed requirements?

1 MR. MAGRUDER: I have not discussed them
2 personally, but they were submitted to them eight days
3 ago and filed with the Corporation Commission a week ago
4 Wednesday.

5 MEMBER EBERHART: What I would -- assuming we
6 have a lunch break, and in between and if it is
7 possible, if you could get together with the applicant
8 and maybe review some of your suggested improvements or
9 requirements, that maybe, if there is consensus on some
10 of them, that would make it easier for our job.

11 MR. MAGRUDER: Yes, I will. No problem.

12 MEMBER EBERHART: Thank you.

13 CHMN. FOREMAN: All right. Rosemont.

14 MR. JAMES: Thank you, Mr. Chairman, Committee
15 members. And I guess like everybody else, I want to
16 thank the Committee. This is my first Line Siting
17 Committee hearing and it has certainly been a very
18 interesting experience. So I am not -- again, I will
19 try to be short.

20 And Rosemont, of course, supports the preferred
21 alternative. I am not going to echo what Mr. Derstine
22 has said, but we agree with his points. It is the most
23 direct route.

24 Most critically, I think, it is supported by the
25 University of Arizona, which manages the experimental

1 range. And if I recall correctly, roughly seven miles
2 of the preferred route crosses the experimental range.
3 So again, they were consulted. I think there are two
4 letters that are in the application from the university.
5 Mr. Husman spoke and, again, echoed their preference for
6 the preferred alternative.

7 And as has been indicated, the preferred
8 alternative actually impacts about half a mile of
9 national forest system lands. So the -- I think about
10 three and a half miles are on Rosemont's land. So in
11 terms of overall impacts, in terms of being able to
12 minimize ground disturbance, collocating facilities and
13 so on, it seems to Rosemont that the preferred
14 alternative is clearly the best.

15 Moving on to some of the other comments that
16 were made here during closing, the Nation had indicated
17 that the parties have been working on revised conditions
18 to address concerns over cultural resources. We have
19 been involved in those discussions. I think we have
20 worked out language that would be acceptable to the
21 parties which we hope to be submitting to you for your
22 approval. So hopefully that won't be an issue. And
23 among other things, I believe that language is going to
24 address impacts to Huerfano Butte.

25 Let me also note for the record, and obviously

1 you all have heard this, but it seems as if the parties
2 who are opposing the CEC are not, they are not really
3 opposed to the transmission line, they are opposed to my
4 client, the mine. And while we appreciate their
5 position, obviously siting a mine today is very
6 difficult.

7 Mr. Chairman, Committee members, as you have
8 recognized, the issue here is the line. And I think
9 Tucson Electric has put together a very strong
10 application. They have made excellent presentations.
11 Mr. Beck and Ms. Weinstein have done an excellent job in
12 terms of explaining the process and the analysis they
13 have done.

14 So again, we support the preferred alternative
15 and think the Committee ought to grant it.

16 CHMN. FOREMAN: Mr. James, let me stop you and
17 pursue a line of inquiry with you to help me understand
18 the mine's position.

19 TEP has indicated that it does not intend to
20 start construction, start the environmental impact that
21 would go with construction until all of the appropriate
22 permits have been granted.

23 First of all, is there any contractual leverage
24 that the mine has or any contractual agreement that the
25 mine has with TEP about the mine being able to pick the

1 date of initiation of construction?

2 MR. JAMES: No, there isn't. I think, as
3 Mr. Black has indicated, we are still -- or perhaps
4 Mr. Beck had indicated, questioned by Mr. Black -- we
5 are still negotiating the details of the agreement. And
6 again, the reason that hasn't been finalized is because
7 we are all waiting for a decision in this proceeding.

8 CHMN. FOREMAN: And may I assume, then, that you
9 don't have a problem with TEP then deciding when all of
10 the appropriate permits have been granted, or is the
11 mine going to decide when all the appropriate permits
12 have been granted? Or who is the ultimate decision
13 maker with regard to the initiation of construction?

14 MR. JAMES: Well, and that was the last point I
15 was going to make and you have led right into it. We
16 have no problem with, we, Rosemont has no problem with
17 Condition 25 as currently written. And Condition 25
18 indicates that TEP will not commence construction until
19 a record of decision is issued by the Forest Service
20 with respect to the plan of operations. So we would
21 abide by that condition.

22 CHMN. FOREMAN: Scenic Santa Ritas has
23 recommended expanding that beyond the record of decision
24 to all applicable federal permits, or language similar
25 to that. Is that language acceptable to you, or do you

1 have a problem with that?

2 MR. JAMES: We have a serious problem with that,
3 Mr. Chairman. And the reason is, and if you recall our
4 original legal memorandum on the issue of the scope of
5 this Committee's jurisdiction, Rosemont -- well, back up
6 a step.

7 Siting and permitting a mine today is an
8 extraordinary, extraordinarily complicated situation.
9 And we have a variety of different permits and approvals
10 that relate to some aspect of the mine. And so having a
11 blanket provision that just says when all permits are
12 approved, what does that mean?

13 CHMN. FOREMAN: Well, let's pursue that. So far
14 as I know right now, the federal NEPA process is the
15 only place where there is a permit that embraces both
16 the mine and the line. Are you aware of any other
17 permit that you would be required to get that would
18 embrace both the line and the mine?

19 MR. JAMES: Well, I am not sure. I don't think
20 there is. Ms. Arnold indicated to me that she thinks
21 there may be a -- it may be in related with our 404
22 permit. The 404 permit -- and let me back up.

23 This came up. As you recall, I objected to
24 questions relating to Section 404 of the Clean Water
25 Act. We need a 404 permit in order to conduct certain

1 of the mining operations, because we will be placing
2 tailings and waste rock that are going to be affecting
3 some upper drainages.

4 But that doesn't affect the line, to get to your
5 point, Your Honor. The only thing that really affects
6 the line is the plan of operations. The plan of
7 operations is also, if you will, the central permit.

8 Remember, if you look at the map, the line
9 route, the pink -- I think that's pink; I may be color
10 blind, too -- the pink land that's owned by Rosemont,
11 that's private land. Those are primarily patented
12 mining claims that resulted from the fact that this area
13 is a historic mining district that has been mined for
14 over 100 years. And technically we could start mining
15 on our private land right now.

16 We are not doing that. We are waiting, we are
17 waiting until approval of the plan of operations,
18 because it is necessary to use adjoining national forest
19 system land in connection with the operation. The NEPA
20 process is also going to include the 404 permit, and I
21 think that's what Ms. Arnold was referring to.

22 But in terms of the line itself and bringing
23 power into the mine, to the area where we need to have
24 that power to operate, along with water, there really
25 isn't any other permit, again, unless TEP were to

1 encounter a situation where they had to, for example,
2 acquire a 404 permit, and I don't think that situation
3 is likely to occur.

4 So long answer perhaps, Your Honor, but I -- it
5 is a bit difficult to guess, again in view of the
6 complexity of this project, exactly what permit might
7 trigger what.

8 CHMN. FOREMAN: Well, we are talking about
9 something very important here, because my own guess is
10 this is likely to be the key issue that determines when
11 this mine starts, when construction of the mine starts.
12 I take it your position would be that this Committee is
13 not in a position to require that all federal permits
14 relating to the -- or all permits of any sort relating
15 to the mine and the line be a condition of the CEC for
16 the line. Would that be a fair --

17 MR. JAMES: Yes, it is.

18 CHMN. FOREMAN: Okay. So if the federal NEPA
19 process, the record of decision in that process, is the
20 only one that you are aware of, and anybody is aware of,
21 that embraces both the line and the mine, then if there
22 is a condition that requires you to wait until that is
23 final before you begin, and a condition that requires
24 you to wait until all of the applicable permits relevant
25 to the line as opposed to the mine are granted, would

1 you agree that that is the limit of this Committee's
2 legal jurisdiction to impact the construction, the
3 initiation of construction of this project?

4 MR. JAMES: I would. I think you have
5 summarized our position very well.

6 CHMN. FOREMAN: Okay. Well, I am just trying to
7 understand it.

8 MR. JAMES: But I think you have hit on a key
9 point. And that is, again, we are again bleeding over
10 into mine approval. And that's why we also disagree,
11 respectfully disagree, with the proposal of the Save Our
12 Scenic Santa Ritas to add the additional proviso that
13 all litigation has to be concluded. Because, first of
14 all, that's just an obvious invitation to file a
15 lawsuit, because whether the lawsuit is frivolous,
16 whether it is in good faith, whatever, it is going to
17 delay things, and again, given the complexity of this
18 situation, and given the fact that Commission
19 decisions -- and again, this is my first time before
20 this Committee, but I have been before the Corporation
21 Commission on a number of occasions -- Commission
22 decisions are normally final and become effective when
23 they are issued.

24 So again, given the unique situation here, I can
25 see wanting to wait until the key federal process, the

1 NEPA process is concluded. But again, to expand that to
2 other permits, getting into areas, again, that relate to
3 the mine that are outside the Committee's jurisdiction,
4 and then adding the additional caveat that all
5 litigation or even are no longer subject to judicial
6 review, which also implicates the statute of
7 limitations -- and, for example, the statute of
8 limitations for challenging a NEPA action is six years,
9 so you can see the amount of time that would be involved
10 here -- we could be back here 10 years from now
11 relitigating these issues and we still wouldn't be in a
12 position to start construction. All this really is a
13 way, frankly, to delay Rosemont's project.

14 CHMN. FOREMAN: Very good. Anything else you
15 would like to tell us?

16 MR. JAMES: One other point I would like to --
17 well, two other points very briefly. First of all,
18 Rosemont is not a utility. We have no intention of
19 providing utility service to anyone else. We are
20 simply -- we simply want service.

21 CHMN. FOREMAN: Well, let's drill down on that a
22 little bit. There are two different definitions of
23 utility that are floating around here. One is a
24 definition of a utility for, we will call it, the other
25 parts of providing electrical energy other than the line

1 siting statute. And then there is a different
2 definition of utility in the line siting statute.
3 Correct?

4 MR. JAMES: That's correct.

5 CHMN. FOREMAN: And we know that because Salt
6 River Project is covered under the line siting statute
7 and it is not covered under the, for example, ratemaking
8 statute.

9 For purposes of this statute, if, for example,
10 TEP was going to build this line or build a line having
11 greater than 115 kilovolts on it on its property, it
12 would be, according to the legal definition contained in
13 40-360, a utility, correct.

14 MR. JAMES: That's correct.

15 CHMN. FOREMAN: And that's an artifact of the
16 fact that statute was drafted at a time that the only
17 entities that were doing that sort of thing were, in
18 fact, the utilities that were regulated by the
19 Corporation Commission. And after deregulation, lots of
20 other people, like mines, like merchant operators, were
21 able to get into the power plant and transmission line
22 construction business. And that definition hasn't been
23 changed or adjusted to recognize that change in the
24 world.

25 So if you folks need to build a transmission

1 line within the meaning of the line siting statute, you
2 would in fact be a utility, do you agree?

3 MR. JAMES: I don't think we would be, because I
4 think we are -- I think under the definition of utility,
5 even in the expanded form of that definition in the
6 statute, I think you still have to be in the business of
7 generating or transporting power. If you are simply
8 serving yourself -- at least that's how I view it, as
9 someone who has done a lot of work in the water utility
10 area -- if you are simply serving yourself, I don't
11 think you are subject to regulation, subject to simply
12 the siting of the line itself. But it doesn't make you
13 a utility, either a public service corporation or a
14 utility in the broader sense of the statute.

15 CHMN. FOREMAN: Somehow I have a feeling that
16 you and Mr. Metli and Mr. Robertson are going to have a
17 chance to discuss that issue again. But that is not
18 before us here today, would you agree?

19 MR. JAMES: I would agree.

20 CHMN. FOREMAN: Okay.

21 MR. JAMES: And that was my point. We are
22 not -- we are simply requesting service, and we have no
23 intent to transmit or distribute power to anyone. And
24 again, this whole, the final red herring is the whole
25 idea that this is part of a larger master plan to serve

1 other mines in the area.

2 We have been working for six years, over six
3 years trying to get this mine open. So we don't have
4 plans to open more mines. We don't have plans to
5 transmit or distribute power to anybody else. We are
6 just -- we just want power delivered to our property so
7 that we can operate our mine.

8 CHMN. FOREMAN: This is not a secret plan of
9 yours to pay for the electrical transmission capacity
10 for competitors?

11 MR. JAMES: It is not, Your Honor.

12 CHMN. FOREMAN: All right. I am glad that you
13 reassured me on that point.

14 Member Walker.

15 MEMBER WALKER: Thank you, Mr. Chairman.

16 Mr. James, on the question of whether Rosemont
17 is a public utility, I thought a lot about that in
18 reading the briefs. It strikes me that the facilities
19 that Rosemont would build would be for the purpose of
20 simply receiving the power and putting that power to
21 use, is that correct?

22 MR. JAMES: That's absolutely correct.

23 MEMBER WALKER: If the Committee or the
24 Commission went from that viewpoint to saying the size
25 of the line itself is the determinant in whether you are

1 a utility, couldn't that open the door to every large
2 user in the state who is simply building a facility to
3 accept and use power becoming a utility?

4 MR. JAMES: Absolutely. And that was the point
5 I was trying to make a few moments ago. I think you do
6 have to look at the use of the power. And if you are
7 simply serving yourself, if that's the purpose of the
8 facility, I don't think it is covered by the line siting
9 statutes.

10 MEMBER WALKER: Thank you.

11 MEMBER EBERHART: Mr. Chairman.

12 CHMN. FOREMAN: Member Eberhart.

13 MEMBER EBERHART: Thank you, Mr. Chairman.

14 Mr. James, to go back to the Chairman's earlier
15 line of questioning regarding the potential timing for
16 the start of construction of the mine and the
17 transmission line, is there a trigger in your mind, or
18 an event, at which point you will decide that it is safe
19 to make the investment to proceed with construction?
20 And if so, could you tell us what that event is?

21 MR. JAMES: I think that's a bit difficult.
22 Presumably it will be the issuance of the record of
23 decision, because again, as I have indicated, that is
24 the principal permitting decision that needs to get
25 made, and that will also mark the conclusion of the

1 federal NEPA process and any additional or related
2 federal actions such as our 404 permit would also be
3 linked to. That's going to be the key event for us. At
4 that point, we will be able to begin fully investing in
5 the development of the mine.

6 Now, I say that with the caveat that again, in
7 view of the complexity of this project, as I sit here
8 today in December 2011, it is possible that some other
9 complicating factor could come along. But as we sit
10 here today, that really is the trigger, as I indicated,
11 for Rosemont. And that's why we think it is also the
12 appropriate trigger to include in the CEC.

13 MEMBER EBERHART: Do you -- and maybe this is a
14 question for the Committee. Is there a reason we
15 couldn't tie the CEC duration, the time clock, if you
16 will, of the length of time to begin ticking at the
17 issuance of the record of decision?

18 MR. JAMES: No. I think frankly I would -- I
19 could see there is some logic to doing that.

20 MEMBER EBERHART: Just a thought. Thank you.

21 CHMN. FOREMAN: Anything further, Mr. James?

22 MR. JAMES: No, Your Honor.

23 CHMN. FOREMAN: Thank you.

24 Is there anything that the applicant has to say
25 in reply?

1 MR. DERSTINE: No, Your Honor. I think we are
2 ready to proceed with however you would like. We have
3 the proposed CEC and negotiated conditions.

4 CHMN. FOREMAN: Okay. Member Walker.

5 MEMBER WALKER: Thank you, Mr. Chairman.

6 Mr. Metli, the decision on Ms. Webb's status as
7 a party, that did not -- excuse me. Did that affect the
8 offer of proof that Santa Rita has put into the record
9 in this case in any way?

10 MR. METLI: Mr. Chairman, Member Walker, no.

11 MEMBER WALKER: So Ms. Webb's exhibit remains in
12 the offer of proof and Ms. Fonseca's direct testimony
13 remains in the offer of proof for the Commission to
14 consider?

15 MR. METLI: Mr. Chairman, Member Walker, it is
16 my understanding that the Chairman yesterday removed
17 Ms. Webb's exhibits from the offer of proof on the
18 record. Ms. Fonseca's testimony is still in our offer
19 of proof. As I indicated yesterday, she has been
20 testifying as an individual, as an expert witness on
21 behalf of Save the Scenic Santa Ritas.

22 CHMN. FOREMAN: And let me comment on that,
23 because I have had a chance to talk with Colette this
24 morning. The usual practice is to take out of the
25 record that which has not been offered or admitted. And

1 that's the rule that we will follow in this case. So if
2 there was nothing that was offered or admitted that
3 relates to Ms. Webb, that won't be a part of the record
4 that goes up.

5 The offers of proof, I think, were made at the
6 time of the opening statements. And so the offers of
7 proof or the booklet that contains the offers of proof
8 of multiple parties, that offer of proof remains. I am
9 open to thoughts from the members of the Committee, but
10 at this point, I don't see any harm in having it in the
11 larger record that goes up.

12 And my concern, obviously, with the amount of
13 paper that has been commented about and generated in
14 this case is to try and make the record as succinct and
15 direct as possible and not put anything extraneous in
16 it. But this is an unusual circumstance. And I usually
17 try to err on the side of keeping things in and
18 available for review rather than taking them out.

19 MEMBER WALKER: That anticipates my question for
20 you, Mr. Chairman. Would it be appropriate for the
21 Committee to take Ms. Webb's offer of proof exhibits and
22 the documents she provided the Committee that she was
23 going to mark as direct testimony and include those as
24 public record or public comment, I am sorry, public
25 comment, so that they are -- her viewpoint remains in

1 the case, but it is not evidence because she is not a
2 party?

3 CHMN. FOREMAN: Well, the reason for an offer of
4 proof is to allow a reviewing body access to the
5 information that was at issue in the lower forum. As a
6 nonparty to this proceeding, it is conceivable the
7 Commission may grant her party status if there is a
8 review, and I expect that there will be, before the
9 Commission. At that stage, they could authorize the --
10 or they could review the offer of proof or whatever.

11 Actually, that's a creative suggestion, to put
12 it into public comment. I like that. I don't have a
13 problem with that.

14 Is there any other member of the Committee that
15 has a concern about putting the exhibits that were
16 proffered by Ms. Webb into the public comment category?

17 (No response.)

18 CHMN. FOREMAN: Okay. If you are proposing
19 that, I think that's a really good idea.

20 MEMBER WALKER: I am proposing that,
21 Mr. Chairman, because we have, you know, an obligation
22 to ensure that the public participates to the fullest
23 extent possible. And while I disagreed with the way she
24 approached things as a party in the case, as a member of
25 the public, I think we should include her comments and

1 let the Commission give it the weight that it deserves.

2 CHMN. FOREMAN: Very good. We will see that it
3 is done.

4 MR. MAGRUDER: Mr. Chairman, I have a question
5 about your discussion at the beginning of this one. And
6 that is, when something is accepted for the record --
7 like a good number of my exhibits were not accepted, are
8 they still in the record?

9 CHMN. FOREMAN: Yes.

10 MR. MAGRUDER: Yes.

11 CHMN. FOREMAN: If they are offered but not
12 admitted, they are left in the record but not considered
13 as a part of the basis upon which the Committee may make
14 its decision.

15 MR. MAGRUDER: Thank you. That's different than
16 other proceedings.

17 CHMN. FOREMAN: Not in front of me.

18 MR. MAGRUDER: Rate cases, they get returned. I
19 am just -- thank you. I just didn't know.

20 CHMN. FOREMAN: All right. Very good.

21 So what is the pleasure of the Committee here?
22 We could break early for lunch and be back at 1:00 and
23 begin deliberations then. We could start our
24 discussions now and talk, for example, about the issue
25 of need and then move to a discussion of, assuming there

1 is a finding of need, go to the issue of alternatives
2 after lunch, and then go to the business of the language
3 of the conditions.

4 Member Rodriguez.

5 MEMBER RODRIGUEZ: Mr. Chairman, I prefer that
6 we kind of start this dialogue right now because there
7 may be some other subject matters that may come up that
8 the parties may confer during the lunch break.

9 CHMN. FOREMAN: Okay.

10 MEMBER RODRIGUEZ: So we can get the issues that
11 maybe individual Committee members want to address that
12 they can talk about. Because I have a few things that I
13 would like to bring up, and I am sure other Committee
14 members. So we can get those items on the table, have
15 the parties go discuss it during the lunch break, and
16 then we can come back and hammer these things out.

17 CHMN. FOREMAN: Okay. Member Haenichen.

18 MEMBER HAENICHEN: I think we definitely should
19 get the discussion about need out of the way now.

20 CHMN. FOREMAN: Okay.

21 MEMBER HAENICHEN: Because if we don't think
22 there is need, then the whole thing is over. So I think
23 we should do that right now.

24 CHMN. FOREMAN: Okay. We need to talk about
25 need right now. So let's begin with that.

1 And again, we are in deliberation. Now, we have
2 the parties and some of the witnesses available that we
3 can make use of it. But at this stage the Committee is
4 going to be deliberating amongst ourselves. You all are
5 welcome to view our deliberations and hear them as they
6 take place, because that's the way we do business.

7 So do I have anyone who would like to comment or
8 open discussion with regard to the issue of need?

9 Member Walker.

10 MEMBER WALKER: Mr. Chairman, I move that we
11 find there is need in this case. Look in particular, it
12 was -- take this language in TEP's memorandum on whether
13 the Siting Committee may consider the environmental
14 impact of the proposed mine and the motion in limine. I
15 don't know if I am pronouncing that right. But on
16 page 9, beginning at line 10, it says, in short, TEP is
17 obligated to serve customers within its service
18 territory. The mine is largely located within TEP's
19 service territory. And a few lines later it says
20 because Rosemont is requesting service, TEP must oblige.

21 I think that's it. That is correct, and it is
22 factual, and I think it demonstrates need.

23 CHMN. FOREMAN: Is there a second?

24 MEMBER HAENICHEN: Wait until there is a second.

25 MEMBER NOLAND: Second.

1 CHMN. FOREMAN: Second by Member Noland.
2 Member Haenichen.

3 MEMBER HAENICHEN: I sort of agree, except that
4 I don't think we should refer to the Rosemont mine as
5 extant. We should say conditional need or something
6 like that. And the utility has already, or the
7 applicant has already given us some previous testimony
8 their intent not to build this if the mine is not built.
9 So I think we should at least call it conditional need.
10 I don't know if that's even appropriate. But you can
11 probably.

12 CHMN. FOREMAN: Well, it seems to me in the past
13 we have considered applications for lines to fill needs
14 that had not -- that did not exist at the time of the
15 construction.

16 MEMBER HAENICHEN: Projected need.

17 CHMN. FOREMAN: So projected need. So I am not
18 sure we should treat this conditional need differently
19 than other conditional or projected needs that we have
20 had before, but it is different in some respects.

21 MEMBER HAENICHEN: It has a different flavor
22 because it is only one usage.

23 CHMN. FOREMAN: It is.

24 MEMBER HAENICHEN: So it is, in the case of
25 prior cases that you brought up, it is a multiplicity of

1 users, of projected users. And it is almost for certain
2 that a majority or some fraction of those are going to
3 materialize. Here there is a little more fuzziness
4 about it.

5 CHMN. FOREMAN: And we are being asked to go
6 where other regulatory agencies have not yet gone, to
7 use a Star Wars paraphrase.

8 MEMBER HAENICHEN: Right.

9 CHMN. FOREMAN: Or a Star --

10 MEMBER WALKER: Trek.

11 CHMN. FOREMAN: -- Star Trek paraphrase. Thank
12 you.

13 So we are taking the first step here. If the
14 federal government, if the Coronado National Forest in
15 its record of decision says no, there will be no mine,
16 then obviously the line will not be constructed. If the
17 federal government says yes, and there is litigation
18 concerning that, which I think we may assume there is a
19 high likelihood that that will occur, and the line
20 construction project begins and then ultimately the
21 litigation is successful and the mine is precluded, then
22 that puts us in an uncomfortable situation, it seems to
23 me.

24 MEMBER HAENICHEN: Right, my point exactly.

25 CHMN. FOREMAN: Member Walker.

1 MEMBER WALKER: Mr. Chairman, to me it seems a
2 bit analogous to what the Commission does when it grants
3 a utility a right to serve an area. It grants a
4 certificate of convenience and necessity. And in that
5 process, if a request for service is received by a
6 utility for an area outside of its existing service
7 area, it has to file for an extension to what is called
8 a CC&N. And the Commission regularly extends service
9 areas based upon the representation of a developer, a
10 customer, saying I intend to build XYZ development in
11 this area, and the Commission extends the service area
12 based on that.

13 This seems to me analogous. You have somebody
14 who is actually within the service area saying they want
15 service. It is always conditional because, as we
16 learned in the latter half of the last decade, a lot of
17 developers disappeared and the projects remain vacant.
18 But it doesn't necessarily mean that the CC&N needs to
19 be invalidated.

20 CHMN. FOREMAN: Member Noland.

21 MEMBER NOLAND: Mr. Chairman, I agree with
22 Member Walker, and I think we just went through this in
23 Yuma with potential need within a certain time frame in
24 the future and the ability to do an extension if that
25 need did not develop as quickly as anticipated.

1 So I think we should remain consistent on this,
2 and need is need based on the best information we have.
3 If it doesn't happen or it is delayed, then it goes back
4 before the Corporation Commission for an extension or it
5 doesn't happen.

6 CHMN. FOREMAN: And I think it is also important
7 to note that it is true that we are talking about the
8 potential for significant environmental impact
9 associated with the building of the line while perhaps
10 litigation concerning the mine might continue. But
11 courts do have equitable ability to enjoin proceedings.
12 And I don't think we should be in the business of
13 telling the courts whether or not to enjoin proceedings.

14 But I think we need to just remember we are part
15 of the process. We will do our job and we will trust
16 that the other parts of the larger process will do their
17 jobs as they see fit also.

18 Are there any other comments then with regard to
19 the motion? Any other discussion?

20 (No response.)

21 CHMN. FOREMAN: All right. Well, let me do this
22 as a sneaky way of taking roll call, which my fellow
23 Committee members have pointed out to me that I failed
24 to do. I did on Monday, but I failed to do the last on
25 Tuesday or Wednesday.

1 So let's -- the motion is to find that the
2 applicant has demonstrated need for the application
3 before the Committee.

4 Member Eberhart.

5 MEMBER EBERHART: Aye and here.

6 CHMN. FOREMAN: All right. And I will assume
7 that if you vote, you are here. This is not Chicago.

8 All right. Member Haenichen.

9 MEMBER HAENICHEN: Aye.

10 CHMN. FOREMAN: Member Lacey.

11 MEMBER LACEY: Aye.

12 CHMN. FOREMAN: Member McGuire.

13 MEMBER MCGUIRE: Aye.

14 CHMN. FOREMAN: Member Noland.

15 MEMBER NOLAND: Aye.

16 CHMN. FOREMAN: Member Palmer.

17 MEMBER PALMER: Here, aye.

18 CHMN. FOREMAN: Member Parke.

19 MEMBER PARKE: Aye.

20 CHMN. FOREMAN: Member Richins.

21 MEMBER RICHINS: Aye.

22 CHMN. FOREMAN: Member Rodriguez.

23 MEMBER RODRIGUEZ: Aye.

24 CHMN. FOREMAN: Member Walker.

25 MEMBER WALKER: Aye.

1 CHMN. FOREMAN: Chair votes aye.

2 By a vote of 11 to zero the Committee has found
3 that there is need for the application.

4 Now, shall we move, then, to discussion of
5 alternatives? And maybe at this point if some of the
6 members want to talk about things that they would like
7 to, matters of concern, I tried to do that earlier, but
8 if there are matters of concern...

9 Member Noland.

10 MEMBER NOLAND: Yes, Mr. Chairman. I have a
11 couple, and there may be more as we go through each
12 condition.

13 But I had drafted a little bit of language with
14 regard to the Tohono O'odham conditions that they had
15 asked be placed in the CEC. And I would like to at
16 least throw this out so that it can be considered and
17 maybe worked on during the lunch break.

18 Number one, that one that they suggested I would
19 word it differently, that applicant would allow Tohono
20 O'odham cultural monitors to be present during any
21 construction activities within 100 feet of an
22 archeological site, an identified or discovered site.

23 Number two, applicant shall make reasonable
24 efforts to minimize all cultural resource sites that
25 cannot be avoided. And that was per the language that

1 Mr. Steere was giving us yesterday during his testimony.

2 And finally, Scenic Santa Ritas, I cannot in
3 good conscience vote for their condition that they
4 suggested that all -- until all judicial review has been
5 exhausted. I work in the courts. I know what that
6 means. And I think that is just a backdoor way to stop
7 everything. And so I really can't go along with that.

8 CHMN. FOREMAN: Okay. Anybody else
9 have -- Member Eberhart.

10 MEMBER EBERHART: Thank you, Mr. Chairman.

11 As far as the proposed routes, I prefer the
12 preferred alignment. I did have one question for
13 Rosemont regarding the potential that we have kind of
14 alluded to and discussed that, should the Fort Huachuca
15 line need beefing up or something like that, is the mine
16 open to allowing TEP to continue the line from where it
17 ends into the substation further south.

18 MR. BLACK: Chairman, Member Eberhart, yes, the
19 mine is open to that. In fact, in earlier discussions
20 and review of that line we felt that that was one of the
21 advantages of the preferred route, is that you could
22 eventually tie in between the Rosemont substation and
23 Greaterville a 138kV option that could then feed Fort
24 Huachuca. And then whether that would basically
25 eliminate the need for that existing 46kV line,

1 certainly definitely the mine is very open to that
2 future possibility.

3 MEMBER EBERHART: Thank you.

4 CHMN. FOREMAN: Member Haenichen.

5 MEMBER HAENICHEN: I believe, if I recall
6 correctly, that Mr. Beck yesterday testified there will
7 be language in the agreement on this line that TEP can
8 buy part of it back or whatever. So I think they have
9 already thought of this. Is that an accurate depiction?

10 MR. BLACK: Yes, Chairman; yes, Member
11 Haenichen. As Mr. Beck had testified to, there is
12 excess capacity on that line. And it is not capacity
13 that will be used by the mine. So certainly that
14 advantage, that's another advantage to the 138 kilovolt
15 size.

16 CHMN. FOREMAN: Member Rodriguez.

17 MEMBER RODRIGUEZ: Yes, I had to -- I would like
18 to ask either a representative of TEP, Mr. Magruder had
19 indicated some kind of top of the poles, some kind of
20 platform beside -- like a cone shape. Can somebody tell
21 me a little bit about that?

22 MR. BECK: Mr. Chairman, Member Rodriguez, yes.
23 I have had a little bit of discussion with Mr. Magruder
24 regarding the potential for trying to put some type of a
25 cone assembly on top of the poles to reduce the

1 potential for raptor nests. It is something we will
2 review and look into.

3 But as I think the testimony that was provided
4 this week has shown, it is not clear what the
5 environmental results would be relative to that, whether
6 it is a positive or a negative.

7 We do a lot of raptor protection on our
8 distribution systems, so we protect raptors. In this
9 case we would be trying to dissuade raptors from landing
10 on the poles. It is something we will look into, but we
11 don't have a definite conclusion as to whether it makes
12 sense or not.

13 MEMBER RODRIGUEZ: So these types of things do
14 not exist right now, is that what you are saying?

15 MR. BECK: Typically what is done today is
16 companies will put raptor perches on the poles to
17 actually encourage them to sit up on top of the pole
18 rather than on the insulator strings, because their
19 presence on insulators can cause future maintenance
20 issues with the poles.

21 MEMBER RODRIGUEZ: Yeah.

22 MR. BECK: It is not a problem for the raptor
23 per se. It is more of a maintenance issue for the
24 company.

25 CHMN. FOREMAN: This is invidiously antiraptor.

1 MR. BECK: I am not sure politically how it
2 would go forward if we -- whether we support or not
3 support the raptors.

4 MEMBER RODRIGUEZ: One of the other questions, I
5 would like, because Mr. Magruder has been a very good
6 participant in this one, he spent some time, so I would
7 like all the parties to look over his items that he
8 submitted as an exhibit, that's MM-20, to see if any of
9 these things -- some of them are minor, like put the
10 word or, or a comma, because sometimes that can change
11 the whole meaning of it. So I haven't spent a lot of
12 time on that one.

13 I do think that Mr. Magruder is right on page 2
14 that they need to identify where all the Committee
15 members are coming from, instead of just appointed
16 members. We all represent different agencies. You did
17 identify the government, other governmental entities, so
18 I do think that's a good thing.

19 I am not sure about the one item on page 4 where
20 he says insert U.S. Army Corps of Engineers, but I would
21 like you all to look this over to see if there is
22 something that he did. I am not saying I agree with all
23 of them, but at least give him the benefit of the doubt
24 of looking his things over.

25 MR. DERSTINE: We will.

1 MEMBER RODRIGUEZ: And I do agree with the TO
2 Nation, and I am very respectful of their rights and
3 their culture. I think we need to do as much possible.

4 I think on, Ms. Berglan, when you said the
5 vicinity, that is a big area of land. So the word
6 vicinity is subject to interpretation by somebody. We
7 can't walk all the areas. But I think there is due
8 diligence on the part of the mine and TEP moving forward
9 on this project to be sensitive to the areas of here,
10 these of our ancestors. We must respect that they were
11 here before us. And the elders are losing a lot of the
12 traditions and I understand that.

13 Their young are not keeping up, so anything they
14 can kind of treat their young. We have had testimony
15 from members of the armed services coming back and doing
16 their prayers. And their spiritual leaders, we may not
17 understand them, but we must respect everyone's belief.
18 And I think we need to go to the utmost farthest to do
19 that one. So I hope we can work together in unison and
20 give them that dignity and respect.

21 So thank you.

22 CHMN. FOREMAN: Let me ask if -- oh, I am sorry.
23 Member Parke.

24 MEMBER PARKE: I would just like to say that I
25 concur. And I hope I did not come off as disrespectful

1 to the Nation or counsel for the Nation. I just thought
2 it was important to point out that we can't really
3 consider speculative harm, and that was really my point.

4 Thank you, Mr. Chairman.

5 CHMN. FOREMAN: I am sorry. Member Richins.

6 MEMBER RICHINS: Yeah. To that end, in No. 4 it
7 says to make notification to the director of the Arizona
8 State Museum. And I know that we are adding provisions
9 about having cultural monitors in place, which we put an
10 additional notification to the Tohono O'odham Nation as
11 part of that condition.

12 CHMN. FOREMAN: Well, that would be an option.
13 I earlier raised the possibility of including the
14 Coronado National Forest as a subject of notification
15 there and in paragraphs 5 and 6 also, certainly at least
16 with regard to 5. And it seems to me that the Tohono
17 O'odham Nation would be an appropriate noticed party for
18 those two items, too.

19 Member Rodriguez.

20 MEMBER RODRIGUEZ: Having worked with members of
21 the nations, and sometimes, and I say this very
22 cautiously, their traditions do not always follow our
23 business tradition. And I think Ms. Berglan will
24 understand what I am talking about. So I think just
25 besides saying we notified the Nation, I think we need

1 to notify the office of Mr. Steere and counsel. Because
2 it will be the duty of counsel to making sure that they
3 follow up.

4 We heard testimony that they tried to reach out
5 to the Nation, but I don't know if they went to the
6 wrong department, you know, fell onto somebody's hands
7 that doesn't understand our type of proceedings.

8 They are a sovereign nation so they tend to be
9 confined within their own areas and not branching into
10 other types of government. We need to be very sensitive
11 to that area, because I do work with them. So I would
12 include, to be very specific, which branches of the
13 Tohono O'odham Nation we notify.

14 CHMN. FOREMAN: Maybe the thing would be to ask
15 Ms. Berglan to specify an appropriate person to notice
16 or office to notice.

17 MEMBER RODRIGUEZ: I would prefer notice,
18 because people change hands, Ms. Berglan may be leaving
19 one day, that we notify their legal counsel so they can
20 make sure that whoever is in charge of that department
21 follows through so we don't have any slippage. I have
22 had this experience with them, and I do not wish to see
23 that in this particular project.

24 CHMN. FOREMAN: Member Haenichen.

25 MEMBER HAENICHEN: Mr. Chairman, in the interest

1 of saving time, help me understand. In the past when we
2 have gone through review of the conditions and
3 suggestions came up, we put them in right then and
4 there. Seems to me we are just throwing ideas out and
5 not acting on them.

6 CHMN. FOREMAN: You are exactly right, but as I
7 have described myself before, I am the chief cat herder
8 here. And so what I had kind of envisioned us doing at
9 this point was, because I am a linear thinker, talking
10 about the alternatives. And we are, I think, also
11 trying to share our thoughts with the parties and let
12 them know where our areas of concern are so that they
13 can be prepared to address those after lunch.

14 But let me bring us back to the consideration of
15 the alternatives.

16 MEMBER HAENICHEN: That's what I thought we were
17 doing.

18 CHMN. FOREMAN: And maybe the thing to do would
19 be to just have a vote on the alternatives and go
20 through, each of us indicate what alternative we think
21 would be appropriate, whether it is preferred or
22 Alternative 1, 2, 3, or 4. Would that make sense?

23 MEMBER HAENICHEN: And then after that
24 discussion, which I think is appropriate, would you do
25 it then? Would you say all in favor of 1, all in favor

1 of 2, or is that how you planned to come to a
2 determination?

3 CHMN. FOREMAN: Well, let's -- after we have
4 sort of a, I will call it, an Iowa caucus on the issue
5 of preferences, then if somebody wants to make a motion
6 with regard to the one that has the most votes or the
7 one that they like, then we would be able to vote
8 directly on a specific proposal. I think that would
9 make some sense, rather than just going directly to
10 that, because there have been plusses and minuses
11 mentioned I think for each one of the alternatives.

12 I have my own strong preference for one option.
13 But it is, you know, reasonable people can disagree
14 about how to evaluate those. So let's just go through
15 and get a sense of where we are with regard to what we
16 favor, and then maybe we can go to a motion to adopt
17 that as the Committee's --

18 MEMBER HAENICHEN: Good.

19 CHMN. FOREMAN: -- approach then.

20 So let me just run through, if that works for
21 everybody, let me just run through the list and have
22 each of you identify the preferred or alternative route
23 that you are -- that you favor. And if you want to say
24 no preference right now, that's an acceptable
25 alternative also.

1 So Member Eberhart.

2 MEMBER EBERHART: Thank you, Mr. Chairman. I
3 prefer the preferred alternative. It is one of the
4 shortest routes. It is the least costly. It is
5 collocated with the water line and does not require a
6 separate road to be upgraded that would entail
7 additional ground disturbance. So I prefer the
8 preferred alternative.

9 CHMN. FOREMAN: Okay. Member Haenichen.

10 MEMBER HAENICHEN: Thank you. I like both the
11 preferred route and Alternative 1. I realize
12 Alternative 1 results in a small amount of additional
13 ground disturbance, but it does handle at least
14 partially the viewshed issue of those homes in that
15 area. So I have just a slight edge on No. 1.

16 CHMN. FOREMAN: Okay. I was going to let you
17 vote for both preferred and Alternative 1, but I will
18 mention, I will list it as Alternative 1.

19 Member Lacey.

20 MEMBER LACEY: Thank you, Mr. Chairman. I, too,
21 have a preference for the preferred alternative. But,
22 like Member Haenichen, it is closely followed by the
23 Alternative 1. I have concerns about the preferred
24 alternative with the Helvetia cemetery and impacts to
25 the existing residents here.

1 I am not convinced entirely that the water line
2 and disturbance issue is in fact -- I mean the water
3 line does not yet exist. I believe it would be possible
4 to route that water line through the route of
5 Alternative 1 as well. So the ground disturbance issue
6 may not be as significant as has been testified to to
7 the Committee.

8 CHMN. FOREMAN: Okay. Member McGuire.

9 MEMBER MCGUIRE: Considering everything, I think
10 preferred route.

11 CHMN. FOREMAN: Okay. Member Noland.

12 MEMBER NOLAND: Mr. Chairman, I could support
13 the preferred route, I do support that, but could live
14 with Alternative 1. I cannot support the other routes.

15 CHMN. FOREMAN: Member Palmer.

16 MEMBER PALMER: I support the preferred route,
17 Mr. Chairman.

18 CHMN. FOREMAN: Okay. Member Parke.

19 MEMBER PARKE: Thank you, Mr. Chairman. I
20 support the preferred route based on the landowners'
21 expression of support. I know the concerns raised over
22 the Santa Rita Experimental Range and its long-term
23 studies. That has clearly been supported by the
24 manager, the University of Arizona, and the State Land
25 Department.

1 I also support it because of the distribution
2 line issue with regard to Alternate 1. I think it is
3 important to point out that the proposal includes the
4 distribution line being above ground, at least that's
5 what was testified to, at least up to the boundary of
6 the experimental range, which there it would be
7 undergrounded. And from an environmental standpoint, I
8 think that it has the least amount of impact. And
9 culturally the Tohono O'odham, despite being in
10 opposition to the siting whatsoever, has at least
11 indicated that that's their most preferred route should
12 the project go forward.

13 Thank you, Mr. Chairman.

14 CHMN. FOREMAN: Member Richins.

15 MEMBER RICHINS: It is probably as good a time
16 as any to express that I am not real thrilled with the
17 mine project. But knowing that, you know, had this not
18 been for a big hole at the end of this wire, this would
19 be a pretty quick case, I think.

20 And I appreciate the length that everyone has
21 gone through. But in face of the evidence, the
22 preferred alternative is by far the best route, how it
23 follows the existing road and collocated with other
24 facilities such as the water line, so I am in support of
25 the preferred alternative.

1 CHMN. FOREMAN: Okay. Member Rodriguez.

2 MEMBER RODRIGUEZ: Thank you, Mr. Chairman. I
3 prefer the preferred route for many of the things my
4 colleagues have stated here. It has the most support,
5 even for those that don't really want to support the
6 mine project in its entirety.

7 As far as the viewshed is concerned, for those
8 few homes that are in there, I don't think it is a major
9 impact. Yes, it will change from what they are normally
10 looking at, but I think all of us looking at the center
11 city, we are used to looking at telephone poles and you
12 kind of look through them after awhile. And I know I do
13 from where I reside.

14 And I think most of all the parties, including
15 Mr. Magruder, said he did the preferred route. And I
16 think that's the most positive thing if this line is
17 going to be built, that we take into consideration the
18 Nation, the largest landowner in there, who also have
19 agreed that the preferred route is the best route to go.

20 CHMN. FOREMAN: Member Walker.

21 MEMBER WALKER: Preferred route.

22 CHMN. FOREMAN: And I prefer the preferred
23 route. I think that the Alternative 1 route is a
24 reasonable alternative for reasons that have been
25 articulated by others and I don't need to repeat. It

1 seems to me that the preferred route is the least bad
2 option that we have available to us. And that's really
3 what we do in a situation like this, and that's what our
4 statutory responsibility is, to select the least bad
5 option, the option that has the lightest environmental
6 impact.

7 The statute that we have that gives us guidance
8 in how to make our decision does not give us guidance --
9 and has been cited by Ms. Berglan -- does not give us
10 guidance with regard to how to weight any of the
11 enumerated factors that we are supposed to take into
12 consideration. It doesn't give us any guidance with
13 regard to what sort of burden of proof there is or
14 threshold of proof that has to be demonstrated in order
15 to find one route as opposed to another one.

16 It is really a very, very broad grant of
17 authority for us to look at the environmental impact of
18 a project like this and make a determination of what we
19 think is in the best interests of the State of Arizona
20 and its environment. And it seems to me that the people
21 who have the greatest potential impact, and I am
22 thinking specifically now of the Santa Rita Experimental
23 Range, the Nation, and others, have, when they were
24 faced with picking the least bad alternative, have, as
25 the Nation has and Mr. Magruder has and as the Santa

1 Rita Experimental Range has, concluded that the
2 preferred route is the least bad route. And so I defer
3 to their judgment. And that's the reason I support it
4 also.

5 So we have 10 votes for the preferred route, one
6 vote for the alternative route, a couple of will support
7 Alternative 1, and our voter for Alternative 1 said he
8 was comfortable or would be willing to support the
9 preferred route. So it seems to me we have narrowed our
10 focus dramatically. Would someone like to make a motion
11 with regard to the preferred route?

12 MEMBER PALMER: So moved.

13 CHMN. FOREMAN: Do I have a second?

14 MEMBER NOLAND: Second.

15 CHMN. FOREMAN: All right. Motion by Member
16 Palmer, second by Member Noland, that the preferred
17 route in the application be adopted as the route for
18 this application.

19 Let's all in favor signify by saying aye.

20 (A chorus of ayes.)

21 CHMN. FOREMAN: Opposed no.

22 MEMBER HAENICHEN: No.

23 CHMN. FOREMAN: Okay. We have -- do you want
24 a -- should we have a roll call on that? We have just
25 gone through a roll call and I don't think we need to go

1 through it again. Okay.

2 MEMBER HAENICHEN: No.

3 CHMN. FOREMAN: The ayes have it. The preferred
4 route is adopted.

5 We are going to take the lunch recess. We will
6 return at 1:30. At that point we will begin a
7 discussion of the specific language of the proposed CEC.
8 We are in recess.

9 (A recess ensued from 11:51 a.m. 1:34 p.m.)

10 CHMN. FOREMAN: Let's start with a preliminary
11 matter. Ms. Berglan, you have favored us with another
12 piece of paper. Why don't you tell us what is on it.

13 MS. BERGLAN: Thank you, Mr. Chairman. Sorry
14 for more paper. What I passed out was Exhibit O-3,
15 amended pursuant to the discussion yesterday. And
16 meeting and conferring with the parties, we have come up
17 with an amended map that represents the exclusion of
18 private lands within the boundaries of the traditional
19 cultural property, and added that legend that indicates
20 that the red dotted line is representative of the
21 proposed Ce:wi Duag traditional cultural property, with
22 Rosemont and other private inholdings excluded.

23 CHMN. FOREMAN: All right.

24 MS. BERGLAN: And I believe it is on the screen.
25 So I would like to move Exhibit O-3 Amended to be

1 admitted.

2 CHMN. FOREMAN: Is there any objection from any
3 of the other parties?

4 MR. GELLMAN: No objection.

5 CHMN. FOREMAN: All right.

6 MR. MAGRUDER: No objection.

7 CHMN. FOREMAN: No objection and good cause
8 appearing, it will be ordered admitting Exhibit O-3A.

9 (Exhibit O-3A was admitted into evidence.)

10 CHMN. FOREMAN: And I think that having O-3 and
11 O-3A together will help address some of the concerns
12 that were raised earlier, I think, by Member Noland and
13 others about being able to understand a little more
14 clearly what was in the application and what wasn't.

15 So I appreciate very much your putting this
16 together for us and putting it in the record. It is
17 very helpful.

18 MS. BERGLAN: And my thanks goes out to the EPG
19 folks because they put it together.

20 CHMN. FOREMAN: Oh. Well, very well.

21 Now let's move on to the language of the
22 certificate of environmental compatibility, if we could
23 get that on the screen. And being a linear person, I
24 like to start at the beginning.

25 So first off, obviously we need to adjust the

1 dates, which it looks like has been done. And then I
2 think the language is fairly straightforward. And I
3 encourage any member of the Committee to chime in if you
4 see something that is of interest to you.

5 Let's go to the names of the Committee members.
6 And we have Mr. -- Member Lacey replacing his
7 predecessor as the designee for the director of the
8 Arizona Department of Water Resources.

9 MEMBER HAENICHEN: Mr. Chairman.

10 CHMN. FOREMAN: Member Haenichen.

11 MEMBER HAENICHEN: Our office has recently moved
12 under the governor's office, and the name of it has
13 changed.

14 CHMN. FOREMAN: That's right.

15 MEMBER HAENICHEN: I am the designee for
16 director, comma, Arizona Governor's Office of Energy
17 Policy. Thank you.

18 CHMN. FOREMAN: So I think we need an "of" after
19 office or before energy. And it looks like we could --

20 MEMBER HAENICHEN: Scratch Arizona Commerce
21 Authority.

22 CHMN. FOREMAN: And the comma, yes. We have got
23 a comma in there that needs to go out, too. There we
24 go. All right, very good.

25 Now, everybody's name is spelled correctly,

1 hopefully. And some have middle initials and don't. If
2 you want, I am not a middle initial guy, but if you are
3 okay with middle initials, that's fine.

4 Now, we have additions of the representational
5 areas of the designees of the Commission. That's
6 something we haven't had on before, but it is kind of
7 nice. Does that work for everybody?

8 MEMBER NOLAND: Mr. Chairman.

9 CHMN. FOREMAN: Member Noland.

10 MEMBER NOLAND: Actually I kind of like
11 Mr. Magruder's designations.

12 CHMN. FOREMAN: Okay.

13 MEMBER NOLAND: But representing the general
14 public or representing cities and towns, representing
15 counties --

16 CHMN. FOREMAN: Okay.

17 MEMBER NOLAND: -- I think that gives a little
18 better idea of what it is.

19 CHMN. FOREMAN: Probably need a lower case R
20 there. Does that work for everybody?

21 (No response.)

22 CHMN. FOREMAN: Very good. Let's move on next
23 to the next paragraph. We want Mr. James to have
24 appropriate recognition for his presence.

25 All right. Anybody have any other suggestions

1 or recommendations with regard to that paragraph?

2 MEMBER HAENICHEN: Mr. Chairman.

3 CHMN. FOREMAN: Member Haenichen.

4 MEMBER HAENICHEN: Where it says Save the Scenic
5 Santa Ritas, didn't you indicate that the "Save the"
6 wasn't correct several times in testimony?

7 CHMN. FOREMAN: Well, Mr. Robertson said that
8 the -- I was trying to find some acronym to adequately
9 express the clients of Mr. Robertson and Mr. Metli. And
10 the acronym you would come up with if you took the first
11 letter of all of the nouns would end up being a foot
12 long. So in order to save me, Mr. Robertson said that
13 he would refer to him and Mr. Metli as representing the
14 Scenic Santa Ritas. But since I had already been
15 imprinted with Save the Scenic Santa Ritas, it seemed
16 impossible for me to mention Scenic Santa Ritas without
17 throwing a Save in there, too. So I think it is
18 probably easiest to just have them out -- listed out
19 like that.

20 That's an interesting -- okay. We have got
21 intervenors in there. That's --

22 MEMBER HAENICHEN: Is that spelled right?

23 CHMN. FOREMAN: That's a different spell checker
24 than my computer has for intervenor.

25 MEMBER EBERHART: Mr. Chairman.

1 CHMN. FOREMAN: Member Eberhart.

2 MEMBER EBERHART: I had a question. In the
3 first part of the paragraph we refer to the law firm of
4 the two attorneys, but then in the others, the other
5 intervenors, we don't mention their firm specifically,
6 but I don't know if they are employed by a firm or
7 private practice.

8 CHMN. FOREMAN: Oh, yes, I am led to believe
9 they are.

10 Do you folks want your firm in there?

11 MR. BLACK: My management committee would
12 probably say yes.

13 CHMN. FOREMAN: I was going to say sometimes
14 management committees review transcripts.

15 MR. BLACK: And it is Fennemore Craig, P.C.

16 CHMN. FOREMAN: Okay. I was going to say, has
17 this year's bonus meeting been held? All right, enough
18 of that.

19 Fennemore Craig, P.C.?

20 MR. BLACK: Yes.

21 CHMN. FOREMAN: All right, very good. Thank you
22 for that.

23 All right. Moving right along then, let's go to
24 the next paragraph. Other than the vote totals, any
25 issues?

1 MEMBER WALKER: Does Mr. Metli's management
2 committee have a position on whether Munger Chadwick
3 should be in there? I am going to assume they do.

4 MR. METLI: Well, being the management committee
5 for the Phoenix office, I have no preference, and
6 Mr. Robertson is of counsel to the firm. So it would
7 probably be an extensive amount of wording. So I am
8 fine with the way it is listed.

9 CHMN. FOREMAN: All right. Happy to, we are
10 happy to put it in if you feel it is important.

11 Member Eberhart.

12 MEMBER EBERHART: Mr. Chairman, the reason I
13 brought it up is, again, thinking as someone had alluded
14 to earlier, we don't all live or stay with our current
15 employers forever, that perhaps if this issue five years
16 from now or 10 years from now became an issue, who would
17 the applicants or so forth contact to get people
18 informed again, and it may be harder to track people
19 down, or easier with the firm name included.

20 CHMN. FOREMAN: All right. Well, we will let
21 each individual decide how they want to be referred to.
22 And Mr. Metli is comfortable with what is there, I think
23 that makes sense.

24 Next paragraph, then, with regard to the
25 description of the project, I had one question as we go

1 on to the next page about line 6.

2 Member Walker.

3 MEMBER WALKER: A question for TEP. We had
4 talked about these poles being set up for double
5 circuit, but it says single circuit. I don't want to
6 get into a Devers situation. Should that say double?

7 MR. BECK: Mr. Chairman, Member Walker, the
8 application, I think, was clear that we were planning to
9 put in double circuit capable poles, but we are
10 intending only to put one circuit along Santa Rita Road
11 at this time --

12 MEMBER WALKER: Okay.

13 MR. BECK: -- with the understanding that in the
14 future we would have to make application to put a second
15 circuit on.

16 MEMBER WALKER: Okay.

17 CHMN. FOREMAN: Now, on line 7 and 8, there is
18 the clause that the preferred route turns northeast and
19 follows the Rosemont water pipeline alignment over Lopez
20 Pass to the Rosemont substation.

21 Is that an identifiable path now? I mean my
22 understanding is the water pipeline is not in existence
23 now. Is that correct?

24 MR. BLACK: That is correct.

25 CHMN. FOREMAN: So if someone is trying to find

1 where this is going, how do they find where the water
2 pipeline is?

3 Member Eberhart.

4 MEMBER EBERHART: Mr. Chairman, in the past have
5 we allowed the applicant to include an Exhibit A, legal
6 description, of the proposed route, or some other
7 exhibit number or letter?

8 CHMN. FOREMAN: We have. And there is an
9 Exhibit A, of course, to their application here that
10 contains a map. But the map is not of sufficient detail
11 to me to be able to identify with precision where the
12 water pipeline is.

13 MR. BECK: Mr. Chairman, the intent that we had
14 with the CEC was to attach an Exhibit A map, which is
15 actually Tab 10 of our binder. And it indicates the
16 route of the water pipeline, the route of our line,
17 which is adjacent to the pipeline.

18 CHMN. FOREMAN: All right.

19 MR. BECK: Beyond that, I guess the only other,
20 we have got the maps in our case which kind of indicate
21 where the pipeline is. But to your point, it has not
22 yet been built yet.

23 CHMN. FOREMAN: Has it been filed someplace as a
24 matter of public record?

25 MR. BECK: Well, there is an application pending

1 with the State Land Department, pending the outcome of
2 these cases, that identifies the route of that pipeline.

3 CHMN. FOREMAN: Okay. Mr. Black.

4 MR. BLACK: The route is included in the EIS
5 application. The water pipeline route is included in
6 the EIS application for Rosemont, excuse me, the DEIS.

7 CHMN. FOREMAN: All right. Well, is anybody
8 else concerned about this?

9 Member Eberhart.

10 MEMBER EBERHART: Mr. Chairman, I am concerned
11 only from the fact that during construction things
12 happen and routes change, and there may be bedrock
13 located where this underground pipeline is shown now.
14 And I am not real thrilled about the idea of aligning
15 our CEC with the route of a pipeline that we really
16 haven't examined that closely and tying our CEC to that.
17 If anything, it seems like it should be the other way
18 around.

19 But like I said, an easy solution to me would be
20 to allow the applicant to provide a written legal
21 description of the route. I would think that their
22 surveyors or engineers could come up with something.

23 CHMN. FOREMAN: Is there a legal description
24 that is contained in the draft EIS?

25 MR. BLACK: No, there is not. But I understand

1 that we can certainly survey and provide that legal
2 description.

3 CHMN. FOREMAN: But it is not presently
4 available, is that correct?

5 MR. BLACK: No, it is not.

6 CHMN. FOREMAN: All right. Is the water
7 pipeline alignment that is in the EIS any more precisely
8 defined than what you have here?

9 MR. BLACK: If you could give us just one
10 minute.

11 CHMN. FOREMAN: Sure.

12 MR. BLACK: Thank you.

13 Chairman.

14 CHMN. FOREMAN: Yes.

15 MR. BLACK: Chairman, Committee members.

16 CHMN. FOREMAN: Yes.

17 MR. BLACK: I understand that in the DEIS it
18 does provide a route along Santa Rita Road up until
19 Lopez Pass. It has not been surveyed past that point.
20 I have been told by Rosemont that they can conduct the
21 survey required to get the legal description necessary
22 to have that water pipeline route included in the CEC.

23 CHMN. FOREMAN: Well, it is going to be
24 difficult if we are going to vote on the final form of
25 the CEC this afternoon.

1 Let me suggest that a way to do this would be to
2 have the language read as follows: The proposed
3 Rosemont water pipeline alignment contained in the draft
4 EIS, whatever the number is.

5 MR. BLACK: That's acceptable to us, I mean that
6 works for us.

7 CHMN. FOREMAN: Does that give sufficient
8 precision to the applicant?

9 MR. BECK: Yes, Mr. Chairman, it would.

10 CHMN. FOREMAN: All right. And does that
11 provide sufficient precision for the other parties? Is
12 there any objection to trying to at least tie it down in
13 that way?

14 MS. BERGLAN: No objection, Mr. Chairman.

15 MR. DERSTINE: No objection.

16 CHMN. FOREMAN: Mr. Magruder.

17 MR. MAGRUDER: No.

18 CHMN. FOREMAN: All right. Then why don't we do
19 that. It is draft EIS. And then is there a number or
20 just draft EIS for the Rosemont copper mine?

21 MR. JAMES: Yes.

22 CHMN. FOREMAN: Rosemont Copper project.

23 MR. BLACK: Yes, for the Rosemont Copper
24 project.

25 CHMN. FOREMAN: Okay.

1 MEMBER LACEY: If I may add.

2 CHMN. FOREMAN: Member Lacey.

3 MEMBER LACEY: I would probably reference the
4 date of that draft in case additional drafts come out.

5 MR. BLACK: I have a number also with respect to
6 this particular one. It is MB-R3-05-3, dated
7 September 2011.

8 MEMBER LACEY: Can we specifically reference the
9 exhibit from that?

10 MR. BLACK: Yes, if you just give us one minute.
11 And that would be on Figure ES-3.

12 CHMN. FOREMAN: All right. Very good.

13 Now, does that -- that seems to me it ties it
14 down with as much specificity as we can. Anybody else
15 have thoughts on that?

16 MR. MAGRUDER: Mr. Chairman.

17 CHMN. FOREMAN: Mr. Magruder.

18 MR. MAGRUDER: Most are used to seeing metes and
19 bounds, and that's the corridor width. And then they
20 are allowed to have the 100 feet in the corridor width.
21 And I don't see that being able to be derived from what
22 we have here, and the metes and bounds being an
23 Exhibit A or something like that. And lots of times it
24 is furnished by the applicant a little bit after the
25 time you vote on the CEC.

1 CHMN. FOREMAN: Well, we are going to vote on a
2 CEC today. So I don't see that we are going to be able
3 to do that right now. We have tied it to the
4 specificity in the federal process, and I am comfortable
5 with that.

6 MR. MAGRUDER: Okay.

7 CHMN. FOREMAN: But I do take your point with
8 regard to the corridor width. I see at the bottom of
9 page 2 on my copy, the corridor width for the entire
10 project is 500 feet. So it seems to me that that
11 addresses the issue, except I believe the corridor is
12 entirely on the north and east side of Santa Rita Road
13 up to a point, and then is centered on the proposed line
14 the rest of the way. Am I correct in my understanding?

15 MR. BECK: Mr. Chairman, I believe that is in
16 accordance with our proposed Exhibit A for the preferred
17 route.

18 CHMN. FOREMAN: Okay.

19 MR. BECK: We spell out in there the 500-foot
20 corridor centered 100 feet north and east of the Santa
21 Rita Road right-of-way up to the point to where it turns
22 along Helvetia Road. And from that point the 500 feet
23 is centered on private land owned by Rosemont Copper,
24 generally following Helvetia Road to Lopez Pass before
25 veering to the south and terminating at the Rosemont

1 substation.

2 CHMN. FOREMAN: Very good. So I think that's
3 covered. All right. Very good. All right.

4 So is there then -- do I hear a motion with
5 regard to accepting the proposed CEC as we have amended
6 during our deliberations up to the heading that says
7 conditions? So it would be basically the first part of
8 the CEC.

9 MEMBER NOLAND: So moved.

10 MEMBER RODRIGUEZ: Second.

11 CHMN. FOREMAN: Motion by Member Noland, second
12 by Member Rodriguez. Is there further discussion on the
13 CEC to that point?

14 (No response.)

15 CHMN. FOREMAN: All those in favor signify by
16 saying aye.

17 (A chorus of ayes.)

18 CHMN. FOREMAN: Opposed no.

19 (No response.)

20 CHMN. FOREMAN: The ayes unanimously have it.
21 And we will have, as is our usual practice, a roll call
22 vote on the entire CEC at the end.

23 All right. So then let's start with our
24 conditions. The first issue that I thought was kind of
25 interesting is can somebody explain the coverage legally

1 to me, the difference in coverage of paragraphs 2 and 3?

2 Don't you just have a series of enumerations in
3 paragraph 3 that are really covered in the general
4 language of paragraph 2, so this is a lawyer's belt or
5 engineer's, as the case by be, belt and suspenders
6 situation.

7 MR. GELLMAN: Mr. Chairman, it does appear that
8 the two conditions appear to cover the same area. You
9 know, it is probably a fault of the drafter, which was
10 probably me, when it came to this. So...

11 CHMN. FOREMAN: At least you are the one that's
12 falling on his sword.

13 MR. GELLMAN: Yes. So I would think Condition 2
14 would probably cover it. I know in recent CECs it has
15 been more spelled out along the lines of Condition 3.
16 But with that, I don't believe we would have any
17 objection if 3 were taken out, or 2 were taken out for
18 3.

19 CHMN. FOREMAN: I will confess they do seem
20 duplicative to me. There is some -- as long as we don't
21 get trapped in the language and we have that phrase
22 including but not limited to the following, any time as
23 a member, as a method of statutory construction, if you
24 begin enumeration examples of the application of the
25 language and you then try to apply it to a fact

1 situation that is not a part of the enumerations, you
2 can run into a problem unless you have language that
3 says it is not limited to that which is enumerated.

4 Now, and I guess we have that language in there, so...

5 And maybe people feel more comfortable if they
6 have specific references in there. And one other
7 specific reference that could be put in would be all
8 requirements of the record of decision relating to the
9 Rosemont mine project or to the transmission line
10 portion of the Rosemont mine project and the U.S. or the
11 U.S. Forest Service's plan for the Coronado National
12 Forest. That would be something else that could be put
13 in. But again, I don't -- I think it is covered by the
14 general language. As long as everybody agrees that
15 those two things are incorporated into the general
16 language, I don't feel a need to put any more specific
17 language in.

18 I am a simplicity person myself, but for people
19 who like specific language, having a place where there
20 is some specific language may be advantageous.

21 So what are the feelings of the members of the
22 Committee? Do you like 2 or do you like 3?

23 Member Parke.

24 MEMBER PARKE: I concur with you, Mr. Chairman.

25 CHMN. FOREMAN: Okay.

1 MEMBER EBERHART: Mr. Chairman.

2 MEMBER MCGUIRE: Few is always better.

3 CHMN. FOREMAN: Member Eberhart.

4 MEMBER EBERHART: Mr. Chairman, is there a
5 difference? No. 3 appears to only be applicable during
6 construction and operation, and No. 2 is more
7 generalized. It seems to apply before construction and
8 operation.

9 CHMN. FOREMAN: Well, the language of 2 says
10 shall comply with, lists a bunch of things having
11 jurisdiction during the construction and operation of
12 the project. 3 says during the construction and
13 operation of the project, the applicant shall comply,
14 and then lists exactly the same things.

15 MEMBER EBERHART: Oh.

16 CHMN. FOREMAN: So I think that they are
17 identical in their coverage and application. That's my
18 opinion, for what it is worth.

19 So how many think 2, how many think 3, how many
20 think both? 2, let's see hands for 2. Hands for 3.

21 Okay. So do I have a motion then with regard to
22 adopting paragraph 2 and deleting paragraph 3?

23 MEMBER MCGUIRE: So moved.

24 MEMBER EBERHART: So moved.

25 CHMN. FOREMAN: So motion by Member McGuire,

1 second by Member Eberhart.

2 All in favor signify by saying aye.

3 (A chorus of ayes.)

4 CHMN. FOREMAN: Opposed no.

5 (No response.)

6 CHMN. FOREMAN: All right. The ayes have it.

7 We will delete 3 and keep 2. And I think it is
8 important that this was -- is on the record, that there
9 is an explicit understanding that the language in
10 proposed 3 has the identical reach or coverage of
11 paragraph 2 that was adopted, even though specific
12 enumerations were not made.

13 All right. So now let's move on, and I would
14 like to take a look at 4, 5, and 6. Very good. So you
15 folks have been working on these and you have put
16 federal or municipal land. And you have included the
17 Coronado National Forest and the cultural affairs office
18 and Office of the Attorney General of the Tohono O'odham
19 Nation, and in consultation with the above entities.

20 All right. Very good.

21 I think this addressed some of the concerns
22 raised by Member Rodriguez this morning. And can I
23 infer from the fact that it is coming up that the
24 parties have discussed this and you are all comfortable
25 with it or all agreeable to it?

1 MR. BLACK: Yes, we are.

2 CHMN. FOREMAN: Okay. Mr. Magruder, Mr. Metli.

3 MR. MAGRUDER: Yes, I agree.

4 Can I talk about to 3? 3 agreed to add night
5 sky ordinance, but since it is all inclusive, I will
6 assume the company agreed to we are just putting that on
7 record.

8 CHMN. FOREMAN: Thank you for putting that on
9 the record. That is certainly my understanding, that if
10 there is a night sky or light pollution ordinance, it is
11 covered by the language of paragraph 2.

12 MR. MAGRUDER: Thank you.

13 CHMN. FOREMAN: So with regard then to paragraph
14 4, we have designations there.

15 And now let's take a look at 5 and 6. So if we
16 have human remains and funerary objects, I would assume
17 that the tribe would want to have some notice of that.

18 MS. BERGLAN: Mr. Chairman, I did discuss that
19 with Mr. Steere, and he said the normal process, that's
20 what the process set out by law is, that the director of
21 the Arizona State Museum is notified, and if there is an
22 indication that it is O'odham related, then the director
23 of the museum contacts the Nation.

24 CHMN. FOREMAN: Okay. And are there -- does
25 anyone think that it would be appropriate to put the

1 Coronado National Forest in as an entity to be notified
2 in either paragraph 5 or 6?

3 MEMBER RICHINS: Does the word director refer to
4 director in 4?

5 CHMN. FOREMAN: Yes.

6 MEMBER RICHINS: So if we made an adjustment on
7 that, do we have to change this at all to the above
8 entities?

9 CHMN. FOREMAN: We don't have to, but we could.

10 MEMBER PARKE: Mr. Chairman.

11 CHMN. FOREMAN: Member Parke.

12 MEMBER PARKE: Just some -- I am lacking
13 knowledge in this area, so I don't know if I can be of
14 help. But it says on private land. And that's
15 specifically laid out. Is there another process for the
16 public lands? Anybody can help me out about that.

17 Thank you, Mr. Chairman.

18 MR. BECK: Yes, Mr. Chairman, Member Parke,
19 there are other requirements under federal land. So
20 this is very specific to the private lands. And this is
21 specific to Arizona Revised Statutes. That's why we
22 only put the director in that rather than adding
23 Coronado National Forest or others.

24 CHMN. FOREMAN: Yes. The statute that's cited
25 at the end of the paragraph requires the notice. And

1 frankly, arguably, this is already covered by
2 paragraph 2. But it has been in explicitly so that,
3 again, so that there would be sort of a public
4 recognition of that responsibility, and people who are
5 reading the CEC would be able to see that it was there.

6 Well, if no one sees the need to put the
7 Coronado National Forest in as an entity to be notified
8 in either of those things, I guess I am okay with that.
9 I am assuming that if something of significance occurred
10 there would be notice to the Coronado National Forest.

11 This is going to be sort of a unique CEC that we
12 have here because, as I have said before, the Committee
13 does not have any enforcement power. Our ability to
14 enforce what we do comes from the Commission. So we
15 have to craft a CEC that the Commission is comfortable
16 with and will enforce.

17 In this case we have not only the enforcement
18 capability of the Commission, but we have the
19 enforcement capability of the Coronado National Forest
20 as the federal entity that's involved. And so, because
21 there is this overlap, we obviously want to work in
22 harmony with them, but we don't want to be going off on
23 our own enforcement path and not be -- not have the
24 other enforcement, another agency responsible with
25 enforcement alerted to what is going on, because I would

1 think we would want to have enforcement coordinated.

2 So that was the reason that I brought that up.

3 My guess is that there will be coordination. Is that
4 the expectation of Rosemont and the applicant?

5 MR. BLACK: Yes, Your Honor.

6 CHMN. FOREMAN: Okay.

7 MR. BECK: Yes, sir, Mr. Chairman.

8 CHMN. FOREMAN: All right. Then maybe it is not
9 necessary for us to go further there than just to note
10 that as we go by.

11 All right. Do I have then a motion to accept,
12 or to adopt the language for paragraphs 4, 5, and 6 as
13 we have amended them?

14 MEMBER HAENICHEN: So moved.

15 MEMBER LACEY: I will second.

16 CHMN. FOREMAN: Member Haenichen moved, Member
17 Lacey seconds. Any further discussion?

18 (No response.)

19 CHMN. FOREMAN: All those in favor signify by
20 saying aye.

21 (A chorus of ayes.)

22 CHMN. FOREMAN: Opposed no.

23 (No response.)

24 CHMN. FOREMAN: The ayes have it. The amended
25 language for paragraphs 4, 5, and 6 is adopted.

1 Then we come to paragraph 7 and the issue of the
2 term of the CEC. Anybody want to be heard on that?

3 (No response.)

4 CHMN. FOREMAN: There has been a request for 10
5 years. Ordinarily I would think five years would be a
6 reasonable time period. Because I, too, have great
7 respect for the ability of Mr. Metli and Mr. Robertson,
8 10 years is perhaps not an unreasonable grant of
9 authority.

10 But Member Lacey.

11 MEMBER LACEY: Mr. Chairman, the motion that was
12 offered earlier today of beginning the time frame with
13 the record of decision and then the NEPA process I think
14 had some attractiveness to me.

15 CHMN. FOREMAN: It does. Unfortunately, I think
16 it may conflict with our statutory authorization which
17 talks about the need for the -- it gives to the -- it
18 makes what we do in a CEC take legal effect after it is
19 approved and affirmed by the Commission. And I would
20 not be comfortable putting us in a position where we
21 might be acting inconsistently with the statutory
22 language; although, if the applicant is willing to
23 assume that risk, I guess I shouldn't be concerned.

24 MR. BECK: Mr. Chairman, the applicant still
25 stands with the 10 years, even though based on

1 discussion this morning it maybe would have been more
2 reasonable to go even longer than that.

3 CHMN. FOREMAN: Okay. Member Walker.

4 MEMBER WALKER: Mr. Chairman, I appreciate TEP's
5 position. I think we need to make this as simple as
6 possible for people to look at and understand what the
7 compliance dates were when they review it. When you
8 reference some secondary or tertiary document
9 administered by a completely separate agency, it just
10 becomes more difficult to figure out when did the clock
11 start, when does it end.

12 And I agree with you completely on the 10 years.
13 I appreciate the offer to limit it to five years with
14 the opportunity to litigate it well past that. And I
15 would offer the same thing, but I don't think we should
16 necessarily take it.

17 CHMN. FOREMAN: All right. So do I have a
18 motion, then, for a number of years to be included in
19 paragraph 7?

20 MEMBER WALKER: Mr. Chairman, I move that we use
21 the 10 years as requested by the applicant.

22 CHMN. FOREMAN: And that the Committee adopt the
23 language in paragraph 7 with a 10-year provision?

24 MEMBER WALKER: Yes, Mr. Chairman.

25 MEMBER MCGUIRE: Second.

1 CHMN. FOREMAN: Second by Member McGuire. All
2 right.

3 Is there further discussion?

4 (No response.)

5 CHMN. FOREMAN: All those in favor of adopting
6 the language as proposed for paragraph -- or Condition 7
7 of the proposed CEC signify by saying aye.

8 (A chorus of ayes.)

9 CHMN. FOREMAN: Opposed no.

10 (No response.)

11 CHMN. FOREMAN: Ayes have it. 7 is adopted.

12 Now let's go on to 8. This is the notice
13 provision if there is a request to extend. And the
14 concern that I had is that the Coronado National Forest
15 was not a party and did not make public comment. So
16 would it make sense to include the Coronado National
17 Forest in this?

18 Mr. James.

19 MR. JAMES: I just wanted to note that
20 technically the Forest Service is the landowner. So I
21 believe they would be covered by the language of the
22 provision, which requires notice to all landowners.

23 CHMN. FOREMAN: Very good, very good. Then I
24 think that satisfies my concern.

25 All right. Anybody else have concerns on

1 Condition 8?

2 (No response.)

3 CHMN. FOREMAN: Condition 9 is fairly
4 straightforward.

5 Condition 10, the concern that I had on
6 Condition 10 is maybe the signs that are described are
7 inconsistent with sign ordinances and regulations of the
8 national forest or the Santa Rita Experimental Range.
9 It seems to me there should be a limitation on the sign
10 size or a limitation on compliance, that compliance be
11 consistent with the -- how do I want to say it? --
12 property owner or regulating jurisdiction's, yeah,
13 applicable regulations.

14 MR. BECK: Mr. Chairman, I would just like to
15 point out that in the third line it says to the extent
16 authorized by law. And one of the reasons we have that
17 language in this is to the extent there are issues with
18 the local jurisdiction.

19 CHMN. FOREMAN: Very good. And as long as we
20 all agree that law includes rules and regulations and
21 not just statutes, then you folks feel comfortable with
22 that?

23 MR. BECK: The applicant does.

24 CHMN. FOREMAN: Rosemont?

25 MR. BLACK: Yes.

1 CHMN. FOREMAN: All right. That addresses --

2 MEMBER PALMER: That's implied in Condition

3 No. 2.

4 CHMN. FOREMAN: It is.

5 MEMBER PALMER: So it is redundant.

6 CHMN. FOREMAN: Yes, but frankly most of the
7 conditions are implied in Condition 2.

8 MEMBER PALMER: But the one referencing statutes
9 and ordinances specifically?

10 MR. DERSTINE: And the applicant is willing to
11 stop at Condition 2 if you offer.

12 CHMN. FOREMAN: All right. Member Eberhart.

13 MEMBER EBERHART: Do we say in item No. 10 at
14 what frequency the signs have to be posted? And I don't
15 know that we want to micromanage that, but I want to
16 make sure there is a reasonable number of signs posted,
17 not just one at the start and one at the end.

18 MEMBER HAENICHEN: Well, it says reasonable.

19 CHMN. FOREMAN: Yeah, it says at reasonable
20 intervals, and I just would be -- yeah, I think we would
21 get into micromanagement if we get beyond that.

22 MEMBER NOLAND: Yeah.

23 CHMN. FOREMAN: All right. Then with regard to
24 paragraphs 8, 9 and 10, do I hear a motion to accept
25 those paragraphs as written in the proposed CEC?

1 MEMBER PARKE: So moved.

2 MEMBER WALKER: Second.

3 CHMN. FOREMAN: Motion by Member Parke, second
4 by Member Walker that we accept the language as proposed
5 in Conditions 8, 9 and 10.

6 MEMBER HAENICHEN: Mr. Chairman.

7 CHMN. FOREMAN: Member Haenichen.

8 MEMBER HAENICHEN: On the next page, page 6, it
9 says the expected date, (b), on the top, of completion
10 of the project facilities. Is this just like the best
11 guess of the applicant or --

12 CHMN. FOREMAN: I think that would be a very
13 fair --

14 MEMBER HAENICHEN: I am just thinking back to
15 our discussion about the litigation and problems.

16 CHMN. FOREMAN: Yes.

17 MEMBER HAENICHEN: Okay.

18 CHMN. FOREMAN: Would the applicant concur
19 with --

20 MR. BECK: Yes, Mr. Chairman, that we would use
21 our best guess. And also, because we have the public
22 information number on there, people can call for
23 updates.

24 CHMN. FOREMAN: Okay. All right. And it would
25 be -- would it be like one of those billboards for a

1 play that's held over, you would just be going along and
2 putting new dates up there as needed?

3 MR. BECK: To the extent the date extends far
4 enough, we could do that, yes.

5 CHMN. FOREMAN: Very good. Any other
6 discussion?

7 (No response.)

8 CHMN. FOREMAN: All those in favor then of
9 adopting language proposed for paragraphs, or for
10 Conditions 8, 9 and 10 signify by saying aye.

11 (A chorus of ayes.)

12 CHMN. FOREMAN: Opposed no.

13 (No response.)

14 CHMN. FOREMAN: The ayes have it. The language
15 for Conditions 8, 9 and 10 is adopted.

16 Now let's go to 11. And this is one where I
17 have some concerns, too. And my concern is about the,
18 what I will characterize as the conehead solution to the
19 raptor problem. On this raptor/rodent issue, I come
20 down on the side of the raptors and against the rodents.
21 So I am concerned about this addition of language. And
22 from raptors --

23 Yes, Mr. Metli. One of your clients, I think,
24 is Audubon Society. Do you share my concern about the
25 raptors?

1 MR. METLI: Mr. Chairman, frankly, we do not
2 have an opinion on this issue.

3 CHMN. FOREMAN: I smell a rodent.
4 Member Noland.

5 MEMBER NOLAND: Mr. Chairman, with all due
6 respect to Mr. Magruder, in several other cases we have
7 had people that are more concerned about the safety of
8 the raptor and a place that's safe for them to land and
9 not impact the lines. I just would have a real problem
10 going against those who have been experts and have
11 testified in other cases about raptors in these
12 situations that I would like to leave the wording as it
13 is.

14 CHMN. FOREMAN: Member Walker.

15 MEMBER WALKER: Mr. Chairman, I agree with you
16 and Member Noland. We don't know one way or the other.
17 What we know was what was in the record. And it was to
18 minimize the impacts to raptors. I, too, took biology
19 classes, but I was lousy at them and never became a
20 wildlife biologist. So I think we just defer to them.

21 CHMN. FOREMAN: Okay. Member Lacey.

22 MEMBER LACEY: Mr. Chairman, I believe the land
23 management agencies were consulted and provided input to
24 this process, and they expressed no concerns consistent
25 with Mr. Magruder's stated concerns.

1 CHMN. FOREMAN: Member Haenichen.

2 MEMBER HAENICHEN: Yes. And we also had
3 testimony from the applicant that the raptors will land
4 right on the insulators anyway. So there is no way to
5 stop that.

6 CHMN. FOREMAN: All right. Well, then do I hear
7 a motion to accept the language for Condition 11 in its
8 original form as proposed?

9 MEMBER NOLAND: So moved.

10 MEMBER MCGUIRE: Second.

11 CHMN. FOREMAN: Okay. We have got a motion by
12 Member Noland, second by Member Walker. Further
13 discussion?

14 (No response.)

15 CHMN. FOREMAN: All those in favor signify by
16 saying aye.

17 (A chorus of ayes.)

18 CHMN. FOREMAN: Opposed no.

19 (No response.)

20 CHMN. FOREMAN: The ayes have it.

21 All right. I appreciate your concern and
22 heartfelt sympathy for your furry little friends,
23 Mr. Magruder. But, you know, on this side of the, on
24 this issue, I think the raptors deserve a perch.

25 MR. MAGRUDER: I am sorry, Mr. Chairman. I just

1 didn't have time to bring in some of the research
2 biologists in this field. I didn't have time. I didn't
3 expect it to be an issue.

4 CHMN. FOREMAN: Okay. And I -- it is fine. I
5 appreciate you raising the issue, but -- well, I voted
6 with the majority and a unanimous Committee on that
7 matter.

8 All right. Let's go to 12 now. The language in
9 proposed 12 talks about dulled surfaces. Does a dulled
10 surface mean either the dulled galvanized or the dulled
11 steel or Corten or both?

12 MR. BECK: Mr. Chairman, that would apply to
13 either, but it is clear in the application that we
14 proposed to use Corten, and that would be our intent
15 unless conditioned otherwise.

16 CHMN. FOREMAN: All right. Mr. Magruder has
17 made an interesting proposal in that regard. Does the
18 Nation have a position on pole coloring?

19 MS. BERGLAN: No, Mr. Chairman, no position.

20 CHMN. FOREMAN: All right. Mr. Metli, the
21 position on pole coloring.

22 MR. METLI: No position, Your Honor.

23 CHMN. FOREMAN: And I guess Rosemont, you don't
24 have a position one way or the other?

25 MR. BLACK: No position.

1 CHMN. FOREMAN: All right. We received -- I
2 remember us having in a case that Mr. Magruder was
3 involved with public comment about pole coloring from
4 people who -- we had one person get up and say you would
5 have to be an idiot to use anything but Corten, and then
6 the next person got up and said you would have to be an
7 idiot to use anything than brushed steel.

8 And I can remember our discussions then sort of,
9 or at least my thinking at the time sort of boiled down
10 to it depended on what your background was. If you were
11 really close and you were looking up at the sky, the
12 brushed steel perhaps was less visible, but if you were
13 in the distance and the pole you were looking at was
14 below the horizon, then the Corten appeared to be
15 superior.

16 I was impressed by the fact that we had an
17 expression of preference by the Forest Service, who I
18 believe -- and this is the testimony, maybe
19 Ms. Weinstein's -- that the Forest Service considered
20 the Corten poles as mitigation, but not the brushed
21 steel. Am I remembering the testimony correctly?

22 MS. WEINSTEIN: Yes, that's correct. They
23 didn't necessarily call it Corten, but they called it
24 dark brown, nonreflective colored.

25 CHMN. FOREMAN: Dark brown. Okay.

1 So Member McGuire.

2 MEMBER MCGUIRE: I move we let TEP decide what
3 color to put in and what is most cost effective.

4 CHMN. FOREMAN: Okay. Is there a second?

5 MEMBER NOLAND: Second.

6 CHMN. FOREMAN: All right. Further discussion.

7 MEMBER LACEY: Just to clarify, Mr. Chairman, I
8 believe this language as originally proposed allows TEP
9 to select either alternative.

10 CHMN. FOREMAN: Yes. Let me ask. So would in
11 essence the motion be that the language that is proposed
12 be adopted, since it would allow TEP to make the
13 decision?

14 MEMBER MCGUIRE: Yeah, that will work, yeah.

15 CHMN. FOREMAN: And that works for the second?

16 MEMBER NOLAND: That works for the second.

17 CHMN. FOREMAN: Okay. So any further
18 discussion?

19 (No response.)

20 CHMN. FOREMAN: All right. All those in favor,
21 then, of the language as set forth in Condition 12
22 signify by saying aye.

23 (A chorus of ayes.)

24 CHMN. FOREMAN: Opposed no.

25 (No response.)

1 CHMN. FOREMAN: Ayes have it.

2 All right. Let's go to 13. Now, we talked
3 about a restoration plan. Now, we have amended
4 language. And again may I assume that the amended
5 language is agreeable to all of the parties?

6 All right. I see heads nodding up and down.
7 And the amended language includes the Coronado National
8 Forest, which I think is a really good idea.

9 All right. Now, Member Parke had asked earlier
10 that we consider the inclusion of language relating to
11 the control of noxious weeds. Has that language been
12 included in another place in the amendments that the
13 parties have put forward?

14 MR. BECK: Mr. Chairman, at this point we
15 haven't included it in the draft conditions. We do have
16 language from the other case ready to pull up.

17 I guess the point relative to the noxious weeds
18 issue kind of goes back to Condition No. 2. And that is
19 that we will be required in particular in this case with
20 the U.S. Forest Service to deal with the noxious weeds
21 issue, and as part of our right-of-way and also as part
22 of the EIS itself, and we will make sure that we don't
23 bring noxious weeds into the area.

24 So I think from that standpoint it is covered.
25 And it is indirectly covered specifically by Condition 2

1 that we follow all the rules and requirements and so on.
2 But we do have the language we can bring up from the
3 other case.

4 CHMN. FOREMAN: Okay. Member Parke, what are
5 your thoughts?

6 MEMBER PARKE: Well, I just want the record to
7 reflect this is the -- the Santa Rita Experimental Range
8 has long-term studies going on about native plant
9 restoration or recovery after grazing. There has been
10 in both the testimony and the record concerns expressed
11 about not just noxious weeds but also invasive species.
12 I don't usually bring this up unless it pertains to
13 either wild lands or range lands. So as long as the
14 intent is there and we have that on the record, both for
15 the Arizona State Land Department lands as well as the
16 federal lands, I have no concerns.

17 Thank you, Mr. Chairman.

18 CHMN. FOREMAN: So Member Eberhart.

19 MEMBER EBERHART: Mr. Chairman, one point I
20 would make is that the Coronado National Forest, I think
21 testimony was that this line is only about a half mile
22 on their property. And the other 13 and a half miles
23 then would not be really addressed by the Forest Service
24 because it is not on their property.

25 CHMN. FOREMAN: Well, let's explore that. There

1 is a significant part of the preferred alignment that is
2 on private land that is owned by Rosemont. Will the
3 revegetation and noxious weed control language in the
4 record of decision from the Forest Service control
5 action on that private land?

6 MR. BECK: Specifically for the EIS we feel that
7 it will cover the whole transmission line because it is
8 part of the process. To the extent it doesn't, Arizona
9 State Lands will put in their right-of-way document
10 recommendations for protection against invasive and
11 noxious weeds. And beyond that, TEP within its own
12 processes and procedures, our environmental policies
13 deal with the issue of not introducing noxious weeds
14 into areas that we are working on.

15 But as I said, we are willing to go to a
16 condition if it makes the Committee more comfortable.
17 It just goes to the issue that we continually add
18 conditions to cases. That's my bottom line.

19 CHMN. FOREMAN: It is kind of like trees and
20 their growth rings and you can tell how far along the
21 Committee is by how many conditions we have.

22 It seems to me it would be relatively easy to
23 address this by modifying the language that we have used
24 previously. Take out plan, or actually you could put
25 the language exactly as it is right at the end of

1 paragraph 13 and have the plan refer to the restoration
2 plan. Or you could try and take out the word plan and
3 put something consistent with federal -- the EIS, the
4 final EIS or the record of decision.

5 MR. BECK: Mr. Chairman, if I suggested -- if
6 the Committee really wants a condition relative to the
7 noxious weeds issue, we would propose that we have a
8 condition that says applicant will comply with ASLD
9 guidelines and its policies and procedures regarding
10 protection against invasive species and noxious weeds.

11 CHMN. FOREMAN: Well, presumably that would be
12 consistent with the plan that's adopted by the
13 Corporation Commission, would it not?

14 MR. BECK: I would hope so, yes.

15 CHMN. FOREMAN: Okay, all right. Member Parke.

16 MEMBER PARKE: I stand with my previous remarks.
17 I have expressed my concern. And as long as the intent
18 is there to meet that concern, I, too, do not endeavor
19 to grow the number of pages on each certificate granted.

20 Thank you, Mr. Chairman.

21 CHMN. FOREMAN: All right. Is there a motion
22 then to adopt the language of paragraph 13 as is, or
23 adopt it with the addition of the noxious weeds
24 language.

25 MEMBER NOLAND: I move we adopt the language in

1 13 as is.

2 CHMN. FOREMAN: Is there a second?

3 MEMBER McGUIRE: I will second.

4 CHMN. FOREMAN: Second. Further discussion?

5 (No response.)

6 CHMN. FOREMAN: All those in favor signify by
7 saying aye.

8 (A chorus of ayes.)

9 CHMN. FOREMAN: Opposed no.

10 (No response.)

11 CHMN. FOREMAN: Ayes have it. The language in
12 Condition 13 that was proposed is adopted.

13 Now we go to 14, 15, 16, and 17 which are fairly
14 straightforward. They are conditions that we have
15 discussed before. I was not able to come up with any
16 special application in this case.

17 Member Richins.

18 MEMBER RICHINS: You know, as we have been going
19 through this it has kind of occurred to me that we are
20 crossing the Santa Rita Experimental Range. And the
21 experimental range, part of its hallmark has been, you
22 know, water control projects, different things that they
23 have tried there and monitored them over long term to
24 see how they would work out.

25 And I think there might be a great opportunity

1 here, since a new power line would be going into this
2 area and water line, to partner with the University of
3 Arizona and monitor the results, what happens, what
4 happens during the course of this, what does it look
5 like over time, you know, have a photographic study now
6 and in the future, you know, and use the experimental
7 range to our advantage to inform us for future line
8 siting cases.

9 So I don't know why we wouldn't do something
10 like that. And I don't know how to impose a condition
11 on it, but it is just striking me this gives us a great
12 opportunity to see what are the effects on raptors and
13 raptor -- furry creatures, what are the effects on
14 migration.

15 CHMN. FOREMAN: You know, I think that makes
16 sense. The question that I have is what part of our
17 budget would you like to divert to do that.

18 MEMBER RICHINS: Well, the University of Arizona
19 has a budget for things on this range. So maybe we just
20 make Rosemont Copper pay for it. I don't know, but...

21 CHMN. FOREMAN: Member Haenichen.

22 MEMBER HAENICHEN: Well, I think it is an
23 interesting idea, but I don't think we are empowered to
24 impose costs on that for something beyond the scope of
25 the application.

1 CHMN. FOREMAN: I, too, think it is a really
2 good idea. And I would like to see the research done.
3 But, you know, the University of Arizona is not a party
4 to this. I would be uncomfortable with language that
5 would in essence give the University of Arizona a blank
6 check with regard to proposing and putting together
7 research. I would hope that perhaps something like that
8 could get done at some time in the future.

9 MR. BECK: Mr. Chairman, just from the
10 applicant's perspective, that is a good idea. And we
11 will take that idea and at least have discussions with
12 the range as far as what we can work together on to see
13 what research could be done.

14 MEMBER RICHINS: Yes, and I wasn't even sure how
15 you could craft that into the CEC, but as we have
16 wrestled with all these individual issues, it just
17 occurred to me there is an opportunity here. So thank
18 you.

19 CHMN. FOREMAN: Yes. And it is very helpful to
20 us in thinking about these in the future to be informed
21 about their impact in the past. Maybe Mr. Magruder is
22 right about our friends the rodents. I mean it could
23 be, if there is a significant impact on the rodents that
24 comes as a result, maybe we have to go to the coneheads
25 down the --

1 MR. MAGRUDER: I know the answer already.

2 CHMN. FOREMAN: But right now we don't have an
3 empirical basis that would allow us to go with the
4 cones.

5 MR. BLACK: Chairman, members of the Committee.

6 CHMN. FOREMAN: Yes.

7 MR. BLACK: Just for the record, Rosemont, too,
8 would work with TEP and the university on looking at
9 that issue as well.

10 CHMN. FOREMAN: Okay. All right. Very good.
11 Let's move on then to proposed paragraph 18, which deals
12 with natural gas or hazardous liquid. And is there a
13 natural gas pipeline that would be impacted by the
14 preferred route?

15 MR. BECK: Mr. Chairman, not that we are aware
16 of at this time.

17 CHMN. FOREMAN: Okay. And Rosemont, are you
18 aware of any natural gas pipeline that would come within
19 100 feet of the preferred route?

20 MR. BLACK: No, we are not aware of any either.

21 CHMN. FOREMAN: All right. We have then
22 Mr. Magruder's concern that he expressed about
23 electrification of the underground water pipeline. And
24 I am -- I did not see or I have no recollection of an
25 evidentiary support for that outside of Mr. Magruder's

1 testimony.

2 Is there anybody who wants to pursue that? If
3 not, is there anyone who -- any member of the Committee
4 who would move that we not include paragraph 18?

5 MEMBER MCGUIRE: I move we not include it.

6 MEMBER WALKER: Second that.

7 CHMN. FOREMAN: Motion from Member McGuire,
8 second by Member Walker that paragraph 18, the standard
9 language relating to contact or proximity to natural gas
10 or hazardous liquid pipelines not be included. Any
11 further discussion on that?

12 (No response.)

13 CHMN. FOREMAN: All those in favor signify by
14 saying aye.

15 (A chorus of ayes.)

16 CHMN. FOREMAN: Opposed no.

17 (No response.)

18 CHMN. FOREMAN: The ayes have it. So 18 is out.

19 19, 20, 21, 22 all are fairly standard. Let's
20 see. We have in paragraph 20 an addition that's
21 proposed including the Coronado National Forest record
22 of decision.

23 MEMBER EBERHART: Mr. Chairman.

24 CHMN. FOREMAN: I am sorry, who? Oh, Member
25 Eberhart.

1 MEMBER EBERHART: Mr. Chairman, on line 2 of the
2 page on the screen, does that Arizona Commerce Authority
3 Energy Office need to be revised to properly --

4 CHMN. FOREMAN: Yes, I think so.

5 MEMBER EBERHART: -- to properly reflect --

6 MEMBER NOLAND: Can you pull that microphone a
7 little closer to you? I am having trouble hearing you
8 and I am sitting --

9 CHMN. FOREMAN: Member Haenichen.

10 MEMBER HAENICHEN: What page are we on?

11 CHMN. FOREMAN: Condition 20, the pages of -- so
12 if you go back to -- no, up a little further. There you
13 go.

14 MEMBER HAENICHEN: But why not correct it to the
15 Arizona Governor's Office of Energy Policy? Replace all
16 those words there, Arizona Commerce Authority Energy
17 Office.

18 CHMN. FOREMAN: And I think we can. Do you want
19 to -- are you confident enough that --

20 MEMBER HAENICHEN: No, I would leave the
21 successor.

22 CHMN. FOREMAN: Getting Member Haenichen's
23 designating agency properly described in our CECs has
24 been like trying to hit a moving target.

25 MEMBER HAENICHEN: It is a challenge. It is

1 like the green laser pointers.

2 CHMN. FOREMAN: But we should use the most
3 recent one, so very good. Thank you for catching that.

4 All right. So any other additions or
5 corrections that we need for paragraphs 19, 20, 21, or
6 22? And can you scroll down and let us see?

7 MR. BECK: Mr. Chairman, that was a suggestion
8 from Mr. Magruder, and we weren't sure what the
9 Committee's pleasure would be as far as whether the
10 Commission grants or approves the certificate. We
11 believe approving is probably the correct term to use.

12 CHMN. FOREMAN: Approving is the statutory term.
13 Approve and affirm is the statutory term.

14 Well, let's see. It is the statutory term, but
15 I don't want to create problems here.

16 MEMBER HAENICHEN: Do we have a motion on those?

17 CHMN. FOREMAN: First I want to think in my own
18 mind which side of the motion I would like to be on.

19 Yeah, I think we can go with approving.

20 MEMBER HAENICHEN: What was it, 20 through 22?

21 CHMN. FOREMAN: It is Condition 21, and the
22 first line of that, changing the word granting to
23 approving.

24 All right. So let's go ahead with that. So do
25 I hear then a motion to approve the language in

1 paragraphs 19, 20, and 21 as amended?

2 MEMBER NOLAND: So moved.

3 CHMN. FOREMAN: Member Eberhart.

4 MEMBER EBERHART: I don't know if we got a
5 second.

6 MEMBER NOLAND: Not yet.

7 CHMN. FOREMAN: Is there a second to the motion?

8 MEMBER LACEY: Second.

9 CHMN. FOREMAN: Second by Member Lacey.
10 Member Eberhart.

11 MEMBER EBERHART: I have a question regarding
12 No. 21. Are there any private landowners other than
13 Rosemont within this project? Because this specifically
14 says you only have to contact private landowners.

15 CHMN. FOREMAN: On the preferred, the corridor
16 and the preferred route is entirely on public land or
17 Rosemont land, is that correct?

18 MR. BLACK: Correct, except for the half mile on
19 federal land.

20 CHMN. FOREMAN: Okay.

21 MEMBER EBERHART: That would be public.

22 CHMN. FOREMAN: So it would be public.

23 MEMBER EBERHART: So do we need this No. 21, or
24 do we need to strike the word private out?

25 CHMN. FOREMAN: Well, actually you raise a

1 really good point. Do we need it at all? I mean we, in
2 essence, would be directing TEP to go to Rosemont and
3 talk about buying Rosemont's land. I don't think from
4 the way the deal has been described to me that Rosemont
5 is going to buy land, its own land for itself. So maybe
6 deleting paragraph 21 makes sense.

7 MEMBER PARKE: Can we ask the applicant?

8 CHMN. FOREMAN: Am I correct in my analysis?

9 MR. BECK: Yes.

10 CHMN. FOREMAN: Member Walker.

11 MEMBER WALKER: We had talked earlier today to
12 Rosemont about whether they would be amenable to TEP in
13 some subsequent case coming forward and proposing to
14 build links to 160, 190, and 210. So when we talk about
15 eliminating paragraph 21, is there any way, Rosemont,
16 that you can see us making it clear in the record that
17 you are perfectly willing to work with TEP on the future
18 links without having this paragraph in here?

19 MR. JAMES: Mr. Chairman, Member Walker, let me
20 take a stab at this. First of all, just to this
21 provision, I would agree I don't think we need it. I
22 assume the intent is to notify affected landowners, and
23 we are the affected landowner.

24 CHMN. FOREMAN: All the affected landowners.

25 MR. JAMES: Yes.

1 CHMN. FOREMAN: And apparently, from what you
2 are telling us, there is only public land and Rosemont.

3 MR. JAMES: There is state land in the range,
4 there is Forest Service land, and then Rosemont owned
5 land.

6 As to Member Walker's question, the link I
7 believe we are talking about would be over Forest
8 Service land that would connect up. We would certainly
9 not object, however, to including language that would
10 indicate that we would, Rosemont would cooperate with
11 Tucson Electric in connection with --

12 MEMBER WALKER: Future plans to build a line to
13 Fort Huachuca.

14 MR. JAMES: Something along those lines, we
15 would have no problems.

16 MEMBER WALKER: Can you take a stab at drafting
17 something like that?

18 MR. JAMES: We can.

19 MEMBER WALKER: We can.

20 MEMBER HAENICHEN: Because, looking at the place
21 mat, there is a little bit that would go on Rosemont
22 land below the Rosemont substation. Do you see that
23 little area, if they wanted to do section 210?

24 CHMN. FOREMAN: Uh-huh.

25 MEMBER HAENICHEN: So I think we should leave it

1 in.

2 MEMBER WALKER: Well, Mr. Chairman.

3 CHMN. FOREMAN: Member Walker.

4 MEMBER WALKER: Well, yeah, I don't think 21
5 would specifically apply for what we are talking. So
6 what I would like to do is see what Mr. James comes up
7 with, because we will be talking about an entirely
8 separate case when we talk about extending --

9 MEMBER PARKE: Right.

10 MEMBER WALKER: -- in the future to Fort
11 Huachuca. All I am asking is, when we have the
12 opportunity to review Mr. James' language, I think
13 that's probably the best place to consider it, is
14 separate from this.

15 CHMN. FOREMAN: All right.

16 MEMBER NOLAND: Mr. Chairman.

17 CHMN. FOREMAN: Member Noland.

18 MEMBER NOLAND: I move we delete item 21 in the
19 CEC.

20 CHMN. FOREMAN: We have got a pending motion.
21 So we either need to withdraw that motion or incorporate
22 a withdrawal. Let's see. And the pending motion dealt
23 with paragraphs, what, 19, 20, 21, and 22. So -- and I
24 have forgotten who --

25 MEMBER NOLAND: I think it was me.

1 (The record was read by the reporter as
2 requested as follows:

3 Chmn. Foreman: It is Condition 21, and the
4 first line of that, changing the word granting to
5 approving.

6 All right. So let's go ahead with that. So
7 do I hear then a motion to approve the language in
8 paragraphs 19, 20, and 21 as amended?

9 Member Noland: So moved.)

10 MEMBER NOLAND: Mr. Chairman, I withdraw my
11 motion and would ask if the second would withdraw
12 theirs, and I will remake the motion.

13 MEMBER LACEY: Before I do that, I would just
14 like to clarify some issues. Ms. Weinstein's
15 presentation about the residents and Helvetia, we talked
16 about some proximity to the corridor. And I just want
17 to verify that I guess this definition of description is
18 that these properties would be outside the corridors. I
19 think one of the homes is like 278 feet when I think
20 Mr. Beck was running through, or whoever was messing
21 with the Google Earth, and coming up with distances.

22 MS. WEINSTEIN: The right-of-way would only be
23 on Rosemont property, if that's what this is getting at,
24 your proximity to some of the residences right, is
25 outside of that right-of-way and even beyond the

1 corridor.

2 CHMN. FOREMAN: So, I am sorry, would the
3 right-of-way or the corridor, are all the -- is all of
4 the corridor outside of other private property owners
5 other than Rosemont? That's the issue.

6 MEMBER LACEY: That is my question, yes. If the
7 answer is we don't know, then I would suggest that that
8 language needs to stay in the CEC.

9 CHMN. FOREMAN: All right. We are to the point
10 where we need to take a break. Why don't we take a
11 break, 15 minutes. We will come back at 3:10 and
12 perhaps at that time we will have an answer. We are in
13 recess.

14 (A recess ensued from 2:56 p.m. to 3:13 p.m.)

15 CHMN. FOREMAN: All right. Let's go back on the
16 record.

17 Now, Ms. Weinstein, what is the result of your
18 research during the break?

19 MS. WEINSTEIN: It does appear that the 500 foot
20 wide corridor does overlap with private land other than
21 Rosemont. So...

22 MEMBER NOLAND: Okay. Then Mr. Chairman --

23 CHMN. FOREMAN: Member Noland.

24 MEMBER NOLAND: -- I will leave my original
25 motion in place.

1 CHMN. FOREMAN: All right. Leave the second in
2 place?

3 MEMBER LACEY: Second in place.

4 CHMN. FOREMAN: Is there further discussion,
5 then, about the motion to adopt the language as amended
6 for proposed Conditions 19, 20, 21 and 22?

7 MEMBER PARKE: Mr. Chairman, just one question.

8 CHMN. FOREMAN: Member Parke.

9 MEMBER PARKE: I didn't get to see inside of
10 your mind as to how the wheels turned with regard to the
11 change of one word in Condition 21. I don't have a
12 feeling either way, but I think at least the record
13 should reflect, and this is what I believe the case is,
14 that you made the change or accepted the change based on
15 consistency with statute that, regardless of what
16 previous CECs have stated because this is, I guess, a
17 departure from other CECs in that manner, that it is not
18 meant to change anything substantively.

19 CHMN. FOREMAN: Exactly. And there are two ways
20 that the statutes contemplate the Arizona Corporation
21 Commission can review a decision by this Committee on a
22 CEC. They are both found in A.R.S. Section 40-360.07.

23 In A, it says that the -- it says no utility may
24 construct a plant or transmission line within this state
25 until it has received a certificate of environmental

1 compatibility from the Committee with respect to the
2 proposed site, affirmed and approved by an order of the
3 Commission, which shall be issued, and then it goes on,
4 except, and then it talks about if a request for review
5 is filed.

6 If a request for review is filed in paragraph B,
7 it says that the Commission shall within 60 days from
8 the date the notice is filed either confirm, deny, or
9 modify any certificate granted by the Committee.

10 So I wish to offend no one and I wish not to
11 open wounds that, scars that some of which I have
12 myself, but it is the Committee that grants the
13 certificate of environmental compatibility. It is the
14 Commission that reviews the grant by the Committee. If
15 there is no request for review, then the statute says
16 shall affirm and approve. If there is a request for
17 review, then the Commission is authorized to confirm,
18 deny, or modify the certificate. So that's the
19 statutory language.

20 Now, by practice, since October 16, 2000, the
21 Commission has reviewed all certificates of
22 environmental compatibility, whether or not a timely
23 request for review is filed. Now, I personally think
24 that's a good idea, because if they are going to enforce
25 them, they ought to review them and they ought to sign

1 off on them. But that's not the way I read the statute.

2 And so again, we have kind of the history of the
3 granting of these applications or granting of these
4 certificates is a little bit different than the precise
5 language that has been used. And so I think approving
6 is fine, and I think approving can be taken to include
7 confirming, denying, or modifying.

8 MEMBER PARKE: The grant.

9 CHMN. FOREMAN: The grant. But the statutory
10 language is that it is the Committee that grants, it is
11 the Commission that approves, confirms, denies, or
12 modifies.

13 MEMBER PARKE: Thank you, Mr. Chairman, for that
14 background. I appreciate it.

15 CHMN. FOREMAN: All right. Moving right along.

16 MEMBER NOLAND: There is a motion on the table.

17 CHMN. FOREMAN: We have the motion on the table.
18 Any further discussion on it?

19 (No response.)

20 CHMN. FOREMAN: All those in favor signify by
21 saying aye.

22 (A chorus of ayes.)

23 CHMN. FOREMAN: Opposed no.

24 (No response.)

25 CHMN. FOREMAN: Very good. The language for

1 proposed Conditions 19, 20, 21, and 22 as modified is
2 adopted.

3 Now we go to --

4 MR. BLACK: Chairman.

5 CHMN. FOREMAN: Yes.

6 MR. BLACK: Committee members, I do have that
7 language proposed by Member Walker, if you would like to
8 listen to that now or later.

9 CHMN. FOREMAN: All right. Well, let's hear it.

10 MR. BLACK: And we don't know if this is more
11 appropriate for avowal on the record or for a condition,
12 but I will take a stab.

13 CHMN. FOREMAN: Just before you begin...

14 Member Eberhart.

15 MEMBER EBERHART: Just, I think the motion was
16 for 19, 20, 21. I think you included in your ruling
17 that it included 22, but I don't think we moved on 22.

18 CHMN. FOREMAN: Well, my notes said 22.

19 MEMBER EBERHART: When Colette read back the
20 original it only went to 21.

21 CHMN. FOREMAN: 21? Okay. Well, we can, then
22 we will start with 22 as soon as we start up again.

23 Mr. Black.

24 MR. BLACK: The language I have is TEP has the
25 commitment of Rosemont Copper to work in conjunction

1 with one another regarding any future system
2 improvements over Rosemont's private property and/or
3 facilities to serve other TEP customers, including but
4 not limited to Fort Huachuca.

5 CHMN. FOREMAN: Okay. Now, I guess the question
6 is whether that is something that's appropriate
7 including in the CEC, or whether just having that avowal
8 on the record is appropriate. So any thoughts?

9 Member Haenichen.

10 MEMBER HAENICHEN: Yes. It is not really the
11 subject matter of the application as submitted, so maybe
12 just the other way you said to do it.

13 CHMN. FOREMAN: Member Walker, are you
14 comfortable with that?

15 MEMBER WALKER: I am comfortable with that,
16 Mr. Chairman. As long as it is in the record, I think
17 that's acceptable. Does TEP agree?

18 CHMN. FOREMAN: And I agree with that, too. I
19 think it is, as Member Haenichen points out, not a part
20 of the application in this matter. And while it is an
21 issue that is raised by the application, especially the,
22 we will call it, excess capacity of the line, I am not
23 sure that we should get -- in fact, I don't think we
24 should get into the business of trying to allocate the
25 use of that excess capacity in this proceeding.

1 And the fact that there has been a formal avowal
2 on the record with regard to a willingness to work
3 together to make sure that Fort Huachuca's interests are
4 protected should they desire to make use of it I think
5 satisfies our needs.

6 All right. Then let's move on. We will look
7 then at paragraph 22. That's the paragraph that talks
8 about private landowners. And apparently we have at
9 least a corner of one private landowner who is not
10 Rosemont within the corridor for the preferred route, is
11 that correct?

12 MS. WEINSTEIN: Potentially. So to be safe --

13 CHMN. FOREMAN: So we are going to leave 22 in.

14 Now we will go to 23. And any concerns on 23?
15 That's routine language that we have used before.

16 So let's go then to 24. And here, this looks
17 like an attempt to integrate the concerns of the Nation.
18 So let me ask for an explanation of this language.

19 Ms. Berglan.

20 MS. BERGLAN: Yes, Mr. Chairman. Thank you.

21 Well, this gets at our minimizing impacts to
22 cultural resources issue that we have raised during the
23 course of the hearing. So the language is that the
24 applicant shall avoid or minimize impacts to listed or
25 eligible for listing on the national historic, national

1 register of historic places and sites.

2 And that was to address specific concerns with
3 respect to Huerfano Butte and perhaps other shrine sites
4 that might be out there and known by the cultural
5 affairs office that are significant to the Nation to
6 minimize impacts on those sites. And the parties have
7 all reviewed and agreed to that language.

8 CHMN. FOREMAN: Okay. Everybody is comfortable
9 with that language or accepting of it?

10 MR. BECK: The applicant is.

11 MR. BLACK: Rosemont is, yes.

12 MR. MAGRUDER: Mr. Chairman, I am almost
13 comfortable. Where it says the word sites, fourth line
14 down, if we put including shrines, ceremonial sites, and
15 burials, that's slightly different because there might
16 be some other kind of sites than just shrines,
17 ceremonial sites, and burials. And it is a slight
18 change, but it gives a little more freedom in case some
19 other kind of site is found.

20 CHMN. FOREMAN: So take out the parentheses and
21 put in including?

22 MR. MAGRUDER: Including.

23 CHMN. FOREMAN: All right. Does that work for
24 you, Ms. Berglan?

25 MS. BERGLAN: That's fine with the Nation.

1 CHMN. FOREMAN: The applicant.

2 MR. BECK: Yes, that would be acceptable.

3 CHMN. FOREMAN: Okay. Rosemont.

4 MR. BLACK: Yes, that's acceptable.

5 CHMN. FOREMAN: And the Scenic Santa Ritas.

6 MR. METLI: It is acceptable, Your Honor.

7 CHMN. FOREMAN: All right. So let's -- very
8 good. I think we are keeping sites.

9 MR. MAGRUDER: Keeping sites.

10 CHMN. FOREMAN: There we go. All right. So
11 then do we have a motion with regard -- well, any
12 further discussion on it?

13 MEMBER HAENICHEN: Well, the parentheses have to
14 be moved around a little bit.

15 CHMN. FOREMAN: I think they are going to take
16 them out.

17 MEMBER HAENICHEN: Oh, okay.

18 CHMN. FOREMAN: All right.

19 MEMBER PARKE: Mr. Chairman.

20 CHMN. FOREMAN: Member Parke.

21 MEMBER PARKE: Yes. With regard to paragraph or
22 Condition 23, I don't know if this is -- it seems to me,
23 but I don't know if it is true, that this kind of runs
24 parallel to the provision in 2 and 3 that we talked
25 about with regard to the Sonoran Desert tortoise.

1 I know earlier, Mr. Chairman, you sided with the
2 raptors. I know nothing of beardless chinch weed or
3 Coleman's coralroot or the Mexican garter snake or some
4 of the others, but there might be some folks that are
5 concerned about singling out the desert tortoise. I
6 don't know if that was intended for a specific reason,
7 and I don't recall any testimony. But maybe just
8 striking 12, on line 12 through 14 of 23 regarding the
9 Sonoran Desert tortoise, and if I can have confirmation
10 from either the applicant or EPG that they believe that
11 would still cover the Sonoran Desert tortoise and maybe
12 help our other friends.

13 CHMN. FOREMAN: Well, let's talk a little bit
14 about the history of that. I think that the guidelines
15 language went in because the guidelines were not
16 considered law to be up to the level of statutes, rules,
17 regulations and so on. The guidelines would be simply
18 aspirational methods of treatment. And so requiring
19 them to conform to a guideline would be different than
20 requiring them to conform to the list of laws that were
21 put in paragraph 2.

22 And I think that one of the reasons that the
23 Sonoran Desert tortoise was singled out was because it
24 is one of the few species for which there is a
25 guideline, a published guideline. Is my recollection in

1 this regard correct?

2 MR. BECK: Mr. Chairman, the applicant believes
3 it can be taken out, but we understand the history of
4 that condition and has a longstanding history with the
5 Committee, so...

6 CHMN. FOREMAN: All right. Well, if you find a
7 Sonoran Desert tortoise how are you going to handle it?
8 Are you going to follow the guidelines or no?

9 MR. BECK: We would follow the guidelines
10 regardless of whether it is stated in a condition in our
11 CEC.

12 CHMN. FOREMAN: Do you believe that a guideline
13 is covered under paragraph 2? And I realize that's not
14 an engineering question.

15 MR. BECK: That is a legal question. But from
16 our policies, from TEP's perspective environmentally, we
17 would look at the guidelines and include guidelines in
18 our policies, so...

19 CHMN. FOREMAN: I am kind of in favor of leaving
20 it in, but...

21 MEMBER HAENICHEN: Safe, be safe.

22 CHMN. FOREMAN: Yes. Member Parke, what is your
23 pleasure on this?

24 MEMBER PARKE: Again, I just want some
25 clarification as to the history, so I appreciate the

1 indulgence.

2 CHMN. FOREMAN: All right. If there is any --
3 no further discussion, let's -- do we have a motion on
4 the floor with regard to paragraphs 22, 23, and 24?

5 MEMBER PARKE: So moved, Mr. Chairman.

6 CHMN. FOREMAN: Okay. Do we have a second?

7 MEMBER RODRIGUEZ: Second.

8 CHMN. FOREMAN: All right. There is a motion
9 and a second to accept the language of proposed
10 Conditions 22, 23, and 24 as modified. Further
11 discussion?

12 (No response.)

13 CHMN. FOREMAN: All in favor signify by saying
14 aye.

15 (A chorus of ayes.)

16 CHMN. FOREMAN: Opposed no.

17 (No response.)

18 CHMN. FOREMAN: The ayes have it. The language
19 as modified for Conditions 22, 23, and 24 is adopted.

20 Now, for 25 we have shalls instead of wills, and
21 then we come to 27.

22 MEMBER PALMER: Mr. Chairman, I have a comment
23 on 25.

24 CHMN. FOREMAN: Okay. Member Palmer.

25 MEMBER PALMER: I may be misremembering, to

1 quote Roger Clemens.

2 MEMBER NOLAND: Speak up, Mike.

3 MEMBER PALMER: I may be misremembering, to
4 quote Roger Clemens, but Mr. Beck, I think it was your
5 testimony on Tuesday where we got into a discussion
6 about the values of the 138kV line. And one of the
7 things it was distinguished was that the Rosemont mine
8 folks could use power from the 138kV line to facilitate
9 the construction of the mining operation, is that
10 correct?

11 MR. BECK: Yes, Member Palmer, that is correct.

12 MEMBER PALMER: What Condition 25 does is
13 preclude that from happening, because if a record of
14 decision from the Forest Service is necessary before the
15 mine can operate and before the line can be built, and
16 there is an eight-month lag due to the time necessary to
17 build the 13.1 or 2 mile line, the applicant and also
18 Rosemont mine are precluded from saving money. Is that
19 your understanding?

20 In other words, this condition actually prevents
21 that from happening, utilizing the power from an
22 energized 138kV line to facilitate construction of the
23 operation.

24 MR. BECK: Yes, Member Palmer. It does delay
25 the date when they will have construction power,

1 effectively pushing the time when they can start
2 construction on their project. So it is a delay to the
3 mine.

4 MEMBER PALMER: And the additional cost they
5 might bear, this is the unintended consequence, would be
6 portable diesel generating units which are much more
7 expensive to operate, I would assume, than hooking up
8 to, you know, plugging into the outlet, so to speak?

9 MR. BECK: That would be correct, yes.

10 MEMBER PALMER: I just wanted that as a matter
11 of record.

12 CHMN. FOREMAN: Okay. Any other concerns, then,
13 on 25, 26, or 27? And I take it that 27 we again are
14 integrating concerns of the Nation, is that correct,
15 Ms. Berglan?

16 MS. BERGLAN: Yes, Mr. Chairman.

17 CHMN. FOREMAN: And the language is language
18 that is agreeable to the Nation, or acceptable?

19 MS. BERGLAN: Yes, Mr. Chairman.

20 CHMN. FOREMAN: And acceptable to everyone else?

21 MR. BECK: Yes, sir.

22 MS. BERGLAN: Yes, Chairman.

23 MR. MAGRUDER: Yes, Chairman.

24 CHMN. FOREMAN: All right. Let's push on and do
25 28, too. And this, I take it, is a part of the

1 compromise that you worked out. And we talked a little
2 bit about it before. It incorporates the table that was
3 in, what was it, Exhibit F of the application, is that
4 correct?

5 MR. BECK: I believe it was Exhibit E.

6 CHMN. FOREMAN: Exhibit E, I am sorry.

7 MR. BECK: I would point out, Mr. Chairman, that
8 this is the language that we have kind of settled upon
9 with the Tohono O'odham Nation at this point. It
10 doesn't incorporate, I believe it was, Member Noland's
11 comment from earlier.

12 CHMN. FOREMAN: All right. Well, let's talk
13 about that. Remind me of the language that you wanted
14 to --

15 MEMBER NOLAND: I will read my language. And I
16 made the statement, I believe, yesterday or whenever we
17 were doing -- the days have all blended together -- that
18 I feel it is a conflict of interest to hire the cultural
19 monitor from the Tohono O'odham Nation. So my language
20 was the applicant shall allow a Tohono O'odham Nation
21 cultural monitor to be present during any construction
22 activities within 100 feet of an archeological site or
23 identified or discovered site.

24 Now, I would be perfectly fine the way they
25 stated the end of that No. 28 from 100 feet on of known

1 prehistoric cultural resource. But I just, I am sorry,
2 I have just a personal issue with requiring someone to
3 hire and pay to do this service.

4 CHMN. FOREMAN: Member Walker.

5 MEMBER WALKER: Ms. Noland, would you be
6 amenable to an amendment to your language after allow
7 that said and consult with?

8 MEMBER NOLAND: Yes, I would be amenable to
9 that. I just have a real problem with the word engage,
10 which means hire and pay.

11 CHMN. FOREMAN: So --

12 MEMBER McGUIRE: I agree.

13 CHMN. FOREMAN: -- how would this language then
14 read? Applicant shall allow and consult with a Tohono
15 O'odham cultural monitor?

16 MEMBER WALKER: During all construction
17 activities on and within.

18 MEMBER NOLAND: And I didn't have during all
19 construction, because Mr. Steere qualified that language
20 or someone else did. It said during any construction --
21 oh, any construction within the 100 feet of a
22 prehistoric cultural resource site.

23 CHMN. FOREMAN: All right. Now --

24 MEMBER NOLAND: Any, not all, any.

25 MEMBER WALKER: Maybe my language is misplaced

1 there and we should go with yours, and at some other
2 point put in that it shall consult. So yours is to
3 allow the Tohono O'odham cultural monitor to be present
4 during construction activities. If we could have some
5 language that takes it a bit further and requires TEP to
6 consult with that cultural monitor, that's what I am
7 trying to get at.

8 CHMN. FOREMAN: Member Rodriguez.

9 MEMBER RODRIGUEZ: I understand Ms. Noland's
10 concern about forcing TEP or anyone to hire somebody.
11 But who is going -- does the tribe compensate the
12 monitors if you send them out into the field to do this
13 type of work?

14 MS. BERGLAN: Member Rodriguez, these are
15 private individuals. There isn't currently a budget to
16 pay those individuals, so no.

17 MEMBER RODRIGUEZ: Well, I then have a concern
18 that we may not get some monitors to come forward,
19 because then if they have to give up their job to come
20 and do this, and they want to but they feel compelled
21 that they have to be employed, as we all do, that there
22 may be some hardship cases. And we don't want the
23 hardship cases, but yet we also want them to be able to
24 go out there.

25 I don't know TEP's stand on this either. You

1 know, if they have -- you know, I mean we are trying to
2 do multiple things here, but all of us here are getting
3 paid to serve in this capacity. We can't expect others
4 to go and do something else and then not be compensated
5 in some way or fashion.

6 MR. BECK: Member Rodriguez, one issue from
7 TEP's perspective is just the sole sourcing to, or I
8 don't know the right term, but being biased in hiring
9 one cultural representative for a project, and whether
10 that is legal for us.

11 But beyond that, we understand the issue. We
12 understand the need for the monitor to be paid. And to
13 the extent the Nation doesn't have a budget for that, we
14 also understand that issue.

15 CHMN. FOREMAN: Member Eberhart.

16 MEMBER EBERHART: Mr. Chairman, I am not sure
17 that we have defined in here either what scope the
18 cultural monitor will have or what powers of authority
19 the cultural monitor will have. Will that person be
20 able to shut down construction if something comes up
21 or -- you know, all we have said in this is that they
22 will allow one to be standing there watching
23 construction. And I am -- if we are going to have
24 something in here, it ought to have some teeth, in my
25 opinion.

1 CHMN. FOREMAN: Member Haenichen.

2 MEMBER HAENICHEN: Thank you, Mr. Chairman.

3 While I believe there is some merit to all these things
4 that have been suggested, I would suggest that at this
5 stage of the proceedings, rather than risk delays,
6 unwanted delays, that we let that stand, or at least
7 remand the applicant to work with the tribe to come up
8 with a suitable solution to this. But I would hate to
9 see the whole thing come to a grinding halt on this
10 point for somebody that's going to make 12 bucks an
11 hour.

12 CHMN. FOREMAN: Well, let me see if I can ask
13 some questions here. It appears to me that the language
14 that is now up there does not impose on the applicant,
15 Rosemont, or the tribe a payment agreement with regard
16 to the monitors. Do you all agree?

17 MS. BERGLAN: I agree.

18 MR. BLACK: As currently written, yes.

19 CHMN. FOREMAN: So that would allow the parties
20 to negotiate whatever selection and consultation process
21 would be consistent with what is required.

22 MR. BECK: Mr. Chairman, if I may, one comment
23 relative to the language that's up there, rather than
24 consulting with the Tohono O'odham cultural monitor, I
25 would suggest if we are going kind of down this path, it

1 would be the Tohono O'odham cultural affairs office,
2 which basically is Mr. Peter Steere, that we would
3 consult with him.

4 And I think this goes back to the intertwining
5 of some of these conditions. We will be filing a
6 mitigation plan, and part of that mitigation plan will
7 include coordination and discussions with the tribe.
8 And that mitigation plan should spell out the specifics
9 of what we plan to do, what the extent of responsibility
10 of each party would be. And to the extent if we are
11 hiring some monitors for specific things, that would
12 also be identified in that plan.

13 CHMN. FOREMAN: Now, there are earlier in the
14 conditions of the CEC requirements that TEP, the
15 applicant, stop, provide notice if certain objects are
16 discovered during construction or obviously around the
17 specifically enumerated location, correct?

18 MR. BECK: Correct. And one addition is we also
19 have been required to do a historic properties treatment
20 plan, not only the mitigation plan, but the historic
21 properties plan.

22 CHMN. FOREMAN: And here again, there will
23 likely be some sort of federal enforcement mechanism if
24 artifacts or materials relevant to this provision are
25 discovered, is that true?

1 MR. BECK: There would be both federal and then
2 the State Historic Preservation Office.

3 CHMN. FOREMAN: I want to address the
4 enforcement point that Member Eberhart made. So if
5 things that come within the purview of what we have up
6 there are found, then there are certain other things
7 that need to be -- that have to happen. There are
8 certain acts that have to take place, correct?

9 MR. BECK: That is correct.

10 CHMN. FOREMAN: And the provision which would
11 allow consultation with a representative of the Nation
12 would be a way to make sure that they have input in the
13 identification of the objects or things that would give
14 rise to this process, correct?

15 MR. BECK: That is correct, and they are
16 required to do, or we are required to do anyway.

17 CHMN. FOREMAN: All right. Let me ask, then,
18 the Nation. Do you want to have monitors referred to,
19 or do you want to have a specific person like Mr. Steere
20 designated as someone to whom these -- this consultation
21 and review could take place, and presumably he could
22 delegate his responsibilities to people who worked under
23 his dominion and control?

24 MS. BERGLAN: The Nation would be agreeable to
25 putting in the cultural affairs office.

1 CHMN. FOREMAN: Okay. Now, does that work for
2 everybody? Does everybody see a way to identify things
3 that we want identified? There is a path to enforcement
4 and it leaves to the parties an agreement that they can
5 negotiate with regard to compensation for the people who
6 are going to do that. Does that work for everybody?

7 Member Eberhart.

8 MEMBER EBERHART: Mr. Chairman, I think this
9 satisfies all of my concerns, including one I didn't
10 even mention, that I would think from the Nation's point
11 of view they would not, they would rather have one of
12 their own persons monitoring the construction, not
13 someone hired by the applicant. So I think this
14 addresses not only that concern, but the others that I
15 have already expressed.

16 CHMN. FOREMAN: Would you maybe want to put a
17 representative of the Tohono O'odham cultural affairs
18 office? Would that make a little more sense, shall
19 consult with a representative of the Tohono O'odham
20 cultural affairs office?

21 MR. BECK: We would defer to the Nation on that.

22 CHMN. FOREMAN: Does that work for you?

23 MS. BERGLAN: That would be fine. I would just
24 point out in another place we just put in Tohono O'odham
25 cultural affairs office. Earlier in, I believe,

1 Condition 4 we just used Tohono O'odham cultural affairs
2 office.

3 CHMN. FOREMAN: I am sorry? You --

4 MS. BERGLAN: I am sorry. Earlier in, I
5 believe, CEC proposed Condition 4, I believe we just
6 used Tohono O'odham cultural affairs office rather than
7 a representative of.

8 CHMN. FOREMAN: Okay. All right. Then let's be
9 consistent. So, yeah, take out "a" and put in "the."
10 All right. Does that work for everybody?

11 MR. BECK: Yes, sir.

12 CHMN. FOREMAN: All right. Do I hear a motion,
13 then, to adopt the language in paragraphs 23 through 28
14 as proposed, proposed language as modified?

15 MEMBER HAENICHEN: And modify the language in
16 the earlier paragraph?

17 CHMN. FOREMAN: No. We are going to keep the
18 language in the other paragraph and modify this language
19 and make them consistent.

20 MEMBER NOLAND: I would make that motion.

21 CHMN. FOREMAN: All right. Motion.

22 MEMBER HAENICHEN: Second.

23 CHMN. FOREMAN: Second. Further discussion?

24 (No response.)

25 MEMBER LACEY: We do not believe 22 has yet been

1 included.

2 CHMN. FOREMAN: Out of an abundance of caution,
3 Condition 22 will be included in the motion.

4 MEMBER NOLAND: I do include No. 22 through 28.

5 CHMN. FOREMAN: Through 28.

6 CHMN. FOREMAN: And the second accepts that?

7 MEMBER HAENICHEN: Yes.

8 CHMN. FOREMAN: All right. Any further
9 discussion?

10 (No response.)

11 CHMN. FOREMAN: All those in favor signify by
12 saying aye.

13 (A chorus of ayes.)

14 CHMN. FOREMAN: Opposed no.

15 (No response.)

16 CHMN. FOREMAN: Ayes have it. The proposed
17 language through proposed Condition 28 is adopted.

18 Now we look at the findings of fact, conclusions
19 of law, and signature space. Anybody have anything they
20 want to discuss on that? Do I hear a motion to adopt
21 the proposed language?

22 MEMBER PALMER: So moved.

23 CHMN. FOREMAN: Is there a second?

24 MEMBER NOLAND: Second.

25 CHMN. FOREMAN: Further discussion?

1 (No response.)

2 CHMN. FOREMAN: All those in favor signify by
3 saying aye.

4 (A chorus of ayes.)

5 CHMN. FOREMAN: Opposed no.

6 (No response.)

7 CHMN. FOREMAN: The ayes have it. Now, we have
8 an attached map, an Exhibit A. Do I hear a motion to
9 append Exhibit A?

10 And there was no property description. There is
11 just Exhibit A, correct?

12 MR. BECK: That is correct.

13 CHMN. FOREMAN: Okay. Motion to adopt Exhibit A
14 as proposed?

15 MEMBER RODRIGUEZ: So moved.

16 CHMN. FOREMAN: Hear a second?

17 MEMBER PALMER: Second.

18 CHMN. FOREMAN: Okay, motion and second.

19 Further discussion?

20 (No response.)

21 CHMN. FOREMAN: All in favor of appending
22 Exhibit A signify by saying aye.

23 (A chorus of ayes.)

24 CHMN. FOREMAN: Opposed no.

25 (No response.)

1 CHMN. FOREMAN: Ayes have it.

2 Now, do I hear a motion to adopt the CEC as we
3 have -- the proposed CEC as we have amended it by our
4 deliberations here this afternoon?

5 MEMBER EBERHART: So moved.

6 MEMBER RODRIGUEZ: Second.

7 CHMN. FOREMAN: Okay, motion and second. All
8 right. Any final comments that any of the parties have
9 to make, concerns that need to be raised?

10 (No response.)

11 CHMN. FOREMAN: Okay. Any discussion by members
12 of the Committee?

13 Member Haenichen.

14 MEMBER HAENICHEN: I just have a comment to
15 make. Regardless of how the vote comes out on this, I
16 want it to be in the record that there was very vigorous
17 discussion of all the issues on this over a period of
18 four days. And the Committee does not take these
19 decisions lightly. And we don't want the public to
20 think that we just rubber stamp these things. There has
21 been a lot of modifications made to the application due
22 to the efforts of not only the Committee but all of the
23 other people in the room. And that's, however the
24 voting comes out, it needs to be recognized that this
25 was a process that was fair and complete.

1 Thank you.

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

3 (No response.)

4 CHMN. FOREMAN: All right. Let's have a roll
5 call vote. We will start with Member Eberhart.

6 MEMBER EBERHART: Aye.

7 CHMN. FOREMAN: Member Haenichen.

8 MEMBER HAENICHEN: Aye.

9 CHMN. FOREMAN: Member Lacey.

10 MEMBER LACEY: Aye.

11 CHMN. FOREMAN: Member McGuire.

12 MEMBER MCGUIRE: Aye.

13 CHMN. FOREMAN: Member Noland.

14 MEMBER NOLAND: Aye.

15 CHMN. FOREMAN: Member Palmer.

16 MEMBER PALMER: Aye.

17 CHMN. FOREMAN: Member Parke.

18 MEMBER PARKE: Aye.

19 CHMN. FOREMAN: Member Richins.

20 MEMBER RICHINS: Aye.

21 CHMN. FOREMAN: Member Rodriguez.

22 MEMBER RODRIGUEZ: Aye.

23 CHMN. FOREMAN: Member Walker.

24 MEMBER WALKER: Aye.

25 CHMN. FOREMAN: Chair votes aye.

1 By a vote of 11 to zero the Committee has
2 unanimously adopted the proposed CEC as amended and
3 granted the application.

4 Congratulations to the applicant. Thank you to
5 the parties who have contributed time and effort to our
6 hearing in this matter and our deliberations.

7 Unless there is an objection, we will work with
8 the applicant to make sure that a signed copy of, or
9 signed originals of the CEC are delivered to and filed
10 with the Commission as soon as they provide them to me
11 and we have an opportunity to review them.

12 Member Rodriguez.

13 MEMBER RODRIGUEZ: Thank you, Mr. Chairman.

14 As I am new to this Committee, this was the
15 largest one where we had so many intervenors, in this
16 one. I want to thank all of them for working together
17 during the breaks and during the lunch hour.

18 And Mr. Magruder, you should be commended for,
19 as a private citizen, putting forth all your efforts.
20 You know, we may not agree on everything you do, but you
21 are giving your donated time for something that you
22 personally believe in.

23 I also would like to thank TEP and Rosemont for
24 taking the considerations from our Tohono O'odham
25 Nation, and continue working in that because we are all

1 members of this community.

2 Thank you.

3 CHMN. FOREMAN: Very good. Do I hear a motion
4 to adjourn?

5 MEMBER LACEY: So moved.

6 CHMN. FOREMAN: And a second. All right.
7 Without objection, we are adjourned.

8 MR. DERSTINE: Thank you.

9 (The hearing concluded at 3:55 p.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

WITNESS my hand this 19th day of December,
2011.

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658