

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 23, 2012
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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 AGENDA ITEMS NOS. 16 AND 17
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18 (Pages 94 through 229, inclusive.)

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter reconvened as Agenda Items Nos. 16 and
3 17 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 10:04 a.m. on the 23rd 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:

8

Mr. Charles Hains

9

Ms. Janet Wagner

ALJ Jane Rodda

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1 CHMN. PIERCE: Good morning, everyone. I want
2 to welcome you to the continuation of our open meeting.
3 We are going to take up Item No. 16, which is TEP's line
4 extension issue. We have Commissioner Kennedy on the
5 phone.

6 COM. NEWMAN: Who is on the phone?

7 CHMN. PIERCE: Commissioner Kennedy.

8 SECRETARY BERNAL: She is not on the phone.

9 CHMN. PIERCE: Well, we have three of us here so
10 we are good.

11 What we are going to do before we do anything,
12 we have had a lot of public comment in the past, I
13 wasn't planning on doing that today, we do have someone
14 on a call in. Why don't we release that so I can go
15 right to that.

16 What I have is Cheryl Rennie, representing
17 herself. But I need to have her taken off mute so we
18 can hear her. Cheryl, we will be with you in just a
19 moment.

20 Cheryl, can you hear me?

21 MS. RENNIE: Yes, I can.

22 CHMN. PIERCE: Put your mouth a little closer to
23 the mike. And you have three minutes to make public
24 comment.

25 MS. RENNIE: Thank you very much. Can I start

1 now?

2 CHMN. PIERCE: And identify yourself for the
3 record.

4 MS. RENNIE: Good morning, Honorable
5 Commissioners and guests. My name is Cheryl Rennie from
6 Sonoita, Arizona. I am calling to express my support
7 for Commissioner Burns' Amendment No. 1 and respectfully
8 request the addition of the following condition: a
9 substantial liquid performance bond or other appropriate
10 substantial liquid financial assurance --

11 CHMN. PIERCE: Hold on. Slow down. Repeat
12 that, please, slowly. We have a court reporter taking
13 all this down.

14 MS. RENNIE: Okay. I am just worried about the
15 three minutes.

16 CHMN. PIERCE: Don't worry about the three
17 minutes.

18 MS. RENNIE: Thank you.

19 Okay. I respectfully request the addition of
20 the following condition to Commissioner Burns Amendment
21 No. 1.

22 CHMN. PIERCE: Go ahead.

23 MS. RENNIE: A substantial liquid performance
24 bond or other appropriate substantial liquid financial
25 assurance vehicle be required to guarantee Rosemont's

1 financial compliance with Condition 24, 25, and 26.

2 CHMN. PIERCE: Okay.

3 MS. RENNIE: This additional condition addresses
4 my concern pertaining to Rosemont's questionable
5 financial sustainability in a December 5th, 2011 letter
6 I sent to the Commission, which is Docket No.
7 0000133147.

8 CHMN. PIERCE: Okay. Does that conclude your
9 comment?

10 MS. RENNIE: No. No, it doesn't. I just have a
11 few more supplementations.

12 Furthermore, financial assurance ensures the
13 public interest because this transmission line is being
14 built for the exclusive benefit and use of Rosemont.

15 Secondly, as a start-up company with no history
16 of operating a mine or profitability, it is unknown
17 whether Rosemont can produce an economic return adequate
18 to justify the development costs and risks associated
19 with the construction of the project.

20 Three, a substantial liquid financial assurance
21 vehicle is necessary to mitigate the physical
22 environmental impacts and to protect TEP customers from
23 carrying the financial burden in the form of higher
24 rates in the event that Rosemont is unable to meet its
25 financial obligations. This is especially significant

1 in the event of default.

2 A hedge fund, Red Kite, is entitled to take
3 possession of the common shares and assets of Rosemont
4 Copper Company and funds may not be available.

5 Therefore, a substantial liquid financial assurance
6 mechanism is necessary, absolutely necessary to ensure
7 the enforceability of Conditions 24, 25, and 26 of
8 Commissioner Burns' Proposed Amendment 1.

9 Finally, financial assurance is connected to the
10 environmental success of the Forest Service's proposed
11 action alternative and is part of the approval of the
12 management plan of operation for the Rosemont copper
13 mine.

14 Thank you for considering my proposal in
15 protecting the people.

16 CHMN. PIERCE: Okay. Thank you so much.

17 We are done then now with public comment.

18 COM. NEWMAN: Mr. Chairman, I have a couple
19 questions for her, please. I just have to. She is only
20 one public comment. It is a lot.

21 CHMN. PIERCE: Okay. Rennie, do you represent
22 yourself or some other organization?

23 MS. RENNIE: Myself.

24 CHMN. PIERCE: Yourself, okay.

25 MS. RENNIE: Yes, sir.

1 CHMN. PIERCE: She represents herself.

2 COM. NEWMAN: I understand. I want to just
3 briefly, Mr. Chairman.

4 The language that you are asking -- well, first
5 of all, it is unusual for a public commenter -- this is
6 Commissioner Newman. It is unusual for a public
7 commenter to suggest language to one of the
8 Commissioner's amendments, not done very often in our
9 process. I wanted to explain that to you. And it is up
10 to Commissioner Burns to -- whether she wants to add
11 that language.

12 So you just, you picked that one amendment. The
13 reason why I am talking to you is it is a process issue.
14 There were people taking down what you were saying, I am
15 not sure verbatim -- well, it is verbatim from the
16 record, for sure. And some of the things that you were
17 saying were interesting, but I am not sure if
18 Commissioner Burns is going to give you permission to
19 put it on her amendment.

20 I might think about such an amendment if I knew
21 the basis for you suggesting these additions and if this
22 has ever been done before, if you know about that. Can
23 you answer those two questions?

24 Just those two questions, Mr. Chairman. Have
25 patience.

1 Can you answer those two questions?

2 MS. RENNIE: I am sorry. Are you speaking to
3 me?

4 COM. NEWMAN: Yes. Where did the language come
5 from? What are -- basically what is your expertise with
6 that language? It is not a bad idea what you are
7 discussing, but, and has, and has such an amendment or a
8 direction been given in other cases?

9 For example, it sounds like you are using very
10 technical language. You know, what is your technical
11 expertise, first of all? And then where is that
12 technical language coming from, or an attorney, or what
13 is your knowledge? What are you trying to resolve?

14 CHMN. PIERCE: Okay. Hold on a second.

15 Ms. Rennie, if this is just your own language,
16 just state that.

17 MS. RENNIE: It is my own language.

18 COM. NEWMAN: Okay. What are you trying to
19 resolve?

20 MS. RENNIE: I am trying to ensure the
21 enforceability of Commissioner Burns' Amendment No. 1,
22 because unless there are liquid assets in place, the
23 Conditions 24 and 25 and 26 are without teeth and most
24 likely cannot be met based on Rosemont's uncertain
25 financial sustainability as described in Rosemont's, and

1 I have got, the resources annual report year ended
2 December 31st, 2011, which is available for the public's
3 review. And I have it in front of me if you would like
4 to have the information.

5 I am happy to meet with you at this time for as
6 long as you want, or any other time.

7 COM. NEWMAN: The way the process works, we are
8 in a very, we are in a big hearing here, lots of people
9 in the room representing incredible amount of interest.
10 And usually that letter probably should have come to the
11 Commissioners a little bit earlier if you are
12 interested.

13 MS. RENNIE: You are welcome to change it and
14 improve on the language. I am not an attorney. I did
15 my best.

16 COM. NEWMAN: No, no. I now understand your
17 point.

18 MS. RENNIE: Thank you.

19 COM. NEWMAN: And I will ask someone on Staff to
20 draft it up and we will research it a little bit over
21 here. I am not sure if it can become an amendment but
22 we will do some research on it. Okay?

23 MS. RENNIE: I am just requesting that it be
24 another condition added onto Commissioners Burns'
25 amendment, because without it, her amendment has no

1 teeth. And if you look at Rosemont's, I have got the
2 resources financial statement, their material assets are
3 all encumbered by the Red Kite hedge fund and there is a
4 probability that no monies will be available to enforce
5 Conditions 24, 25 and 26.

6 COM. NEWMAN: Well, we will try to figure out
7 whether or not this will be added into the hearing
8 today. I might have to run it as an amendment to
9 Brenda's amendment, Commissioner Burns' amendment,
10 because she, you know, this is her amendment. And I
11 don't know if she thinks this is a friendly amendment or
12 a foe amendment. So that's how we will deal with it the
13 best we can.

14 And, again, you have gotten a lot more input
15 than most public commenters. But I hear what you are
16 saying.

17 CHMN. PIERCE: Okay.

18 COM. NEWMAN: Your point is well taken.

19 CHMN. PIERCE: Don't talk over each other.

20 MS. RENNIE: Help me with a clarification why it
21 might not be a friendly amendment.

22 CHMN. PIERCE: Hold on. We are not going to go
23 there. Ms. Rennie, public comment is over.

24 MS. RENNIE: Okay.

25 CHMN. PIERCE: So if you want to listen in, we

1 have a listen line that you can listen in or you can
2 watch us online, but the, the ability to comment at this
3 point will be shut down because our public comment time,
4 I don't have any slips, is now over. There is no other
5 interested parties on the line. So we are going to cut
6 that one off and we are going to go back where we
7 finished off last time.

8 I just wanted to make sure everyone had an
9 appropriate amount of time to look at the various
10 amendments or be able to get the amendments at the same
11 time, so that there was a fairness involved in this
12 process.

13 What I would like to do now, though, is we are
14 going to take up the amendments because there is
15 probably going to be some discussion about that. There
16 are a number of amendments. I can tell you that,
17 honestly, the first amendment we need to take up --
18 Commissioner Burns, I hope -- I need to have your
19 attention because if we take up your amendment and it
20 passes, that ends the process here. So if that one were
21 to pass later on, we have wasted a lot of time.

22 So my objective is to put those in order. Your
23 amendment, Commissioner Burns, would cut to the chase
24 and end this process. What I just said is if we went
25 through these other ones and passed one and we still

1 took yours up and it passed, that means we wasted a lot
2 of time. So I hope you are ready to just jump into your
3 amendment. We will have a discussion with the parties
4 out here.

5 COM. NEWMAN: Mr. Chairman, are you connoting
6 that there is one route out of here? I mean,
7 Commissioner Kennedy's No. 3 is what everyone was
8 talking about in the last hearing. And I think that
9 that's clearly the most important amendment of today's
10 hearing. I don't know why we start off with a poison,
11 not a poison pill, an amendment that will stop the
12 debate.

13 CHMN. PIERCE: Well, mind you, there will be
14 plenty of debate. What we will do is we will discuss
15 the Kennedy one at the same time because those are the
16 two that do take care of the matter today. And if those
17 fail, then we can proceed. But I think that one of
18 those, if they pass later on, would supersede, if they
19 want to. So let's talk about those two amendments.

20 And, actually, Kennedy 1 will do -- would just
21 end it. What we are going to do is we are going to talk
22 about Kennedy 1 -- we don't want to move either one --
23 and Burns Proposed Amendment No. 1. We want to get --
24 Kennedy 3, I am sorry, and Burns No. 1. And we will
25 simply have Commissioner Burns describe hers,

1 Commissioner Kennedy describes her, and then we will
2 have a conversation with the parties.

3 Go ahead, Commissioner Burns.

4 COM. BURNS: Mr. Chairman, Burns Amendment No. 1
5 and Kennedy No. 3 start out the same. They both would
6 vacate the decision and approve the CEC. But then there
7 are some differences.

8 My amendment, I guess I should just explain
9 mine, but my amendment would not include as far as what
10 has to be done before construction could begin. We
11 would simply have to have gone through and received all
12 of the permits that are required for building as well as
13 for construction and operation.

14 There might be some language that I would want
15 to revise because my intention is start-up operation,
16 not future operations. So it would be start-up or
17 initial operations. That's in Item No. 23.

18 And then in some of the discussions that we have
19 had, there were concerns about who pays. There was
20 discussion about Rosemont is going to pay and yet it
21 didn't seem to really be pinned down as much as perhaps
22 that should be. And so this is going to make sure that
23 we do know whether Rosemont intends to pay.

24 And then there was some discussion about what
25 happens if they begin construction and then, you know,

1 say there are lawsuits or whatever and something should
2 happen that is overturned and they have to pull
3 everything back up, who is going to pay for that. And
4 then there were also questions about, well, just paying
5 for pulling up the lines isn't enough because there is
6 some environmental concerns that we have to look at.

7 So my amendment is intended to pin those things
8 down and then to be able to move forward and approve the
9 CEC. And I would obviously like to hear what the
10 parties have to say about it.

11 CHMN. PIERCE: We will get to that.

12 Commissioner Kennedy -- that way we will have
13 the parties talk about those -- go ahead and describe
14 yours.

15 COM. KENNEDY: Thank you, Mr. Chairman.

16 My Kennedy Proposed No. 3 vacates Decision
17 No. 73074 and says that the applicant will not commence
18 construction on the project until all permits required
19 to allow construction and operation of the Rosemont
20 copper mine have been obtained and are no longer subject
21 to judicial review.

22 And I think that's clear, there are two clear
23 differences between my amendment and the Burns
24 Amendment.

25 CHMN. PIERCE: Okay. What I want to do is go to

1 the parties. We want to discuss these two amendments.
2 Then we will come back to Commissioners who may have
3 additional questions.

4 But I want to go to Rosemont first. Looking at
5 the two amendments, is there -- then we will go to TEP.
6 And I don't know if TEP has an issue. We will get to
7 it.

8 Go ahead.

9 MR. BLACK: Thank you, Chairman, Commissioners.
10 Let me speak first to Burns Proposed Amendment No. 1.

11 We do support the Conditions 24, 25, and 26 as
12 written. With respect to Condition No. 23, and we
13 haven't had an opportunity to discuss it in terms of
14 Commissioner Kennedy's amendment as well, the issue
15 there is the problem with the language is that the mine
16 is built in phases. There are certain phases that the
17 mine goes through and has to obtain permits throughout
18 the life, at least the initial start-up. And that's
19 with respect to the NEPA process.

20 I am going to let Mr. James discuss that
21 particular issue, but before doing so, I just want to
22 say that, Commissioner Burns, you had mentioned that in
23 terms of the start-up construction. That's why we feel
24 that the condition, as written, is correct, because the
25 record of decision would be provided by the U.S. Forest

1 Service. That is the overall permit that allows the
2 company to begin construction. And I will let Mr. James
3 explain in more detail.

4 MR. JAMES: Thank you. For the record, I think
5 this is Patrick Black next to me. I don't think he
6 introduced himself for the record. I am Norm James with
7 Fennemore Craig. We represent Rosemont Copper.

8 What Mr. Black explained is essentially correct.
9 And, Commissioner Burns, we understand what you are
10 trying to do and it makes sense. The problem that we
11 have is this. This is a, the mine, like any other
12 large, say a real estate project, an industrial plant --
13 Chairman Pierce, you remember back in March you referred
14 to Intel building a plant -- any major project like this
15 is going to go in phases. In short, with Rosemont's
16 project, there is going to be a two- to three-year
17 construction period. That's where Rosemont -- and,
18 remember, part of this land is Rosemont's private land,
19 about a third of it. The other third is on the National
20 Forest.

21 Rosemont will be constructing facilities to
22 essentially treat the ore that's mined from Rosemont's
23 property, which is the core, their patented mining
24 claims. I am not going to go into detail. I could go
25 into as much as you want. But essentially we have got

1 to build facilities to process oxide ore, to process
2 sulfide ore, to begin storing tailings, to begin storing
3 waste rock. That initial period, as I said, is a
4 construction period.

5 We are then going to be mining ore for 20 to 25
6 years. We then have another three- to five-year,
7 perhaps longer closure period where we reclaim the
8 property.

9 In order to get started with our construction,
10 as Mr. Black said, the key approval, aside from of
11 course the right-of-way from the State Land Department
12 for the transmission line and our water line, is the
13 issuance of a mining plan of operations by the Coronado
14 National Forest which would allow Rosemont to utilize
15 the Forest Service land and which has mining claims. It
16 has the right to use that land. But that is, and
17 that's, again, why at the Line Siting Committee and
18 again here the focus should be on the record of decision
19 approving the plan of operations. Once we have that, we
20 are going to need water, we are going to need power in
21 order to construct the facilities necessary to mine.

22 The way both of the amendments are written, it
23 refers to all permits. Well, there are permits that are
24 going to be required at various stages. But in a sense,
25 if this passes, what you are going to make us do is

1 obtain permits that we don't need immediately and may
2 not need in the future.

3 There is a whole raft of permits associated with
4 operating a major facility like this. What we do need
5 right away is we need, again, the CEC and the
6 right-of-way from the State Land Department so we can
7 get water and power to the property. And we need
8 approval of our plan of operations so that we can
9 commence the construction phase of our project. Those
10 are the critical permits. And that's why the Line
11 Siting Committee made construction contingent on the
12 Forest Service's issuance of its record of decision.

13 So I realize it is, this is a complicated
14 project. There are a number of steps involved. Some
15 permits we don't need right away. If you push this
16 requirement on us that says you have to have all permits
17 before you can even get power to your property, we are
18 not -- we are going to have a difficult time getting
19 started. I don't think that's the intent here. I think
20 the intent is to make sure that there is a viable
21 project that's going forward. And if that's the intent,
22 again, I would suggest again going back to the language
23 in the original CEC.

24 If you wish to add the requirement that we
25 obtain the necessary right-of-way from the State Land

1 Department, that's fine. Obviously we have to have
2 that. But going beyond that and talking about all
3 permits, I can't even tell you as I sit here today, and
4 I have been working on this project for two and a half
5 years, I can't even tell you all the permits we need.
6 Some of them are very minor. Some of them are
7 administerial. Some of them relate to things like an
8 encroachment permit for State Highway 83. You can see
9 how far this can potentially reach in trying to cabinet
10 what is really necessary.

11 CHMN. PIERCE: Mr. James, you have made your
12 point.

13 MR. JAMES: Okay. I apologize, Mr. Chairman.

14 MR. BLACK: Chairman, Commissioners,
15 Commissioner Burns, and Commissioner Kennedy, with
16 respect to your proposed amendments, Rosemont would be
17 able to offer a friendly amendment to those particular
18 proposed amendments that may address some of the issues.

19 First of all, we would support Newman Amendment
20 No. 1 to be added as a condition to the line siting, to
21 the CEC.

22 COM. NEWMAN: For the historical preservation.

23 MR. BLACK: For engaging the Tohono O'odham. We
24 would support that.

25 We would also support a Condition No. 6 and

1 reduce the time from ten to seven years. I think that
2 that was discussed at the last open meeting with respect
3 to the energize of the line.

4 And then Rosemont would also support a condition
5 that would prohibit a transfer of the CEC to Rosemont
6 and require that TEP actually own the line. So that
7 issue would not be an issue going forward.

8 CHMN. PIERCE: Okay. Let's go to the company.
9 Can we have the mike, please.

10 MR. DERSTINE: Good morning. Matt Derstine,
11 Jason Gellman on behalf of Tucson Electric Power
12 Company.

13 Mr. Chairman, members of the Commission, Tucson
14 Electric Power Company would support Burns Proposed
15 Amendment No. 1 and Kennedy Proposed No. 3 with
16 appropriate trigger language that has been addressed by
17 Rosemont in Condition No. 23. I think it certainly is
18 an issue for Rosemont and it is not within certainly our
19 knowledge as counsel or Tucson Electric Power Company's
20 knowledge in terms of all of the permits that are
21 required for operation and construction of the mine. I
22 think only Rosemont can accurately speak to that.

23 But I think what we are all looking for is
24 trigger language in Condition 23 that everyone
25 understands what, what is required for the commencement

1 of construction and what is an appropriate trigger for
2 that. And as Mr. Black and Mr. James indicated, that
3 the Siting Committee came down on the Forest Service
4 record of decision, which I understand to be the lead
5 agency in the EIS process, and that that encompasses
6 much of the analysis of the mining project.

7 And so beyond that, if there is some compromise
8 language, I would certainly let the folks from Rosemont
9 speak to that. But, again, we would certainly support
10 either of these amendments, which I think really address
11 the main concerns that the company had over further
12 proceedings that dealt with mine impact evidence,
13 et cetera. I think both of these amendments, Kennedy's
14 Amendment No. 3 and Burns' No. 1, both get us on the
15 right path.

16 CHMN. PIERCE: Okay. The mine pulled in Newman
17 No. 1. Would you comment on that.

18 MR. DERSTINE: We would support Newman No. 1.

19 CHMN. PIERCE: Let's go to the other parties. I
20 don't know who wants to jump in and have comment.

21 Go ahead, Mr. Wakefield.

22 MR. WAKEFIELD: Thank you. Scott Wakefield,
23 Ridenour, Hienton & Lewis, for Pima County.

24 With respect to Burns No. 1 and Kennedy No. 3,
25 the County does not believe that the Commission's

1 decision granting the CEC at this point would have
2 satisfied the requirements to examine the impacts of
3 development, planned development in the area. And so
4 the County would oppose, oppose these amendments. If
5 they were to be adopted, we would be supportive of
6 Newman Amendment No. 1 to either one of them. And we
7 would also request that either amendment specifically
8 grant the County's intervention in the proceeding.

9 Thank you.

10 CHMN. PIERCE: Okay. Mr. Robertson.

11 MR. ROBERTSON: Thank you, Mr. Chairman, members
12 of the Commission. Lawrence V. Robertson, Jr. on behalf
13 of the Scenic Santa Ritas group.

14 I am going to address my comments initially to
15 Burns Amendment No. 1 and Kennedy Amendment No. 3. And
16 I will begin by focusing on the proposed substitute
17 language for Condition No. 23 as it currently appears
18 within the certificate of environmental compatibility
19 that was granted by the Siting Committee.

20 The language that you see in both Kennedy No. 3
21 as substitute language and the language that you see in
22 Burns No. 1 as substitute language for Condition No. 23
23 has its genesis in a condition that was originally
24 proposed by the Scenic Santa Ritas group at the Siting
25 Committee hearings in December. It was not adopted at

1 that time. We continued to argue that language as this
2 proceeding moved up to the Commission level.

3 And as I indicated in my comments at the
4 March 15, 2012 open meeting in this docket, that
5 condition arose out of our belief that the Commission
6 has a stewardship responsibility with respect to
7 anything that may occur in the way of environmental
8 impacts associated with the line. And until the mine
9 actually has all of the permits it needs to allow it to
10 begin construction and operation, there is no need for
11 the line.

12 Now, listening to Mr. James discussing all the
13 various permits earlier today, I can visualize a
14 situation where they get some permits that allow them to
15 start construction, the line is built, but then they
16 don't get the permits they need to begin operation of
17 the mine, and you are stuck with a line and the task of
18 environmental remediation. And even though the
19 conditions that are added in Commissioner Burns'
20 Amendment No. 1 would address who pays for those
21 consequences, there will still be some environmental
22 impact to the area in which the line would be
23 constructed and located.

24 So our belief is that you need language, whether
25 it winds up being Kennedy No. 3 or Burns No. 1, for

1 your stewardship responsibilities, Scenic Santa Ritas
2 can support either Kennedy 3 or Burns 1 as it relates to
3 the substitute language for Condition No. 23. We would
4 suggest for your consideration after the word permits
5 that the words and approvals be added, because the key
6 language, as we read it, in both of the substitute
7 languages is required to allow construction and
8 operation of the mine.

9 With respect to Conditions 24, 25, and 26, or
10 the proposed conditions for the numbers in Burns No. 1,
11 Scenic Santa Ritas supports those as well. Whether you
12 decide to adopt Kennedy No. 3 or Burns No. 1 as your
13 vehicle, we believe that those would be good additions
14 to Kennedy No. 3 or that they are good additions as they
15 appear in Burns No. 1.

16 Mr. Chairman, did you also want me to comment on
17 Newman No. 1 and all also Rosemont's friendly amendment?

18 CHMN. PIERCE: Sure. Well, yes, because I
19 think -- yes. And if anybody adds something else, I am
20 going to come back to those comments, because, if there
21 is some way to distill this into something, that would
22 be good. So comment on Newman and the verbal.

23 MR. ROBERTSON: Using again either Kennedy 3 or
24 Burns 1 as the vehicle, which I understand we are
25 discussing right now, we would be supportive of Newman

1 Amendment No. 1 being added as the condition that
2 pertains to the Tohono O'odham Nation.

3 We would support Rosemont's offer to reduce the
4 term of the CEC from ten years to seven years.

5 We would support, as we understand it,
6 Rosemont's offer that there be language added to the CEC
7 that would preclude any transfer of the line and the
8 substation to Rosemont or any affiliated entity of
9 Rosemont and that TEP would own the line.

10 And I believe that concludes my remarks,
11 Mr. Chairman, at this point.

12 CHMN. PIERCE: Okay. Did we have other comment?

13 Let's go on over to Tohono O'odham Nation.

14 COM. NEWMAN: Good morning.

15 MS. BERGLAN: Mr. Chairman, Honorable Chairman,
16 members of the Commission, thank you. Laura Berglan for
17 the Tohono O'odham Nation.

18 I am very pleased to hear that all the parties
19 are in agreement with Newman Amendment No. 1. And we
20 appreciate Commissioner Newman drafting that up. That's
21 a key condition for the Nation to protect our cultural
22 resources.

23 Now, between Burns No. 1 versus Kennedy No. 3
24 the Nation really has to come out in favor of Kennedy
25 No. 3. And the real issue is what Commissioner Burns

1 mentioned earlier. It is the idea that this line could
2 be installed and then removed at a later date. Once
3 that line is installed, if any cultural resource sites
4 have to be mitigated, this means disturbed or destroyed,
5 that's it. That's the end of that particular site. So
6 for that reason, we are in support of Kennedy No. 3 but
7 would be in support of Burns No. 24, 25 and 26 being
8 added to Kennedy No. 3 in addition to Newman No. 1.

9 And with respect to the triggering language for
10 the permits, the Nation believes that language is
11 sufficient. I mean it is all permits required to allow
12 construction and operation. If there is going to be any
13 amendment of that language, the Nation would support the
14 triggering language to include all permits that would
15 effectively stop the project from being constructed.
16 Otherwise, again, we are dealing with cultural resource
17 sites that are being destroyed and that's the end of it.

18 With respect to, let's see, Rosemont's proposed
19 conditions, we have no objection to the, I believe that
20 was Condition No. 6, from ten to seven years to the term
21 of the CEC. And including the transfer of the CEC to
22 Rosemont, we have no objection to that either.

23 I think I covered it all. Thank you.

24 COM. NEWMAN: To TEP.

25 CHMN. PIERCE: Okay. Mr. Magruder.

1 MR. MAGRUDER: Good morning, Chairman,
2 Commissioners. There are several orders on the table.
3 And I respectfully urge approval of the Newman Amendment
4 No. 1 concerning archeological survey personnel from the
5 Nation as your first priority. The Siting Committee
6 action on this issue was embarrassing and disgraceful.

7 TEP and Rosemont Copper are permanently
8 desecrating known and unknown archeological --

9 CHMN. PIERCE: I want you to comment on the
10 amendments.

11 MR. MAGRUDER: Okay. Rosemont should fund it as
12 required by Amendment No. 1 from Commissioner Newman.

13 Of the three Kennedy orders, only the Revised
14 Order No. 2 permits evidence of new parties and
15 correction of the CEC errors and omissions. This allows
16 relevant information about the impacts of the line and
17 mine to be included. And, most importantly, the due
18 process is observed for all, especially Ms. Webb and
19 Pima County. This order No. 2 is wise. And any
20 lawsuits would be a waste of time and money.

21 CHMN. PIERCE: I want to stay on Kennedy 3,
22 Newman No. 1.

23 MR. MAGRUDER: Can I talk about Kennedy 3 -- 2?
24 I have to --

25 CHMN. PIERCE: We are on, we are talking about

1 amendments. When we started out, we are talking about
2 Burns 1, Kennedy 3, and then we pulled in Newman No. 1.

3 MR. MAGRUDER: Okay. The Kennedy Order No. 3
4 can always be added to No. 2 at a later date.

5 The Burns order approves a CEC without any
6 hearings. Thus the due process rights of all parties
7 cannot happen, including potential intervention by the
8 Commission Staff. However, and I repeat, however, if
9 the Commission decides it does not want to consider any
10 more concerns about due process, then without
11 clarification and modifications in the Burns order, it
12 could be made acceptable.

13 For me, Condition No. 23, just stated by Save
14 the Santa Ritas, adding the word and approvals after
15 permits would help clarify.

16 Further, in Conditions No. 24, 25, and 26, it
17 says Rosemont mine. It really should say Rosemont
18 Copper Company because the mine is a mine. It is not a
19 company, and you really want the company to be
20 responsible.

21 As you know, Santa Cruz County is the smallest
22 county in the state. We have over 300 abandoned mines.
23 The comments from Sonoita are real. And this company
24 will be owned by a hedge fund if it falls. And there
25 will be no money. So consideration of some type of

1 funding should also be considered in the Burns approach.

2 As previous -- frankly, as a, as a layman, from
3 the due process view, I do not see how the Legal Staff
4 can agree that either Pierce No. 1 or Burns No. 2, Burns
5 No. 1 or Kennedy No. 2 are legally correct. The Legal
6 Staff should ensure that the Commission ensures due
7 process to follow it. That's their job.

8 Thank you very much for your patience. We need
9 Kennedy Revised Order No. 2 approved or, in the
10 alternative, changes to Kennedy No. 3 or Burns No. 1 as
11 suggested. Thank you.

12 CHMN. PIERCE: Okay. Ms. Webb, did you want
13 to --

14 MS. WEBB: Thank you, Mr. Chairman, members of
15 the Commission. I will go ahead and start with Newman
16 Proposed Amendment No. 1.

17 I am in partial support of that amendment. I do
18 not believe it is comprehensive enough. There are known
19 archeological sites that are not in Table E-3 of the CEC
20 that's in evidence. Well, I wouldn't say in evidence.
21 It is on the docket in a letter from the State Historic
22 Preservation Office to the Coronado National Forest.

23 Additionally, it doesn't take care of issues
24 related to known historic sites, particularly the Town
25 of Helvetia, which cannot be spanned according to CEC

1 the application. So I could not support -- well, I
2 could support it in reference to the Tohono O'odham
3 Nation.

4 All of that said, I cannot speak on behalf of
5 the Tohono O'odham Nation. It just concerns me that
6 there are known archeological sites that are not
7 included in E-3. Okay.

8 COM. NEWMAN: I will ask some questions about
9 that.

10 MS. WEBB: Okay. The Burns Amendment No. 1, I
11 appreciate that Commissioner Burns was trying to work on
12 a solution that we can all agree to. And I would
13 consider supporting a blend of Burns No. 1, which would
14 include 23, 24, 25, and 26, with some wordsmithing to
15 echo what Mr. Magruder said. The Rosemont copper mine
16 isn't a company. It is Rosemont Copper.

17 And, also, Rosemont Copper is a wholly owned
18 subsidiary of Augusta Resources. So if Rosemont Copper
19 were to go under, it would seem logical to have their
20 parent company be responsible or whomever owns the
21 project.

22 COM. NEWMAN: I totally agree with you.

23 MS. WEBB: Okay. In regard to Rosemont Copper's
24 proposed amendment that says they would agree only, TEP
25 would only own the line, as a ratepayer I have a concern

1 about that. My concern has not been with Rosemont
2 Copper, only the line. My concern has been that
3 Rosemont Copper should have been a co-applicant. That
4 said, I don't want that to be something that happens,
5 that we are, as a ratepayer, I am paying for a line that
6 is specifically to go to one project. So that one, I
7 could not support that part of the friendly amendment.

8 CHMN. PIERCE: I think your concern would be
9 that it go into some kind of rate base. But I think the
10 reality is Rosemont will have paid for the line, but TEP
11 will own the line. Rosemont will have paid for the
12 line.

13 MS. WEBB: Okay. Thanks, Mr. Chairman. I was
14 thinking more into the future as far as maintenance
15 costs and those sort of things go. So if that's not a
16 concern... But that was my concern with that particular
17 issue.

18 I am not in opposition to the ten years down to
19 seven years that was offered.

20 And in my blend, I want to get into the blend of
21 1 and --

22 CHMN. PIERCE: 3.

23 MS. WEBB: -- 3. Sorry, the numbers. There are
24 so many things. So get back to that, I support 23, 24,
25 25 and 26 of the Burns Amendment with some wordsmithing.

1 And then to go to Commissioner Kennedy's 3, to
2 talk about the blend, and I am not trying to go over
3 there, I am just saying how I would blend it, I would
4 ask to strike 1, 2, and 4 -- where did 3 go, there it
5 is -- 1, 2, 3, and 4 and leave No. 5. And then, so the
6 clarification of 73074 would exist. We would still have
7 the fair hearing, which assures the due process
8 regarding the transmission line project. And once that
9 was done, although I hate to say that the outcome is
10 predisposed or whatever, I think that would be fair.
11 Then the due process would be served regarding the
12 transmission line project and we would have these
13 protections in as far as a rate goes.

14 And I could talk with Staff, too, if that's
15 something you guys are willing to consider because I
16 know it is kind of confusing trying to figure out what
17 pieces were being pulled out of that. But I think
18 that's a reasonable compromise. Because I honestly
19 believe that this is a bad transmission line. There is
20 information that is on the docket that shows that it was
21 not complete, that there is information missing. And so
22 I think this is a reasonable compromise to get that
23 information in the record to assure the financial safety
24 of the company and then to allow -- I mean I don't think
25 it should just be limited to me, but I have to have an

1 advocate on behalf of myself, for a very minimum me, at
2 this hearing. And I think that would be a fair trade to
3 make sure that due process of other intervenors in the
4 future -- because this is not about the mine for me,
5 this is about the line, and they shouldn't go through
6 that ever.

7 Thank you.

8 CHMN. PIERCE: Okay. I think we have -- I don't
9 know if Staff wanted to -- I think, go ahead if you want
10 to comment, but I am, I am -- I need to clear some
11 things before. Go ahead, if you have a comment.

12 MR. HAINS: Sure. Thank you, Chairman,
13 Commissioners. Charles Hains on behalf of Staff.

14 Staff is neutral as to the preference between
15 Burns 1 or Kennedy 3. I did want to point out that we
16 did perceive a typo that's present in both of them. And
17 at an appropriate time I will bring that up.

18 CHMN. PIERCE: Okay.

19 MR. HAINS: And also if --

20 CHMN. PIERCE: What is the typo, so we don't
21 forget?

22 MR. HAINS: Sure. It is in the ordering, or,
23 excuse me, in the conclusions of law. And it is the
24 same typo in both. It is in the first conclusion of
25 law. It references A.R.S. Section 40-250 and 251. I

1 point out those are both relating to rate cases. And so
2 it should be, I believe, 40-252. So delete those other
3 two.

4 CHMN. PIERCE: Okay.

5 MR. HAINS: And then, in addition, Staff
6 actually had some language that it would propose for an
7 additional condition. It related to doing a cathodic
8 protection study for pipelines that would be in the
9 vicinity of the transmission line. We had provided that
10 by a notice of filing, I believe, before the first open
11 meeting, which was considered. It was not reduced to
12 orange paper at that point but all the parties are aware
13 of it.

14 CHMN. PIERCE: If there is any degradation to
15 pipe and steel over time because of the voltage, that
16 would be wise for us to know. I mean if there are any
17 buildings in the neighborhood with rebar and structural
18 reinforcement that would be degraded over time, I would
19 think we would want to know about that.

20 MR. HAINS: Certainly. It is standard language.
21 It only requires them to perform a study.

22 CHMN. PIERCE: Okay. The reason I combined
23 these to take a look this morning is to see, so the
24 Commission could see if there is, if it is possible for
25 a deal to be made. I don't care whose name is on an

1 amendment. What I care about is can we come to
2 agreement and finish this. If not, then I am going to
3 offer Pierce No. 1 and go from there.

4 I mean I have already shown, I think, previously
5 Kennedy No. 2 is something I voted against in the last
6 one, so... But I was, but I just wanted to see.

7 Now, mind you, the parties -- Ms. Webb brought
8 up some things and Staff may have some objections. You
9 know, I think there are some things. But at the same
10 time, there may be reasons that you may have that could
11 sway Ms. Webb on her part or somebody else that what
12 makes sense. Right now, as Ms. Webb said, you know, she
13 represents herself, and here is what she sees plainly
14 for herself, what is the explanation why she could be
15 potentially wrong in any of these. Because at some
16 point here, if the parties and if the Commissioners
17 think yes, if they could come up with something that is
18 workable here, we could end this today. And we are
19 happy to do that. If the Commissioners want to do that,
20 then fine. But I just want the parties to now
21 backtrack on anything they heard, can a deal be made.

22 And, Commissioner Newman, if you want to join
23 in, I hope you feel the same way. If we can make a
24 deal, fine; if not, let's move on.

25 COM. NEWMAN: I have been up on the board for

1 awhile, just to have sort of this conversation as well.
2 Because it is complicated. We now have at least ten
3 suggestions. I wrote down four of them of interest to
4 me.

5 CHMN. PIERCE: Mr. Olea has all of them.

6 COM. NEWMAN: Other people have four things of
7 interest to them. But I, too, agree that if there is a
8 way to mold a compromise amendment, that's what we
9 should do.

10 However, I mean I got a baseline that my
11 thoughts on this matter almost mirror Mr. Robertson's
12 statements about Kennedy 3 being very important as far
13 as the future goes. So I don't know if we are going to
14 be able to do it, because the fundamental argument that
15 was being made by the Santa Rita folks, that there
16 should be, like in Kennedy 3, an amendment that builds
17 in new evidence to talk about other effects is of
18 seminal importance to why we are all gathered here
19 today. So for me the bottom line is it would have to
20 include something like that. So I'm just giving my two
21 cents as to what I think is essential to the melding
22 document.

23 The other thing that I feel strongly about is,
24 whatever order comes out, there should be, we should
25 recognize Pima County as an intervenor. I think that

1 that's important as well. They probably should have
2 been an intervenor in the case below with the Line
3 Siting Committee. They were not. And I would add that
4 to my list of friendly things that we can talk about.

5 And then with this, with regard to the arguments
6 about permits and approvals, I actually don't know if
7 there is a distinguishing, if that is distinguished
8 under the law. I am willing to listen to more arguments
9 about that, if we should be changing the language to
10 permits and approvals, meaning it is more inclusive. I
11 would need advice from the counsel on that as well. But
12 I would maybe be in favor of adding that language.

13 And then the issue of liability of the line, I
14 don't know the answer to all these questions. I kind of
15 whispered to Patrick Black: But if the company gifts
16 the line to TEP, can they do stuff like that, first of
17 all? That's good technically for the ratepayers, but
18 can they do stuff like that? And what happens if things
19 blow up and who is going to be responsible to take care
20 of the line then? Does it become a ratepayer expense?

21 I think we should stay right here, that it
22 shouldn't be, that in case -- and I actually think that
23 goes to some of the comments of the speaker who, who
24 gave some public notice today. She wanted some
25 liability, for lack of a better word, liability language

1 that protects, protects future folks, because we can't,
2 we can't know for sure what function, you know, how this
3 will go over the next ten to 15 years. We don't know
4 for sure.

5 And I certainly support that comment, because it
6 is proper that we shouldn't -- you know, the branding of
7 the mine as the Rosemont mine is not the legal name of
8 the enterprise. We are here at the Corporation
9 Commission. We should be referring to the companies at
10 hand. And that is especially important with all these
11 lawyers here, you know, that we know that because there
12 could be potential lawsuits. Rosemont mine is just, is
13 a public relations term, not the company.

14 CHMN. PIERCE: Commissioner Burns.

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

16 I first of all want to just make it clear my
17 position was, I was fine with the No. 23 in the CEC.
18 But I don't think there is three votes here for that, at
19 least, you know, it doesn't appear from our initial open
20 meeting. You might remember we had a three/two vote.

21 And so, and I am willing to support the Pierce
22 Amendment. However, I am concerned in the Pierce
23 Amendment about the precedence it sets, having been
24 sitting here on the Commission, on a line siting
25 commission, and so on. So this is an attempt to try and

1 find that median that gives enough comfort to enough
2 sides and gets three, hopefully five, but three votes
3 here.

4 So I was listening obviously to everyone who
5 spoke, the company concerned, wanting to stay with the
6 CEC language for 23. I am fine with that. But, again,
7 I don't know that the three of us are. And then I am,
8 you know, hearing the additions of different individual
9 issues. Mr. Robertson listed some specific permits that
10 they are concerned about, Ms. Webb. Others had probably
11 some, some good suggestions if we are going to meet
12 something in the middle that ends this thing today.

13 I don't know if the words initial operation
14 help. I mentioned that earlier, but I am not sure that
15 that did what you wanted.

16 I certainly appreciate the note from
17 Mr. Magruder and Ms. Webb about, you know, referring to
18 Rosemont mine correctly, and Rosemont Copper Mine. I am
19 not sure how you feel about the Augusta, you know, the
20 parent company, putting something in there.

21 I don't know if there is, I am not sure if we
22 are at that point or if there is any, enough will or
23 enough thought that we could get there. I don't know,
24 Mr. Chairman, if there is an option for a break to see
25 if, to see if some of these things can be ironed out

1 enough and put this to bed.

2 Obviously, just to say also, No. 24, 25, 26,
3 those were things that I thought should be clarified in
4 an attempt to reach out to everyone who had concerns to
5 put something in. I am hearing that they want something
6 a little more certain than that even. So...

7 MR. JAMES: Mr. Chairman, Commissioners, let me
8 respond to what you just stated, Commissioner Burns, and
9 also to some of the comments.

10 Mr. Robertson had mentioned several permits, as
11 you said.

12 COM. BURNS: Yes.

13 MR. JAMES: And, again, I have got for -- I
14 apologize again. This is, this gets into the weeds and
15 some environmental statutes that I deal with a lot but
16 usually don't come up at Corporation Commission open
17 meetings.

18 There is no permit or authorization under the
19 Endangered Species Act for this project. What has to
20 happen is the Forest Service and the Army Corps of
21 Engineers, and I will get to the Corp's permit in a
22 second, they have to ensure that their action won't
23 jeopardize the continued existence of any listed species
24 or adversely modify critical habitat. But they go
25 through a process. Rosemont doesn't. We get to

1 participate as an applicant but we don't need a permit
2 from the Fish & wildlife Service. And, again, I respect
3 the fact that Mr. Robertson doesn't practice in this
4 area. He wouldn't know that.

5 The other permits, we do have to have an air
6 quality permit to commence construction. The record of
7 decision, the Forest Service's decision is going to
8 incorporate the requirement that we have an air quality
9 permit. If that's something you would like to add to
10 this Commission and specifically say we need
11 authorization, we need an air quality permit, we are
12 willing to do that.

13 COM. NEWMAN: Yes.

14 MR. JAMES: The same, the same with a permit
15 under Section 404 of the Clean Water Act, to discharge
16 fill material into waters of the United States. The
17 Corps of Engineers is a cooperating agency. The NEPA
18 document, the EIS is going to also address the 404
19 permit.

20 So those decisions, those processes are running
21 in parallel tracks. We are willing to add that as a
22 condition because, again, that's something, in order to
23 discharge waste rock into some of the upper watersheds,
24 we need a 404 permit. So we have no objection to adding
25 that. That's another permit that's going to be required

1 early on in operations, so...

2 And with regard to the archeological issues, we
3 have heard comments on those. Again, the Forest Service
4 has to go through a process under the National Historic
5 Preservation Act. The archeological sites that are
6 being referred to are not sites along the transmission
7 line route that has been approved, at least my
8 understanding. They are sites that are on Rosemont's
9 property or on the National Forest in the vicinity of
10 the mine that are going to be disturbed. The Forest
11 Service has an obligation to go through a consultation
12 process with the Tohono O'odham tribe and other
13 interested Indian tribes. Again, it is not a permit
14 Rosemont needs but it is going to happen as part of the
15 Forest Service's process.

16 Again, that was why initially we had said the
17 record of decision really is the key document, because
18 things like compliance with the Endangered Species Act,
19 with the National Historic Preservation Act, those are
20 obligations imposed on federal agencies and have to be
21 completed for the Forest Service to approve their, the
22 mining plan of operation. So there aren't permits there
23 per se that you can say Rosemont needs this permit or
24 approval, because we don't, we don't get permitted under
25 those statutes. The Forest Service has to go through a

1 process.

2 The air quality permit, and the 404 permit, we
3 do obtain those permits and we have no objection to
4 including those, so if that, if that's helpful.

5 Oh, in terms of bonding, we have, again, there
6 is a reclamation, there will be reclamation bonds
7 required both under state law under the Mine Land
8 Reclamation Act, which we have, already have a
9 reclamation plan approved for Rosemont's private land
10 with a bond requirement, there will be a bond required
11 by the Forest Service, a reclamation bond which is
12 imposed under the Forest Service's surface use
13 regulations, which those are the regulations that govern
14 the plan of operations.

15 So, as we have said all along, Commissioners,
16 there is extensive federal regulation, there is federal
17 permitting, there is federal bonds involved. And the
18 focus, the key agency here is the Forest Service,
19 because we will be using National Forest system land.

20 COM. BURNS: And the parent company suggestion
21 as far as liability?

22 MR. JAMES: Well, Augusta is a publicly traded
23 company. Rosemont Copper Company is an Arizona
24 corporation that's solely owned by Augusta. So do we
25 have an objection to --

1 Go ahead.

2 MR. BLACK: Rosemont Copper Company is the
3 correct name. That is the entity that actually owns the
4 mining project. Its parent company does not do business
5 in the United States.

6 COM. BURNS: Okay.

7 COM. NEWMAN: That doesn't mean they shouldn't
8 be subject to liability.

9 COM. BURNS: May I ask Mr. Robertson, since you
10 were the one that sort of gave a list of the permits.

11 And so, and now you heard from Rosemont what is
12 incorporated into the Forest Service's permits already
13 and what they are willing to add.

14 MR. ROBERTSON: Chairman Pierce, Commissioner
15 Burns, as Mr. James correctly observed a moment ago, I
16 do not practice in the area of environmental law myself
17 on an ongoing basis. My knowledge with respect to
18 permits that would be required in this instance has been
19 acquired from some people within our client group who
20 work in this area. And one of the things Mr. Metli and
21 I were just conferring about is that it might be
22 appropriate at some point to take a break, because if we
23 are talking about changing language, we need to try and
24 contact our client group and speak with them.

25 I think specifying, for example, the Section 404

1 permit, the record of decision, and the clean air permit
2 is progress in the right direction. And I am
3 appreciative of Mr. James' indication Rosemont would be
4 willing to agree to that sort of specification.

5 I had been looking at some possible alternative
6 language to "all permits" as those words appear in both
7 your amendment and Commissioner Kennedy's. And I don't
8 know if it is improvement but I suggest for your
9 consideration "such authorizations as are." So it would
10 read: Applicant will not commence construction on the
11 project until such authorizations as are required to
12 allow construction and operation of the Rosemont copper
13 mine have been obtained. Because it seems to me, as I
14 indicated earlier, the key here is required to allow
15 construction and operation. And that goes back to
16 our --

17 COM. BURNS: What about initial construction and
18 operation, would that --

19 MR. ROBERTSON: The problem, Chairman Pierce and
20 Commissioner Burns, as we see it, and this goes back to
21 the stewardship concept that we believe the Commission
22 has, if you build the line for initial start-up and then
23 for whatever reason Rosemont does not get one or more
24 permits or authorizations to allow it to continue and to
25 complete construction and operate the mine, you have got

1 a line, in essence a line to nowhere. And then you are
2 confronted with the task of removing it. And you have
3 the environmental damage that has occurred because the
4 line was constructed in the first instance. And that's
5 what we have been hoping to address with this condition,
6 both as we initially proposed it, Commissioner Newman
7 had an amendment on it back at the March 15th open
8 meeting, Commissioner Kennedy picked up on it in her
9 Amendment No. 3, and you picked it up in the first item
10 in your Amendment No. 1.

11 I hope I have been responsive at least for the
12 moment. My knowledge of the specific permits, as I
13 said, is drawn from other people. So beyond the ones
14 that I mentioned a moment ago, we would like to try and
15 check with them if that's the approach you decide to
16 take.

17 COM. BURNS: Okay. Any other comments before I
18 give up to my colleagues?

19 Mr. Magruder.

20 MR. MAGRUDER: Good morning, Commissioner Burns.

21 Mr. James just a minute ago mentioned the mine
22 remediation plan has already been approved. If it was
23 modified to include remediation, including removal of
24 the transmission line if not used, or just removal of
25 the transmission line, that itself when they finish and

1 remediate the mine process would solve the problem. And
2 if you could get a promise from them that they will
3 modify the remediation plan, then maybe the removal part
4 might help.

5 COM. BURNS: I am sorry. Maybe I am
6 misunderstanding, but I think is that not covered in
7 No. 26 on my amendment?

8 MR. MAGRUDER: Well, I am worried about the
9 bonds. The bonds are in the, the bonds should cover --
10 the remediation plan includes bonding and the bonds
11 should be enough to pay for that. That's what -- I
12 should have said that. I am sorry. I wasn't very
13 clear.

14 COM. BURNS: Okay. Any other comments from
15 the -- well, wait a minute. Ms. Webb.

16 MS. WEBB: Mr. Chairman, Commissioner Burns, one
17 thing I want to make very clear is this has been about
18 the transmission line for me from the beginning. So
19 when I said there are sites in the project area, I meant
20 along the transmission line site for the archeological
21 resources and the historical cultural resources, number
22 one.

23 I am not going to profess to be any kind expert
24 in the 404, however, in the 404 Federal Register
25 application that was put forth for comment there are

1 three transmission lines or transmission structures,
2 poles, that could be in waters of the U.S. So this is
3 not just a 404 permit for the actual pit tailings and
4 waste rock. This is something I am taking from
5 something that is part of the public record.

6 COM. NEWMAN: That's Corps of Engineers.

7 MS. WEBB: For the Army Corps of Engineers 404
8 permit.

9 My understanding, and I would have to verify
10 this so don't take this as being gold, is that the
11 transmission line will also require a 404 permit as
12 well. That's what I was told by Marjorie Blain, so as
13 far as that goes.

14 Also, lastly, one half of one acre would be
15 crossed by this transmission line on the preferred
16 alternative. The Coronado National Forest is depending
17 on ACC to do its job, which is to protect the ecology
18 and environment of Arizona.

19 So a lot of these issues regarding the cultural
20 resources, there is nothing in the NEPA process that
21 precludes other agencies from doing their jobs. And,
22 again, I don't profess to be an expert. This is in the
23 beginning of the CE -- of the DEIS. I can find it and
24 show it to you. So I am just asking, when all this
25 stuff is going around, this legal stuff, that we

1 recognize the Forest is asking the ACC to do its job to
2 protect the ecology and environment of Arizona for the
3 transmission line.

4 COM. BURNS: I understand. Thank you.

5 I would like -- I don't know if TEP has anything
6 to say or Rosemont wants to wrap up for at least my
7 portion of questioning here. It just seems like we are
8 getting awfully close. It would be really a shame to
9 let it go.

10 MR. DERSTINE: Mr. Chairman, Commissioner Burns,
11 I think it sounds like we are awfully close. And I
12 certainly, the company appreciates your efforts to try
13 to get something done today that moves this case
14 forward.

15 We would, again, because there appears to be a
16 unanimous support of your Conditions 24 and 25 and 26 in
17 your amendment, the company certainly supports that as
18 well. And we would support the offer from Rosemont in
19 terms of clarifying exactly the type of permits that are
20 required as the starting condition, the trigger
21 condition to construction.

22 And I think that's the key consideration here.
23 It is, in terms of reading the CEC or the decision
24 approving the CEC, is it clear on the face, under the
25 language, whether or not TEP is entitled to construct.

1 And if it is not, if it is simply a matter of until all
2 permits have been obtained, candidly, the company
3 doesn't want to be in a position of trying to determine
4 whether all permits have been obtained and we would
5 likely have to come back to you folks for some guidance
6 to make sure we are not starting in advance of everyone
7 being in agreement.

8 So I think the language is key. And by
9 specifying exactly the permits that are required, the
10 record of decision from the Forest Service, the 404
11 permit and the air quality permit, those can be, once
12 those have been issued, TEP can determine that from the
13 record, can obtain -- can determine whether those in
14 fact have been issued, and that gives clear guidance
15 whether or not we can commence construction without any
16 further disputes or issues. So I think that's, that's
17 an appropriate way to proceed and we would support that.

18 So, again, we would, Commissioner Burns, we
19 would support your amendment with the add-ons from the
20 company reducing the term of the CEC from ten to seven,
21 including prohibition on the transfer to the company, we
22 would support that as well, along with Commissioner
23 Newman's amendment. That seems to wrap it up. And we
24 would support that new package as has been discussed on
25 the record.

1 COM. BURNS: Thank you.

2 CHMN. PIERCE: Okay.

3 COM. BURNS: Rosemont, Mr. Chairman.

4 CHMN. PIERCE: Hold on just a second.

5 Where do you want to go?

6 COM. BURNS: Rosemont.

7 CHMN. PIERCE: Rosemont, go ahead.

8 MR. JAMES: Thank you, Chairman, Commissioner
9 Burns. Again very briefly, we, Rosemont agrees with TEP
10 essentially, I think, if we can get to the point where
11 we are identifying specific permits so we don't have
12 language that, as counsel for TEP just indicated, can be
13 construed in a variety of different ways. I respect
14 Mr. Robertson and appreciate his attempt to try to
15 provide a little more definition, but I don't think
16 substituting authorizations for permits does it because,
17 again, it leaves it very vague.

18 What it creates, as I said earlier, essentially
19 is a chicken and egg problem. We need power to get
20 started but we can't get power until we have all permits
21 or all, quote, authorizations. We are not sure what
22 those are. Some of them aren't needed immediately. And
23 we have created a situation which -- again, I don't want
24 to, I am not going to go bash anybody today. We are
25 trying to get this resolved. But you see the situation

1 it puts us in to go get permits we don't need in order
2 to start construction.

3 Now, let me talk about the 404 permit and make
4 sure again. This is, this is a complicated project.
5 And, as you can see, it is like peeling the onion. You
6 start peeling off these layers and we get into another
7 layer.

8 There is going to be a water pipeline
9 constructed by Rosemont along Santa Rita Road. One of
10 the things that the Line Siting Committee decided to do
11 was to collocate the new transmission line in the same
12 utility corridor, hence the need for the cathodic
13 protection amendment Staff has proposed. We need a
14 404 permit for that, for that water line. We have told
15 the Corps of Engineers about the fact that there may be
16 a transmission line. We think we can span washes that
17 are jurisdictional; we don't know that. But the 404
18 permit is going to cover that. And the TEP, TEP or
19 Rosemont, whoever is going to build the line, can't
20 build the line and violate the Clean Water Act. So we
21 are going to need the 404 permit.

22 And this just ties back I think to what I
23 suggested before, revise the Burns Amendment
24 paragraph 23 to specify the Forest Service's record of
25 decision approving Rosemont's mining plan of operations,

1 the Army Corps of Engineers' permit under Section 404 of
2 the Clean Water Act, and appropriate air quality permit
3 that would allow Rosemont to commence construction at
4 the mine. We can support that amendment. It provides
5 clarity. It ensures that critical permits and approvals
6 will be in place. By again focusing on the Forest
7 Service's record of decision ensures that we will have
8 to complete a Section 7 Consultation on the Endangered
9 Species Act. It ensures that the Forest Service is
10 going to comply with the National Historic Preservation
11 Act and address cultural issues with respect to the area
12 that's going to be impacted by the mine. So that rolls
13 everything into it.

14 Now, we can, I am sure we can cherry pick more
15 permits. And I am afraid that's what is going to
16 happen. We are going to end up with a laundry list of
17 permits and we are going to be back in the situation I
18 talked about a moment ago. There are going to be so
19 many permits required that we can't build the line and
20 therefore we can't start construction of the mine,
21 which, frankly, is what some of the mine opponents want
22 to have happen. So with that, I will conclude.

23 COM. BURNS: Thank you.

24 Thank you for letting me have all this time,
25 Mr. Chairman. I know Mr. Robertson asked at some point

1 if we could take a break and I know there were others on
2 the board. And I wanted to --

3 CHMN. PIERCE: I am going to come back to me.
4 Commissioner Stump, go ahead.

5 COM. STUMP: Thanks, Mr. Chairman.

6 I wanted to make perfectly clear in case I
7 didn't earlier that my vote early in this process was to
8 address a specific due process issue. And I think your
9 draft order, Mr. Chairman, does address it. But by the
10 same token, I think there are other avenues by which
11 that can be achieved and I am certainly open to
12 achieving consensus to compromise through a blending of
13 amendments.

14 CHMN. PIERCE: Well, okay. Here is, here is
15 where I am at on this. The reason we are going through
16 this little exercise is because if we pass 10, I
17 mean Pierce 1, and we go off and Judge Rodda has a
18 hearing and we have this much information that a court
19 reporter provides for us and we will have that come back
20 here, because I am sure at the end of the day we are
21 going to tell Judge Rodda you don't need to write an
22 order, we just want you to referee this process and give
23 us the information so we, so that the parties can offer
24 up amendments and other things that they want to do,
25 that's what is going happen, we are going to have that

1 record, and then what is going to happen is we are going
2 come back here and do exactly what we are doing right
3 now, talking about these little issues and trying to --
4 or we just come to pass the whole thing. But at the end
5 of the day I think for the parties that don't like the
6 CEC, today is your opportunity to work this out.
7 Because I don't see it getting better. Today is the
8 opportunity.

9 Mr. Wakefield, I appreciate Tucson would like to
10 be an intervenor, not to the extent, in my view, so that
11 we work out something and then Tucson, Pima County, can
12 then sue because we have now given them standing.
13 That's not -- I would give you standing to sign off on
14 an agreement today. That's what I would give Pima
15 County standing to do, in my world of this.

16 So that's, that's how I look at it, because I
17 would like something that maybe you can homogenize.
18 And, frankly, it is fine tuning 23. I have listened to
19 Ms. Webb's comments. I am not sure -- from Staff's
20 point of view, a lot of what I see is a lot of
21 boilerplate type of things around each case that we
22 include. And I am not sure we are going to walk away
23 from those types of things, but I think that's where --

24 I will let Commissioner Newman make some
25 comments, probably some of the same things, probably

1 would like to see a break so the parties could do
2 something. I would think we would come back at 1:00
3 because I think people are going to want to talk about
4 this since there is no way to do it, go to lunch and
5 come back here at 1:00 and we either have an agreement
6 or we don't and we will move on to other amendments.

7 Commissioner Newman, did you want to offer
8 anything more than that?

9 COM. NEWMAN: Yeah, well, just that first of
10 all, your comments, I have to demur on your comments
11 regarding Pima County. I don't think that they are here
12 necessarily to sue. They are here to represent the
13 public interests of the people of Pima County. And so I
14 see no reason why they shouldn't be intervenors.
15 Anybody here can sue. Everybody yesterday, who is for
16 our hearing yesterday, could sue for the people who were
17 here yesterday. It was quite a day. But to use that as
18 a reason not to grant intervention is -- I just don't
19 think, I don't think it is.

20 CHMN. PIERCE: Well, think about it.

21 COM. NEWMAN: It is being open to, it is --

22 CHMN. PIERCE: It is intervention status for the
23 agreement.

24 COM. NEWMAN: Mr. Chairman, there is a special
25 interest at every single point at this table. They are

1 a lay intervenor. But to suggest you will not allow
2 them intervenor status because they, they have a
3 litigious nature is just a little bit beyond --

4 CHMN. PIERCE: That's not what I said. If you
5 want me to explain myself, I will.

6 COM. NEWMAN: Well, you can, because I think you
7 offended Pima County.

8 CHMN. PIERCE: Well, no. I am saying if it were
9 just doing this, giving them intervention status, what
10 is the purpose of that if we have an agreement today?
11 See, what is the purpose of that? And the purpose of
12 that would be to give Pima County standing. And I am
13 not sure there is a good reason to do that if we have a
14 deal. That's my point.

15 COM. NEWMAN: Right. But we may not have a
16 deal. So that's why I said any order should say they
17 should be intervenors. I am just demurring on that
18 point. I am not going to -- I want -- what I wanted to
19 say is that there is some progress, but if there should
20 be a hearing, Kennedy 3 should be the model.

21 So I don't know if we can figure out how to get
22 everything we need to have a satisfactory run. It may
23 well be that we will have a hearing under the rubric,
24 under the, the evidentiary rubric as set out in
25 Kennedy 3. So we leave it to you, ladies and gentlemen,

1 to try to accomplish a communication during the break.

2 Gary is right. This is an attempt to do this
3 quickly. And I haven't heard from Sandra on her views
4 about it, but I would, I would -- again, my position
5 after I thought -- I have thought about this thing for
6 about six months, even before it came to us, about what
7 I want out of this. And I would want out of this some
8 sort of hearing if this compromise doesn't work out.

9 CHMN. PIERCE: Okay, exactly.

10 And I will get to you, too, Mr. Robertson.

11 See, if we end up with my amendment, Pima County
12 has intervened, they will be granted intervention. But
13 the thing is, my point, Mr. Wakefield, is what you asked
14 for was if we do this you want amended in, and my point
15 is, well, what do you need intervention for after the
16 fact if we have come to some grant agreement. Maybe we
17 hadn't talked about coming to a grant agreement before
18 you made your statement. It was a caution to me. So I
19 want Pima County to sign off here and be involved in
20 this. But if I am going to give you intervention, then
21 I just as soon go to the hearing and let you all
22 intervene there and do that. That's my point. You can
23 comment to that if you -- see, I don't know what you
24 have in mind, but that's what I -- logically where I
25 got.

1 MR. WAKEFIELD: Thank you, Chairman Pierce. And
2 I understand from a pragmatic point of view it would be
3 silly to go down the avenue of your proposal if there is
4 three votes to grant a CEC with certain conditions.
5 Either of those approaches still fails to fully consider
6 the environmental impacts of developments in the area.
7 Under either of those courses of action, even if we were
8 granted intervention and you determined you were going
9 to have a narrow proceeding before Judge Rodda, we still
10 have our concern that you have not developed a record on
11 all the issues that you are statutorily required to
12 develop a record on, and that would include impacts of
13 the mine.

14 Now, I recognize that the Commission may adopt a
15 decision that Pima County is not in favor of. And at
16 that point Pima County will consider what it would do in
17 that event.

18 Now, I have heard the discussion this morning.
19 I will attempt to find out from my client whether they
20 would be willing to essentially sign off on such a
21 resolution. But at this point, I don't have authority
22 from my client to indicate that they will support
23 anything, any resolution of this matter that involves
24 granting a CEC without holding additional proceedings to
25 consider all the impacts of development in the area.

1 CHMN. PIERCE: And, of course, my amendment
2 doesn't point that out.

3 MR. WAKEFIELD: It does not do that.

4 CHMN. PIERCE: Well, it points out you won't do
5 that.

6 Okay. Mr. Robertson.

7 MR. ROBERTSON: Thank you, Mr. Chairman. I just
8 wanted to comment briefly. During his most recent
9 comments, Mr. Derstine made a statement to the effect
10 that there appears to be unanimous support for Burns 1
11 and I wanted to clarify that.

12 As I have been speaking this morning thus far it
13 was my understanding you had asked the parties to
14 address Burns 1 and Kennedy 3 as they related to
15 proposed CEC conditions. And that's the approach I
16 took.

17 Scenic Santa Ritas from a process standpoint
18 still supports Kennedy No. 2 or, as a fallback, Pierce 1
19 because it does deal with the due process issue and it
20 does allow for further consideration of environmental
21 aspects. So I just wanted to make clear from a process
22 standpoint those are still our views.

23 We are more than willing to participate in
24 exploring a possible settlement over the noon recess.
25 In fact, the reason Mr. Metli is not seated next to me

1 is he already -- he is back. He is very subtle.

2 CHMN. PIERCE: Peripheral vision.

3 MR. ROBERTSON: And I tried to leave him in the
4 truck but it didn't work out.

5 He went out to contact our clients and see if we
6 could start talking about some language changes for
7 Condition 23. So I just wanted to clarify what our
8 position is and also make that comment we are willing to
9 explore settlement language.

10 CHMN. PIERCE: We are at that point where we
11 would we need to break anyway for our court reporter,
12 so, and I don't know if it is enough time. And we will
13 plan on coming back at 1:00 if we are notified. So let
14 my office know so we can let the other Commissioners
15 know and we will get word when we are going to come
16 back.

17 And I would like Mr. Olea involved in this, if
18 you don't mind, Mr. Olea, just to help facilitate it.
19 And you know what I mean. And --

20 COM. NEWMAN: That could mean many things.

21 CHMN. PIERCE: And there are some key elements
22 here, why we didn't approve this the first time. And my
23 amendment kind of wraps around some of those things.
24 Not that everybody isn't equal, on equal footing here,
25 but there are things that we have concern and we would

1 certainly like agreement from specific parties as we
2 move along if that's available. Otherwise, we just want
3 to know so we can come back, we can do one or the other
4 and call it a day.

5 So thank you, everyone. We are in recess until
6 approximately 1:00.

7 (A recess ensued from 11:30 a.m. to 1:53 p.m.)

8 CHMN. PIERCE: Okay. We have us all. Mr. Olea,
9 let's go to you.

10 MR. OLEA: Yes, Mr. Chairman and Commissioners.
11 All the parties have been meeting upstairs. And I am
12 going to just try and explain where we are at this
13 point.

14 We are in sort of agreement. Let me tell you
15 what I mean by that, is most of the parties agree to
16 starting with the Burns Amendment No. 1 and modifying
17 that. And at the end of my discussion here, those
18 parties that aren't in agreement, they were told that
19 they could then talk about their side of it and what
20 they, you know, agree with or don't agree with.

21 And so I am going to try and make this as clear
22 as I can. And I am going to ask all the other parties
23 that are in agreement, if I say anything or if I miss
24 anything, if they could jump in and kind of help me out,
25 because we did kind of do this kind of quickly and I

1 just took notes as fast as I could.

2 But basically we are starting with the Burns
3 Amendment No. 1. And we would put in a new Condition
4 No. 23.

5 CHMN. PIERCE: Okay. Mr. Olea, do you want us
6 to -- you are going to explain each of these items
7 verbally. Let's talk about the process, what we want to
8 do.

9 COM. NEWMAN: I want to find out.

10 MR. OLEA: Here is what I thought, was that I
11 would go through the whole thing first.

12 CHMN. PIERCE: Okay.

13 MR. OLEA: And then each of the parties that
14 didn't agree could then talk about the whole thing that
15 they don't agree with. And then we could go back and I
16 could do one piece at a time. And the Commissioners
17 would then vote as an amendment to the Burns Amendment
18 on that piece. And they would --

19 So I would go through each piece doing that.
20 And then, when you are done, you would have a new Burns
21 amended amendment that you could then vote on yes or no.

22 And the way that I explained to the parties is
23 that, if that passed, that means a CEC would be issued
24 and we would be done. If that does not pass, then you
25 would have to go back to one of the other amendments and

1 send it back to hearing, which is either yours or I
2 think Commissioner Kennedy also had one, to send back to
3 hearing. So then you would have to decide among
4 yourselves how you send it back to hearing because you
5 don't have a CEC.

6 CHMN. PIERCE: Right. Go ahead.

7 COM. NEWMAN: Mr. Chairman, point -- I am not
8 quite ready, point of procedure.

9 I take it the compromise in the room wants to
10 end this today with the CEC without going back and
11 taking extra evidence. There are two issues, that due
12 process issue and then of course the issue of how much
13 evidence that we should collect with regard to
14 environmental issues, environmental facts and scenarios
15 that need to be on the record for a full review under
16 252.

17 So it is very important -- of course, we are all
18 taught in law school how you frame the issue is somehow
19 how the result of the hearing happens. So my point of
20 procedure is: Why aren't we giving equal time to the
21 point of going back for more hearing? Why do we make
22 that a minority view? Because it was not agreed upon
23 by, you know, seven people that went into a room. How
24 did you get this majority and minority? Why do you get
25 to frame the issue?

1 CHMN. PIERCE: Okay. Here is -- this is, the --
2 procedurally we have exhausted the going back to hearing
3 one in previous hearings here. This is the really the
4 first time we have talked about an opportunity to, this
5 meeting, to approve this and put conditions on it.
6 So --

7 COM. NEWMAN: No.

8 CHMN. PIERCE: -- that's --

9 COM. NEWMAN: That's not what --

10 CHMN. PIERCE: Don't interrupt me, please.

11 That's what we are doing right now. And what we
12 sent everyone to do is to see if there is a way to do
13 this. And so they, the parties, are working from a
14 starting point, which is Burns No. 1, and are going to
15 do a series of amendments which will change Burns No. 1.

16 I don't know to what extent you are going to
17 tell us that, Mr. Olea.

18 And then what we will do after we have heard all
19 that, heard each side is we will decide if we are
20 going -- if Commissioner Burns wants to move her Burns
21 No. 1. And then we will go down each of the changes
22 verbally that the parties have pretty much agreed to.
23 And we can pass -- and we can accept those as verbal
24 changes to the amendment, yes or no, up or down, and go
25 right through that. And at the end, the ones that held

1 a majority of us will become part of Burns No. 1. And
2 then we will, we will move that one as amended. And
3 then, if that one has a majority of the votes, then we
4 are done, which at the end of the day we are looking for
5 one of these to give us a majority to move forward,
6 whether it is to go to hearing or to do this. So
7 that's --

8 COM. NEWMAN: Mr. Chairman.

9 CHMN. PIERCE: -- the procedure we are on.

10 COM. NEWMAN: Mr. Chairman, please. I demur
11 strongly, because it sets up an unfair comparison which
12 is to pass the -- as you know, the Line Siting
13 Committee, I had a colloquy with the judge on the Line
14 Siting Committee. He doesn't want the line siting case
15 back to him. The only chance for us to collect more
16 evidence to clarify the, quote-quote, due process issue
17 as well as clarifying the issue of what evidence, which
18 I haven't even heard from counsel yet -- I wanted to be
19 able to ask counsel on the record today what evidence
20 that can be taken into a 252. The only reason I agreed
21 to talk about a settlement is if they can come up with a
22 whole settlement. This is not a settlement. It is an
23 agreement between a portion of the settlers.

24 CHMN. PIERCE: Well, your point of procedure --

25 COM. NEWMAN: And I want to ask counsel this

1 question that is very relevant and I don't think has
2 ever been brought into the case, into evidence even. I
3 wanted, and this is a point of procedure, if we go the
4 252 route, which we seemingly can't because the best
5 dressed men in the group decided that they want to go a
6 certain way -- I haven't heard from the other side yet;
7 this is not a settlement -- I wanted to hear from
8 counsel, our counsel, on what evidence can be brought
9 into a 252 so we could have Ms. Kennedy's amendment
10 treated equally.

11 There is no reason to cut off testimony. It
12 hurts from the point of a due process issue, and it
13 certainly hurts us from the point of protecting the
14 public interest. So I would ask you if we could hear
15 from counsel as to, as to the, what kinds of evidence
16 can be brought in in a 252 and whether that's, that's in
17 compliance with Kennedy 3.

18 I don't understand why -- and it is important.
19 Just as I said, you are addressing the issue your way.
20 There is no reason why the issue shouldn't be framed
21 through Kennedy No. 3. It is how you frame the issue
22 sometimes that is how you win the game. That's why I am
23 being a bit pedantic about this, but I am serious as
24 hell. And if this Commissioner doesn't have a chance to
25 talk about Kennedy 3 before these others and go on the

1 record as to what we can do in a 252 so everybody knows,
2 including people listening in the audience and perhaps a
3 newspaper reporter's presence, so I am asking you right
4 now what is -- under Kennedy 3, wouldn't that be cutting
5 off a lot of evidence that wouldn't get into the record
6 under 252?

7 CHMN. PIERCE: Okay. We are not going to go
8 there.

9 COM. NEWMAN: I ask to go into executive session
10 to get the advice, if you are not going to allow it in
11 public.

12 CHMN. PIERCE: Well, I am not going into exec
13 session.

14 COM. NEWMAN: I ask it be heard in public. It
15 is a matter of importance to this hearing.

16 CHMN. PIERCE: Okay. Just to be in order here,
17 Mr. Olea, the things that we are using, and I will
18 repeat this, we are using the Burns No. 1 as a starting
19 point.

20 COM. NEWMAN: Why was that mike taken away from
21 the lawyer? She is not going to be able to answer my
22 question?

23 CHMN. PIERCE: We are going to Mr. Olea.

24 COM. NEWMAN: Mr. Olea is not a lawyer.

25 CHMN. PIERCE: Do you mind, please?

1 COM. NEWMAN: Mr. Chairman.

2 CHMN. PIERCE: Please hold up. What we are
3 going to do is, no matter what amendment we use as a
4 starting point, there will be verbal changes which may
5 incorporate other people's ideas, Commissioner Kennedy's
6 and so on. I don't know where we are going to be. I
7 just know where the starting point was. Mr. Olea said
8 that the one they chose was the Burns No. 1.

9 And so, Mr. Olea, proceed. You may talk about
10 why you picked that one, as the group, as the starting
11 point. But I would like to get through this. That's
12 what we agreed to do when we recessed to let you all
13 talk this through.

14 So go ahead, Mr. Olea.

15 MR. OLEA: Mr. Chairman and Commissioners, and
16 this is where I have got enough lawyers around me where,
17 if I start to violate any of the 2008 settlement thing
18 or whatever you guys call it, you guys can get me here.
19 But, you know, first I would like to explain the process
20 that we used.

21 You know, at least when I walked into open
22 meeting this morning, Staff was just here to listen. We
23 didn't have a position here. We had one minor amendment
24 that had to do with a cathotic protection, which
25 basically that's boilerplate language that we put in

1 every CEC.

2 Just before we broke, I was drafted to actually
3 facilitate some kind of discussion. The way I took that
4 is that this Commission had talked about for a long time
5 going back to hearing, going back to hearing. The point
6 of having the discussion at lunchtime was to see if we
7 could come up with some kind of settlement. That's the
8 way I approached it.

9 And for those of you that have not ever been in
10 settlement discussions with me, I am pretty blunt. And
11 that's what happened here. So I walked in with my idea.
12 I said we are going to start with Burns 1 and this is
13 what we are going to do. And so we went down the line.

14 Then I listened to everybody that said here is
15 how we need to modify No. 23 or add this or whatever.
16 Everybody had their say. Nobody was forced to agree
17 with anything. That's why not all the parties agreed.

18 When we were done with that, I said, okay, all
19 those parties that don't agree, you will have a chance
20 when we go down to tell the Commissioners why you don't
21 agree, what you think should be added to what we are
22 already saying, what should be taken away, what is
23 missing, you know, what are your problems with what most
24 of the parties agreed to. And the Commissioners will
25 listen to you. If they want to add those things, they

1 can; if they don't, then they don't have to. And in the
2 end, if you don't have a settlement, you will be going
3 back to hearing because that's the only thing left to do
4 based on what I could gather from what has happened in
5 the last two or three meetings.

6 So I was pretty blunt when I went in there and I
7 am not going to spend a lot of time because I don't do
8 that in settlements. We are either going to get
9 something or we are not. And that's how I approached
10 it.

11 But every party was given a chance to say what
12 they wanted to say and add what they wanted to add. And
13 in the end, if you have anybody to blame what is in
14 front of you, it is me, because, at least the way I took
15 it, I was asked by this Commission go down there and,
16 you know, do this and, you know, do some kind of
17 facilitation, see what you come back with.

18 Now, are you going to hurt my feelings if you go
19 back to hearing and don't agree with this? Absolutely
20 not. But I tried to come up with something that not
21 only all the parties can live with but that looked out
22 for the ratepayers, looked out for TEP, which is the
23 two, those are the two, you know, primary parties that
24 we look out for here at the Commission, is all the
25 ratepayers and those utilities that serve the

1 ratepayers. So that's what I was trying to do when I
2 did this. So that's the process we used out there.
3 That's how we came up with what we came up with.

4 Now, if I can go down the whole list of what was
5 done, we came up with a new Finding of Fact 23, which
6 basically would read something as follows. And anybody
7 that wants to jump in from the parties that wants to
8 help me out here, can. The new 23 would say: Applicant
9 will commence construction -- would not, important
10 word -- applicant will not commence construction on the
11 project until the following have occurred. And there is
12 now five different permits or approvals that would be
13 needed.

14 The first would be the issuance of a record of
15 decision for approval of the mine plan of operations for
16 the Rosemont copper mine.

17 And let's see. The other one, number two would
18 be the issuance of Section 404 permit by the United
19 States Army Corps of Engineers pursuant to, pursuant to
20 the Clean Water Act. I am trying to read Larry's
21 writing here. Right, Section 404. So that takes care
22 of the 404 permit.

23 And then the third would be certification by
24 Arizona Department of Environmental Quality pursuant to
25 Section 401 of the Clean Water Act. Certifying issuance

1 of 404 permit would not result in violation of Arizona
2 surface water quality standards.

3 Number four would be the issuance of an air
4 quality permit pursuant to the Clean Air Act. And the
5 issuing agency is left out there because we don't know
6 if it will be Pima County, DEQ, or EPA on the air
7 quality permit.

8 And the fifth one was acquisition of
9 right-of-way from Arizona State Land Department for the
10 transmission line across Santa Rita --

11 MR. ROBERTSON: Experimental range.

12 MR. OLEA: Right, for the construction across
13 the Santa Rita experimental range. That's the first
14 piece. So that deals with at least the group's New
15 Finding of Fact 23.

16 The other one is that TEP would submit proof of
17 bonding for the dismantling of the line. And for that I
18 am going to have Jason read how that would read.

19 MR. GELLMAN: Good afternoon.

20 The language would read as follows: TEP shall
21 submit proof that all costs regarding removal of the
22 transmission line shall be covered by one or more
23 mechanisms obtained by Rosemont Copper Company, its
24 successors or assignees to ensure funds are available.

25 MR. OLEA: And that would cover something that I

1 think was brought up by the lady on the phone and also
2 by Mr. Magruder, that you just saying that TEP would
3 charge the mine for that kind of left it open, but if
4 there was some kind of bond put up, that could cover it
5 in case the mine went out of business. So that's what
6 that was meant to cover.

7 COM. NEWMAN: By that you mean a performance
8 bond? What kind of bond?

9 MR. OLEA: It could be, it could be a
10 performance bond. It could be a letter of credit.
11 There are several ways to do it, but yes, that's
12 basically it.

13 The next one would be the way currently the CEC
14 is written gives TEP ten years to complete the project.
15 It would -- we changed that from ten to seven. It would
16 read as follows: This authorization to construct this
17 project shall expire unless the transmission line is
18 capable of operation within seven years from the date
19 the certificate is approved by the Arizona Corporation
20 Commission. And it gives them a chance to ask for a
21 time extension. But we changed the ten. It would be
22 from ten years to seven.

23 The other thing is that everybody was in
24 agreement with Newman 1. And I forgot exactly what that
25 covered, but everybody is in agreement with Newman 1.

1 CHMN. PIERCE: We could run that separately.

2 MR. OLEA: Yeah.

3 COM. NEWMAN: We could run that separately. And
4 I think I have some questions, follow-up questions that
5 come from, from one of the intervenors about whether it
6 needs to be expanded or not, and I will need that
7 dialogue.

8 CHMN. PIERCE: We will do that when we do
9 Newman 1.

10 Go ahead.

11 MR. OLEA: And then the next thing, there would
12 be a new condition added regarding who would own the
13 line. And it would just, and it will simply read:
14 Applicant shall construct -- and applicant is TEP --
15 applicant shall construct and own a 138kV transmission
16 line serving the Rosemont Copper Company's mining
17 operations.

18 The next item would be, there was a concern by
19 one of the parties about when would the line have to be
20 torn down, is there some kind of trigger for that. And
21 what we came up with is:

22 TEP shall certify annually until further order
23 of the Commission whether the service is still required
24 by means of this transmission line. Once service is no
25 longer required, TEP shall submit a plan for removal of

1 the transmission line.

2 So that covered the fact that when do you know
3 that this line is no longer needed so you would actually
4 have to tear it down, if you ever have to tear it down.
5 So that, and that also left it open that today the line
6 is being constructed for the mine. Let's say ten years
7 from now there is growth out there, something happens
8 out there where now TEP needs the line not for the mine
9 but for whatever other customers they have because it is
10 in their CC&N. So even though today the line is for the
11 mine, ten, 20 years from now, the mine could still be
12 operating but the line needed for something else. And
13 so just because the mine goes out of business, you would
14 have another 5,000 customers out there that need this
15 line. You don't want to tear the line down because you
16 have other customers.

17 I think I have got everything that the parties
18 agreed to. Now I think you should probably ask for
19 those parties that are -- oh, okay, one more thing.

20 There are a couple of places where we refer to
21 Rosemont mine, in the Burns No. 1, where there is a
22 couple of spots where you would have to change it to
23 Rosemont Copper Company or its successors and assignees.
24 I think you would have to do that in 25 and 26, and in
25 24 also.

1 COM. BURNS: Maybe 23. 23.

2 MR. OLEA: Right. You probably wouldn't do it
3 in our new version of 23. Do we have -- yes, several
4 parts in that new version of 23 where you have to do the
5 same thing. So --

6 CHMN. PIERCE: Rosemont Copper Company or its
7 assignees, okay.

8 COM. BURNS: Successors.

9 CHMN. PIERCE: Assignees or successors.

10 MR. OLEA: Yes.

11 COM. NEWMAN: Mr. Chairman.

12 MR. OLEA: Okay. So I think I have gone through
13 what most of the parties agreed to. What you might want
14 to do now is hear from those parties who are not in
15 agreement because I think they need to tell you what
16 their side is so you have everything.

17 COM. BURNS: And who is in agreement.

18 CHMN. PIERCE: Who is in agreement.

19 COM. BURNS: Who is and isn't.

20 MR. BLACK: Rosemont is in agreement.

21 MR. GELLMAN: TEP is in agreement.

22 MR. WAKEFIELD: If Pima County's intervention
23 was explicitly granted, we would be in agreement;
24 although, I did have one concern about what Mr. Gellman
25 read in terms of the language for the proof of the

1 bonding. I thought there were a few additional words
2 regarding environmental remediation that we had included
3 in there and he didn't include those.

4 MR. GELLMAN: That is correct. I kind of lost
5 my wording here. But yes, environmental remediation was
6 meant to be included.

7 MR. WAKEFIELD: With the inclusion of
8 environmental remediation and explicit granting of the
9 County's intervention, Pima County would be agreeable.

10 COM. KENNEDY: I would like to hear from
11 Ms. Webb.

12 CHMN. PIERCE: We are going to. But who else is
13 in agreement? Those in agreement, that's what we are
14 doing right now.

15 MR. ROBERTSON: Mr. Chairman, Scenic Santa Ritas
16 is in agreement. At an appropriate time I would like to
17 explain the reasons why we are in agreement.

18 CHMN. PIERCE: Okay.

19 MS. BERGLAN: Mr. Chairman, members of the
20 Commission, I may be in a bit of a unique spot, but the
21 Nation has a specific process for indicating its
22 agreement in any kind of settlement. And there isn't
23 just one person that I could contact, so I just don't
24 have authority to indicate my agreement.

25 CHMN. PIERCE: Thank you.

1 Okay. Still -- go ahead. Those that are in
2 agreement, are we there, or are you in agreement, no.
3 This is -- because I am going to who is not next. So
4 why don't we start with you then, Mr. Magruder.

5 MR. MAGRUDER: Mr. Chairman, this is hard for
6 me, because I have some real reasons.

7 I think that it is very important individuals be
8 able to intervene, because that's a part of our process.
9 They bring a unique spirit and unique set of comments
10 and characteristics. And one intervenor had a real
11 problem and wasn't able to do that. And I gave in my
12 briefings a whole bunch of reasons why I think we needed
13 to have additional hearings.

14 And I also don't think the time is critical,
15 because there is no schedule for the EIS because the
16 present one is unsatisfactory. So time is not so
17 critical that we have to rush to an agreement.

18 If the Commission acknowledges that they are not
19 able to fulfill these issues, and you can make a
20 decision on whatever basis you want to make a decision,
21 if you make a decision that you want to stop and finish
22 it today, I will go along with the agreement --

23 CHMN. PIERCE: Okay.

24 MR. MAGRUDER: -- but it is acknowledged that
25 you are missing a couple other things.

1 CHMN. PIERCE: Okay. Ms. Webb.

2 MS. WEBB: Mr. Chairman, members of the
3 Commission, Elizabeth Webb on behalf of myself.

4 I just want to make it clear from the beginning
5 that I took this seriously when we went in there. I was
6 prepared to do a blend and to do a negotiated
7 settlement. I had three small conditions. And I was
8 willing to give up the fact that an intervenor was
9 denied the ability to present evidence as required under
10 the statutes. I was willing to give up the fact that
11 there is evidence missing from the CEC regarding the
12 transmission line project. I was willing to give up the
13 fact that this application was not complete. And
14 unfortunately, those conditions, I was told that I
15 needed to ask you on one of them, number one, but even
16 if I did, my understanding was the Rosemont Copper was
17 going to oppose it.

18 So I want to preface what I have to say with
19 that, because it might be easier to read whatever I
20 wrote.

21 COM. NEWMAN: Please.

22 MS. WEBB: We have to recognize that what
23 happens now is going to be used in the future in
24 decisions related to line siting. And if the Commission
25 accepts this CEC, even as modified with these very

1 appropriate conditions, it is going to place a -- it is
2 going to show there is a very, very low value on the law
3 and on the statutes.

4 And that's a huge concern for me, because this
5 wasn't about the mine, this was about the transmission
6 line. I have known from the beginning they did not need
7 a 138kV line. So this was not about the mine. This was
8 about a transmission line through a very sensitive
9 historic area.

10 TEP and Rosemont Copper had their timely,
11 expeditious hearing in front of the Line Siting
12 Committee, but, unfortunately, that was at the expense
13 of meaningful participation of an affected individual
14 interested in the protection of the environment. Access
15 and timelines are not mutually exclusive.

16 And this was just the amendments that I was in
17 support of that we talked about earlier. For reasons
18 mentioned previously, while I may agree philosophically
19 with the components of the other amendments, I cannot
20 support any amendment that does not afford due process
21 for parties who are denied it at the Committee level.

22 And for the record, I have not flip-flopped
23 throughout these proceedings. I have continually
24 expressed my desire to present evidence related to the
25 transmission line project, which by all logic should

1 include associated access roads.

2 Before the line siting hearing began, in my
3 prefiled witness summary, let's see, I indicated the
4 cultural resources report for this application was
5 insufficient. That assertion was later validated by a
6 letter on the docket from the State Historic
7 Preservation Office to the Coronado National Forest.

8 From the beginning I indicated it was unfair to
9 allow only TEP and Rosemont Copper to consider the
10 environmental impacts of the proposed Rosemont copper
11 mine when it was to their benefit. That assertion was
12 later validated by the ACC Legal Staff.

13 I have many other relevant points related to the
14 transmission line project that I was willing to give up
15 and move on in this process so it could go through. I
16 honestly was going to work on this. And I can tell you
17 what it was. And maybe you guys would agree to it or
18 maybe you wouldn't. But, otherwise, I am in opposition
19 to anything but a Kennedy Amendment Proposed, Revised,
20 whatever, No. 2, and then I think it is 1 that denies.
21 All I wanted was some language that says due process was
22 not served before the Committee and that my status -- I
23 didn't go this far into it because it got shut down
24 fairly quickly, I felt that way -- my status was not
25 revoked, that the Committee does not have the right to

1 deny intervenors the right to present material,
2 nonrepetitive evidence and comments as required without
3 just cause and due process.

4 I understand there are processes at the
5 Commission level that allow people to be removed if
6 there is just cause and if they have some way to go
7 through due process to have that occur. So I am not
8 saying that never can it happen. What I am saying is
9 there should be a process where not just say this has
10 never been done before but we are going to take a vote
11 on it and you are gone. That is not due process. And
12 that's not the way things should be handled. That was
13 my one condition.

14 And then the other two I think they might have
15 been willing to work with me, which was data recovery
16 before construction begins in the known historic area of
17 Helvetia, and then two was to do oral histories. And
18 obviously, because I haven't thought about the blending
19 until the way up, I did have somebody for the hearing
20 process who was going to work on what those hours would
21 require like they did. When they did their Rosemont
22 Copper - AMEX land exchange they did data recovery. And
23 it is called New Rosemont. It is a town called New
24 Rosemont. They did the data recovery and they did oral
25 histories.

1 So those three minor things were the one things.
2 I was willing to give up everything else that happened
3 to be able to get this done today. So I just, on
4 principle, I can't, because this isn't about the mine,
5 this is about the transmission line siting process.
6 Thank you.

7 CHMN. PIERCE: Okay. Do we have anybody else
8 who did not get a chance to comment on that? We are --

9 COM. NEWMAN: Mr. Chairman, I have some
10 follow-ups.

11 CHMN. PIERCE: Well, when -- Mr. Olea, and I
12 guess to the parties, you know, you want to go through
13 each of these items one by one that would be a change.
14 At the end of the day, I am concerned that based on what
15 we just heard that I don't want to spend -- I want to
16 come back and do that if there is a majority up here
17 that want to proceed with this at that point as opposed
18 to moving on to some other alternative. Because, as I
19 recall, originally we voted three to two to take the
20 action we took and to send it back to hearing to gather
21 evidence from Ms. Webb.

22 And I don't -- personally I have a hard time
23 with putting on the record that we didn't have due
24 process. I would think Legal Division would have a
25 problem with that, too, that I think we would look at

1 what we are doing as a replacement for that if that
2 person agreed to that. And if that's not happening
3 here, then I appreciate the work. Honestly, what a
4 great amount of work you did in a short amount of time.
5 We know; we have watched other things go on. So thank
6 you, everyone. I appreciate it.

7 But I want to make sure. I know where
8 Commissioner Burns and were last time and I know where
9 Commissioner Kennedy and Commissioner Newman were last
10 time particularly. Commissioner Stump was kind of a
11 swing vote in that. So I want to put him on the spot
12 here to -- because we need some direction. And it would
13 save us a lot of time if we just knew where Commissioner
14 Stump stood so that we could proceed. Not that I like
15 three to two decisions, I like five/zero decisions, but
16 I think rather than have Mr. Olea go through a whole
17 litany, let's see if we should even be doing this.

18 COM. KENNEDY: Since I am on the board,
19 Mr. Chairman, I know you have asked for Mr. Stump but I
20 would like to clarify something.

21 CHMN. PIERCE: Sure. Go ahead.

22 COM. KENNEDY: Mr. Chairman, after sitting and
23 listening, let me say thank you to those who
24 participated to try and come up with a compromise. I,
25 too, like you, Mr. Chairman, feel the way you do. And I

1 appreciate Commissioner Burns for her amendment.

2 But I do believe that the due process issue is a
3 hard issue for me. And I was really hoping that that
4 had come out of the negotiations. It did not. It
5 changes my position. So just to let you know, it
6 changes my position.

7 CHMN. PIERCE: Towards the amendment, not
8 towards really what we voted out of here a couple months
9 ago.

10 COM. KENNEDY: That's right.

11 CHMN. PIERCE: Right. And that's what I
12 figured. That's why we kind of had a -- that's why I
13 would like to give Commissioner Stump a moment to --
14 because it will take us a half hour to do something
15 maybe we don't need to do, so we can go ahead.

16 MR. OLEA: And if I could speak to the very
17 issue we are talking about right now, which is the due
18 process thing --

19 CHMN. PIERCE: Sure.

20 MR. OLEA: -- and, then again, you are not
21 hearing from a lawyer, you are hearing from an engineer,
22 but I totally see Ms. Webb's position.

23 Let me tell you why it is not in the agreement.
24 It is because this is something that I felt the
25 Commissioners had to decide. And there may be some way

1 to word it where you could say something, but it is not
2 something I felt that we in that room could come up with
3 that wording to say, that this is something where I
4 think the five Commissioners would have to say -- if we
5 want it to say something to the Line Siting Committee
6 about how they do their process, I think that had to
7 come from the five Commissioners and not from the group
8 that was in that room.

9 And even though, you know, Rosemont may not like
10 that type of language or whatever, but I think there
11 might be a way for the Commissioners to say something to
12 the Line Siting Committee about their process. But it
13 is not in this agreement because I felt it was not
14 something that we could come up with. It was something
15 that you would have to come up with. First of all, do
16 you want to tell the Line Siting Committee something,
17 and, if you do, then how you say it would be up to you
18 five.

19 CHMN. PIERCE: Mr. Black, did you want to --

20 MR. BLACK: Just a clarification. Patrick Black
21 on behalf of Rosemont Copper.

22 We take the same position that Mr. Olea has
23 taken. We, just for clarification, we did not
24 specifically oppose what Ms. Webb was trying to do in
25 terms of getting language into the agreement. We would

1 like to have a CEC, or we would like TEP to have a CEC.
2 If the Commission feels that there is language that they
3 can put into the order that addresses the issues that
4 Ms. Webb has brought up, we don't oppose that.

5 CHMN. PIERCE: Okay. Ms. Wagner, I think now we
6 might need an executive session. Well, because this
7 is --

8 COM. NEWMAN: I know. I was asking you.

9 CHMN. PIERCE: Well, no, this is a different
10 issue.

11 COM. NEWMAN: It is the same issue.

12 CHMN. PIERCE: We are looking at now how we make
13 something stand up, I think, legally. What we might do
14 is what Mr. Olea and Mr. Black just talked about. I am
15 not talking about crafting something upstairs. I am
16 talking about legal questions about what will stand up,
17 what will not and what we need to do.

18 So I would move that we go into recess of the
19 regular session and go into executive session. We will
20 say that here so we don't have to set up here. All
21 those in favor of going into executive session say aye.

22 (A chorus of ayes.)

23 CHMN. PIERCE: Any opposed.

24 (No response.)

25 CHMN. PIERCE: So we are going to recess into

1 executive session. And we are going to come back down
2 and end the exec session down here and reconvene.

3 (A recess ensued from 2:29 p.m. to 3:42 p.m.)

4 CHMN. PIERCE: Let's begin. We are back in
5 session. I move that we exit executive session. All
6 those in favor say aye.

7 (A chorus of ayes.)

8 CHMN. PIERCE: Any opposed.

9 COM. NEWMAN: No.

10 CHMN. PIERCE: Okay. (Laughter) We are now out
11 of exec session. We will now reconvene in regular
12 session.

13 Okay. We are back in regular session. I passed
14 out a paragraph. And going directly to Ms. Webb, this
15 is meant to, in the way that we can as a Commission, try
16 to meet the first criteria you had. If we can, if we
17 can take care of this one, then we can work on the
18 others because I don't think they are as hard. But for
19 us legally, the first one was the toughest.

20 So, Ms. Webb, did you get a chance to read it?
21 Okay. Would you just tell us what -- if that, if that
22 will work for you. And then we can work on those other
23 ones.

24 MS. WEBB: Thank you, Mr. Chairman, members of
25 the Commission. Am I allowed to ask a question?

1 CHMN. PIERCE: Sure.

2 MS. WEBB: Can I possibly hear what Commissioner
3 Kennedy had to say about this? Because it was your
4 amendments that were going to allow us to go back to
5 hearing, I just wanted to hear. Or am I not allowed to
6 ask that?

7 CHMN. PIERCE: Let us find out what you are
8 asking because I want to go over to our Legal Division
9 and --

10 MS. WEBB: I may not just be asking right. Is
11 this something everybody agreed on? I mean you can't
12 tell me what happened in executive session.

13 CHMN. PIERCE: Right.

14 MS. WEBB: How do you feel about this one? Am I
15 allowed to ask that? I just don't know.

16 CHMN. PIERCE: Let me go ahead to Ms. Wagner,
17 who helped us in crafting this. She was our legal
18 counsel up there. So she can maybe give us a little bit
19 of a briefing, which I think you can, and if you have a
20 question we will go to Commissioner Kennedy.

21 MS. WEBB: Okay.

22 MS. WAGNER: Mr. Chairman, members of the
23 Commission, this is a proposed amendment that I worked
24 on the first draft of and then provided it to Chairman
25 Pierce's office. Actually, the other members of the

1 Commission have not had an opportunity to see this
2 before it was just passed out now.

3 As I understood or I think as we all heard your
4 comments earlier, you had three additional conditions
5 that you wanted to see added to the list of conditions
6 that Mr. Olea read earlier. One of them had to do with,
7 I think, the Committee process. And this is, this is
8 essentially my try on a first pass to come up with
9 something that I think I could recommend that the
10 Commission include in an order in this matter.

11 It is not a condition obviously. It would be a
12 new number. Let's see. It would be a No. 6 on page 3
13 of 4 of Burns 1.

14 But if you could, this is an attempt to try to
15 meet the request you made, and I guess if you could, the
16 ball is now in your court to give us an indication as to
17 whether this language is going to meet your concern.

18 CHMN. PIERCE: And that's, that's really where
19 we are at, Ms. Webb. It is for you to -- Commissioners
20 are all going to have a discussion about this, but we
21 need to know if this satisfies you. If it doesn't, we
22 are going, then we are going to move on.

23 MS. WEBB: Okay. And I appreciate the effort
24 that everyone has put into this. My concern is that
25 Commissioner Kennedy put a lot of thought and effort and

1 I know when Commissioner Stump made the comments about
2 due process that he probably stuck his neck out on the
3 line. And I think this is in the right direction.

4 I just would like to clarify somehow that, even
5 if it is through the 252 process, that I am an
6 intervenor. And I think that says that between the
7 lines here, but if that were somehow more explicit. But
8 if I can reserve exactly -- but this is the right
9 direction. And I am not opposed to it. I just would
10 like to hear what the other Commissioners have to say
11 before I make a final decision, if I can.

12 This is, if this clarifies that I am an
13 intervenor somehow, even through the 252 process, then I
14 probably would be comfortable.

15 This isn't about bashing something or getting
16 revenge or anything. This is about making it better for
17 people in the future in front of the Line Siting
18 Committee. So I appreciate there is a positive tone to
19 this.

20 So the only thing is I just, I just don't want
21 to do something that is counterintuitive to what the
22 Commissioners who have been supportive of the -- I mean
23 I am not saying you haven't been. I am not making it
24 sound right. But what I am saying is the Commissioner
25 that put forth the amendment in the first place. So

1 this is -- if there is some way to sort of clarify that
2 somehow, even if it was through the 252, that I am an
3 intervenor, I am good with this until I hear --

4 CHMN. PIERCE: Well, I think that's another
5 legal question. Is she an intervenor by virtue of this?

6 MS. WAGNER: It is my understanding that
7 Ms. Webb was granted intervention in the 40-252.

8 CHMN. PIERCE: Right.

9 MS. WAGNER: So that preceded where we are
10 today. Of course, that has been stayed to allow for
11 these processes to go forward.

12 CHMN. PIERCE: Right.

13 MS. WAGNER: But I think she is an intervenor.

14 CHMN. PIERCE: Yeah. And we could simply insert
15 made by intervenors, Ms. Webb and Mr. Magruder in that.

16 MS. WEBB: Okay. And so the only thing would be
17 left, I know that when you do put forth an amendment it
18 takes a lot of thought and effort. So if it would be
19 possible just to hear from Commissioner Kennedy before I
20 100 percent said I am behind this. Anybody who does the
21 amendments deserves to hear -- I mean to express -- I
22 don't know. I am not making any sense.

23 CHMN. PIERCE: You know what? And that's
24 really -- we are going to do that. But that's
25 something, you are out there and we are, and we are

1 going to each -- I guess we can each tell you. We have
2 been in exec session. We have been trying to resolve
3 this as best we can legally with our legal counsel as
4 well. So if you want to hear from each of us, that's
5 fine.

6 Commissioner Kennedy.

7 COM. KENNEDY: Thank you, Mr. Chairman.

8 I did just get the language. And I think I am
9 okay with the word intervenor being included in that
10 last sentence of the paragraph. So...

11 CHMN. PIERCE: Okay. Commissioner Stump, let's
12 just go --

13 COM. NEWMAN: I will say something.

14 CHMN. PIERCE: Go ahead.

15 COM. STUMP: This is, Mr. Chairman, I support
16 this language. I think it is well crafted. And I would
17 simply echo Commissioner Kennedy's comments to that
18 effect.

19 CHMN. PIERCE: And it is plural, intervenors.
20 Commissioner Newman.

21 COM. NEWMAN: This is language that I would
22 support. It recognizes the importance of intervenors as
23 well as sends a strong message that at least those on
24 the Commission, we value the time and the input of the
25 intervenors. And we want them to know that and give

1 them as much time as they need to make their cases and
2 all that. And so it is, it is a general message as well
3 not only just regarding the intervenors, it has other
4 meanings, I think, that are salutary, helpful.

5 CHMN. PIERCE: Commissioner Burns.

6 COM. BURNS: Yes, I would support the amendment.

7 CHMN. PIERCE: Okay.

8 COM. BURNS: I am happy to have the intervenors.

9 CHMN. PIERCE: For those in the audience, I am
10 going to read this. What this is is it adds a 6 on
11 page 4. And it is:

12 The Commission values the intervention and
13 participation of members of the public in the siting
14 process. Such intervenors provide a unique perspective
15 to proceedings and we value their input. We appreciate
16 the contributions made by intervenors Ms. Webb and
17 Mr. Magruder in this case.

18 Now, that's the sum total of the statement for
19 those who are out there and didn't get a copy of it and
20 the public who might be listening in. So that's what we
21 were just talking about. So as Ms. Wagner said, the
22 ball is in your court, so...

23 MS. WEBB: Mr. Chairman, members of the
24 Commission, I appreciate the work that you put into
25 this. I know we have been here all day and I know this

1 has been a difficult situation for everyone involved.
2 And I appreciate this and I do accept this language.

3 CHMN. PIERCE: Okay. What were the other two
4 items that we were talking about, the communities that
5 you -- we wanted to, if this is fine, then I think we
6 wanted to address those other.

7 COM. NEWMAN: Helvetia.

8 MS. WEBB: Helvetia. Mr. Chairman, members the
9 Commission, we did have extensive discussion while you
10 were gone. Unfortunately this was the make or break for
11 me. So I don't believe there was any language that was
12 potentially crafted. But I am going to turn that over
13 to TEP and they can tell you.

14 CHMN. PIERCE: Would you do that, please.

15 MR. GELLMAN: Mr. Chairman, Commissioners, we
16 will give this language a shot.

17 We would propose adding this as the last
18 sentence to Condition 25 of the CEC, quote, applicant
19 will complete cultural recovery and, comma, as part of
20 the recovery efforts, comma, perform an oral history for
21 the Helvetia town site for areas that will be disturbed
22 by the transmission line to the extent this activity is
23 not already part of the treatment plan.

24 CHMN. PIERCE: Okay. You know what we are going
25 to do? We are going to have that read after we -- it

1 seems like we are going to be okay.

2 Mr. Olea, we are going to have each, but
3 those -- is that going to be okay when they finish it?

4 COM. NEWMAN: No, he is not okay.

5 MS. WEBB: Mr. Chairman, members of the
6 Commission, most of it I am okay with. But, again, we
7 didn't really have time to work on some wordsmithing.
8 And there are a couple things in there that send up some
9 red flags for me on the end part.

10 CHMN. PIERCE: Okay.

11 COM. NEWMAN: Do you want a five-minute break?

12 CHMN. PIERCE: I was going to say everybody else
13 knows what Mr. Olea is going to say to us on each of
14 the -- and we are going to go through amendments on
15 that. Would it be possible for that to be worked on
16 while we do that or do you need five minutes?

17 Maybe, Jason, you and Elizabeth can do that.

18 MR. GELLMAN: We can work on that.

19 MS. WEBB: Thank you.

20 CHMN. PIERCE: Okay. We are at this point now
21 where Commissioner Burns will move her amendment. And
22 then we are going to do a series of verbals to it and
23 come back and do this verbal last.

24 What we will do, and we will recess if we
25 are -- I am sorry.

1 MR. OLEA: Mr. Chairman, for your, for the ease
2 of operation here, we have passed out a white paper
3 entitled Settlement Amendment 1, Settlement Amendment 2,
4 all the way through 6. So you would do one at a time
5 and those would be the amendments to the Burns Amendment
6 No. 1.

7 CHMN. PIERCE: Okay.

8 MR. ROBERTSON: Mr. Chairman.

9 CHMN. PIERCE: Yes, sir.

10 MR. ROBERTSON: You may recall earlier when I
11 expressed the support of Scenic Santa Ritas for the
12 revised language for Condition 23 I indicated I would
13 like to have an opportunity as to why we could support
14 it. So at an appropriate time I just wanted to mention
15 that.

16 CHMN. PIERCE: Do we want to get all the way
17 through 23 before we do that or do we want to have him
18 beforehand? Let's do it beforehand because we are going
19 to be voting.

20 So yeah, go ahead, Mr. Robertson.

21 MR. ROBERTSON: I appreciate that opportunity.

22 I wanted to share with the Commission some
23 insight to the process as to how we arrived at our
24 ability to support revised Condition 23.

25 When we started out in this proceeding at the

1 Siting Committee level, we had two goals. One was to be
2 able to offer evidence of the environmental impact of
3 the Rosemont mine into the record, and, secondly, to
4 have language in a CEC condition that would make very
5 clear the conditions under which construction on the
6 line could begin or, stated differently, that which had
7 to occur before construction could begin. So we
8 proffered evidence at the Siting Committee level that
9 was excluded. And, as you know, we thereafter filed an
10 offer of proof. And we also proposed a CEC condition
11 for what is now Condition 23 in the CEC. And that was
12 rejected by the Siting Committee.

13 Thereafter we experienced more success at the
14 Commission level, initially in your March 21st, 2012
15 Decision No. 73074, which would have afforded an
16 opportunity to present evidence of the environmental
17 impact of the Rosemont mine at the additional proceeding
18 to be conducted pursuant to A.R.S. 40-252. So that
19 addressed our goal to be able to offer evidence of the
20 environmental impacts of the mine. And that
21 subsequently was reiterated in Commissioner Kennedy's
22 May 10th, 2012 Proposed Amendment No. 2 for which we are
23 very appreciative.

24 The Decision 73074 and Commissioner Kennedy's
25 Amendment No. 2, however, did not address the revised

1 CEC condition goal that we had. And so that continued
2 to be a goal, so to speak, that we wanted to pursue.

3 Where we find ourselves today is presented with
4 a decision as between the two goals we had which are not
5 provided for within a single amendment which is now
6 before you. In that regard, there is no guarantee
7 looking at Commissioner Kennedy's Amendment No. 2 in
8 Decision 73074 that after a proceeding in which you
9 received evidence of the environmental impact of the
10 mine you would arrive at a decision to deny a CEC for
11 this project, whereas revised Condition 23 in Burns
12 No. 1 which is now before you does reach our goal of
13 having a very specific occurrence which must take place
14 before commencement of construction of the line can
15 begin.

16 Further, if the settlement is not accepted using
17 Burns No. 1 as the vehicle, as we understand Chairman
18 Pierce's Amendment No. 1 and the procedure he would
19 envision, we would not really have a meaningful role of
20 participation in the evidentiary hearing that would be
21 conducted. It would be limited to evidence on the line
22 and evidence within the scope of what Ms. Webb had filed
23 with the Commission on December 6, 2010.

24 So against that background, realizing that the
25 circumstances are we would not be able to fully reach

1 each goal, we decided to support revised Condition
2 No. 23. In fact, we played a very direct and meaningful
3 role in the shaping of the language of that condition.

4 And in that regard, I would like to add another
5 factor that influenced our ability to support it. One
6 of the occurrences that must occur within the revised
7 Condition 23 language is issuance of a record of
8 decision for approval of the mine plan of operations for
9 the Rosemont copper mine. Now, initially I had wanted
10 to add some of the required occurrences, completion of
11 the Section 7 Consultation process pursuant to the
12 Endangered Species Act and completion of the
13 consultation process pursuant to the National Historic
14 Preservation Act. However, in discussions with
15 Mr. James, counsel for Rosemont, he advised me that as
16 part of the record of decision process, usually those
17 consultations are required to be completed before a
18 record of decision can be issued by the Forest Service
19 in this instance. So against that background, and that
20 representation, we did not push for those two additional
21 features to be completed.

22 Mr. Chairman, I appreciate the opportunity to
23 explain why we can support the settlement and to also
24 express our appreciation for Kennedy Amendment No. 2.
25 Thank you.

1 COM. NEWMAN: So you can't? You actually said
2 can't.

3 CHMN. PIERCE: He said can.

4 MR. ROBERTSON: I am sorry?

5 CHMN. PIERCE: What was your last phrase?

6 MR. ROBERTSON: And to express our appreciation.
7 If I said can't --

8 CHMN. PIERCE: Just before that, whether you can
9 or can't support.

10 MR. DERSTINE: Do you or don't you?

11 MR. ROBERTSON: Oh, no, we do support.

12 Mr. Chairman, it has been a long time. If I misspoke, I
13 apologize.

14 CHMN. PIERCE: Thank you.

15 Commissioner Burns.

16 COM. BURNS: Thank you, Mr. Chairman. I move
17 the adoption of the Burns Amendment No. 1.

18 CHMN. PIERCE: Okay. Mr. Olea, for the
19 amendments.

20 MR. OLEA: Yes. If we could start with the one
21 entitled Settlement Amendment 4, it is the new
22 Condition 23 where you would delete the existing
23 condition and add the language -- do you want me to read
24 the whole thing?

25 CHMN. PIERCE: No. We all have it.

1 MR. OLEA: Okay.

2 CHMN. PIERCE: Okay. This is what you explained
3 before? Okay.

4 MR. OLEA: Yes.

5 CHMN. PIERCE: All those in favor -- well, I
6 need it moved. Would you move Settlement Amendment
7 No. 4.

8 COM. STUMP: Mr. Chairman, I move Settlement
9 Amendment No. 4.

10 CHMN. PIERCE: Settlement Amendment No. 4 has
11 been moved. All those in favor say aye.

12 (A chorus of ayes.)

13 CHMN. PIERCE: Any opposed.

14 (No response.)

15 CHMN. PIERCE: Thank you. Motion carries.

16 MR. OLEA: And the next one, you would go to
17 Settlement Amendment 3, which is actually a new
18 condition. It would be 28 on page 2 of 4 of the Burns
19 Amendment No. 1. And it basically talks about that TEP
20 will submit proof that --

21 CHMN. PIERCE: Right.

22 MR. OLEA: -- they have the bonding for that
23 from Rosemont in case they got to tear the line down.

24 CHMN. PIERCE: Move it.

25 COM. STUMP: Mr. Chairman, I move Settlement

1 Amendment No. 3.

2 CHMN. PIERCE: Settlement Amendment No. 3 has
3 been moved. All those in favor say aye.

4 (A chorus of ayes.)

5 CHMN. PIERCE: Any opposed.

6 (No response.)

7 CHMN. PIERCE: Motion carries.

8 Mr. Olea.

9 MR. OLEA: Now you go to Settlement Amendment
10 No. 1. That would be a new Condition 27 that just says
11 TEP will construct and own the line serving the copper
12 mine.

13 COM. STUMP: Mr. Chairman, I move Settlement
14 Amendment No. 1.

15 CHMN. PIERCE: Settlement Amendment No. 1 has
16 been moved. All those in favor say aye.

17 (A chorus of ayes.)

18 CHMN. PIERCE: Any opposed.

19 (No response.)

20 CHMN. PIERCE: That motion carries.

21 COM. NEWMAN: I don't oppose but just point of
22 information. This still implies that Rosemont Copper
23 Company or its -- or is paying for the line, paying for
24 the mitigation, but we don't say it here.

25 CHMN. PIERCE: I think in that is, if something

1 falls apart, TEP, don't expect to recover from
2 ratepayers, you know.

3 COM. NEWMAN: That's in the main body?

4 CHMN. PIERCE: It is there.

5 COM. NEWMAN: Okay. I just wanted to make sure.

6 CHMN. PIERCE: Yeah. Ratepayers are never
7 paying for this. That's the point, right.

8 Okay. Go ahead, Mr. Olea.

9 MR. OLEA: Okay. Settlement Amendment No. 5,
10 now, that would add a new Condition 29 to Burns No. 1 on
11 page 2 of 4. And this is basically that TEP will
12 certify annually that they still require the line to
13 provide service, and if a time comes when they don't
14 need the line to provide service, they will file a plan
15 for removal of the line.

16 CHMN. PIERCE: Okay. Move it.

17 COM. STUMP: Mr. Chairman, I move Settlement
18 Amendment No. 5.

19 CHMN. PIERCE: Settlement Amendment No. 5 has
20 been moved. All those in favor say aye.

21 (A chorus of ayes.)

22 CHMN. PIERCE: Any opposed.

23 (No response.)

24 CHMN. PIERCE: Motion carries.

25 MR. OLEA: Now, and I think the last one that

1 would amend Burns Amendment No. 1 is Settlement
2 Amendment No. 6. And that would basically insert, in
3 the place of Rosemont mine, you would insert Rosemont
4 Copper Company, its successors and assignees in all the
5 proper places for the conditions that are listed as 24
6 and 25 and 26 in Burns Amendment No. 1.

7 CHMN. PIERCE: Making all conforming changes is
8 just in case we miss one.

9 MR. OLEA: Right.

10 CHMN. PIERCE: Commissioner Newman.

11 COM. NEWMAN: Yeah, I have a question about this
12 one. It is not a hard question. It is a clarifying
13 question.

14 Of course I understand contract law and
15 assignees, what that means. But you had made mention of
16 the holding company in Canada. There is another, a
17 member of the public today made mention of we should
18 have bonding perhaps because -- actually I am not even
19 sure how this thing is being financed. That was never
20 explained to me during this process. So what if there
21 is a hedge fund like was mentioned by the public? We
22 dealt with that in bonding.

23 I don't understand, if the people who are
24 pulling the strings on this operation are the company in
25 Canada, why we are not naming them. Does anybody have a

1 comment about that? I have no idea why we are not
2 naming them. And I would want it to be in this
3 amendment. And I know I wasn't part of the settlement
4 agreement but it doesn't make any sense not to include
5 them as fiduciaries.

6 MR. JAMES: Mr. Chairman, Commissioner Newman,
7 Norm James again, representing Rosemont.

8 The reason -- well, let me back up a step.
9 Augusta Resources is the parent company.

10 COM. NEWMAN: Right.

11 MR. JAMES: They are not -- they don't own any
12 of the assets. They don't own any of the facilities.
13 They won't hold any of the permits, including permits
14 or -- for example, the plan of operations, as we have
15 discussed before, has reclamation requirements in it.
16 So all the land holdings, everything is going to be
17 owned by Rosemont Copper Company. And Augusta Resources
18 doesn't do business in Arizona or even, for that matter,
19 in the United States. So it wouldn't seem to make a lot
20 of sense to include a foreign company in something like
21 this.

22 COM. NEWMAN: Well, I will give you an example.
23 I will give you a hypothetical. Let's say the foreign
24 company was in China, not in Canada, and we are allowing
25 them to basically have a line. We are giving them

1 permission to have a line. And I could have used
2 another country like south -- let's say Venezuela or
3 something like that. The funds, I have no idea how you
4 are financing this operation. It is not a matter of
5 public knowledge.

6 And so are you telling me there is nobody in
7 Canada trying to raise money for this project that's
8 affiliated with the parent company?

9 MR. JAMES: Well, there are a couple things
10 there. First of all, Augusta Resources is a public
11 company. It is publicly traded. There is information
12 available on Augusta Resources if you just go to Google.

13 COM. NEWMAN: That's not my job. It is not my
14 job to check up on them. I want to make sure that they
15 are named in this because they have some sort of
16 fiduciary relationship with the company, whether they
17 can do business here or not. Just because they are
18 hiding in Canada doesn't mean that their actions here
19 don't afford, afford civil jurisdiction over their
20 actions. And I will ask counsel to back me up on that.
21 Personal jurisdiction.

22 MR. JAMES: Well, they are not -- well --

23 COM. NEWMAN: Well, they are not in personal
24 jurisdiction because they haven't registered with the
25 Corporation Commission as a company? Don't act as if

1 they don't exist. How are you raising money for this
2 project if it is not involving the parent company?

3 MR. JAMES: I am happy to answer your questions
4 if you will let me.

5 COM. NEWMAN: I will let you.

6 MR. JAMES: Okay. First of all --

7 COM. NEWMAN: But so far you haven't answered
8 them very well.

9 MR. JAMES: Well, because I haven't had a
10 chance, Commissioner. Again, as I said earlier, Augusta
11 Resources is publicly traded. They are not hiding
12 anything. They are very easy to research but not doing
13 business in Arizona. And the line itself is not going
14 to be owned by Rosemont Copper. It is going to be owned
15 by TEP. So I don't know what the urge is to investigate
16 Augusta Resources, a company that doesn't do business
17 here.

18 Now, I haven't, admittedly, I haven't read the
19 most recent cases on personal jurisdiction. And
20 Ms. Wagner, you have asked her to address this. But I
21 don't think you have, I know you don't have jurisdiction
22 over Rosemont Copper because it is not a utility and it
23 is not a public service corporation, I don't think that
24 you have jurisdiction over companies that do business in
25 other states and not here.

1 COM. NEWMAN: Okay. So you don't want to, you
2 don't want -- you only take responsibility, you are
3 taking responsibility for Rosemont.

4 MR. JAMES: We are taking responsibility --

5 COM. NEWMAN: -- for Rosemont company but you
6 don't want to take it for your parent. I am just
7 bringing up the point.

8 I have been following the mine situation
9 probably longer, just as long as you have, maybe longer.
10 And this didn't come to us as Rosemont originally. It
11 came to us as the company in Canada. You may have
12 changed to a Rosemont Copper Company doing business in
13 the State of Arizona therefore subject to personal
14 jurisdiction.

15 Yes, we are the Corporation Commission, trying
16 to site a transmission line for a mining company. Our
17 jurisdiction over you stems from this line. You are
18 asking us give us this line. We have jurisdiction over
19 you.

20 CHMN. PIERCE: We do not have --

21 COM. NEWMAN: We have --

22 CHMN. PIERCE: Hold on a second.

23 COM. NEWMAN: -- jurisdiction over TEP and the
24 transfer of all these assets. You can't separate it.

25 Why, why won't you just say okay to adding the

1 parent company's name as, as an assignee or designator
2 actually under contract law?

3 MR. JAMES: Because, again, that's why we,
4 that's why we have Rosemont Copper Company.

5 COM. NEWMAN: It also protects the parent
6 company from any mention in any of these documents here
7 and prevents us -- that's one reason I am mentioning it
8 by the way now. Even if I don't get this amendment on,
9 I guess it doesn't mean that they are not susceptible to
10 service in Arizona.

11 I just don't know how -- the second part of it,
12 you were going to tell me how I shouldn't be concerned
13 about the parent company because the way you are raising
14 money for this is not really some sort of hedge fund.
15 How are you raising money for the project?

16 CHMN. PIERCE: Hold on. We are getting into --
17 the transmission line is going to be paid for by
18 Rosemont. TEP is going to build it and own it.

19 COM. NEWMAN: Okay.

20 CHMN. PIERCE: And so if you want to make a
21 motion to include that, let's move Amendment No. 6.

22 COM. NEWMAN: I will make --

23 CHMN. PIERCE: Let me move -- move Amendment
24 No. 6.

25 COM. STUMP: Mr. Chairman, I move Settlement

1 Amendment No. 6.

2 CHMN. PIERCE: Okay. Commissioner Newman, make
3 your motion.

4 COM. NEWMAN: And, Mr. Chairman, sometimes my
5 voice goes in a certain, it just -- a certain pattern.
6 I didn't mean to even think that counsel was being hit
7 with too many questions.

8 I just don't understand under assignee law why
9 we can't add the parent company. I don't see it as that
10 big of a problem. And I offer the amendment, an
11 amendment to the amendment. It might not win, but just
12 for the purposes of discussion, Steve, can you help me
13 where it needs to fit in, or counsel? If it loses, so
14 be it, but the point will have been made.

15 CHMN. PIERCE: Ms. Wagner, I think where he
16 wants it is probably in parentheses somewhere, the name
17 of the company.

18 MS. WAGNER: Right. Just as an example, after
19 its successors and assignees, if you had in parentheses
20 or their parent holding company.

21 COM. NEWMAN: Yes.

22 CHMN. PIERCE: Okay. All those in favor of
23 Newman's parent holding company amendment which would
24 follow each, each individual piece of language that
25 includes the name of the company, all those in favor say

1 aye.

2 COM. NEWMAN: Aye.

3 COM. KENNEDY: Aye.

4 CHMN. PIERCE: All opposed say no.

5 No.

6 COM. STUMP: No.

7 COM. BURNS: No.

8 COM. NEWMAN: Split the vote.

9 CHMN. PIERCE: The nos carry.

10 COM. NEWMAN: I ask for a roll call. Is it too
11 late?

12 CHMN. PIERCE: I said the nos carry.

13 COM. NEWMAN: I actually said it at the same
14 time, but it is okay.

15 CHMN. PIERCE: You said split the vote. I don't
16 know what that means. The vote was split.

17 COM. NEWMAN: Well, you can record the vote, but
18 it is okay.

19 CHMN. PIERCE: The motion failed.

20 COM. NEWMAN: The motion failed but it appeared
21 as if Commissioner Kennedy and I voted for that
22 amendment.

23 CHMN. PIERCE: Okay. All those in favor of
24 Settlement Amendment No. 6 say aye.

25 (A chorus of ayes.)

1 CHMN. PIERCE: Any opposed.

2 (No response.)

3 CHMN. PIERCE: That motion carries.

4 Next amendment.

5 MR. OLEA: Chairman and Commissioners, I believe
6 as far as the amendments to the Burns Amendment 1,
7 that's it. The three you have left, that would be
8 separate ones, would be Settlement Amendment No. 2,
9 which actually amends Condition 6 in the existing CEC,
10 and then you have the one that's proposed by Staff about
11 the cathodic protection. And then you have Newman
12 No. 1.

13 CHMN. PIERCE: Okay. I have the language.
14 Okay. And this is, Ms. Wagner, this fits in as a
15 Condition No. 8 on page, sorry, on page 3.

16 MS. WAGNER: Mr. Chairman.

17 CHMN. PIERCE: Go ahead.

18 MS. WAGNER: Actually, it is better as a new
19 finding of fact on page 3 of 4, line 8.

20 CHMN. PIERCE: New finding of fact on page what?

21 MS. WAGNER: On page 3, line 8, right before the
22 conclusions of law.

23 CHMN. PIERCE: Okay. And that will be Pierce
24 No. 2. We will just -- well, you know what? That's
25 just -- no, no. We will make that No. 7, or Amendment

1 No. 7.

2 Okay. Okay. Amendment No. 7 is a new finding
3 of fact for page 3, line 8. And it doesn't need the
4 No. 6 then?

5 MS. WAGNER: It is new Finding of Fact No. 6.

6 CHMN. PIERCE: Finding of Fact No. 6. Okay.

7 COM. NEWMAN: And where?

8 CHMN. PIERCE: Why don't you move that.

9 COM. STUMP: Mr. Chairman, Pierce No --

10 CHMN. PIERCE: Well, no, no. It is Amendment
11 No. 7, Settlement Amendment No. 7.

12 COM. STUMP: Mr. Chairman, I move Settlement
13 Amendment No. 7.

14 CHMN. PIERCE: This is Settlement Amendment
15 No. 7.

16 COM. NEWMAN: Which one is this?

17 CHMN. PIERCE: It is the one Janet wrote for
18 Ms. Webb.

19 COM. NEWMAN: Oh, I just didn't know the number.

20 CHMN. PIERCE: No, that is the verbal includes
21 intervenors --

22 MS. WAGNER: Yes.

23 CHMN. PIERCE: -- in this one. And that's
24 included in this Amendment No. 7.

25 All right. All those in favor say aye.

1 (A chorus of ayes.)

2 CHMN. PIERCE: Any opposed.

3 (No response.)

4 COM. NEWMAN: Mr. Chairman, Mr. Magruder had a
5 point of order or something.

6 CHMN. PIERCE: I am sorry. Mr. Magruder.

7 MR. MAGRUDER: Mr. Chairman, since my name is
8 mentioned in there, I would like to make a few
9 suggestions.

10 In the actual CEC, Ms. Webb's name is not
11 mentioned. And I would suggest that on page 2 of the
12 actual CEC, before Marshall Magruder, you put Elizabeth
13 Webb and Marshall Magruder on page 2 of the CEC, line
14 16, and that this paragraph 6 would fit very nicely as a
15 following paragraph to wherever you have Ms. Webb's
16 name. So she would be shown as an intervenor and this
17 paragraph would then continue in that location in the
18 CEC instead of putting it buried -- or the Burns
19 Amendment could put it as another paragraph, but this is
20 where it should best be located in the CEC itself, in my
21 opinion.

22 MS. WAGNER: Mr. Chairman, this gets into
23 actually something we struggle with here. We don't
24 actually change the CEC. The CEC comes from the Siting
25 Committee.

1 CHMN. PIERCE: Right.

2 MR. MAGRUDER: Okay.

3 MS. WAGNER: We have then sample orders.

4 CHMN. PIERCE: We always amend it.

5 MR. MAGRUDER: Okay, okay.

6 CHMN. PIERCE: Thank you. And I know you knew
7 that.

8 MR. MAGRUDER: No, I didn't know. But I think
9 it should be amended, the CEC amended to be put on
10 page 2 after line 16, is where I think it would fit
11 best.

12 COM. NEWMAN: But we can't do it under our
13 power.

14 MS. WAGNER: Mr. Chairman, just as a matter of
15 procedure, we just, we use the sample orders as the
16 vehicle --

17 CHMN. PIERCE: Right.

18 MS. WAGNER: -- for accomplishing the
19 Commission's order. We just don't change the CEC
20 because the CEC is the product of the Line Siting
21 Committee. And just the standard procedure that we have
22 used here, that seems to work pretty well --

23 MR. MAGRUDER: Okay.

24 MS. WAGNER: -- is the sample orders.

25 MR. MAGRUDER: That's fine. But my quick

1 response is could you please put Elizabeth before Webb
2 and Marshall before Magruder, especially since their
3 names aren't mentioned anyplace else.

4 CHMN. PIERCE: The CECs are signed by Foreman
5 and I think it is -- go ahead.

6 ALJ RODDA: He means in the amendment.

7 COM. NEWMAN: Just their full name. I have no
8 objection to that.

9 MR. MAGRUDER: I am not trying to make a big
10 deal.

11 MS. WAGNER: You will authorize that and direct
12 us.

13 CHMN. PIERCE: Full names, that's a good idea.
14 Okay. What did we find out?

15 MS. WEBB: Mr. Chairman, members of the
16 Committee, unfortunately he doesn't have a printer. Do
17 we need to come off of that?

18 CHMN. PIERCE: Read it into the record. This
19 would be, this would be Settlement Amendment No. 8. Go
20 ahead.

21 MR. GELLMAN: We propose that this now be the
22 last few sentences of Condition 25, and I can send this
23 to Mr. Hains, too, but, quote:

24 Applicant will complete cultural resource
25 recovery and, comma, as part of the recovery efforts,

1 comma, perform oral histories for the Helvetia town site
2 for areas that will be disturbed by the transmission
3 line project to the extent this activity is not already
4 part of the treatment plan, period.

5 Next sentence: The items recovered shall be
6 handled in accordance with state law and, to the extent
7 allowed, will be provided to regional historical
8 organizations, period.

9 Next sentence: The results will be provided to
10 Arizona State Museum and Pima County subject to
11 restrictions on disclosing information regarding
12 specific cultural resources, period.

13 CHMN. PIERCE: Okay. We have that here. And,
14 Jason, you will forward that?

15 Anything else?

16 MR. OLEA: Mr. Chairman, and just for clarity,
17 because Mr. Gellman referenced Condition 25, it is
18 Condition 25 in the existing CEC, not Condition 25 in
19 the Burns Amendment.

20 CHMN. PIERCE: Okay. So that is not an
21 amendment to the Burns, to the Burns Amendment.

22 MR. GELLMAN: I apologize. Yeah. It would
23 be -- we meant it as the last few sentences to the
24 original. It could be a separate amendment.

25 CHMN. PIERCE: Okay. We will do that. We will

1 do that in just a minute. Okay. That's all the
2 amendments on the Burns.

3 MR. WAKEFIELD: I would just remind the
4 Commission of the County's request that its intervention
5 be explicitly granted as part of the proceeding.

6 CHMN. PIERCE: That's the last issue that you
7 have?

8 MR. WAKEFIELD: Yes.

9 COM. NEWMAN: Mr. Chairman, would you like to
10 discuss that?

11 CHMN. PIERCE: Yes, I suppose we ought to.

12 COM. NEWMAN: I had mentioned before that I
13 favor intervention and said it on the record a few hours
14 ago. In fact, I actually -- I see them, excuse me, I
15 see them as a necessary party.

16 There is some folks who are concerned that
17 granting intervention grants some, a legal status to sue
18 that that can come back to haunt the Commission. I
19 don't see it that way. I see Pima County as having
20 their own duty to protect the public interests of the
21 citizens of Pima County that have been on record now for
22 a long time about their feelings about this case.

23 They were not at the Line Siting Committee.
24 That makes their intervention here even more important.
25 I know that they have gone to some, the Pima County

1 supervisors have gone to some extent in hiring outside
2 counsel with an expertise from the regulatory bar of the
3 Commission. That is something they really don't usually
4 do.

5 And I do not feel a threat of suit because what
6 I heard from counsel earlier in the day was that he
7 would like to settle, be a part of the settlement. He
8 is only asking for the intervenor status.

9 CHMN. PIERCE: Let me -- you are comfortable.
10 Let me see if I can get comfortable real quick.

11 COM. NEWMAN: I am trying to get comfortable.

12 CHMN. PIERCE: You are comfortable.

13 Why is it important, Mr. Wakefield, for Pima
14 County to have intervention?

15 MR. WAKEFIELD: It is important in the event
16 that the proceeding gets back in front of the
17 Commission, for instance, with respect to a subsequent
18 filing that may be made.

19 CHMN. PIERCE: Or a 252?

20 MR. WAKEFIELD: The extension of the seven back
21 to ten years or some other topic. So it is not -- I
22 mean we are on board with this proposal as it is being
23 considered. So it is not for the purpose of furthering
24 this proceeding on any appeal at this point. It is to
25 have the right to participate if this proceeding is back

1 in front of this Commission because of some subsequent
2 filing by the applicant or whatever else may bring it
3 back to this Commission.

4 CHMN. PIERCE: And, Mr. Wakefield, if that's the
5 purpose, so that we do a 252 and you have, you know,
6 that status, I think we could probably give you status
7 at that time, too. But I can see that. I am not going
8 to oppose it then.

9 COM. NEWMAN: Thank you, Mr. Chairman.

10 CHMN. PIERCE: I am going to move that Pima
11 County be given -- well, I don't do that. Let's do --
12 do you want to do this in this amendment? I can do that
13 separately, correct?

14 MS. WAGNER: You could do that as a verbal
15 amendment and we will insert it.

16 CHMN. PIERCE: Where it needs to be, not in the
17 Burns Amendment, or in the Burns Amendment?

18 MS. WAGNER: The Burns Amendment is in essence a
19 proposed order.

20 CHMN. PIERCE: In this amendment, this will be
21 No. 9 -- well, I don't know if the number was No. 8 --
22 whatever number we need to assign it.

23 MS. WAGNER: It would be new No. 7.

24 CHMN. PIERCE: Okay. I move that Pima County be
25 granted intervention.

1 COM. NEWMAN: Second that motion.

2 CHMN. PIERCE: All those in favor say aye.

3 (A chorus of ayes.)

4 CHMN. PIERCE: Any opposed.

5 (No response.)

6 COM. BURNS: I just -- you said it was No. 7. I
7 thought the one with Ms. Webb was No. 7 and this was
8 No. 8.

9 CHMN. PIERCE: Yeah. It is No. 8, for the
10 record.

11 COM. BURNS: For the record, yeah.

12 CHMN. PIERCE: So that will be No. 8.

13 MS. WAGNER: No, it is No. 7.

14 CHMN. PIERCE: We did designate --

15 MS. WAGNER: It is, it would be Finding of
16 Fact 7 on page 3, because you had a new Finding of Fact
17 No. 6.

18 CHMN. PIERCE: But it is another -- the
19 Amendment No. is 8.

20 MR. OLEA: Okay.

21 CHMN. PIERCE: The Amendment No. is 8, for the
22 record, and Finding of Fact No. 7. And that's the
23 point.

24 MS. WAGNER: Have you moved it?

25 CHMN. PIERCE: We have not moved the amendment

1 as amended yet. We have already passed --

2 MS. WAGNER: And before you do that, I think it
3 would make sense to essentially, not a very technical
4 term, but pour in the remaining amendments on page 2 of
5 4. Because if you look at the top of the page, it says
6 the Commission modifies the CEC to delete the existing
7 23 and insert new conditions as follows.

8 In other words, you can put your, you can put
9 all your modifications right --

10 CHMN. PIERCE: In the Burns Amendment.

11 MS. WAGNER: -- in the Burns Amendment and just
12 give me authority to make the conforming changes.

13 CHMN. PIERCE: Keep going then, Mr. Olea.

14 MR. OLEA: So the next one would be Settlement
15 Amendment No. 2. That changes the length of the CEC
16 from ten years to seven years.

17 CHMN. PIERCE: Okay. That is Settlement
18 Amendment No. 2.

19 MR. OLEA: Settlement Amendment No. 2.

20 CHMN. PIERCE: I am sorry. Would you move that
21 one.

22 COM. STUMP: Mr. Chairman, I move Settlement
23 Amendment No. 2.

24 CHMN. PIERCE: Settlement Amendment No. 2 has
25 been moved. All those in favor say aye.

1 (A chorus of ayes.)

2 CHMN. PIERCE: Any opposed.

3 (No response.)

4 CHMN. PIERCE: That motion carries.

5 MR. OLEA: Now, the next one is what Staff filed
6 on March 5th, 2012. That is the boilerplate language
7 about cathodic protection around gas pipelines.

8 COM. NEWMAN: That's a no-brainer, Mr. Chairman.
9 I move that.

10 CHMN. PIERCE: Okay. That motion has been
11 moved, whatever number that is. What are we calling
12 that? Amendment No. 9?

13 MR. OLEA: It would be 9.

14 CHMN. PIERCE: Amendment No. 9, it has been
15 moved by Commissioner Newman. All those in favor say
16 aye.

17 (A chorus of ayes.)

18 CHMN. PIERCE: Any opposed.

19 (No response.)

20 CHMN. PIERCE: That motion carries.

21 MR. OLEA: Now, the last one, I don't know if
22 this would be No. 10 or you call it Newman 1, but it
23 would be Newman's Amendment No. 1 about Tohono O'odham
24 cultural monitor.

25 CHMN. PIERCE: Why don't you move that in.

1 COM. NEWMAN: Mr. Chairman, I move Newman
2 Amendment 1.

3 CHMN. PIERCE: Which is No. 10 within
4 the settlement agreement.

5 COM. NEWMAN: Which is No. 10 for this draft.

6 CHMN. PIERCE: So the Newman 1, which is now the
7 Settlement Agreement No. 10, has been moved. All those
8 in favor say aye.

9 (A chorus of ayes.)

10 CHMN. PIERCE: Any opposed.

11 (No response.)

12 CHMN. PIERCE: That motion carries.

13 MR. OLEA: We have one more from Legal. I will
14 let them explain it. It is just some number changes on
15 statutes.

16 MR. HAINS: Yes. Chairman, Commissioners,
17 again, this is the correction that I pointed out,
18 typographical correction for the conclusion of law that
19 refers to A.R.S. 40-250 and 251, deleting both of those
20 references and inserting 40-252 in their place.

21 CHMN. PIERCE: Sure. So moved.

22 All those in favor say aye.

23 (A chorus of ayes.)

24 CHMN. PIERCE: Any opposed.

25 (No response.)

1 CHMN. PIERCE: That one carries.

2 Are we good?

3 COM. BURNS: No. We still have one.

4 CHMN. PIERCE: And we can do this one, too. And
5 it will be No. 12. Are we up to 12?

6 MR. GELLMAN: I did send the language for
7 Mr. Hains. And just I want to note for the record,
8 Ms. Webb brought it up, is that transmission line
9 crossing meant both the transmission line and the access
10 road for the transmission line.

11 CHMN. PIERCE: Okay. And it is Settlement
12 Amendment No. 12. And we have the language. And would
13 you move it.

14 COM. STUMP: Mr. Chairman, I move Settlement
15 Amendment No. 12.

16 CHMN. PIERCE: Settlement Amendment No. 12 has
17 been moved. All those in favor say aye.

18 (A chorus of ayes.)

19 CHMN. PIERCE: Any opposed.

20 (No response.)

21 CHMN. PIERCE: That motion carries.

22 Would you move your amendment as amended,
23 please.

24 COM. BURNS: Chairman, I move the adoption of
25 the Burns Proposed Amendment No. 1 as amended.

1 CHMN. PIERCE: This is an amendment. I could
2 just call for a voice vote, but I won't do that. Madam
3 Secretary -- because I am sure people want to comment.

4 Madam Secretary, why don't you call the roll.

5 SECRETARY BERNAL: Commissioner Burns.

6 COM. BURNS: Aye.

7 SECRETARY BERNAL: Commissioner Newman.

8 COM. NEWMAN: Mr. Chairman, I vote aye. And I
9 wanted to say I wanted to thank your leadership in this
10 process, which started this morning and is ending now at
11 4:30 in the afternoon. And it has been all day. I want
12 to thank everyone's participation. This is a long table
13 here. I actually didn't know how it was going to come
14 out today. No one quite knew. There are a lot of
15 things on the plate.

16 And, but I think that we helped the process, the
17 Commission helped the process. I know that. And Staff,
18 of course, helped the process and Legal of course helped
19 the process, everybody here, all the intervenors,
20 everyone.

21 And I was somewhat concerned about the alacrity
22 in which the Line Siting Committee heard the case down
23 below. I wasn't sure if all the evidence was being
24 provided. I wasn't really sure if we as Commissioners
25 were looking at the full public interests in making this

1 decision on the transmission line. I was prepared to go
2 to a 252 hearing on that as of this morning. That's why
3 I said I really didn't know what was going to happen.
4 But I signed off as well on this amendment by my yes
5 vote on this amendment, this settlement.

6 I think we have made inroads into having an
7 understanding that certain hoops need to be gone through
8 before the transmission line needs to be built. They
9 are still out here. That is something that wasn't going
10 to happen at the Line Siting Committee, according to my
11 colloquy with Judge Foreman that we had on the first day
12 of our hearings. He wasn't going to change his mind on
13 those rulings.

14 So I think we have advanced, we advanced this
15 issue from an environmental standpoint, from a public
16 interest standpoint, from a transparency standpoint, and
17 we have also opened the door for intervenors to come in
18 and let them know that they are welcome, anybody who has
19 important information for the Commission, for the line
20 siting commission should be accommodated, and that this
21 is, this is a good day.

22 However, however long this takes, if per chance
23 it takes longer or per chance the funding doesn't come
24 through for the project, I think that this, that the
25 settlement that we have agreed upon today, through its

1 bonding mechanisms and other mechanisms, protects
2 ratepayers and the public much more than the Line Siting
3 Committee did. And I am happy that we had this
4 proceeding.

5 And I vote aye.

6 SECRETARY BERNAL: Commissioner Kennedy.

7 COM. KENNEDY: I have a 20-page explanation of
8 my vote. Aye.

9 SECRETARY BERNAL: Commissioner Stump.

10 COM. STUMP: Commissioner Kennedy, you struck
11 fear in my heart there for a moment. Got them on both
12 sides. Just kidding, Commissioner Newman.

13 But anyway, Mr. Chairman, I want to reiterate
14 that my, mine was a very specific due process concern
15 from the start. But I do want to commend my colleagues,
16 Staff and the parties for the outcome today. The
17 process may resemble sausage making at times, but I
18 think today we made some fine sausage. And I vote aye.

19 COM. NEWMAN: It must be kosher.

20 SECRETARY BERNAL: Chairman Pierce.

21 CHMN. PIERCE: Yes, I want to thank all the
22 parties. I think that, you know, when you come into a
23 meeting like this you have an idea of where you think
24 you can go but are prepared to go a different direction.
25 And I was. I just, just the parties had to continue to,

1 to move the ball forward. And I want to congratulate
2 you. I think you did the wise thing today. And I think
3 probably you figured that out in negotiations.

4 And I appreciate Judge Rodda. You know, you
5 don't have to do certain things now. And thank you for
6 being, thank you for being here.

7 Our legal counsel, Ms. Wagner, you just -- thank
8 you so much, appreciate that.

9 Mr. Olea, you know, I rely on you and trust you
10 to do certain things. And you just do not disappoint
11 me, and I really appreciate that. Because there are
12 things that we could not do here without very talented
13 people we have working here at the Commission.

14 The members, I really appreciate sticking with
15 this, because I know there was some tough moments there
16 where maybe you didn't see where we were headed.
17 Because I wasn't sure at times where we were going to
18 end up for sure. But I felt like, you know, given
19 enough time here, that we could, we could pull this
20 together and do something, which is really --

21 I appreciate Mr. Wakefield's allaying my fear.
22 I want to trust and I trust you, Mr. Wakefield. So you
23 don't have to comment. But I trust you and therefore I
24 trust Pima County, too, to participate where they need
25 to and where they have committed to.

1 And so I think all of us had our fears allayed
2 as best we could. We are letting our Line Siting
3 Committee know that, you know, we spent more time on
4 this case in open meeting than it would have ever taken,
5 maybe two times or three times to actually hear from
6 Ms. Webb. And so I think that's something that we have
7 all learned.

8 And I -- but I totally appreciate our Line
9 Siting Committee. They do a tremendous amount of work.
10 Once in awhile there may be something that we wish they
11 would have been better on something, and this was a
12 procedural thing, but their decisions and their work are
13 so good. And I have great trust and respect for them.
14 And I want to make sure that they know that, too.

15 But thank you all for being here. With that, I
16 vote aye.

17 By your votes of five ayes, zero nays you have
18 approved -- this is Item 16? Yes -- Item 16 as amended,
19 and 17.

20 This is actually 17.

21 COM. NEWMAN: For the record, we better get it
22 right.

23 CHMN. PIERCE: Yeah, Item 17 as amended, for the
24 record. And then we are done.

25 By your votes of five votes, zero nays you have

1 approved Item 17. And we are adjourned.

2 (The proceeding concluded at 4:35 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 31st day of May, 2012.

COLETTE E. ROSS
Certified Reporter
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