

1 BEFORE THE ARIZONA CORPORATION COMMISSION

2
3 IN THE MATTER OF THE APPLICATION)
4 OF TUCSON ELECTRIC POWER COMPANY)
5 FOR A CERTIFICATE OF) DOCKET NO.
6 ENVIRONMENTAL COMPATIBILITY) L-00000C-11-0400-00164
7 AUTHORIZING THE CONSTRUCTION OF A)
8 138KV TRANSMISSION LINE AND) CASE NO. 164
9 ASSOCIATED FACILITIES FROM THE)
10 PROPOSED TORO SWITCHYARD,)
11 SECTION 29, TOWNSHIP 17 SOUTH,) SECTIONS
12 RANGE 14 EAST TO THE ROSEMONT) 40-252 & 40-253
13 SUBSTATION, SECTION 30,) CONSIDERATIONS
14 TOWNSHIP 18 SOUTH, RANGE 16 EAST,)
15 EACH LOCATED WITHIN PIMA COUNTY,)
16 ARIZONA.) OPEN MEETING

11 At: Phoenix, Arizona
12 Date: May 10, 2012
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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 AGENDA ITEMS NOS. 10 AND 11

17 VOLUME I
18 (Pages 1 through 93, inclusive.)

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard as Agenda Items Nos.
3 10 and 11 at Open Meeting before the Arizona Corporation
4 Commission, in Hearing Room 1 of said Commission, 1200
5 West Washington Street, Phoenix, Arizona, commencing at
6 10:55 a.m. on the 10th of May, 2012.

7
8 BEFORE: GARY PIERCE, Chairman
9 BOB STUMP, Commissioner
10 SANDRA D. KENNEDY, Commissioner
11 PAUL NEWMAN, Commissioner
12 BRENDA BURNS, Commissioner

13 APPEARANCES:

14 For the Applicant:

15 Messrs. Matthew Derstine and Jason Gellman

16 For Rosemont Copper Company:

17 Messrs. Patrick Black and Norman James

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

21 Messrs. Lawrence V. Robertson, Jr. and Robert J.
22 Metli

23 For the Tohono O'odham Nation:

24 Ms. Laura Berglan

25 For Marshall Magruder

Mr. Marshall Magruder

1 APPEARANCES :

2

For Elizabeth Webb:

3

Ms. Elizabeth Webb

4

5 For Pima County:

6

Mr. Scott Wakefield

7

For the Arizona Corporation Commission:

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Ms. Janet Wagner

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1 CHMN. PIERCE: We are going to take Item U-10
2 and U-11 together.

3 There have been a number of things filed. I am
4 going to go ahead and go to public comment first, since
5 I think we can. And we will start out with -- and,
6 public commenters, cover 10 and 11. You have three
7 minutes, but I think you should be able to do it with
8 both items on this.

9 So we will start with Rick Grinnell, Southern
10 Arizona Business Coalition. And after Rick, we will go
11 to Bob Quick, president of the Arizona Mine Association.

12 COM. NEWMAN: No more podium.

13 CHMN. PIERCE: Okay. Let me explain what we are
14 going to do. We are going to bring you up.

15 Do we have a mike?

16 SECRETARY BERNAL: Yes.

17 COM. NEWMAN: Yes, we have a mike at the witness
18 stand.

19 CHMN. PIERCE: So, when you come up, find your
20 way over to this side to our witness stand. We are not
21 going to swear you in.

22 COM. NEWMAN: But I will be happy to be the
23 bailiff.

24 CHMN. PIERCE: Much as we would like to, but we
25 are not going to swear you in. We expect you to make

1 your comments. And pull the mike up close to you so
2 everyone can hear. And you have three minutes.

3 COM. NEWMAN: Mr. Chairman, point of personal
4 privilege. I was a bailiff in the Court of Appeals in
5 California and regularly recorded proceedings and helped
6 people into their seats. So that was a flashback for
7 me.

8 CHMN. PIERCE: Okay. Mr. Grinnell.

9 MR. GRINNELL: Thank you. I don't believe the
10 microphone is working.

11 SECRETARY BERNAL: It is on.

12 CHMN. PIERCE: Just --

13 MR. GRINNELL: Mr. Chairman, members of the
14 Commission, thank you for the opportunity to be here
15 today as vice president of the Southern Arizona Business
16 Coalition.

17 CHMN. PIERCE: Hold on a second. We are not
18 hearing it over the system. And it may be working as
19 far as everyone outside but it is not working over our
20 system.

21 SECRETARY BERNAL: I turned it up.

22 CHMN. PIERCE: Go ahead, Rick.

23 MR. GRINNELL: Yes, sir. As the vice president
24 of the Southern Arizona Business Coalition, one of the
25 many considerations for any business is the cost, time,

1 energy and effort to expand, open, or invest. There is
2 one process that we go through through the banks and
3 make sure our financials are all in order. There is
4 another process that we have to appropriately deal with
5 with the government.

6 CHMN. PIERCE: I need to stop you.

7 SECRETARY BERNAL: Hold on.

8 CHMN. PIERCE: We are going to get you another
9 mike. I am sorry. We will let you start over.

10 MR. GRINNELL: That's all right.

11 (Brief pause.)

12 CHMN. PIERCE: Okay. We can pull another chair
13 up there.

14 Laurie, if you could, move back just a little
15 bit.

16 Thanks, Rick. Go ahead and go down there. We
17 will use that mike that's right in the middle and we
18 will let the public commenters have a seat, not have to
19 stand today. And we will do it that way. We know those
20 mikes work just fine.

21 COM. NEWMAN: That's the last time I am a
22 bailiff.

23 CHMN. PIERCE: And we are going to let you start
24 over; although, the court reporter has it all down.
25 Okay.

1 MR. GRINNELL: Chairman Pierce, members of the
2 Commission, thank you for the opportunity to be here.

3 Is that better?

4 CHMN. PIERCE: Yes.

5 MR. GRINNELL: I am the vice president of the
6 newly formed Southern Arizona Business Coalition. One
7 of the various issues that we are concerned with is the
8 time, energy and effort that it takes for a new business
9 to open, particularly in southern Arizona.

10 And if anybody just recently heard, Tucson
11 unfortunately was named as one of the five worst places
12 for a business to open by CNN. This is an embarrassment
13 to me, to our business environment. And it is a
14 stressful environment of which we have to deal with our
15 government who doesn't seem to understand the process.
16 We want to change rules in order to appease a certain
17 audience.

18 There are rules in place for a reason. And as
19 business owners, as people that are trying to put people
20 to work, invest our hard work and resources back into a
21 community to pay taxes, to generate jobs, we are being
22 continually deflated by opposition to a process.

23 This body is engaged legally in a process. It
24 approved a process. It was approved by the Line Siting
25 Committee. And any additional information over and

1 above that specific data is not part of the process.

2 So on behalf of businesses trying to do
3 business, particularly in southern Arizona, I ask you to
4 stick to the rules. We all have to play by them. And,
5 on a personal note, when my grandkids want to go to
6 grandma for something and they want grampa to change the
7 rules, that doesn't happen in our household. The rules
8 are the rules. Okay, some grandparents do. But the
9 fact is it is really pretty simple. I am asking you on
10 behalf of these businesses.

11 And on an opposing note, yesterday we had
12 30 businesses. 25 of them five years ago employed over
13 10,000 people. Today those same 25 businesses employ
14 less than 1,000 people. They have left Tucson. They
15 have left Arizona. They have been -- unfortunately many
16 had to be taxpayer recipients of unemployment. It is
17 time to put southern Arizona back to work.

18 Thank you for your time, sir.

19 CHMN. PIERCE: Thank you.

20 Okay. Bob Quick, and then I am going to go to
21 Dr. Raymond Smith who is on the phone after Mr. Quick.

22 MR. QUICK: Mr. Chairman, members of the
23 Commission, my name is Bob Quick. I am president of the
24 Arizona Mining Association.

25 On behalf of our 42 members we submitted

1 comments, testimony for the record. And that went in
2 yesterday so it may not have actually made it into the
3 docket. So I just wanted to mention that to you.

4 We are very concerned about what is going on and
5 we believe that the rehearing, the request for the
6 rehearing exceeds the authority of the ACC, that it is
7 not authorized by statute. Fundamentally we believe
8 that it is all covered by the federal EIS process, and
9 the ACC has neither the authority nor the expertise to
10 decide such matters and, at a minimum, that they would
11 be duplicative.

12 The environmental considerations related to
13 actual mine development and mining activities are highly
14 regulated by the State of Arizona, primarily the ADEQ,
15 federal government in the form of EPA, the U.S. Forest
16 Service, the Bureau of Land Management, U.S. Army Corps
17 of Engineers, and the U.S. Fish & Wildlife Service,
18 among others. Adding a new level of environmental
19 review for the entire project, not just the power line,
20 under the purview of the ACC would create a new
21 precedent, be unnecessarily duplicative, and further
22 exacerbate on already ponderous and lengthy regulatory
23 permitting process.

24 The Arizona Mining Association respectfully
25 urges the ACC to grant the rehearing request of TEP and

1 Rosemont Copper by ruling that the consideration of a
2 customer's business operations including environmental
3 and land use impacts is beyond the jurisdiction of both
4 the Siting Committee and the ACC.

5 Thank you, Mr. Chairman.

6 CHMN. PIERCE: Thank you.

7 COM. NEWMAN: Mr. Chairman.

8 CHMN. PIERCE: Why don't you stay there for a
9 moment.

10 Commissioner Newman, do you have a question?

11 COM. NEWMAN: Yeah. Since, I since have read
12 some of the statements that appeared in the Arizona
13 Daily Star and other places regarding the company's
14 position, Mining Association's position, even some
15 elected officials' position that, that the Commission is
16 not allowed to review the public interest decisions that
17 the, that the Line Siting Committee reviews under the
18 aegis of the AG's Chairman designate. And the reason
19 for this hearing is, I wanted to make clear before, I
20 don't know what is going to happen today, I want to make
21 clear the reason for holding this, we had a long debate
22 about whether to go back to the Line Siting Committee or
23 come here. And that was a very difficult interaction.
24 But there are new avenues that we wish to explore.

25 One is the legal, what is the legal definition

1 of public interest in terms of our review, which we have
2 every right to do as elected Commissioners, and we
3 really should. And so that's where it gets a little
4 unclear, number one. And then number two, there are
5 some due process concerns, at least I personally have,
6 about things that happened in the record that need to be
7 clarified. Because I do not in any way want intervenors
8 and members of the public to be in fear of coming to the
9 Line Siting Committee and being part of our transparent
10 public process. Those are the reasons for this. It has
11 nothing to do with stopping jobs or anything like that.

12 Now, with regard to the public interest review,
13 you know, whether you need to build a transmission line
14 before the water even gets to the project, you know,
15 that is something subject to a cost/benefit analysis and
16 I think the ACC has a right to do. I will be hearing
17 from some lawyers on that today.

18 I realize you have a different point of view.
19 It is not an election, but it is comments. And I wanted
20 to, since I haven't seen you in such a long time,
21 Mr. Quick, we have not seen each other in at least a
22 decade, I wanted to give you a chance to respond to my,
23 I thought, I think, fairly reasonable expressed desires
24 for review.

25 CHMN. PIERCE: Mr. Quick, the reality is there

1 is not really a question about --

2 COM. NEWMAN: Mr. Chairman, I wanted him to
3 respond to my, to me, please --

4 CHMN. PIERCE: Well --

5 COM. NEWMAN: -- if you don't mind.

6 CHMN. PIERCE: Well, if you can.

7 COM. NEWMAN: He could definitely respond. He
8 has been around for a long time.

9 CHMN. PIERCE: Well, it is -- you are a public
10 commenter. So respond as you feel like you need to.

11 COM. NEWMAN: He is more than a public
12 commenter. He represents the mining associations.

13 MR. QUICK: Mr. Chairman, Commissioner Newman,
14 it is also good to see you. It has been a long time.

15 COM. NEWMAN: I forget even the last time,
16 somewhere when we were trying to help the mining
17 industry together.

18 MR. QUICK: Yes, indeed.

19 COM. NEWMAN: We worked on many projects
20 together.

21 MR. QUICK: Yes, we have. And we appreciate
22 that.

23 We are concerned overall about the long-term
24 effect that -- of the potential impact of where this is
25 going for the entire industry, not just for Rosemont.

1 We are very concerned for Rosemont and support their
2 activity, but we believe that this could potentially
3 jeopardize all manner of mining expansions and new mines
4 in the state.

5 COM. NEWMAN: Okay.

6 MR. QUICK: So that is, that's the -- excuse me,
7 Mr. Chairman. I am sorry.

8 COM. NEWMAN: No, no, no. I interrupted you. I
9 understand your philosophical reasons for being here, so
10 we get each other. I wanted you to understand --

11 MR. QUICK: I understand.

12 COM. NEWMAN: -- at least this Commissioner's
13 philosophical reasons for being here today. And I do
14 hope that we have a full hearing. And, you know,
15 regardless of people expressing the fact that they don't
16 want a hearing and want a quick vote just to abort this,
17 this is important public discussion that could happen
18 today in the context of this hearing. I agree with you
19 it has potential ramifications for future analysis. But
20 I look forward to legal advice that we get today from
21 various parties.

22 CHMN. PIERCE: Okay. Dr. Raymond Smith, you are
23 on the phone, sir. Can you hear me?

24 Just wait a minute until we get you off of mute.

25 COM. NEWMAN: Good to see you.

1 MR. QUICK: Likewise.

2 Thank you, Mr. Chairman.

3 CHMN. PIERCE: And he is still on mute.

4 Okay. Dr. Smith, can you hear me?

5 MR. SMITH: I can hear you well.

6 CHMN. PIERCE: Please move your voice -- move
7 closer to the microphone so we can hear you a little
8 better.

9 MR. SMITH: Well, that's as close as I can --

10 CHMN. PIERCE: Oh, that sounds -- that's
11 perfect. So go ahead. You have three minutes.

12 MR. SMITH: Well, I am highly in favor of the
13 project.

14 My bachelor's degree was in mining engineering
15 at the University of Alaska. My Ph.D. was at -- in
16 science, Doctor of Science, at Penn. I have several
17 honorary degrees.

18 I know the field very well. I have been in
19 mining not as a paid person but on boards of directors.
20 I have been the chairman of a water company, never,
21 again, as a paid member but as a volunteer. So I know
22 the field very well.

23 I have never seen a mine planned any better for
24 environmental protection than Rosemont mine. They have
25 gone through the hoops. And I must admit that I am

1 ashamed of the board of supervisors for appealing or
2 throwing things in the way to create the jobs. There
3 are not enough jobs. Tucson is a bad place to try and
4 open up a mine, let alone anything else. So I am very
5 sorry that you have to go through all of this. I am
6 very proud of the Commission that they take this job on.

7 That's about all I have to say, unless you have
8 some specific questions that are technical.

9 CHMN. PIERCE: No, thanks. I mean thank you.
10 No one is on the board. I didn't mean to dismiss you
11 that way, Dr. Smith, but no one is on the board to ask a
12 question. But thank you for participating. And if you
13 want to listen in on this, do that on our listen line or
14 by virtual computer. The line you are on is one we pay
15 30 cents a minute. So you will probably get
16 disconnected on that line, but you can certainly call
17 in.

18 MR. SMITH: Thank you very much.

19 CHMN. PIERCE: Like I said, bring us up on the
20 computer because we are live on your computer. All
21 right. Thank you.

22 Now, I don't have anyone else after Dr. Smith.
23 Someone checked out. So I don't have anybody listed.
24 We will go back to people in the audience.

25 David Jones, president/CEO of Arizona

1 Contractors Association, and then Kelly McLearn, board of
2 directors, MAATR.

3 And before we go down memory lane with
4 everybody, Mr. Jones, thank you for being here. We were
5 all legislators and we appreciate that you are here.

6 MR. JONES: It is good to be here today. First
7 of all, on behalf of the Arizona Contractors
8 Association, we were founded in 1956. We represent
9 general contractors, subcontractors, suppliers, and
10 those individuals and professionals who work in the
11 construction industry.

12 It is good to see you, Commissioner. I haven't
13 seen you for awhile. I have worked with most of you in
14 the past. I am familiar with the work you have done. I
15 thank you for the work you are doing and the work you
16 will do in the future.

17 I am here today to represent on behalf of our
18 members and our board of directors our position of
19 support for Rosemont Copper. Most of you are probably
20 aware of the fact that we have lost 108,000 construction
21 jobs in Arizona. That has been devastating.

22 The construction industry in Arizona is the
23 second largest contributor to the revenue streams
24 through the DPT tax. We have lost about 47 percent of
25 our members. And we have lost them because they can't

1 afford to pay dues or they have either just closed their
2 doors.

3 Construction, construction jobs are important.
4 In the five Cs of our economy in this state, they left
5 out one big one; that C is construction. We have been a
6 generator of jobs and a generator of revenue. And we
7 want our people to go back to work.

8 Rosemont Copper will be putting up \$2 billion of
9 construction work on their project when the mine opens
10 over a 10-year period. We have people who want to work.
11 They are willing to work. And they are ready to do it.
12 Further delays, further obstructions, it could be
13 interpreted as abuse of the system.

14 I fully understand your responsibilities. But I
15 am telling you, on behalf of our people, they are
16 starving out there. They are dying on the vine every
17 day. We need help. We want -- we have people who want
18 to go to work. And I solicit your support in anything
19 you can do to facilitate the operations of Rosemont so
20 we can start putting people to work.

21 I thank you today. I will answer any questions.

22 CHMN. PIERCE: Thank you. We are good.

23 COM. NEWMAN: Thank you.

24 CHMN. PIERCE: Kelly McLear, and then Michael
25 Varney from Tucson Metro Chamber.

1 Are you wanting us to be able to see it?

2 MS. McLEAR: I will hold it up.

3 CHMN. PIERCE: Okay.

4 MS. McLEAR: Thank you.

5 My name is Kelly McLearn. I am from Tucson,
6 Arizona. And I am here today on behalf of the board of
7 directors of a nonprofit organization that goes by the
8 acronym MAATR, which stands for Mid-American Association
9 for Autism Training and Research. That's why we have an
10 acronym.

11 I live in Tucson. And the reason is not to talk
12 about the pros and cons of Rosemont mine but because
13 Item No. 10 has to do with the process with TEP and
14 siting lines.

15 Yesterday in the Arizona Daily Star, which I
16 read online every day, it said that TEP would need to
17 follow a state law requiring it to consider other
18 development plans in the area of the line and that the
19 law requires the Commission to consider plans for other
20 developments that are at or in the vicinity of a
21 proposed power line.

22 MAATR has for 20 years been working with the
23 autism community in Arizona to develop a major project
24 on behalf of individuals with autism and their families.
25 We have 80 acres that are near the siting line, within

1 about a half a mile. And I will hand you some pictures
2 and some information as soon as I am finished.

3 Our ranch, which is called MAATRhorn Ranch, sits
4 very close to where the preferred and I believe route
5 number 1, as well, siting lines are designated. This
6 ranch project -- I am going to stand up. This ranch
7 project would consist of not overnight residential but
8 overnight weekend stays for family as well as a full
9 arsenal of outdoor activities that benefit their
10 community of adults and children with autism.

11 If any of you know anything about this disorder
12 or are familiar with SARRC in the Phoenix area, we have
13 consulted with them starting about 15 years ago to help
14 us develop this project. The project was approved by
15 Pima County Development Services in 2011. TEP should
16 have provided that information to the Siting Committee,
17 according to what I read yesterday in the paper. And
18 that information was never provided, that our
19 development project sits very, very close to the
20 proposed power lines.

21 So I have, I don't have the stamped plans with
22 me today, but I do have, you know, preliminary, if you
23 would like to look at them. But I am going to give you
24 some further information.

25 If someone could pass these out to the

1 Commissioners, that would be helpful. In here will be a
2 letter describing MAATR and what we are intending to do.

3 This is extraordinary, this project. Nothing
4 like it exists in the state. Many, many hundreds of
5 families are desperate for resources in southern
6 Arizona. It is our intention to reach out to all of the
7 southern half of the state because we had so few
8 resources. And, as I said, this has been 20 years in
9 the making.

10 We have been busy raising funds. And the
11 Rosemont mine was never considered when we began. But
12 when we had the plans finalized after lots of money and
13 effort by a lot of people, we felt that we should bring
14 it forward in the public process and that it should have
15 been done prior to this by TEP. But that's why I am
16 here today.

17 I am happy to answer any questions. And I am
18 happy to pass around this wonderful rendering of what
19 this project is if you would like to see it.

20 CHMN. PIERCE: Okay. There is a -- if you --
21 you can do that; I don't know if that's necessary.

22 I am on the board and then Commissioner Newman.

23 I just wanted to thank you for being here.

24 Commissioner Stump and I in 2005, when we were at the
25 House of Representatives, had the wonderful opportunity

1 to work with a lady by the name of Gretchen Jacobs --

2 MS. McLEAR: I know Gretchen.

3 CHMN. PIERCE: -- who -- and I was in
4 leadership. And Commissioner Stump, I think, was
5 chairman of health or something like that.

6 COM. STUMP: Yes.

7 CHMN. PIERCE: And we, and we actually took heat
8 from a number of conservatives because we participated
9 in getting an appropriation for autism children.

10 MS. McLEAR: I do recall very well.

11 CHMN. PIERCE: Yes. And it was something that
12 we are happy to do. And I think it had a, from what I
13 understand, it had a great benefit.

14 MS. McLEAR: Yes, it has, as do most funding
15 issues, as well as projects that are privately funded.
16 By the way, this is a privately funded project at this
17 time.

18 CHMN. PIERCE: Great.

19 MS. McLEAR: But the plan number is in the
20 documentation there if you need to get with Pima County
21 Development Services for proof of that. And we have
22 commenced the construction; although, we have kind of
23 stalled it because of this siting plan.

24 We are very, very concerned about the effects of
25 these lines on what we are going to be doing with the

1 people and as well as the families, the volunteers, the
2 donors. There will be a lot of changes in the area
3 considering what this, these power lines will consist
4 of.

5 So I would really appreciate it if you would
6 just take this under consideration, which should have
7 been at the Siting Committee prior to this. But I
8 appreciate the opportunity today.

9 Any questions?

10 COM. NEWMAN: I do.

11 CHMN. PIERCE: Commissioner Newman is on the
12 board.

13 MS. McLEAR: Yes. Thank you.

14 COM. NEWMAN: First of all, the first question I
15 have, this is a question of new information. When is
16 the first time you contacted the Commission with your
17 information?

18 MS. McLEAR: Today. And I must say that I did
19 attend the public hearings and read through or skimmed
20 through the entire documentation, all the manuals.

21 I never knew, none of us knew that this was in
22 the rule, a state rule, that TEP should have provided
23 this. And I actually spoke to people at the siting line
24 section of those public hearings and said that we had
25 something that was developed right there. No one ever

1 mentioned that this should have been brought forward.

2 COM. NEWMAN: Okay. I would like to approach --
3 Madam, your name is?

4 MS. McLEAR: Kelly.

5 COM. NEWMAN: Kelly, Ms. Kelly.

6 CHMN. PIERCE: Kelly McLearn.

7 MS. McLEAR: Kelly McLearn. It is a very Irish
8 name.

9 COM. NEWMAN: I am showing you a document that
10 was in your package.

11 MS. McLEAR: Yes.

12 COM. NEWMAN: And that is, that is the --

13 CHMN. PIERCE: Well, come back here.

14 COM. NEWMAN: I am going to go back.
15 Okay. I am showing you that document.

16 MS. McLEAR: And I will explain it.

17 COM. NEWMAN: Would you please describe the
18 document.

19 MS. McLEAR: Certainly. In the document you
20 will see two yellow highlighted parcels. Those are each
21 40 acres. This is the last item in your packet. Those
22 are the parcels of land that we own for the MAATR Ranch.
23 The one that looks as if it is on the north of the top
24 of that paper is actually pointing south. And that is
25 where the main facility is designated, where the

1 development plan is. On the left of that you will see
2 some slash marks that I just penciled in, just long
3 slash marks in pencil. That's an approximation of where
4 that preferred siting line will be.

5 COM. NEWMAN: Okay. That's very important. So
6 for the record, I want you to go over that slowly.

7 MS. McLEAR: Okay.

8 COM. NEWMAN: Do you know how many feet, do you
9 know how many --

10 MS. McLEAR: Rough approximation of a half a
11 mile. And I am not --

12 COM. NEWMAN: It is a half mile from your
13 property.

14 MS. McLEAR: Yes, from --

15 CHMN. PIERCE: Okay. We are, we are getting --

16 MS. McLEAR: We are going over.

17 CHMN. PIERCE: We really are. This is like
18 taking testimony. And intervenors have a right to
19 really question a lot of this and they will get a chance
20 to go into this. But I think we should be careful,
21 because these lines are drawn on here. And so --

22 MS. McLEAR: Absolutely. Because I had less
23 than 24 hours to prepare something for you, this was the
24 best I could do at 11:00, 12:00 at night.

25 COM. NEWMAN: Mr. Chairman, the purpose of this

1 question is I want this document introduced into
2 evidence. It is the first time I heard about it. And I
3 would like it to be part of the record so that all the
4 parties can see it.

5 CHMN. PIERCE: What I would ask you to do is
6 simply docket all this information.

7 MS. McLEAR: Certainly.

8 CHMN. PIERCE: And you can do that here.

9 MS. McLEAR: I can do that certainly.

10 CHMN. PIERCE: That's what we want to do.

11 COM. NEWMAN: Docketing would be good, but for
12 the purposes of today's discussion, that document I
13 would like to be considered. For the purposes of --

14 CHMN. PIERCE: No.

15 COM. NEWMAN: -- clarification just name it this
16 woman's name so we can talk about it again.

17 There is a representative from Pima County here
18 today who may be able to give us some enlightenment as
19 to the notice problems or potential notice problems that
20 you brought to light. And I am -- it is totally new
21 information to the Commission and I think even to the
22 line siting commission that there is any planned
23 communities in the line, in the way of this line siting.
24 It is the first we have heard of it.

25 I even asked a representative of the tribe in

1 the last hearing whether or not there were some sites
2 associated technically with traditional use in the
3 siting of the line particularly because of that issue.
4 I understand that there is a grander view of holy site,
5 but I wanted to know whether there were holy sites next
6 to there.

7 So I am asking you the same thing. This is
8 something that really fell out of the record. So it
9 needs to be included in the record some way. And I
10 guess we will deal with that procedurally. But I thank
11 you so much for coming today.

12 MS. McLEAR: Certainly.

13 CHMN. PIERCE: We have more questions.

14 COM. NEWMAN: And then I wanted to just ask a
15 question. Your objections, you have a community of
16 disabled --

17 MS. McLEAR: Certainly, yes.

18 COM. NEWMAN: -- people, both adult and
19 children.

20 MS. McLEAR: Yes.

21 COM. NEWMAN: And part of your, I am just
22 speculating that part of your therapeutic situation is
23 to have a lifestyle of peace and quiet. It helps
24 autistic children. I have friends with autistic kids.
25 I know some of it. But would you care to clarify for

1 the record?

2 MS. McLEAR: Some of that is in the letter.
3 Clearly we selected this site because of its
4 tranquility. It was away from the urban environment,
5 which is very conducive to individuals with autism and
6 environmental sensitivities. And that is the bottom
7 line. That is why we selected this. We purchased it
8 over 20 years ago for that reason. And we know that
9 that is a very appropriate environment for individuals
10 with autism.

11 And we are not here to oppose the mine. I am
12 here today because of item No. 10, which pertains to the
13 siting line.

14 COM. NEWMAN: Yes.

15 MS. McLEAR: The siting line is directly close
16 to our project. And we are very concerned about what
17 that will result in. And you will see in the letter a
18 number of issues that we have brought forward.

19 COM. NEWMAN: And I want to tell you, in all the
20 time I have been doing line siting for the last three
21 years, I don't remember a situation where a case got
22 through the Line Siting Committee without, without all
23 landowners around where the lines transgress, the major
24 landowners or interested parties were not part of the
25 Line Siting Committee or that process. We would call

1 them essential stakeholders. And in a sense you really
2 should be an intervenor in this case. But I am -- at
3 least we know that you are here.

4 MS. McLEAR: And you have to understand that
5 because I just read this yesterday I am here as an
6 individual and I don't --

7 COM. NEWMAN: Yes.

8 MS. McLEAR: -- didn't have time for legal
9 counsel or any other items to give you today.

10 COM. NEWMAN: You have legal --

11 MS. McLEAR: That's all I can do.

12 COM. NEWMAN: You have legal interests at risk
13 and you should be represented by legal counsel. But you
14 did an excellent job representing yourself today. Thank
15 you.

16 And I didn't cross-examine you. I am just
17 trying to --

18 MS. McLEAR: No, you didn't.

19 COM. NEWMAN: -- help your process.

20 MS. McLEAR: No. And I must say I have been an
21 advocate for people with disabilities for over 30 years
22 in Arizona, helped craft a lot of legislation. And this
23 is not tied to anything like that, but it is part of the
24 larger picture of how our state does help individuals
25 with special needs by working together to make sure

1 things aren't impacted negatively that were designed for
2 those individuals. So that's really why we are here.

3 COM. NEWMAN: Well, in the spirit of the
4 legislature sweeping 50 -- a lot of money out of working
5 with disabled or troubled youth, that's a great
6 statement to make as well. Sometimes we don't look at
7 the big picture. But this is news to me and news to
8 everybody in the room. And I think it is significant.
9 And thank you for coming.

10 MS. McLEAR: And thank you for giving us the
11 opportunity here.

12 CHMN. PIERCE: Commissioner Burns.

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

14 I would like at some point, either before or
15 after I ask my questions, to understand how far we are
16 going to go in some of these kinds of questions. This
17 is not a hearing. This is just bringing to light
18 perhaps some ideas as to why we may or may not go to
19 hearing or what the breadth of it would be.

20 CHMN. PIERCE: Right.

21 COM. BURNS: So I don't know what the caution is
22 there, but --

23 CHMN. PIERCE: Well, I think -- you know, I
24 understand. And we are going to stop here pretty quick
25 with this.

1 COM. BURNS: Okay.

2 CHMN. PIERCE: Go ahead.

3 COM. BURNS: My question -- and, first of all,
4 thank you for all that you do. It is very important.

5 MS. McLEAR: Certainly.

6 COM. BURNS: Everybody is touched with autism, a
7 growing issue. And just about everybody somewhere is in
8 their life suffering.

9 MS. McLEAR: Just everybody is.

10 COM. BURNS: But I am a little bit concerned
11 about being here at this point and you saying that you
12 only had 24 hours to prepare, yet you were at the line
13 siting, you knew that the process was going on, the
14 hearings at the Line Siting Committee, they were having
15 public comment sessions, and there were opportunities
16 for intervening and so on.

17 So I am a little bit -- I don't really
18 understand why there was all of a sudden a rush and yet
19 you were there. And I don't know why you didn't go to
20 the Line Siting Committee or someone from your
21 organization to bring this issue to light.

22 MS. McLEAR: At the beginning when the public
23 meetings took place I did send in a letter, you know,
24 that sort of thing, written. I may have done more than
25 one of those. And that was what I understood was the

1 opportunity that we had.

2 So whatever was out there for us that we should
3 have known was very obscure, very veiled in terms of
4 what it was that we could have participated in. And I
5 am not stretching the truth here at all. I am -- I read
6 religiously about this because I knew that it was near
7 our project. And I never saw an opportunity other than
8 the letter writing to participate on any other levels.
9 This is the first time that yesterday's paper stated
10 that. And I said this looks like a window, I am going
11 to be there.

12 COM. BURNS: So you sent a letter to the Line
13 Siting Committee?

14 MS. McLEAR: I don't know that it went to the
15 Siting Committee. I believe it went to, I am going to
16 say it was early on, probably one letter went to the
17 Forest Service and some other large entity.

18 You know, there were sort of calls and deadlines
19 for those things that came over the internet and I just
20 responded to them. I apologize for not having copies of
21 anything like that with me today.

22 COM. BURNS: So if you sent a letter --

23 MS. McLEAR: But I don't know that I
24 specifically contacted anyone at the Siting Committee.
25 However, I did speak to people at the public meetings

1 who were there in that section where they were directly
2 involved with that, asked lots of questions. They gave
3 me the map, I showed them where we were, you know, those
4 kinds of things on a personal level. It wasn't a large,
5 our whole organization there. I am the one that lives
6 in Tucson. I am sort of the support person in touch.
7 The rest of the board of directors happens to live in
8 Kansas because that's where the money was raised. So,
9 you know, long story made short, I am it in Tucson.

10 And that's as much as I can clarify. And I
11 don't feel like I did anything inappropriate or wrong in
12 missing a turn here. I really do feel like if there was
13 an open door, an invitation out there to participate in
14 the Siting Committee, I probably would have known that
15 and I would have done something.

16 COM. BURNS: You did send a letter to someone?

17 MS. McLEAR: Oh, yes. Oh, yes.

18 COM. BURNS: So that should be docketed and on
19 the record.

20 MS. McLEAR: Somewhere. I would have to
21 check my e-mail.

22 COM. BURNS: Somewhere. That would be important
23 to find out where that was and where it might be
24 docketed and on the record. Thank you.

25 CHMN. PIERCE: Commissioner Kennedy.

1 COM. KENNEDY: Thank you, Mr. Chair. I actually
2 have a question for Legal, if they could help me,
3 respond to my question.

4 The information that Ms. McLear just presented
5 to us, how can we get this information entered into the
6 record?

7 MS. ALWARD: Chairman, Commissioners, there are
8 two ways you can consider this, I think, from what I
9 have heard presented by the public commenter. You could
10 take it as public comment and then use it to inform
11 yourself about this matter and the process. I also
12 think, because the commenter indicated that Pima County
13 has formally approved the project, you could take
14 judicial notice of the fact that Pima County has entered
15 some decision on this project, because I think that's
16 within the ambit of the Commission. If you take
17 judicial notice of a matter of another public agency,
18 you can then use it, I believe, more as an evidentiary
19 matter.

20 COM. KENNEDY: Okay. One more question for you.
21 If the Pierce Amendment, the Recommended Draft Order
22 passes, then this information will not be entered into
23 the record, correct?

24 MS. ALWARD: My view is that you can take this
25 public comment to inform yourselves of this particular

1 commenter's view. I also think you can take judicial
2 notice --

3 CHMN. PIERCE: Hold it. Hold it. She asked you
4 what my amendment does.

5 COM. KENNEDY: No.

6 CHMN. PIERCE: Well, you said, in relation to my
7 amendment, will this be, will this be brought in, could
8 this be brought in as -- if my amendment passes. That's
9 what --

10 MS. ALWARD: Chairman, Commissioners, maybe I
11 misunderstood. Whether or not your amendment passes,
12 Commissioner Pierce, I think this public comment session
13 permits you to be informed by this public comment. And
14 I believe you could take judicial notice today of this
15 matter irrespective of any amendment that passes.

16 CHMN. PIERCE: Okay. Yeah, I think. But do you
17 mean more like does the judge, if it goes to hearing,
18 not coming back to us, but the amendment, how it impacts
19 what the judge hears in her hearing?

20 COM. KENNEDY: Correct.

21 MS. ALWARD: Chairman, Commissioners, you could
22 just say we take judicial notice that Pima County has
23 approved this proposed plan. And then in the docket,
24 because you have asked her to docket these matters, or
25 one Commissioner has, and that would be the approval

1 number or the plan that was approved -- I think she said
2 she didn't have a document that shows -- oh, you do?

3 MS. McLEAR: The project number is here.

4 MS. ALWARD: Right.

5 Then you could take judicial notice that Pima
6 County had approved this plan. And you could do that
7 today.

8 COM. NEWMAN: Mr. Chairman --

9 CHMN. PIERCE: Well, hold on.

10 COM. NEWMAN: -- point of procedure. I have a
11 point of procedure: Oh, Ms. Kennedy has the floor?

12 CHMN. PIERCE: Yeah.

13 COM. NEWMAN: I am sorry.

14 CHMN. PIERCE: Are you finished or do you
15 need --

16 COM. NEWMAN: Oh, Commissioner Kennedy, I am
17 sorry. I have a point of procedure only because we
18 started talking about the amendment.

19 CHMN. PIERCE: Well, she had a question about
20 what the amendment does to her, how -- you know. Okay,
21 we understood what it is.

22 COM. NEWMAN: Yeah, we started getting into the
23 amendment.

24 CHMN. PIERCE: No, we are not getting into the
25 amendment.

1 COM. NEWMAN: Okay, we are not. I got a little
2 uncertain about where we were going today. I actually
3 feel like we are on a merry-go-round; wherever it stops,
4 somebody is going to get off, because your major
5 amendment would preclude a lot of people from saying
6 what they want to say. And I think that we should -- I
7 wanted, the point of procedure is I want the parties to
8 be able to say what they want to say and that the Pierce
9 Amendment seems to be a shortcut to --

10 CHMN. PIERCE: You are talking about the
11 amendments. So it is not really a point of procedure --

12 COM. NEWMAN: I am not --

13 CHMN. PIERCE: -- technically right now.

14 COM. NEWMAN: I am talking about the amendment.
15 It is a point of procedure. Your amendment seemingly
16 would stop us from talking. So I ask counsel what we
17 do. Because all these people are going to be talking
18 about the environmental --

19 CHMN. PIERCE: Okay.

20 COM. NEWMAN: -- aspects of the case. I would
21 like that argued. And if we are just going to have an
22 amendment to cut off argument, I would like to know.

23 CHMN. PIERCE: We are doing public comment. So
24 we are going to stop. There is no point of procedure.
25 We are finished with this.

1 MS. McLEAR: Thank you very, very much.

2 CHMN. PIERCE: Thank you very much.

3 COM. NEWMAN: Mr. Chairman, I know we are
4 finished with her, but I take the advice of counsel.
5 And I thank Commissioner Kennedy for her very astute
6 question.

7 I absolutely take judicial notice of the parcel
8 number that she set out. And I would like Pima County
9 to do some quick homework on confirming that. And I
10 would like by judicial notice to take that into the
11 record. From what I know about how this project
12 proceeded, I know a lot of private land parcels were
13 purchased by Rosemont Copper as they, as they --

14 CHMN. PIERCE: Commissioner Newman, you are
15 going to have time for this. You are interrupting
16 public comment stuff. I have someone else on deck --

17 COM. NEWMAN: I want to know --

18 CHMN. PIERCE: -- who wanted to speak.

19 COM. NEWMAN: I want to know if there are other
20 similarly situated property owners because I knew that
21 the company assiduously took care of that and
22 obviously didn't permit a witness.

23 CHMN. PIERCE: Okay. We are in recess.

24 (A recess ensued from 11:35 a.m. to 11:43 a.m.)

25 CHMN. PIERCE: Okay. We have a quorum. Let's

1 go ahead and get seated, if we could. Our next person
2 will be Michael Varney, president/CEO of Tucson Metro
3 Chamber.

4 Let's give the other Commissioners a moment to
5 get back here. Hopefully we can...

6 We are waiting on Commissioner Stump.

7 COM. NEWMAN: Mr. Chairman, if I may have the
8 record with you for awhile, I wanted to apologize. I
9 really was trying to clarify a point of procedure about
10 the amendment and how we are going to proceed here. I
11 hope all parties at least get a chance to give their
12 positions here today before the amendment is --

13 CHMN. PIERCE: Sure.

14 COM. NEWMAN: -- acted on. That was my point of
15 procedure and the reason for me trying to clarify.

16 CHMN. PIERCE: What we are going to do is finish
17 the public comment session. And I will outline where we
18 are going for the rest of the day because we are going
19 to get into the lunch hour.

20 So Mr. Varney, president and CEO of Tucson Metro
21 Chamber of Commerce, thank you for being here.

22 MR. VARNEY: Thank you for the opportunity.
23 Good morning, Mr. Chairman, members of the Commission.
24 As stated, my name is Michael Varney. I am the
25 president and CEO of the Tucson Metro Chamber. And I am

1 level of regulatory burden, the last thing we need is
2 additional bureaucracy to forestall the commencement of
3 the operations of a new business and the resulting
4 employment of thousands of our citizens.

5 Unless clear statutory authority can be shown
6 that allows land use and business operations to be
7 included in a decision about siting a power line to a
8 new business and employer, we urge the ACC to attend to
9 their duties as outlined by law and leave ancillary
10 considerations to the proper authorities. We need
11 Rosemont. We need the jobs they will create and we need
12 them now. We do not need regulatory creep. And we do
13 not need another layer of bureaucracy.

14 Thank you.

15 CHMN. PIERCE: Thank you. Commissioner Newman
16 has a question.

17 Were you -- okay.

18 COM. NEWMAN: I wanted to, I wanted to thank him
19 for attending today with his testimony. I actually
20 didn't have a question.

21 CHMN. PIERCE: Okay. We are getting close to
22 noon. Here is what we are going to do. We are going
23 to -- we will go to, we are going to actually come in
24 here, go right back up into exec session -- there is
25 some legal questions that need to be resolved -- come

1 down here. We will take comments from everyone. You
2 can make those comments about each of the amendments; as
3 we go, make your comments. We will -- but then we are
4 going to, we are going to move amendments. And
5 obviously, if certain amendments pass, then that ends
6 the debate really.

7 So we are -- but we will let, we will let you
8 have comments. We will go down the row of comments
9 about the amendments. We will get through that, take
10 your positions. But we are going to come back at 1:00.
11 We will go ahead and come in here. We will start us.
12 Then we are going to go up into exec session. So you
13 can time yourselves however you want to. Then we will
14 come back and take your opening statements and get to
15 the amendments. That's where we are headed.

16 All right. We are in recess for lunch.

17 (A recess ensued from 11:49 a.m. to 1:02 p.m.)

18 CHMN. PIERCE: Okay. We have a quorum. And the
19 others will be here, but they might as well meet us
20 upstairs.

21 We are back in session. We are going to recess
22 for a few minutes to go upstairs for some legal advice.
23 And then we will be coming right back here. I don't
24 anticipate it is going to take long, but that's what we
25 told you we are going to do, and then we will get into

1 the parties. Okay. So we are in recess.

2 Wait. I need a motion to go into executive
3 session.

4 MS. WAGNER: You can do that upstairs.

5 CHMN. PIERCE: Okay. Go into recess and we will
6 go upstairs and do that.

7 Okay. Hold on a second.

8 (Brief pause.)

9 CHMN. PIERCE: Okay. Hold on a second. We are
10 going to have to clear this room then to do a session,
11 is that what you are telling me?

12 (Brief pause.)

13 CHMN. PIERCE: Okay. We are going to vote on a
14 motion to go into executive session.

15 COM. BURNS: I so move.

16 CHMN. PIERCE: It has been moved we go into
17 executive session. All those in favor say aye.

18 (A chorus of ayes.)

19 CHMN. PIERCE: Opposed.

20 (No response.)

21 CHMN. PIERCE: Okay. We are in recess. We are
22 in exec session.

23 (The Commissioners left the hearing room.)

24 (A recess ensued from 1:04 p.m. to 1:59 p.m.)

25 (The Commissioners returned to the hearing

1 room.)

2 CHMN. PIERCE: Okay. We are reconvening in exec
3 session. Would you move to leave the executive session.

4 COM. STUMP: Mr. Chairman, I move we leave exec
5 session.

6 CHMN. PIERCE: Okay. It has been moved we leave
7 exec session. All those in favor signify by saying aye.

8 (A chorus of ayes.)

9 CHMN. PIERCE: Opposed.

10 (No response.)

11 CHMN. PIERCE: All right. Thank you. We are
12 now back in regular session. How is that?

13 Okay. We are going, we are going to start with,
14 we will start with the parties. Let's start with the
15 company. And then we are -- well, let me tell you what
16 is going to happen.

17 We are going to go down the row. We want to let
18 everybody speak. We are not going to ask questions. We
19 are going to let everybody speak. Then we are going
20 to -- I know Commissioners have -- a lot of
21 Commissioners are concerned about how much time we are
22 going to spend today. We may have Commission questions.
23 We will move the amendments. We will have an order of
24 that.

25 But during this, go ahead and address the

1 amendments because that's probably going to answer a lot
2 of our questions. And so we probably won't have to
3 spend a lot of time asking them. You will just go
4 through it. And then, if there are some outlying
5 questions, we will get those asked and then we will get
6 to the amendments.

7 Okay. Start with the company.

8 MR. DERSTINE: Good afternoon, Mr. Chairman,
9 Commissioners. Matt Derstine and Jason Gellman on
10 behalf of Tucson Electric Power Company.

11 I am going to keep my comments brief. You have
12 certainly heard from the company on our position
13 concerning Decision 73074 before. And I want to simply
14 note that the company and its counsel appreciate you
15 taking the time to go back and look at that decision and
16 reconsider what we think are very important and
17 concerning aspects of that decision.

18 You know from our papers that the primary
19 concern that Tucson Electric Power Company has is the
20 decision, or the language of Decision 73074 to go back,
21 reopen the case for the purpose of taking evidence on
22 the environmental impacts of the Rosemont mine. Our
23 view is simply that those impacts, the impacts of the
24 mine as opposed to environmental impacts of the
25 transmission line and the associated facilities, are not

1 material, they are not relevant, and they are not
2 authorized by the statute.

3 We concur and agree with Chairman Foreman of the
4 Siting Committee, who was here before you at your Staff
5 open meeting, that taking that evidence, evidence of the
6 environmental impacts of the mine as opposed to focusing
7 on the environmental impacts of the transmission line,
8 is beyond the jurisdiction of the Commission and, to use
9 the Chairman Foreman's words, illegal under the statute.

10 So if your concerns are really about due
11 process, and I heard that term used at the time of the
12 original open meeting, that there were due process
13 concerns that drove you in approving and voting in favor
14 of 73074, then certainly with respect to the language of
15 Decision 73074 that directs new hearings and further
16 proceedings to take in mine impact evidence, evidence
17 not directed to the transmission line and the facilities
18 but the use to which Rosemont will put the power that's
19 transmitted over that line, that language in that
20 decision violates due process. It goes beyond the
21 jurisdiction of the, of this Commission. It goes beyond
22 the statute.

23 You will also know from our papers that we have
24 urged that there is really no further proceedings
25 necessary, that the concerns over Pima County

1 participating I think are easily answered by the fact
2 that Pima County declined to participate. They had the
3 right to intervene in the Siting Committee proceedings.
4 They chose not to. Instead, they filed a limited
5 appearance. That limited appearance was taken into
6 evidence, considered by the Siting Committee in
7 rendering its decision and issuing a CEC.

8 I certainly understand and heard the concerns
9 over the removal of Ms. Webb as an intervenor.
10 Undoubtedly that was an unfortunate situation, I think
11 unfortunate for all the participants and the members of
12 the Committee. The members of the Committee, of the
13 Siting Committee, at the time that they voted to, in
14 their discretion, to allow Ms. Webb to intervene
15 cautioned her about following the rules and the
16 procedures. And that was done even earlier by the
17 Chairman of the Siting Committee when she appeared for a
18 prehearing conference.

19 So the decision to admit Ms. Webb as a
20 discretionary intervenor and ultimately to remove her as
21 an intervenor based on what transpired before the Siting
22 Committee, it seems to me, accorded Ms. Webb all the due
23 process she was entitled to. And she certainly, her --
24 the evidence that was not available to the Committee
25 through her continued participation came in through

1 public comment.

2 So, in short, our position as we have urged you
3 on rehearing is to approve the CEC, approve the CEC as
4 written.

5 You know, at the same time, we read the
6 amendments, or the proposed Pierce Recommended Draft
7 order and Commissioner Kennedy's amendments, No. 1, 2,
8 and 3. And I would say that the company is supportive
9 of any decision that puts this case on a sound footing,
10 a sound footing in terms of affirming the decision of
11 the Line Siting Committee, that mine impact evidence was
12 properly excluded, and then that moves this case along,
13 to the extent that members of this Commission think that
14 some further proceedings are required, that moves this
15 case along to a resolution without undue further delay.
16 And on that basis, we would certainly support the Pierce
17 Recommended Draft Order.

18 And with that, I will conclude my comments.
19 Thank you.

20 CHMN. PIERCE: Thank you. Thank you.

21 Ms. Webb.

22 MS. WEBB: Mr. Chairman, members of the
23 Commission, in the interest of time, I will begin with
24 the semantics of this particular case.

25 I think in regard to myself, when I spoke of the

1 proposed Rosemont copper mining operations, it has been
2 in the context of activities associated with the
3 proposed mining operations that were also included in
4 the impacts of the transmission line, not the mine as in
5 the actual pit or any of those other impacts that would
6 occur as a result of the mine being mined out of the
7 ground. It has always been, and I think you can go back
8 and look at the record, the proposed mining operations
9 when I have spoken of them.

10 Secondly, I am just going to put this out here
11 as a request, I do have an ADA request, an Americans
12 with Disabilities Act request, that I am working on with
13 Ms. Bernal. And one of the things that was in the 2007,
14 I mean the 27 April procedural order was that filings
15 were to be in OCR or accessible format. And when I
16 received the document last night that everybody else
17 received with the proposed order, it was not in the OCR
18 format. And it wasn't in the docket yet because Docket
19 scans everything into an OCR format. So I was not able
20 to do any work with that last night.

21 So I would like to ask that, if the decision
22 isn't to lift the stay on the first decision, that we at
23 least have time to go over that and I understand it a
24 little better.

25 Secondly, in the April 2007 revised procedural

1 order, we were asked to brief two specific issues. And
2 so that was my understanding of what I needed to do, was
3 to talk about whether or not the environmental impacts
4 of the proposed mining operation were to be discussed or
5 not, and then, additionally, whether to include
6 intervenors aside from me. That was my understanding
7 from the 27 April procedural order. It was very
8 specific in the footnote. So I didn't address a lot of
9 the issues that came through in the opening briefs from
10 TEP and Rosemont Copper. If I had known that I was
11 supposed to discuss procedural, or the issues that had
12 occurred with me, I would have definitely gone back and
13 notated and spent considerably more time on that, but I
14 understood the procedural order to say that we were only
15 supposed to discuss other intervenors aside from me. So
16 I would just like to request again that we are allowed
17 to brief those issues if need be.

18 In regard to Pierce recommended proposed
19 order -- I am sorry, I don't have the exact wording
20 right in front of me -- Condition No. 26:

21 Notwithstanding the foregoing, we will hold
22 additional proceedings pursuant to A.R.S. 40-252 to
23 review the evidence that Ms. Webb wanted the Committee
24 to consider. We understand that Ms. Webb filed, on
25 December 6, 2011, the evidence she intended to present

1 before the Committee. We will hold this additional
2 proceeding only for the purpose of allowing the
3 presentation and consideration of the evidence that
4 Ms. Webb filed on or before December 6 with Docket
5 Control.

6 The second part is really not an issue. I
7 didn't have anything other than some documents that I
8 had to bifurcate because they had both mine and line
9 information in them.

10 The problem with that is I was the only party
11 who submitted evidence to the docket by January, I mean
12 December 6, with the exception of exhibits that were
13 included as part of the prefiled testimony. So that,
14 again, starts to get into a situation where I believe I
15 am being asked to do something that other parties
16 weren't required to do.

17 If you look at the list on Docket Control, the
18 exhibits are not actually filed until they are presented
19 and are part of the case with the exhibit list. I was
20 the only one, again, that put -- so anything that
21 happened above and beyond that, as I explained in my
22 prefiled summary and prefiled testimony, I could not
23 finish it because I had not received all of my data
24 responses. So I would just like to have that
25 considered, that I should be able to present a full

1 case.

2 Right here we have about 900 pages of data
3 responses from Rosemont Copper. A significant number of
4 these, what I pulled out right now, are missing the
5 attachments. When I sent my data request I asked for
6 everything, including attachments. So these are
7 outstanding data responses.

8 So if I am allowed to present a case, again, I
9 am not necessarily saying I have to have new discovery,
10 but I would like to at least have complete discovery
11 from previously. And the same occurred with the TEP
12 data responses; the attachments were missing. So I
13 would at least like to have that included to be able to
14 present a full case.

15 Now, in the recent reply brief, and I have --
16 Rosemont did OCR theirs so I was able to look at it a
17 little bit and work on it a little bit harder last
18 night -- on page 17 at lines 14 through 17 it says:

19 As explained below, the reality is that limited
20 evidence about Rosemont mine was presented to the Siting
21 Committee. And that evidence was relevant and material
22 to statutory criteria in A.R.S. 40-360.06a.

23 And then there is a footnote to that. And it
24 says: Notably, none of the parties objected to this
25 evidence when it was introduced and received into the

1 record by the Siting Committee.

2 Now, on a technical basis, at the time the CEC
3 was entered as an exhibit, I don't recall objecting to
4 it at that time. However, previously, in my initial
5 memo, I mentioned existing plans, my two-page, my short
6 two-page memo.

7 In my reply memo I also indicated that there
8 were lessening or softening effects of the proposed
9 mining operations upon the transmission line project.

10 Number three, the third time that I mentioned it
11 was in that same reply brief when I talked about the
12 Rosemont EIS being amended as a result of the NEPA
13 process as well as a new management plan and a new
14 management area being submitted, which comes after the
15 NEPA. You know, it is part of the NEPA process but it
16 does not occur until there is a decision to allow mining
17 to occur.

18 So I would just like to ask, if I have a case, I
19 would like to be able to talk about those environmental
20 impacts. That's what I have been about from the
21 beginning, being able to talk about the environmental
22 impacts of the proposed mining operation that relate to
23 the transmission line. I think that's fair.

24 Moreover, Rosemont has now acknowledged, and TEP
25 both have acknowledged -- I didn't know about this until

1 yesterday from Rosemont Copper and then within the last
2 two weeks from TEP. This is new evidence that has come
3 to light. I could not have reasonably known about it.
4 And I think that it is reasonable to allow me to present
5 that evidence because I couldn't have known about it.
6 It has only been, if you go back through the entire
7 record, in the last two weeks that anybody has
8 acknowledged that those impacts were used as part of a
9 statutory scheme, or what have you.

10 Sorry, I shouldn't have gum in my mouth.

11 Number four, in my prefiled witness summary and
12 testimony, I indicated again that I -- they are using
13 these impacts, these environmental impacts of the
14 proposed mining operation in conjunction with the
15 transmission line. In my opening statement on the 12th
16 of December at the hearing, I mentioned again, I asked
17 the Committee members not to consider the mitigatory
18 effects of the proposed mining project in relationship
19 to the transmission line if we were not allowed to talk
20 about the environmental impacts of the proposed mining
21 operation. I did the same as well at the prehearing
22 conference on December 8th.

23 So I have a clear record of objecting to not
24 being able to present the environmental impacts of the
25 proposed mining operation in relationship to the

1 transmission line.

2 On March 15th, 2012, here in front of the
3 Commission, I also said, in the interest of fairness, so
4 this is -- I don't mean to beat this issue to death. I
5 just wanted to show that there is a clear record that I
6 have asked several times to not allow me not to talk
7 about the environmental impacts of the proposed mining
8 operation in relationship to the transmission line if we
9 are not allowed to talk about it at all.

10 And, again, it has only been in the last two
11 weeks, actually less than two weeks, that we have heard
12 from the applicant or with Rosemont Copper that indeed
13 they did use the environmental impacts as part of what
14 is required of the statutory mandate.

15 Again, if I am allowed as a single person, I ask
16 that I am able to present my case. I ask that I am able
17 to cross-examine Mr. Magruder. I ask that my
18 outstanding data responses are completed.

19 And here is the problem with Pima County. Well,
20 I mean here is the problem with the situation with Pima
21 County. We got here because of a lot of confusion about
22 their role. And I have worked with them in the past.
23 137 was the first one. I remember you, Chairman Pierce,
24 there. That was the first one. I asked them to give me
25 information. And I worked with Pima County. I have

1 done that on subsequent cases as well.

2 If I am the only one that's allowed to intervene
3 and present a case and present my witness, which --
4 witnesses -- which is myself and Ms. Fonseca, it seems
5 to me we are going to be back here with a lot of
6 confusion again. Because I have specifically requested
7 exhibits and evidence. And it just seems we are going
8 to end up back in the same situation. It seems like it
9 would be a lot cleaner to allow, at a very minimum, Pima
10 County to be able to intervene regarding the proposed
11 transmission line and the associated impacts related to
12 the proposed transmission line.

13 In the Pierce Amendment as well, I haven't
14 really been in the mine versus line issue so I stayed
15 out of a lot of the NEPA arguments, but there are some
16 issues in here that I can go over with Staff that are
17 not accurate regarding NEPA. And they are in the draft
18 environmental impact statement. But the reason why I
19 didn't get into that was because that hasn't been my
20 fight. I have been about the transmission line.

21 I am going to go through the Kennedy amendments
22 right now.

23 Okay. I think in the interest of -- again, due
24 process isn't about the way you feel you have been
25 treated or your perception of how you weren't treated

1 very nicely, any of that stuff, because it just doesn't
2 matter. The reason why in this case it does matter is
3 because the statutes require that material and
4 nonrepetitive evidence is received by the Committee.
5 And I -- it is my opinion that there was not a legal way
6 to remove me in the way that it occurred. But that
7 said, that's just an opinion, but not the part about the
8 statutory requirements. That part is not an opinion.

9 Now, of the Kennedy proposed amendments, No. 2
10 in my opinion would provide the most opportunity for
11 everybody to get their say in and to get the most full
12 and complete record. And I want to circle back to that
13 really quickly.

14 Now that we have had Rosemont Copper and TEP
15 both saying that this line is not needed from an
16 engineering perspective, I understand that you, the
17 Commission, have the latitude to determine what need
18 means.

19 So I do understand when you say that the need is
20 there because the customer requested it. I accept that.
21 That is what has been said. However, we have now had
22 testimony that it is not needed from an engineering
23 perspective. So I ask, because I am a taxpayer, that we
24 get the most information in the record that we possibly
25 can to make sure this can be as clean as possible so, if

1 there are appeals, they can be squashed right at the
2 beginning and we save everybody a lot of money.

3 Again, I am in support of most of No. 1;
4 however, No. 2 has its merits as well.

5 And I, I do remember reading that Rosemont
6 Copper had some concerns about the 252 taking forever.
7 I think it was six months. If you go back and you
8 reapply, first of all, you can take care of those issues
9 related to the environmental impacts, the proposed
10 mining project. But initially they have a statutory
11 requirement under the law and they know when that time
12 frame is going to end. So I can see that could also
13 work as well and it would save time.

14 I am opposed to No. 3. And it is not because I
15 do not believe that all permits and so forth should be
16 required before construction can commence. I think that
17 is a very appropriate condition. But I think the term
18 should be changed to Rosemont copper mining operations,
19 not mine, because I think that's where a lot of
20 confusion is here.

21 But philosophically, because I believe it is
22 very important that the public is allowed to be involved
23 in this as an intervenor, this would preclude me that
24 opportunity to do it except for at an appeal later on.
25 And I really believe in this process. So I would prefer

1 to see -- so, again, it is not because I don't believe
2 that this, that sentence should be in there on No. 23.
3 It is because philosophically I can't agree with it
4 because it would not allow me to come back in and
5 present my evidence and testimony.

6 So I think that's pretty much it. And I
7 appreciate you taking time to hear what I have to say.

8 COM. NEWMAN: Thank you.

9 CHMN. PIERCE: Go ahead. Let's pass the mike
10 over to Pima County.

11 Hold on just a second.

12 (Brief pause.)

13 MS. WAGNER: Mr. Chairman.

14 CHMN. PIERCE: Take five minutes. We are going
15 to take a five-minute recess.

16 (A recess ensued from 2:24 p.m. to 2:40 p.m.)

17 CHMN. PIERCE: We are back on.

18 Let's go ahead and we are going to get through,
19 we have had a request and I am going to honor it, but we
20 are going to get through everybody else's statements and
21 come back over to Patrick who we will finish off with
22 because we started with the company and we will come
23 back around over here. And we will see where we are.

24 We are going to, we are going to end up
25 finishing this off on another day, so, but what we will

1 do, we will start with the county, with Pima County.
2 Mr. Wakefield.

3 MS. WEBB: Mr. Wakefield told me that I may have
4 misspoken when I was talking about my numbers in support
5 based on what I have got written on the top of these
6 instead of the numbers.

7 So very quickly, number one, my number one
8 support is No. 2 of the Kennedy amendments. My number
9 two support is the No. 1 Kennedy Amendment. And my
10 fourth would be the Chairman's recommendation I am
11 opposed to.

12 CHMN. PIERCE: You are opposed to Kennedy 3 and
13 Pierce 1.

14 MS. WEBB: Yes. Thank you.

15 CHMN. PIERCE: Okay. And I am keeping a
16 scorecard up here.

17 MS. WEBB: I was so worried.

18 CHMN. PIERCE: Mr. Wakefield.

19 MR. WAKEFIELD: Thank you, Chairman,
20 Commissioners. Scott Wakefield from Ridenour Hienton &
21 Lewis on behalf of Pima County.

22 I would just like to briefly touch on revisiting
23 one of the legal issues that was set forth in the
24 briefs. And that is the scope of Section A.R.S.
25 40-360.06a and whether that statute requires you to look

1 at, to examine impacts of the mine. And as I indicated
2 in the brief, the County believes that it does.

3 In Rosemont's reply brief they discuss at page 9
4 the degree to which the application already looked at
5 foreseeable impacts on the landscape that would be
6 caused by the mine and how it would, it was appropriate
7 to look at those so that, so that one could take an
8 accurate view of other environmental impacts of the
9 line. That is exactly what A.R.S. 40-360.a1 requires
10 them to do.

11 For instance, if there was a development
12 near -- so let me reiterate what is in my pleadings,
13 that the reason you need to consider the mine is not
14 because it is a customer. It is because it is in the
15 vicinity. Whether it was a customer or not, you need to
16 look at the impacts of things in the vicinity of the
17 project that's being applied for. And you look at the
18 impacts of the project and evaluate them in the
19 context -- in the context of what else is planned and
20 the impacts of what else is planned in the area. And
21 that's exactly what, what the Committee did with the
22 viewshed issues. And it is what you should do with
23 respect to all the issues.

24 For instance, if there was a historical site, if
25 there were two historical sites, one directly impacted

1 by the mine, I am sorry, one directly impacted by the
2 line and another that was impacted, that was in the area
3 and that would be impacted by another development but
4 not the project that you are siting, if you just looked
5 at the impacts of the project you are siting on
6 historical site number one, you might decide, well,
7 there is some impacts on that historical site but there
8 is a nearby historical site that is from the same period
9 and sort of presents the same history and so maybe it is
10 not so bad that we have some impacts on historical site
11 number one. And if you ignore the fact that other
12 planned development might have impacts on historical
13 site number two, then you would be failing to consider
14 impacts of other planned developments and look at the
15 impacts of historical site number one in the context of
16 maybe historical site number two won't exist anymore
17 based on what else is being planned. Not that you have
18 jurisdiction over those other plans, but you need to
19 look at the impacts of those other plans as you evaluate
20 the impacts of the project that you are being asked to
21 site.

22 With that, let me just go through the amendments
23 briefly.

24 The County is most supportive obviously of
25 Kennedy Proposed No. 2; although, we would ask that it

1 be amended to specifically grant the County's
2 intervention in the proceeding. We note that even
3 Chairman Pierce's amendment grants the County
4 intervention for the scope of the proceeding that the
5 Commission would be considering. And we would ask that
6 you do the same for any of the amendments, that you
7 grant our intervention and permit us to participate in
8 whatever process lies ahead.

9 Our second preference would be Kennedy Proposed
10 No. 1, again, asking that you grant the County
11 intervention as a part of that.

12 Third would be Kennedy Proposed Amendment No. 3.
13 That, if you grant the County's intervention, would be
14 our third preference.

15 Among the four, and finally, Pierce's proposed
16 amendment, we do appreciate that you recognize the
17 appropriateness of involving the County in what you are
18 even proposing to be a limited scope of proceedings, and
19 we appreciate that.

20 So unless there is any question, I think that's
21 all I need.

22 CHMN. PIERCE: We are not --

23 COM. NEWMAN: Oh, you are going to go all the
24 way through. Sorry.

25 CHMN. PIERCE: That's all right.

1 MR. METLI: Thank you, Mr. Chairman.

2 Mr. Chairman, fellow Commissioners, Robert Metli
3 and Lawrence V. Robertson on behalf of Save the Scenic
4 Santa Ritas Association, Sky Island Alliance, the Center
5 for Biological Diversity, and the Tucson Audubon
6 Society, which collectively I will refer to as Scenic
7 Santa Ritas.

8 Throughout this process we have made legal
9 arguments regarding what we believe was admissibility of
10 environmental impact evidence related to the mine. I am
11 not going to continue and address that issue. I think
12 all the parties have briefed it. We have briefed it on
13 numerous occasions. Our position is clear on it. It
14 becomes a legal question and it is a legal question that
15 this Commission will have to decide.

16 But because that is our position, we certainly
17 support the Kennedy Amendment No. 2. We believe it
18 reflects our position that the evidence associated with
19 the mine is material and relevant. And it should be
20 entertained by this Commission.

21 Specifically within the Amendment No. 2 I
22 believe what is pertinent is on page 2, line 18, which
23 states: Without a balanced evidentiary record
24 concerning the application, the Commission properly
25 determined that further proceedings were necessary so

1 that the Commission would have a full and balanced
2 record to conduct its required statutory balancing of
3 the public interest.

4 (Cellphone rings.)

5 MR. METLI: And I would like to apologize for
6 the interruption.

7 MR. ROBERTSON: I thought it was off.

8 CHMN. PIERCE: It is a rookie mistake.

9 MR. ROBERTSON: Marshall is the engineer.

10 MR. METLI: I told you to stay in the car.

11 COM. STUMP: With the windows rolled up.

12 COM. NEWMAN: He came all the way up from Tubac.

13 MR. METLI: There are, there are two issues that
14 I do want to, do want to address. And they are really,
15 one concerns the condition and one concerns
16 intervention.

17 We appreciate the Kennedy Amendment No. 3 which
18 modifies Condition No. 23. I also note that at the
19 previous open meeting we had in March 15th, Commissioner
20 Newman proposed a similar amendment.

21 The point I want to make, I think maybe
22 rightfully so, maybe not a mischaracterization of what
23 the intent of that condition was, and I did try to
24 explain the intent in my closing argument, but it kind
25 of got misconstrued that we were trying to delay. And

1 really, the purpose of this amendment was to just ensure
2 that there be would no construction on that line until
3 the mine is approved. And whether or not that means a
4 record of decision being issued is a question, there are
5 certain permit requirements, our intent wasn't to delay
6 the project.

7 I note Mr. James indicated that if you have all
8 the permits, there are permits that are due in five
9 years. We recognize that and we acknowledge that. That
10 wasn't our intent. And that wasn't the type of permits
11 we intended.

12 And specifically with respect to the closure and
13 the reclamation piece, that would cause these permitting
14 issues to be pushed out. And I think appropriately
15 Commissioner Kennedy modified that to just to include
16 construction and operation.

17 With respect to Condition No. 23, I think it is
18 important to understand the Commission's stewardship
19 role in this. You are responsible for ensuring that
20 there are minimal environmental impacts, environmental
21 impacts associated with the construction of this line.
22 I think it would be tragic if we started commencement on
23 a line which ultimately had to be torn down. And that
24 is our concern.

25 At the March 15th open meeting, and Mr. Derstine

1 can speak for himself, I also, I thought I heard him say
2 they certainly would be amenable to conditions or a
3 condition that would be reasonable to them. And I
4 assume the intent from TEP all along is they don't want
5 to construct this line until the approvals are -- the
6 mine will be moving forward. And I think that was
7 always the intent. The question was whether the record
8 of decision does that.

9 I would also like to point out wherein there was
10 a speaker today from the Tucson Metro Chamber of
11 Commerce, a Michael Varney, and I just wanted to cite to
12 you from their July 2010 newsletter:

13 In that spirit, the Chamber supports the
14 proposed Rosemont mine. Our support is contingent on
15 the anticipated acceptable results of the upcoming EIS
16 report and on the presumption that the mine's
17 construction is lawful.

18 The way we read this is there are two
19 conditions, one, the record of decision, number two, the
20 mine is lawful. We interpret that as all requisite
21 permitting being approved.

22 The other issue I wanted to discuss was
23 intervention and specifically intervention of Pima
24 County. In our initial opening brief, we didn't address
25 the intervention of Ms. Webb because we were under the

1 impression that her intervention was granted at the
2 previous procedural conference. But we did make some
3 argument regarding her intervention in our reply brief.
4 But with respect to the Pima County, I don't think there
5 would be a party more competent to address environmental
6 impacts of the line, let's put the mine aside, the line,
7 than Pima County. I think there they would be a
8 valuable asset to any further hearings.

9 I can't speak for the County. I don't know why
10 they didn't intervene in the original case. Maybe it
11 was too close to the holiday time. Maybe they were busy
12 on other projects. Maybe they didn't have the
13 resources. As you know, as an agency, your resources
14 are limited. But they are willing to engage now. I
15 believe the Commission would be prudent to take
16 advantage of their expertise when you make your
17 decision.

18 Just one second. I want to make sure I covered
19 everything.

20 And just in closing, we, unfortunately, we don't
21 support the Pierce Amendment. And we will reserve
22 judgment on Kennedy -- well, we would support Kennedy 1
23 over Kennedy 3 because it would allow -- excuse me. I
24 misspoke. We would -- no, that's right.

25 CHMN. PIERCE: You already said you support

1 Kennedy 2.

2 MR. METLI: That's our first choice. And we
3 don't support the Pierce Amendment. You know, I will
4 reserve judgment on Kennedy 1 and Kennedy 3.

5 CHMN. PIERCE: All right. Thank you.

6 MS. BERGLAN: Thank you, Commissioner, members
7 of the Commission. Laura Berglan here on behalf of the
8 Tohono O'odham Nation.

9 And as the Nation set out in our brief already,
10 we believe the Decision 73074 is legally sound and
11 correct. And for those reasons the Nation supports
12 Amendment No. 2 as it helps to clarify Decision 73074.

13 The Nation also agrees with the reasoning set
14 out in Amendment 2 that the evidentiary record is not
15 currently balanced and that A.R.S. 40-360.06 factors are
16 not narrow in scope and, therefore, they would provide
17 for the allowance to consider the environmental impacts
18 of the mine.

19 The real issue here for the Nation is this idea
20 of chunking off these projects so just to minimize the
21 impacts on the cultural resources. As I mentioned
22 previously, there are 110 cultural resource sites that
23 the Nation considers to be significant in the project
24 area, that is, the Rosemont mine area. However, in the
25 preferred site there are only seven sites that may seem

1 minimal. But if you keep chunking seven to ten at a
2 time, you can minimize all 110 sites.

3 It is the Nation's position that these all need
4 to be viewed together so you can get the full impact of
5 how negative an impact this is going to have on the
6 Nation as a whole. For that reason, we do support
7 Amendment No. 2.

8 If the Commission is inclined to approve the CEC
9 without any further proceedings, we would like the
10 Nation's Condition 26 to be in place. And that was
11 Newman's Proposed Amendment No. 3 from the March 15th,
12 2012 open meeting. I have got copies here. And, again,
13 that condition is, and I will quote:

14 Applicant shall engage the services of a Tohono
15 O'odham cultural monitor during any construction
16 activities on or within 100 feet of known prehistorical
17 cultural resource sites that are eligible for the
18 National Register of Historic Places as identified in
19 Table E-3 of the application with the addition of
20 Huerfano Butte.

21 So, again, that condition would allow a cultural
22 resource monitor out there, and those services should be
23 paid for by the applicant.

24 Thank you.

25 CHMN. PIERCE: Okay. Mr. Magruder.

1 MR. MAGRUDER: Good afternoon, Chairman and
2 Commissioners. My name is Marshal Magruder. I am from
3 Tubac and intervenor.

4 I want to talk about a couple things. The first
5 is I am supporting Kennedy Amendment 2, followed by 1
6 and then 3. And I oppose the Pierce Amendment.

7 I have submitted four briefs in this case so
8 far. I am not sure how many people have read them. I
9 do provide a lot. But I have written comments with
10 respect to the details, in particular the comments that
11 I think are relevant, legal, and show errors in the
12 discussions from many of the comments from Rosemont and
13 from TEP. I really think they need to be looked at.
14 And if we delay final decision until the next time,
15 please take a look at my brief. I think they are pretty
16 good.

17 I am for continuing the 252. And I am for
18 continuing the 252 hearings leaving it up to the judge,
19 the ALJ, to make the decision when things are relevant
20 and when things aren't relevant. That's what judges do.
21 And if we start trying to constrain through artificial
22 barriers the definition between the line and the mine,
23 it doesn't make sense.

24 In one of my briefs I said without this proposed
25 transmission line, there will be no mine, and without

1 the mine, there is absolutely no reason for the line.
2 There are dozens of overlaps between the line and the
3 mine. From an environmental, safety, reliability,
4 resource, use, water, roads, et cetera, et cetera,
5 segregation into little buckets with artificial
6 boundaries, it does not meet the purpose of looking at
7 the environmental impacts of the line. Some things will
8 be 100 miles away. Other things will be 100 feet away
9 from the mine. That needs to be looked at. Those are
10 relative interactions.

11 We have, for example, a 500 foot corridor that
12 has been sited where the line is supposed to go. It is
13 not defined in terms of a location other than it is
14 along the water line. And no one knows where the water
15 line is. And if you don't know where the -- which is
16 considered to be part of the mine and covered in the
17 mine, operations of the mine and the environmental
18 impact statement. So if the transmission line goes
19 along the water line, and we don't know where the water
20 line is, what are the impacts, well, are they related?

21 In fact, they are in the same 100 foot corridor
22 that also includes a 15 to 25 foot access road, which I
23 have tried not to have put in and I can show you that it
24 is not required, which gives more dust than a road that
25 isn't required, and at least one fence, maybe two cheap

1 fences that are specified by the University of Arizona
2 inside the experimental range but not discussed
3 elsewhere.

4 The experimental range wants dust control to be
5 taken into account. Well, is it dust control from the
6 electric company driving on the road or is it from the
7 water company, water people driving on the road? How
8 can we separate those two inside 100 feet?

9 I am not talking about the 2900 feet deep pit
10 mine. I am talking about stuff that's relative to the
11 transmission line.

12 The last time I talked before this group, I gave
13 12 items that I considered relevant. I don't want to go
14 through that list again because they should be in the
15 record. But there is another 12 or more that are
16 missing.

17 For example, we heard about autism today and the
18 problems about worrying about people who have autism and
19 radiation from the transmission line, electromagnetic
20 frequency and electric radiation. It is not covered.
21 It is required.

22 I have since day one tried to have 40-360.a3
23 covered. That is the noise impact of the transmission
24 line in terms of noise levels. TEP, I have said at
25 least 10 times, doesn't know how to give us that number.

1 I want to know that number. Pima County has a county
2 ordinance that requires 45 DB or less, decibels or less.
3 I want to say, TEP, tell me that number, because that's
4 a part of the issue. Because those autistic kids are
5 going to ride horses. They are going to go hiking. And
6 that's why they have the ranch there. I can see it.
7 That's exactly why you want to put them in an isolated
8 place, a place that has the quiet environment. But I
9 don't know what quiet is because it is not defined.

10 And so those are the issues that I want to bring
11 up. I couldn't. I feel that my due process, Marshall
12 Magruder's due process was limited starting, starting
13 before -- at the prehearing conference and kept on
14 getting worse. I think those items that I have just
15 mentioned, and I can give you more, are items that the
16 Line Siting Committee should look at. They didn't.
17 They wouldn't let me talk. If I mentioned the word
18 water, whoops, objection, we are not talking about
19 water, we are talking about electricity. But wait a
20 second, there is a 30-inch water line that goes parallel
21 to the electric line.

22 The electricity radiates, goes through two feet
23 of soil or three feet of soil that has copper in it,
24 which is noted to be a reasonably good conductor of
25 electricity, and might induce electricity into the water

1 line. And also we have a fence. What you do, you put,
2 make it so that the fence doesn't carry electricity and
3 kill the animals.

4 I had one little thing that I think is so small
5 and so easy, and they beat me up so bad it is
6 unbelievable. I saw 21 raptors one day sitting on top
7 of two TEP utility poles. And they are sitting right
8 there on that little flat, little perch, that little
9 perch on top driving past the pecan groves. All I
10 suggested was put a little cap on there so that the
11 raptors don't land on top of the utility poles. Why?
12 Because there is over 100 years of very scientific
13 technical studies done on the experimental range, on the
14 impacts, long-term impacts on the environment. It was
15 too hard. They said I wasn't a wildlife biologist. I
16 don't think you have to have a wildlife biologist to do
17 that.

18 CHMN. PIERCE: But you do need to wrap this up.

19 MR. MAGRUDER: Let me just talk about
20 intervening for example.

21 The procedural order was issued by the, by the
22 Chairman on the 9th, put on the docket on the 10th. The
23 11th was a Thursday. If TEP -- if Pima County wanted to
24 intervene, and their only board of supervisors meeting
25 before the 18th was on the 15th, they had to issue their

1 agenda on the 11th, because the 12th was Veteran's Day,
2 of November. They had one day to answer if they wanted
3 to intervene.

4 And you guys are politicians. How long does it
5 take you guys to make that decision? Can you do it in
6 one day? First of all, you have got to get on the
7 agenda. And then you have got to make the decision. I
8 am just saying they had some reasons why they couldn't
9 intervene.

10 Let me go on to some of this other stuff. I
11 think we need to have discovery. We were very time
12 pressed. There were exactly 25 workdays between the
13 time the 800 or so page CEC application came out and the
14 hearing started. That's not a lot of time.

15 Expedited in my view for a line siting means it
16 meets the requirements of the Arizona Revised Statutes,
17 which is 180 days, not -- starting the thing on day 41,
18 or workday, we had 25 workdays to get the job done.

19 When we heard that they were only going to have
20 four days instead of five days of hearing, I said, my
21 initial response was hooray, hooray, we are going to
22 come back in January and finish. Because most line
23 siting cases that are complex take two sessions; get a
24 lot of questions, then you come back and you get them
25 answered the second time. I have been through as many

1 as four sessions on line siting cases.

2 I am not trying to delay things. There is no
3 time crunch for Rosemont. Their environmental impact
4 statement is unsatisfactory. The Forest Service has not
5 yet issued the outline of --

6 CHMN. PIERCE: Mr. Magruder, I am going to stop
7 you. You are arguing the case and that's not what I
8 want you to do.

9 MR. MAGRUDER: Okay. I am saying we need to
10 have that stuff argued. And by using the -- and I will
11 go back to the Pierce Amendment.

12 I am sorry, Chairman Pierce, but if you look at
13 paragraphs 18, 19, 20, 21, 22, 23, 24, 25, you are
14 writing in those paragraphs material that will be used
15 for 50 years sited by other Line Siting Committees,
16 words that are written by utility companies for their
17 benefit. And the balance is not just the utility
18 company.

19 If I go to the last page, next to last page, in
20 No. 27 it uses my name. And it said that the motions
21 that I submitted were denied.

22 I submitted a motion to compel Rosemont to be an
23 applicant. I don't want to go through the details but I
24 thought I was legally right. The Chairman said he can't
25 change the application. And since he can't change the

1 application, he then said it belongs to the broader
2 authority of the Commission. I accepted that at that
3 time. I said okay.

4 So about two weeks ago, because the 252 hearings
5 are coming up, I refiled the same document I filed
6 before because we were getting ready for 252 hearings.
7 It was not denied as stated here. And so I think that
8 this, this section is wrong. And I think it is just
9 plain wrong. And so that should be fixed. Because I
10 think, if we go back to 252, I have already got a
11 motion. We are in stay, so the time is not counting on
12 motions, but I would like to discuss it in the proper
13 audience.

14 Thank you.

15 CHMN. PIERCE: Okay. Let's go on over to
16 Rosemont. Mr. Black.

17 MR. BLACK: Thank you, Chairman, members of the
18 Commission. Patrick Black and Norm James on behalf of
19 Rosemont Copper Company. I will take a few minutes to
20 discuss some of our legal positions.

21 This case is about siting of a transmission line
22 and a determination by the Siting Committee and the
23 Commission that balances the need for electricity with a
24 desire to minimize the impacts on the environment and
25 ecology of the state.

1 In Decision 73074, the Commission found that the
2 evidence presented to and considered by the Line Siting
3 Committee warranted approval of TEP's application for a
4 CEC. That CEC contains 26 separate conditions designed
5 to address various issues ranging from environmental and
6 visual impacts of the transmission line to prohibition
7 against construction until Rosemont receives approval
8 from the U.S. Forest Service on its mining plan of
9 operation under the ongoing federal NEPA review process.

10 Today Rosemont is requesting the Commission lift
11 the stay on Decision No. 73074 and amend the decision to
12 eliminate any 40-252 proceeding designed to allow the
13 Commission to take evidence concerning the potential
14 impacts of Rosemont's mine. Rosemont's legal position
15 on the issue concerning this evidence remains unchanged.

16 A.R.S. Section 40-360.06a specifically directs
17 the Siting Committee to consider factors in determining
18 the suitability of a new power plant or transmission
19 line, not the mine. One factor, the existing plans of
20 the state, local government, and private entities for
21 other developments at or in the vicinity of the proposed
22 site is to consider how the new electric facility will
23 impact those planned developments, not how those planned
24 developments will impact the environment in general. As
25 argued by mine opponents and Commission Staff, there is

1 simply no factor in A.R.S. Section 40-360.06 that allows
2 the Siting Committee or Commission to consider an end
3 user's land use activity as a means to deny a CEC.

4 To more fully appreciate how this statute would
5 work based on the mine opponents and Staff's
6 interpretation, let's assume for a moment that the
7 transmission line is intended to provide electric
8 service to a new 20,000 lot residential subdivision.
9 Intervening in the line siting application is a group
10 against urban sprawl.

11 Under the interpretation offered by mine
12 opponents and Staff, an organization opposing the new
13 development could present evidence in a line siting
14 proceeding concerning the environmental impacts that 40-
15 to 50,000 new residents will bring, including reduction
16 in groundwater tables, biological disturbance, or the
17 carbon footprint created by that new subdivision,
18 matters under the jurisdiction of other agencies.

19 Can the Commission deny a CEC because it
20 disapproves of the new subdivision without any nexus to
21 the environmental impacts of the transmission line?
22 Rosemont does not believe so.

23 In its reply brief Pima County takes the
24 argument one step further. Using that same example,
25 according to Pima County, the Commission can deny a CEC

1 based on the assessment of the environmental impacts of
2 a soon to be sited cement plant or a municipal landfill
3 in the vicinity of the proposed route even if that
4 facility will not receive service from the line. It
5 does not matter that the Commission is powerless to stop
6 the construction of either facility and thus prevent the
7 environmental impacts that would occur. Instead of
8 focusing on the potential impacts of the transmission
9 line, the Commission can simply find that an unrelated
10 development and its impact on the environment is enough
11 to prohibit the construction of a transmission line.

12 This defies reason, especially in light of the
13 legislative intent behind the siting statutes. And I am
14 going to read the first three sentences from the
15 legislative intent. It states:

16 The legislature finds and declares that there is
17 at present and will continue to be a growing need for
18 electric service which will require the construction of
19 major new facilities. It is recognized that such
20 facilities cannot be built without in some way affecting
21 the physical environment where the facilities will be
22 located. The legislature further finds that it is
23 essential, in the public interest to minimize any
24 adverse effect upon the environment and upon the quality
25 of life of the people of the state which such new

1 facilities may cause.

2 Clearly the Arizona legislature was concerned
3 with potential adverse impacts that new electric
4 facilities might cause to the environment, recognizing
5 that, while they might not be eliminated, they certainly
6 could be minimized. This is directly in contrast to the
7 interpretation offered by Pima County, other mine
8 opponents, and Commission Staff.

9 Likewise, A.R.S. 40-360.07b does not delegate
10 any separate authority to the Commission to consider the
11 mine's environmental impacts requiring that, in
12 reviewing requests by parties unsatisfied with the
13 Siting Committee's decision in a particular matter, the
14 Commission must comply with the provisions of A.R.S.
15 40-360.06a. Both the Siting Committee and the
16 Commission are clothed with the public interest. And
17 their consideration of evidence and parameters are both
18 one and the same.

19 When asked about the issue regarding considering
20 the potential impacts of the mine, Line Siting Committee
21 Chairman Foreman stated that such evidence is
22 nonmaterial and that any such 40-252 proceeding to
23 receive the evidence would be illegal. Rosemont agrees.

24 In order to overcome this challenge, mine
25 opponents and Staff now claim that TEP used evidence of

1 the mine's environmental impacts as a mitigation to the
2 visual impacts of the line in support of its
3 application. However, this is a red herring argument
4 for several reasons.

5 First, Staff concedes that the evidence
6 presented by TEP was to address the visual impacts of
7 the transmission line. There is a nexus between the
8 physical condition of the land which happens to be on
9 Rosemont's property under its control and the visual
10 impacts of the transmission line, that same nexus that's
11 implicated in A.R.S. 40-360.06a1.

12 By contrast, mine opponents want the Commission
13 to consider the potential environmental impacts of the
14 mine only as they relate to the surrounding area with no
15 nexus to the transmission line itself. It is an apples
16 to oranges comparison.

17 For these reasons, Rosemont requests that the
18 Commission reject this argument as a reason to pursue
19 further hearings on the potential environmental impacts
20 of Rosemont's mine.

21 With respect to the process, Staff argues that
22 administrative agencies are more inclined to allow all
23 evidence during administrative proceedings, to be sorted
24 through by the decision makers, in an effort to ensure
25 full public participation. However, both the siting

1 statute and the Administrative Procedure Act strictly
2 prohibit the taking of nonmaterial, repetitive evidence.
3 Furthermore, nothing in the record, Rosemont contends,
4 suggests that the public did not have an opportunity to
5 fully participate.

6 Now, if the Commission chooses to hold further
7 hearings to take evidence of potential mine impacts, I
8 want you to consider for a moment the procedural
9 schedule alluded to at the April 25th Staff meeting.

10 During the April 19th procedural conference
11 intervenors and prospective intervenors requested
12 another four to six weeks to prepare and update
13 testimony, despite the fact that a month had already
14 passed since the Commission issued Decision 73074.
15 During the April 25th Staff meeting the chief hearing
16 officer stated that the Division was looking at
17 potential hearing dates in August. Assuming that the
18 hearing can be concluded in mid August and providing
19 another 60 to 90 days for parties to file briefs and the
20 hearing officer to issue a recommended opinion and
21 order, a final decision might not be reached until
22 sometime between October and November of 2012. This
23 project timeline does not factor in what mine opponents
24 may do to cause further delay. Unfortunately, this does
25 not resemble the timely and expeditious proceedings

1 envisioned by the Arizona legislature when it passed the
2 siting statutes nor statements made by Commissioners
3 during the March 15th securities open meeting that there
4 was no intent to create undue delay.

5 In the final analysis, evidence concerning the
6 environmental impacts of Rosemont's mine is not material
7 to this line siting case, just as evidence concerning
8 the economic impacts of the mine is not relevant as
9 well.

10 The fact that Rosemont is bringing thousands of
11 jobs to southern Arizona, will be paying roughly
12 \$32 million in state and local taxes on an annual basis,
13 and will have an economic statewide impact of about
14 900 million annually for 20 years, all this information
15 is immaterial to the analysis required under the siting
16 statutes.

17 With respect to the proposed amendments, while
18 it prefers the form of order proposed by TEP in
19 Appendix A of its opening brief, Rosemont is supportive
20 of Chairman Pierce's Proposed Amendment No. 1 as a
21 reasonable compromise. Rosemont does not support the
22 proposed amendments by Commissioner Kennedy but would
23 reserve time to discuss at least her Proposed Amendment
24 No. 1 if discussed by the Commission.

25 Thank you.

1 CHMN. PIERCE: Okay. We, just procedurally, we
2 are going to end up having to come back. And my intent
3 would be for that to be on the second day of open
4 meeting, on Wednesday, the 25th, probably about 10:00
5 a.m. We would let you know.

6 The problem I think that we -- we want to make
7 sure that there is, there is a timeline and people have
8 everything filed and done so people have a chance to
9 read this and come -- you know, if we want to do this
10 expeditiously, that's as early as we are going to get to
11 it.

12 Does anybody have a problem with that schedule?

13 COM. KENNEDY: Mr. Chairman.

14 CHMN. PIERCE: Yes, Commissioner Kennedy.

15 COM. KENNEDY: I am looking at the calendar.
16 You said Wednesday, the 25th. Do you mean Friday?

17 CHMN. PIERCE: I am sorry. Wednesday -- oh, I
18 am sorry. I am sorry. Let me get to the top part. I
19 was looking at the April down here on this calendar.
20 Wednesday, the 23rd. The open meeting is 22nd, 23rd, so
21 Wednesday, the second day, 23rd, second day of open
22 meeting in May. That way we have taken it on just as
23 fast as we can.

24 I don't know. We have got Commissioner Newman
25 on the board. We could probably see --

1 COM. NEWMAN: I don't have to.

2 CHMN. PIERCE: Because I think what we probably
3 want to do, everybody said their peace, we probably want
4 to come back. Everybody will have a chance to digest.
5 If anybody is going to offer another amendment, by the
6 way, Commissioners, and, Commissioner Newman, I think
7 there is one you might want to, just make sure it is
8 out, you know, this week or next week so that everybody
9 has got it. I don't think they are hard. I think you
10 have already got them.

11 COM. NEWMAN: Just a point of procedure. I
12 think it is a good idea to wait on the questions because
13 this could be another hour of grilling. And it is much
14 better to happen the next time. I think that's a good
15 idea.

16 CHMN. PIERCE: I don't want to repeat them next
17 time.

18 COM. NEWMAN: But I do want to say, I wanted to
19 reply to the amendment that I had in the first case,
20 about costs associated with doing a full historical
21 review of the line in question, which, after hearing
22 from Mr. Magruder, I am not even sure exactly where the
23 line in question is myself today. But I will, I will
24 try to add that to another one of the amendments before
25 the next hearing. Okay? I heard you loud and clear.

1 CHMN. PIERCE: Go ahead.

2 CALJ FARMER: Mr. Chairman, Lyn Farmer from the
3 Hearing Division. I won't be here at that open meeting
4 so I would just like to say something so the
5 Commissioners can think about it.

6 This case is similar to a previous case we had,
7 which was the Line Siting Case 151, which that was the
8 Hualapai Solar, which also involved a similar situation
9 with some intervenors and a reopening pursuant to a
10 40-252 process.

11 The decision that you have issued in this case
12 requires the Hearing Division to conduct a hearing and
13 prepare a recommended opinion and order. And I would
14 like to ask the Commissioners to consider not requiring
15 the Hearing Division to issue a recommended opinion and
16 order.

17 And I went back and I looked at the transcript
18 from that previous open meeting. And I kind of
19 explained the reasons why, because the ALJ has not heard
20 the evidence from the Line Siting Committee. She has no
21 familiarity with any of that evidence. And we have
22 never made a recommendation about whether to grant a CEC
23 or not.

24 So the previous case like this, the ALJ
25 conducted the hearing, the evidentiary hearing, for the

1 Commission. And I believe that the process in that case
2 was that the parties had the opportunity to file
3 whatever recommended additional conditions they wanted
4 the Commission to consider when it came back to an open
5 meeting. That way, if the Commission wanted to modify
6 the decision, they had some language or conditions that
7 they could adopt or not. But I think it would
8 substantially shorten the time frame, because, if there
9 has to be a recommended opinion and order, it will take
10 a lot more time and effort from the ALJ before it could
11 get to the Commission.

12 So that's something I think that I would like
13 for you to think about, is maybe modifying your previous
14 decision here to just say have the Hearing Division
15 conduct proceedings but not direct us to prepare an
16 opinion and order.

17 CHMN. PIERCE: So you mean, well, we would have,
18 you would have the minutes or the, well, the transcript
19 and then the parties would --

20 CALJ FARMER: File whatever they wanted to do --

21 CHMN. PIERCE: And then we would have that.

22 CALJ FARMER: -- to modify that CEC. That's the
23 process that occurred previously.

24 CHMN. PIERCE: I remember that.

25 CALJ FARMER: And Legal Division may have a

1 position on this. But, you know, that's, that's our
2 preference.

3 MS. WAGNER: Janet Wagner for the Legal
4 Division. I was just going to add that any of these
5 amendments that have been filed by the Commissioners
6 could be amended to include that. That wouldn't be
7 difficult to do.

8 CALJ FARMER: And we have drafted some language
9 already, both yours and the Kennedy ones.

10 CHMN. PIERCE: Commissioner Newman.

11 COM. NEWMAN: Kind of point of procedure and it
12 sort of gets into some of the -- it becomes, it gets
13 into some legal due process issues. I have just been
14 using due process as a word when I don't want to tell
15 the whole story.

16 So I wanted to ask the judge. One of the
17 reasons for having a 252 is because, and this has
18 already been briefed about the scope of the relevancy
19 hearing, you are not suggesting in the second hearing
20 that that, those matters wouldn't be considered by Judge
21 Rodda who presumably would be the judge?

22 I am all for saving time, but I also want to
23 make sure that Judge Rodda has the independence to
24 consider relevancy questions as a unique adjudicator.
25 It is not exactly like Hualapai. In that case, I

1 respectfully disagree.

2 CALJ FARMER: Mr. Chairman, Commissioner Newman,
3 I am aware that one of the amendments, I believe, does
4 make some rulings about what is relevant or material.
5 And I believe, just in briefly reading it, it would, it
6 would more specifically define what kind of hearing the
7 Commission is directing us to conduct.

8 So it depends upon which amendment you adopt
9 exactly what kind of hearing you are telling the Hearing
10 Division to conduct.

11 COM. NEWMAN: Yeah. And I want to make sure
12 that we were not kind of passing each other in the night
13 in statements. I wanted to make sure you haven't given
14 up on the fact that you, in this case Judge Rodda, could
15 be swayed by the briefs talking about public interests
16 being viewed in a different way and relevancy being
17 viewed in a different way.

18 I hope, because, just because you say in the
19 interest of the time -- that is critically important,
20 and I think if we don't have time to explore those
21 issues, that would cause us to be in an appellate
22 situation.

23 CALJ FARMER: That's not the issue I was talking
24 about. The scope of the hearing I wasn't addressing. I
25 was talking about whether we write a recommended opinion

1 and order or not. That was the issue that I am talking
2 to you about, not the scope of the kind of hearing that
3 we have.

4 COM. NEWMAN: Well, it would be helpful to have
5 recommended, a recommended order. I am just sort of
6 chatting with you. It would be helpful, in a procedural
7 way, it would be helpful to have a recommendation and an
8 order, depending on which amendment passed, given the,
9 given that there will be an opinion and order with 1
10 through 25, like usual, and instead of taking it from
11 another record, the 1 to 25 here, if some of the
12 complainants' points are taken would be totally
13 different from the Line Siting Commission's conclusions.
14 So...

15 CALJ FARMER: And, Mr. Chairman, Commissioners,
16 that was the difficulty that -- I mean, from the
17 transcript from that previous open meeting, the
18 challenge that it posed for the Hearing Division is that
19 we are not the Line Siting Committee. And to -- there
20 is already a decision based upon that evidence. And you
21 are adding additional evidence. It puts an ALJ in an
22 almost impossible position to write a ROO based upon
23 someone else's decision and then whether it should be
24 changed or not.

25 COM. NEWMAN: And you are not -- well,

1 respectfully, Judge, some of the decisions that are
2 being made, at least by this Commissioner, I can't speak
3 to the minds of all the Commissioners, are trying to
4 protect due process here, perhaps trying to understand
5 relevancy from the stewardship perspective. That might
6 be different from the line siting perspective.

7 So I know that puts the judges in a difficult
8 position. It puts the Commissioners in a difficult
9 position. But I think that that is, that is the road
10 that we may have to go down to truly play our
11 stewardship role as we should.

12 CALJ FARMER: And I look forward to seeing what
13 the Commission directs us to do.

14 CHMN. PIERCE: There you go.

15 All right. That's it for today, everyone. We
16 are adjourned.

17 (The proceeding concluded at 3:32 p.m.)

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

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

WITNESS my hand this 12th day of May, 2012.

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658