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9 NO. DESCRIPTION IDENTIFIED ADMITTED

10 MM-20 Final Plea with 899 not offered
Proposed CEC

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14 COM-3 through COM-9 were submitted as public comment.
UNS-2, UNS-4, UNS-6, UNS-8, UNS-13 through UNS-20 were
15 not utilized.

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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on to be heard before the Arizona
3 Power Plant and Transmission Line Siting Committee, at
4 the Sheraton Wild Horse Pass Resort, 5594 West Wild
5 Horse Pass Boulevard, Chandler, Arizona, commencing at
6 9:32 a.m. on the 9th of July, 2009.

7

8 BEFORE: JOHN FOREMAN, Chairman

9 DAVID L. EBERHART, Arizona Corporation
Commission

10 PAUL W. RASMUSSEN, Department of Environmental
Quality

11 JESSICA YOULE, Department of Commerce

12 PATRICIA NOLAND, Appointed Member

13 MICHAEL WHALEN, Appointed Member

14 MICHAEL PALMER, Appointed Member

15 BILL MUNDELL, Appointed Member

16 JEFF McGUIRE, Appointed Member

17 BARRY WONG, Appointed Member

18

APPEARANCES:

19

20 For the Applicant:

21

ROSHKA DeWULF & PATTEN, PLC

By Messrs. Matthew Derstine and Jason D. Gellman

22

One Arizona Center

400 East Van Buren Street, Suite 800

23

Phoenix, Arizona 85004

24

and

25

UNISOURCE ENERGY SERVICE

By Mr. Marc Jerden, Senior Legal Counsel

26

One South Church Avenue, Suite 200

Tucson, Arizona 85702

27

28

1 APPEARANCES:

2 For Marshall Magruder:

3 In Propria Persona

P.O. Box 1267

4 Tubac, Arizona 85646

5

For Elizabeth Buchroeder Webb:

6

In Propria Persona

7 17451 East Hilton Ranch Road

Vail, Arizona 85641

8

9

COLETTE E. ROSS

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Certified Reporter

Certificate No. 50658

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1 CHMN. FOREMAN: All right. We will go back on
2 the record. This is a continuation of the hearing in
3 Arizona Power Plant and Transmission Line Siting
4 Committee Case No. 144.

5 Do we have any preliminary matters that we need
6 to address before we move into our closings?

7 (No response.)

8 CHMN. FOREMAN: All right. Mr. Magruder has
9 advised us that he has a doctor's appointment he needs
10 to make later in the day so we are going to start
11 promptly and move along.

12 As I indicated, the applicant will have one hour
13 to make an opening closing, and a rebuttal, one hour
14 total. Each intervenor will have up to 30 minutes.
15 Again, none of the parties need to feel they have to
16 take the allotted time. That's a maximum.

17 We will get started with the applicant. I would
18 like for the arguments to be as precise and directed
19 towards potential CEC language as possible, because then
20 obviously after the closings are concluded, the
21 Committee will begin deliberations on the CEC.

22 Counsel.

23 MR. DERSTINE: Thank you. Good morning,
24 Mr. Chairman, members of the Committee. I simply want
25 to note that I haven't timed myself, but I think I am

1 well under the hour that's allotted. I also offered
2 Mr. Magruder, if he would like to go first, I am happy
3 to have him do that. And he would prefer to have me go
4 first, so here I am.

5 You know, yesterday, Mr. Chairman, you looked at
6 the fact that evidence appeared to be being created on
7 the fly, and that in all your years in sitting as a
8 judge hadn't had that experience. I would say that and
9 other aspects of this case are unique. Certainly my
10 experience in this case and others is that this is not
11 what we would typically see in court, at trial, and in a
12 jury trial.

13 At the same time, I think you and the members of
14 this Committee recognize that you somewhat sit as a
15 jury, trier of fact, hearing the evidence in this case
16 and ultimately making a decision, a verdict on our
17 application for a CEC. And that decision is based on
18 the evidence that is before you. So let me talk about
19 the evidence and focus on the evidence.

20 The evidence you heard on purpose and need I
21 think was straightforward and uncontroverted. The
22 purpose and need for this project is to replace aging
23 43-year-old wood structures that are at or near the end
24 of their useful life; to increase the voltage of this
25 line from 115 to 138kV and to, in doing so by an

1 interconnection at the TEP Vail substation, remove the
2 capacity limitations that currently exist at the WAPA
3 connection, and thereby increase the capacity of the
4 line that serves Santa Cruz County. That's the purpose
5 and the need for this project. I don't think there is
6 any credible evidence that this project isn't needed.

7 So let me also then touch briefly on the public
8 process. Mr. Beck testified that this project changed
9 somewhat over time. It was initially convened as a
10 rebuild, that is, we are going to rebuild this line in
11 place and remove the capacity limitations at the
12 interconnection at the Nogales tap by interconnecting at
13 Vail. So 90 percent of this was a rebuild of the line
14 in place with a new segment of line, short segment,
15 creating a new interconnection at TEP's Vail substation.

16 That assumption changed as the company went out,
17 surveyed the line, started looking at the engineering
18 for rebuilding this project, and determined that at
19 least in two critical areas there was encroachment and
20 construction that made access and construction of the
21 new line in the existing alignment difficult, unsafe, if
22 not impossible, in those locations. That then drove and
23 changed this project and essentially changed the scope
24 of it.

25 By virtue of the need to build alternative

1 routes at least in those two critical areas, the company
2 decided it was appropriate then to look at alternative
3 routes for the entire project and thereby expand the
4 study area, so that the study area for this project was
5 expanded dramatically to one mile on either side of the
6 existing alignment and new routes were looked at. So
7 the project changed and the public process changed; the
8 project expanded and the public process expanded.

9 The public process involved and included four
10 separate newsletters in English and Spanish, as
11 Mr. Miller testified to at length, eight open houses
12 along with a telephone information line, extensive
13 information that was contained and updated on the
14 UNS Electric website.

15 The newsletters informed residents along the
16 route within this larger study area of the planning and
17 development of the project, and later in the project the
18 proposed route that had come out of public open houses
19 and input. The newsletters were mailed to residents and
20 landowners within the study area. And as I mentioned
21 before, as the study area grew from the original
22 conceived project, the newsletter mailings grew.
23 Mr. Miller testified to that.

24 The newsletters, along with radio ads and
25 newspaper advertisements, both in English and Spanish,

1 publicized the open houses that were held. There were
2 three series of open houses, in February, May, and
3 December of 2008. The initial open house series in
4 February of '08 were held only in Nogales and Rio Rico.
5 Two subsequent series in May and December were held in
6 Nogales, Green Valley, and in Tucson.

7 I think much of the focus of Ms. Webb's
8 testimony, I think her involvement in this case has been
9 directed to our public process. I think her position is
10 that we didn't sufficiently or aggressively pursue
11 public outreach, especially in the Vail area. And I
12 think the evidence shows that she is just wrong about
13 that.

14 She points to the fact that neighborhood
15 associations in the Vail area weren't provided with a
16 scoping letter or our newsletters. And she is right
17 about that. We did not pick up registered neighborhood
18 associations as NGOs for our mailings. But the fact is
19 that to the extent that members of those neighborhood
20 associations, residents, landowners live within our
21 large -- that study area that extended one mile on
22 either side of this existing line, they got those
23 mailings. They got that notice.

24 Furthermore, the open houses that were conducted
25 in Tucson at the north end of the project were

1 publicized by advertisements in the local Vail paper.
2 And I think my memory serves that Ms. Webb learned of
3 this project through those advertisements so that
4 residents who lived far away from this project,
5 including Ms. Webb, who I believe she testified lives
6 over 20 miles away from this project -- learned of it
7 and could attend the open houses and find out more about
8 it.

9 CHMN. FOREMAN: Counsel, let me interrupt you
10 briefly. Do you have any objection on a going forward
11 basis to providing notice to the registered neighborhood
12 homeowner associations that have been identified?

13 MR. DERSTINE: Absolutely not. And what I was
14 going to comment to is that we learn from this. We
15 learn from each case that we undertake. We have several
16 that we are working right now. In the future we will
17 look to pick up, certainly in Pima County and other
18 counties, where there are registered neighborhood
19 associations. Frankly, that was the first time we ever
20 heard of that. But we will pick those up.

21 We also adapted our process to start using
22 stakeholder groups. Ms. Webb referred to that in her
23 testimony. So, you know, we learn from this. I am not
24 saying we were perfect on this. But in terms of making
25 a showing and doing what was needed to give the public

1 who were going to be affected by this project and who
2 have an interest in this project notice of it, giving
3 them an opportunity to come to our open houses, learn
4 about it and give us their input, we did that.

5 CHMN. FOREMAN: At the risk of moving you
6 forward to a point that you, I am sure, would discuss
7 later on, what is your legal position with regard to
8 whether the Committee as a condition of the CEC in this
9 case could direct the applicant to form one of these
10 citizens oversight committees that have been suggested
11 in Ms. Webb's draft CEC?

12 MR. DERSTINE: I was going to speak to that, but
13 I am happy to address it now if you like. I don't think
14 this Committee -- well, let me preface my comment by
15 saying this:

16 Both Ms. Webb and Mr. Magruder have included
17 these citizens action councils, groups, as a condition
18 for siting these cases in their CECs.

19 Their visions of what that citizens council will
20 be and what it should do are different, at least based
21 on my reading of their most recent CEC drafts.

22 I don't think either condition is appropriate
23 and I question whether this Committee has the authority
24 or the jurisdiction to do so. I don't think you do,
25 aside from the fact that I don't think it is appropriate

1 or that you should do it.

2 I think with regard to Ms. Webb's vision of what
3 her citizens advisory council does, as I read it, it
4 acts as a consumer or citizen watchdog group. She says
5 it should mirror the southeast Arizona transmission
6 planning group. I don't know if I have got the name
7 right, SATS group. But essentially, you know, it takes
8 on a compliance and an oversight function and,
9 furthermore, imposes or would have authority to impose
10 sanctions on the company if in their judgment that the
11 company failed to comply with the CEC that you issue and
12 is ultimately approved by the Committee or by the
13 Commission. That's not appropriate. The Commission
14 sits in a compliance role. The Commission has that
15 authority and jurisdiction.

16 I understand that Ms. Webb has a keen interest
17 in transmission issues, at least in the Vail area and
18 apparently in a broader area because she has expressed a
19 lot of ideas about what should happen in Santa Cruz
20 County as well. I understand she is interested. But
21 there are other forums, other areas where she can
22 continue her involvement. She is already involved in
23 some of those.

24 But again, compliance, having this Committee
25 establish some sort of council that is staffed by

1 Ms. Webb or people like Ms. Webb to sit in a compliance
2 role and impose sanctions or penalties on the company
3 for failing to comply is not appropriate. I don't think
4 you have the authority to do it, nor do I think you
5 should do it.

6 Mr. Magruder's vision is something entirely
7 different. He wants to resurrect a citizens action
8 group that was established in the late '90s in
9 connection with a complaint that was filed by the City
10 of Nogales against Citizens Utilities arising from
11 reliability issues in Santa Cruz County. That's a
12 separate docket. That docket remains. There was
13 further reliability hearings back in 2005 in connection
14 with that docket.

15 Again, that council was created by the
16 Commission, not a Siting Committee, in connection with a
17 docket that was open in response to a complaint. And if
18 Mr. Magruder feels that there is a basis for
19 resurrecting that, he can file a complaint or some other
20 motion with the Commission in connection with that
21 docket.

22 I simply think it is not appropriate and it
23 becomes unworkable for this Committee in every siting
24 case if it is going to create some sort of independent
25 standing consumer watchdog group to, in each little area

1 in which you are going to site a new line or power
2 plant, have that local organization oversee whether or
3 not your CEC, the conditions of it, have been complied
4 with. That's the Commission's role, not the citizens
5 group, and it is not for this Committee to create those
6 bodies.

7 So again, I guess getting back and just closing
8 my comments in the public process, and some attack on
9 our process by virtue of the fact that open houses
10 weren't held in what Ms. Webb considered Vail, the fact
11 is the Vail substation is in Tucson. The open house was
12 held within reasonably close proximity to the Vail
13 substation in Tucson, at the Holiday Inn airport
14 location. It is in close proximity to the project. It
15 wasn't necessarily the center of the Vail area, but it
16 is an appropriate and good location for people
17 interested in this project to come and hear about it.

18 And finally, we were attacked on the issue of
19 contact and communication with BLM. We addressed that
20 yesterday through Mr. Beck's testimony. I think the
21 fact is and the testimony is that there was and remains
22 real questions about whether BLM has jurisdiction over
23 the aspects of the project that even touch upon BLM
24 land, given the history of transferring property or
25 ownership rights, those two little pieces at the north

1 end and south end of the line.

2 But when the company became aware that the BLM
3 was asserting it had an interest, that it had a right,
4 and that BLM approval was required, the company then
5 communicated with BLM. And there has been at least two
6 meetings since that time on those issues and there will
7 continue to be. And as Mr. Beck testified, once we are
8 through this process, a formal application will be filed
9 with BLM and those issues will be sorted out. So in
10 terms of our public process falling down by virtue of
11 the fact that we didn't have the scoping letter going to
12 BLM at the outset of this project, I don't think there
13 is any substance to that claim.

14 In short, as I said before in response to a
15 question, Mr. Chairman, we weren't perfect on this. We
16 are going to learn from it. I think in the future we
17 will certainly look for registered neighborhood
18 organizations and other organizations that might fall
19 within that category of type of groups who can get
20 notice. We want notice to get out. We want folks to
21 learn about our projects. We do make every effort to
22 aggressively get notice out and get input. It makes our
23 job so much easier so that, when we get before you, we
24 don't have folks standing up for the first time saying I
25 didn't know anything about this project, or they

1 wouldn't listen to me, we don't want this, and we do
2 everything we can to avoid that.

3 So let me turn to the evidence, then, on the
4 routes. Let me start on the north end of the project on
5 Segment 1. The testimony and the evidence that you
6 heard was on Segment 1, the preferred alignment. This
7 north route is the best route. It is the shortest. It
8 is preferred by State Land, which has the major piece on
9 the east/west run. It is the least expensive because it
10 uses most of the existing line.

11 Some of these slides before you have been
12 entered into evidence. Those were slides from
13 Mr. Beck's and Mr. Warner's testimony. No one opposed
14 this north route or came before you and said it is a bad
15 idea or it is a bad route. I think the only question we
16 had about the north route in Segment 1 was from
17 Ms. Webb, who would like to have our right-of-way
18 narrowed. And I don't think -- in response to that I
19 think Mr. Beck testified that on the east/west run of
20 the north route in Segment 1 where it parallels an
21 existing alignment and right-of-way, we are not looking
22 to buy another 100-foot right-of-way. To the extent we
23 can utilize a portion of that existing alignment, we
24 will, keeping in mind that there are separation
25 requirements between facilities and structures.

1 So the evidence, the testimony, 1A is the best
2 route. It was our preferred route. We think that the
3 CEC should be issued for that, for the north route and
4 1A.

5 CHMN. FOREMAN: And again I am sorry for
6 interrupting, but a brief question with regard to
7 right-of-way. Would the applicant be uncomfortable with
8 a limitation on the width of right-of-way to 100 feet or
9 less throughout the project?

10 MR. DERSTINE: I think that would be
11 appropriate.

12 CHMN. FOREMAN: Okay.

13 MR. DERSTINE: So Segment 2. Segment 2 has kind
14 of been the focus of much of certainly the public
15 comment, as well as much of the testimony and questions
16 and valid concerns from this Committee about the routes
17 in Segment 2. But it is a small piece of Segment 2 that
18 we have been focused on.

19 Both the preferred route and the alternative
20 Route 1 use a vast majority of these existing lines.
21 The preferred route, as you are well aware, cuts west to
22 a railroad at Pendleton Drive and continues along the
23 railroad paralleling the railroad right-of-way down to
24 the Cañez substation. The existing line, Alternative 1,
25 stays in the existing alignment from the top of

1 Segment 2 all the way down to Cañez substation.

2 The public comment has made it clear that
3 residents within that small area, Pendleton Drive down
4 south to Cañez, support the preferred and the existing
5 route. But different folks support different routes.

6 Rio Rico Properties, the Campanas, according to
7 their comment, at least according to the e-mail that was
8 entered into evidence, Rio Rico Properties, Avatar,
9 their support has been for the preferred route alignment
10 which moves west over the railroad. It eliminates the
11 existing alignment in terms of a line that now bisects
12 their property and pushes that line to the western edge
13 along the railroad.

14 At the same time, and frankly it was late, after
15 our application had been filed, Mr. Jakle and others
16 made clear that not only were they concerned about
17 mitigation, which was Mr. Jakle's initial communication
18 with us, he was concerned about mitigation, how the
19 placement of these new poles would be mitigated and how
20 can he preserve as much as possible of the bosque and
21 the mesquite trees in the bosque. That turned to I
22 don't want the preferred route and made it clear that he
23 and others, other landowners in that area north of the
24 Campanas, oppose the preferred route and would support
25 the existing route certainly over the preferred route.

1 Now, all of those folks have come together and
2 said boy, if you could push it into the river, that
3 would be great, that would take this line that has been
4 on our property from the time we bought it into the
5 river and away from us. But I think the evidence has
6 also shown, not only from Mr. Beck's testimony, his
7 rebuttal testimony that is in evidence, but also from
8 Santa Cruz County Flood District and the letter from
9 Mr. Hays, the flood district manager, that is not a good
10 idea, that putting this line in the floodway creates
11 risks. It has significant environmental impacts and
12 there is not a good reason to do it.

13 We have had testimony, and Mr. Magruder spent a
14 fair amount of time with Mr. Beck trying to establish
15 that you can build, and utilities do build, lines in
16 rivers, in floodways. And from an engineering
17 perspective, it is done and has been done. But the
18 question for this Committee is should it be done, and
19 the answer is no.

20 If this were the only route, putting this line
21 in the middle of the floodway or into the floodway, if
22 that was our only option for siting this line, then that
23 might be an appropriate choice, and it could be
24 engineered as best as possible to do that. But the fact
25 is that we have two viable routes that are not in the

1 floodway, they are in the floodplain. But those two
2 other routes, the preferred route and existing
3 alignment, both are preferable from an environmental
4 standpoint, from a risk, from a floodplain standpoint to
5 pushing this line in the middle of a floodway to
6 accommodate the interests of a small number of
7 landowners.

8 Mr. Chairman, you asked yesterday about the
9 company's position. Our application does call out what
10 we have identified as the preferred alignment. That is
11 using the existing line and then moving west along the
12 railroad from Pendleton Drive down is our preferred
13 choice. And it was at the time of the filing of the
14 application.

15 But as I mentioned, it was not clear to us and
16 had not been voiced in terms of the opposition from
17 other residents in that same area. Their viewpoints
18 didn't coalesce and were not made vocal, frankly, until
19 we heard much of the public comment, or probably more
20 accurately maybe in the two weeks or so leading up to
21 these hearings. It came together after the filing of
22 the application and communication with them over the
23 application.

24 And I think, you know, as this Committee knows,
25 these hearings are part of the public process. This is

1 part of the public process. And oftentimes in the weeks
2 leading up to these hearings, it certainly, after the
3 filing of the application, folks coalesce, groups get a
4 better understanding what is being proposed, opinions
5 change, and the public process continues through the
6 conclusion of this hearing. That's what happened here.

7 CHMN. FOREMAN: Counsel, you previously
8 indicated in this hearing that your client is willing to
9 use either the -- is comfortable using either the
10 preferred route or use the existing route through this
11 hearing. Is that still your position?

12 MR. DERSTINE: Yes.

13 CHMN. FOREMAN: Member Youle, you had a
14 question?

15 MEMBER YOULE: Yes, Mr. Chairman. Thank you.

16 Counsel, if you use your preferred route where
17 it is not the existing alignment, what, are you
18 abandoning your right-of-way on the existing alignment
19 and would that be what happens to that? Does it get
20 transferred back to the landowners or what?

21 MR. DERSTINE: If it is appropriate, I will let
22 Mr. Beck clarify in the form -- or better inform you
23 about the company's position. But my understanding is
24 that the company is considering abandoning the
25 right-of-way if you were to select the preferred route.

1 Where there is existing distribution in the existing
2 alignment, that would not be abandoned back. But I
3 don't know that there is existing distribution in that
4 small segment of what we are talking about, the bosque
5 area of Segment 2. So my understanding is that the
6 company has not committed to abandon that right-of-way.

7 Do you want to clarify that?

8 MR. BECK: The portion from Cañez north on the
9 preferred route, our intent was to abandon that
10 right-of-way and would be part of the negotiation with
11 the landowners as part of a swap to exchange. To the
12 extent we could, where the same property owner along the
13 railroad owns the existing alignment where we have
14 right-of-way, we would attempt to do a swap with them.
15 Where there are different landowners, we would abandon
16 that right-of-way and have to determine how we would do
17 that.

18 MEMBER YOULE: Thank you.

19 MEMBER MUNDELL: Can I follow up on that,
20 Mr. Chairman?

21 CHMN. FOREMAN: Member Mundell.

22 MEMBER MUNDELL: Well, Mr. Beck, or maybe
23 counsel, let me ask it differently. If we proposed some
24 language -- what I heard was, you know, we intend to,
25 that's our goal. But if we were to, you know, not order

1 abandonment, then you would have basically two
2 right-of-ways, wouldn't you?

3 I don't know who wants to answer the question.
4 I mean I have been around long enough, I heard what you
5 said, we intend to work it, we are going to work with
6 the landowners, we are not sure exactly what the end
7 result will be, et cetera, et cetera. If we pick one,
8 you know, then and ultimately you would have two
9 right-of-ways.

10 MR. BECK: I think in the testimony that one
11 difference is the areas where we have distribution
12 existing, which would be the portion north of Sonoita
13 substation, we need to keep the right-of-way for the
14 distribution portion.

15 Everywhere else where today we only have
16 transmission in that right-of-way, the intent would be
17 to abandon that and, as I said, to the extent we could
18 with landowners, do a swap. To the extent it is a
19 different landowner, then the intent is to abandon. If
20 there is language crafted such that it doesn't impact
21 our distribution rights-of-way, that's a workable
22 situation.

23 MEMBER MUNDELL: Okay. Thank you.

24 Thank you, Mr. Chairman.

25 MR. DERSTINE: So I guess getting back and

1 closing the loop on the company's position, we would
2 build either route. We think either route is
3 compatible, is a viable route. Our preference, I think
4 at this point, in light of the split among the residents
5 who are in that area and that largely drove a preference
6 for moving to the railroad initially, given that we now
7 have a split of opinion among those residents, I think
8 our preference is to build in the existing alignment
9 because it has less cost. But both options are viable
10 options. Both routes are viable and both are
11 environmentally compatible. If you were to select
12 either one, we would build it.

13 Again, I don't want to belabor the point, but I
14 think much of the focus of Mr. Magruder's testimony has
15 been on wanting to push this line into the floodplain to
16 accommodate the interests of some of those landowners in
17 the area, and I think also to protect, in his view, some
18 of the area of the bosque. But again, in light of the
19 overwhelming testimony from the flood district and
20 Mr. Beck, that's not a good choice. Either the
21 preferred or the existing alignment are the best choices
22 for Segment 2.

23 Segment 3.

24 CHMN. FOREMAN: Member Whalen.

25 MEMBER WHALEN: Mr. Derstine, and maybe

1 Mr. Beck, if you use the preferred route, would the
2 100-foot right-of-way apply also as you loop in and out
3 of Cañez? Cañez is, what, a quarter or mile so from the
4 railroad? So you would be coming down the railroad and
5 looping into Cañez and then looping back out to the
6 railroad again, is that correct? And would that be
7 approximately that same 100-foot right-of-way?

8 MR. BECK: Yes, that is correct.

9 MEMBER WHALEN: Thank you.

10 MR. DERSTINE: Let me then turn to Segment 3.
11 Segment 3 was one of the two primary pinch points that
12 we focused on at the outset of this project as creating
13 the need to look at alternative routes. That
14 encroachment comes further down just north of the
15 Sonoita substation.

16 As Mr. Beck indicated, the poles in that
17 existing alignment also or north of Sonoita also carry
18 distribution. And the testimony was that in that area
19 we would need to hold onto the easement, the
20 right-of-way, but that those existing wooden poles would
21 be topped, leaving only the distribution line in place.

22 But our preferred route moves at Cañez over to
23 the railroad, follows the railroad alignment. You are
24 largely out of the mesquite bosque area south of Cañez.
25 The bosque does extend south of it, but as we saw

1 yesterday on the aerial photography, as you are moving
2 south you are moving into open area, open land, and the
3 concerns over bosque growth are not present.

4 I don't think we heard any testimony or evidence
5 for public comment in opposition to the preferred route
6 in Segment 3. It is the best route. It eliminates the
7 problems associated with trying to rebuild this line in
8 place along the sheds and back doors and patio walls of
9 the homes that have built up next to and underneath the
10 line north the Sonoita substation. It is the best
11 route. It is environmentally compatible and the
12 evidence supports it.

13 MEMBER EBERHART: Mr. Chairman.

14 CHMN. FOREMAN: Member Eberhart.

15 MEMBER EBERHART: Thank you.

16 I will ask the same question that other members
17 asked about Segment 2. For this segment, if the
18 preferred route is the one approved, what do you plan to
19 do with the existing right-of-way for the existing 115kV
20 line?

21 MR. DERSTINE: Mr. Beck testified, and he will
22 correct me if I am wrong, that we would abandon the
23 existing right-of-way up to the point that our
24 distribution sits on, sits within the existing
25 right-of-way, and we would then have to maintain the

1 existing right-of-way in that area. And I think that's
2 largely just north of Sonoita substation but, to the
3 extent our distribution line is not attached to our
4 existing 115kV transmission line, that we would abandon
5 the right-of-way in that area.

6 MEMBER EBERHART: When you say abandon, you mean
7 the rights go away or the existing landowners acquire
8 that land? How does that -- what exactly --

9 MR. DERSTINE: You are asking me a legal
10 question that I don't have the answer to. I know that
11 smarter minds than mine, like Mr. Jerden, can probably
12 answer that, but I don't know how legally that is done.

13 Do you know, Mr. Beck? I risk asking my witness
14 a legal question.

15 MEMBER EBERHART: Mr. Chairman, I think this is
16 a first an attorney has actually admitted he doesn't
17 know the answer to a question.

18 MR. DERSTINE: And it is not the first time I
19 admitted either.

20 CHMN. FOREMAN: Member Wong.

21 I am sorry, Member Eberhart, were you finished?

22 MR. BECK: Just quickly in response to that, to
23 the extent we abandoned that right-of-way it would be
24 deeded back to the existing landowner.

25 CHMN. FOREMAN: Mr. Wong.

1 MEMBER WONG: Just to follow up further on the
2 distribution and abandonment issues, as you are
3 explaining and answering questions, and yesterday during
4 some of the testimony from, I believe, Ms. Webb or
5 Mr. Magruder, there was discussion about how Nogales is
6 a web of power lines crisscrossing. So in those
7 instances where you are not going to abandon existing
8 routes that have distribution lines, can you be more
9 specific and identify where on the map that would exist?
10 Because I can envision having a preferred route, which
11 is a new route deviating from the existing route, and
12 you having a parallel to that new preferred route on the
13 existing route that you maintain for the distribution.
14 So can you be a little more specific and start
15 identifying where those distribution lines are? Because
16 I think that's important to know as we deliberate.
17 Thank you.

18 MR. DERSTINE: Let me see if I can get Mr. Beck
19 a laser pointer and we can maybe call out, show you
20 where that is.

21 MR. BECK: Member Wong, specifically we have
22 distribution that comes out of the Sonoita substation
23 and runs to the north along the existing transmission.
24 I believe it goes just short of Rio Rico Drive. So it
25 would generally be the stretch from Sonoita substation

1 to the north. And as I said, I believe it is just short
2 of reaching Rio Rico drive.

3 And we saw a little bit of that, or you had the
4 opportunity to see that on the field trip if you looked
5 out at the bandwidths we were going by. We have
6 distribution underbuilds underneath existing
7 transmission. And that's the issue in question for us,
8 whether or not we would abandon that existing
9 right-of-way.

10 MEMBER WONG: Mr. Chairman, Mr. Beck, thank you
11 for that clarification. Would that be the limit of
12 preserving the existing line from distribution or the
13 other components north of that where there will be
14 further retention of existing distribution lines? Or is
15 that the extent, is that the extent of the distribution
16 lines, what you described, or are there others north of
17 there or south of there that you have described?

18 MR. BECK: I believe on the existing 115kV line
19 that's the only stretch that we currently have
20 distribution associated with that transmission line.

21 MEMBER WONG: Thank you.

22 MR. DERSTINE: So again, in Segment 3, the
23 preferred route through our public process carried a
24 great deal of support from the residents who were faced
25 rebuilding the line on the backs of their homes. There

1 was no opposition to it. We haven't heard any testimony
2 or evidence that something other than the preferred
3 route should be adopted by this Committee, and we think
4 it is the best route and any CEC issued should adopt the
5 preferred route in Segment 3.

6 That leaves Segment 4. Here again, the
7 overwhelming evidence supported the preferred route.
8 The preferred route uses the existing line except for
9 moving around the obstruction that we spent a fair
10 amount of time looking at on the south side tour on
11 Grand Avenue. It is the best route because it carries
12 the lowest cost for Segment 4. At the same time, the
13 preferred route provides the best way to get around the
14 problems associated with Grand Avenue and the second
15 pinch point at Grand Avenue.

16 The alternative that was looked at, and I think
17 that Mr. Magruder initially supported but backed away
18 from, was having the line move around on the hills, the
19 higher elevation around the homes and apartment
20 buildings. Again, we don't think that's the best
21 choice. It puts the line in higher visibility, impacts
22 viewsheds of the residents in the area, puts the lines
23 high on those hills. The preferred route moves around
24 the pinch point on Grand Avenue by running the line
25 behind the warehouses in that area and then bringing it

1 back to the existing alignment. So again, the evidence,
2 the testimony before you is that the preferred route in
3 Segment 4 is the best route and should be the route
4 adopted in your CEC.

5 Let me just take then a few minutes to touch on
6 CEC conditions. As you requested, we did, the company
7 prepared a pole finish plan that adopts the standard for
8 selecting pole finish. I think Clark can project that
9 for you here in a second. And candidly, there has been
10 a significant amount of communication back and forth
11 with Ms. Webb and Mr. Magruder. And frankly that, you
12 know, our position has moved.

13 I think one of the difficulties we struggle with
14 is that I think in Mr. Magruder's mind this should be an
15 easy decision. He thinks it is almost a function of
16 using an equation or just tell me what colors you are
17 going to use, tell me today, and then I will tell you
18 whether I like it and I will object or not within ten
19 days. And the fact of the matter is that determining a
20 pole finish, at least for certain segments of this
21 project, is not that easy.

22 We will have to determine first where those
23 poles are going to be placed. We had a 500-foot
24 corridor for the majority of this project, planned
25 corridor. We have some obstacles in terms of pole

1 placement. We will have to engineer that and get out on
2 the ground and determine where those poles are going to
3 be placed. And then we can take a look at the pole and
4 make some judgment about at that location or in this
5 segment of the line should we use a darker finish, the
6 dull galvanized or the lighter finished galvanized or
7 the darker finish such as the Corten, is that
8 appropriate. Our standard use of a darker pole against
9 the darker background, the lighter pole, the dull
10 galvanized against the lighter background, I think
11 that's in agreement with both Ms. Webb and Mr. Magruder.

12 But the fact is, as you pointed out,
13 Mr. Chairman, in some instances it is going to depend on
14 your perspective and point of view. If someone standing
15 at the west looking to the east is looking at the pole,
16 they may have a different perspective on the background
17 color than someone at the east looking to the west. It
18 is not an easy matter of here is the pole, what is the
19 color. Where are you standing? Where are you looking
20 at? Almost, you know, this has, as my partner
21 indicated, you have to almost decide what is the most
22 important view, most important viewpoint in making some
23 of these decisions.

24 It is not to say it is going to be, you know, a
25 complex task, but it is not one that we can do in a very

1 short amount of time. We need to understand what our
2 route is, then take a look at pole placement. Then we
3 can make some judgments about pole color finish. And
4 according to our condition, we would then make those
5 judgments, prepare a pole finish plan, serve that on the
6 parties within 30 days after the issuance of the CEC.
7 They can then come back to us and say we don't like it,
8 we think you should be using dull galvanized in this
9 area, or we think you should be using Corten in this
10 area. We can talk about it and we will talk about it
11 and try and resolve those differences.

12 We have a history of doing that. In the Cienega
13 case, in which Ms. Webb participated, pole color finish
14 was not a condition of the CEC but it was an important
15 issue for Ms. Webb. We worked with her and we ended up
16 adopting a pole color finish that she supported and
17 wanted. So we will continue to do that.

18 But in the end, to the extent that they are
19 unhappy with the outcome of the decision we made on pole
20 color finish, they would then file as a compliance
21 matter with the Commission asking the Commission to step
22 in and arbitrate and make a decision.

23 CHMN. FOREMAN: Member Noland.

24 MEMBER NOLAND: Thank you.

25 Mr. Derstine, we did have a difference of

1 opinion, I believe, with Ms. Webb as far as one of the
2 public persons that testified wanted, and lived closer,
3 in fact in the Vail area, and wanted the brown poles.

4 MR. DERSTINE: Correct.

5 MEMBER NOLAND: In that case, would you just
6 take the intervenor input or would you consider maybe
7 the highest viewshed as the deciding factor?

8 MR. DERSTINE: I think we have to make some
9 independent judgments about that and try to use our best
10 judgment about what is appropriate.

11 But as I said, to the extent that Ms. Webb
12 disagrees with us, or Mr. Magruder disagrees with us, we
13 will talk about it and we will try to work through it.
14 But that was our view of the condition. I know that
15 Mr. Magruder has a much more complex pole color
16 condition in mind. He is using a color chart. It just
17 seems overdone, too much for what should be -- again, it
18 is a personal judgment at some levels.

19 At the same time, it is a judgment that we are
20 going to make, and we will then notify the parties what
21 our judgment is and we will work through any
22 disagreements. That was our concept for what was
23 appropriate for the CEC.

24 Aside from pole finish there was the issue of
25 pole placement. I know that members of the Committee

1 and maybe members through public comment, residents,
2 were concerned about to the extent we were using the
3 existing alignment or even the preferred alignment in
4 the bosque, concerned about where our poles would be
5 placed. So our construction mitigation condition,
6 Condition 13, works out as a similar scheme under which
7 we would consult with landowners, certainly within the
8 bosque area and potentially other areas where we have
9 landowners and are placing poles on their land, private
10 landowners that we may impact that are relatively close
11 to the home, consult with them and come up with a pole
12 placement plan and consult with them on that and, again,
13 work with them to resolve any disagreements.

14 CHMN. FOREMAN: Counsel, let me ask you to go
15 back to Condition No. 6.

16 MR. DERSTINE: Condition 6?

17 CHMN. FOREMAN: Condition No. 6 originally
18 contained language that says the applicant shall not
19 assign the certificate or its interest in the project
20 authorized by this certificate without prior approval of
21 the Commission. You have deleted that language and put
22 in language that basically would put the approval in the
23 hands of the parties to the transfer.

24 Do you have a problem with including language
25 that would require approval by the Commission before a

1 transfer of interest could take place? And if you do,
2 why?

3 MR. DERSTINE: With your permission, if
4 Mr. Gellman could address that, I know he worked through
5 some of the technical language in these conditions.

6 CHMN. FOREMAN: Sure.

7 MR. GELLMAN: Mr. Chairman, and I will be brief,
8 there was a process, I believe, which started by APS
9 where this issue arose before the Committee. And there
10 was a separate docket number set up that I can get to
11 you pretty quickly during a break.

12 But the proceeding was held back, I believe, in
13 June 2003 about coming up with a form to meet the
14 requirements within what was the rule that is cited
15 here, R-14-3-213(F). So there was that process. I
16 believe that process has been followed to this day when
17 an assignment of a CEC occurs. I don't know of anything
18 at this time where the Commission has deemed to change
19 it. Could they do that? Sure. But they haven't to
20 this point. This is the process that has been followed
21 to this point. That's the process that I would believe
22 we would recommend going forward.

23 But again, the Commission could decide to change
24 that in the future. But it was basically to point out
25 that that process exists. There was a proceeding about

1 it. It is under a separate docket number.

2 CHMN. FOREMAN: Well, that's an interesting
3 historical note. The question is do you object if the
4 original language is in which would require Commission
5 approval for a transfer of your rights under this
6 certificate, yea or nay.

7 MR. DERSTINE: I am told by Mr. Beck we do not,
8 the company does not.

9 CHMN. FOREMAN: Thank you.
10 Member Mundell.

11 MEMBER MUNDELL: Can we go back to Condition 23
12 for a second? Do you want to scroll down to the end?

13 You know, I heard you talk about what will
14 happen after it is submitted and that you will work with
15 the parties. It would seem to me that we would want to
16 add another line at the end there where you have the
17 will be submitted to the parties and the Commission
18 Staff, period. It doesn't say what happens next. So
19 based on what you just said verbally, Counsel, it would
20 seem to me, at least from my perspective, I would want
21 to add and the parties will have 15 days to object or do
22 something. Do you oppose some similar language?

23 MR. DERSTINE: No.

24 MEMBER MUNDELL: Okay. Because that's basically
25 what you said verbally.

1 MR. DERSTINE: Right. That was our
2 expectations.

3 MEMBER MUNDELL: Okay. Thank you, Mr. Chairman.

4 CHMN. FOREMAN: Member Eberhart.

5 MEMBER EBERHART: Thank you.

6 Before we leave this topic of the pole
7 appearance, I am pleased that the applicant is willing
8 to work with the parties, but there is a cost
9 consideration. I think there was some testimony to
10 that. And before we all sing Kumbaya, what is the cost
11 difference between, the Corten brown poles and the dull
12 galvanized poles? And approximately how many poles are
13 we talking about in a magnitude? Are we talking about a
14 thousand total or a million dollars that the ratepayers
15 are going to have to pay to satisfy someone else's
16 criteria as far as appearance?

17 MR. DERSTINE: I will let Mr. Beck speak to
18 that.

19 MR. BECK: I believe in the testimony we
20 represented that a Corten pole was approximately \$10,000
21 and a galvanized would be about 11,500, so it is about a
22 \$1,500 difference per pole. We are talking about on the
23 average probably 700 to 800 foot spans. You have to do
24 that math, but we can come up with a pole number count
25 to give you an idea when we actually get into the

1 condition discussion.

2 MEMBER EBERHART: Mr. Chairman, Mr. Beck, kind
3 of what I have in mind is probably through Segment 1 and
4 part of Segment 2 would be galvanized, and the rest
5 would probably be the brown. If it were split that way,
6 I don't know what the linear feet or mileage is or
7 something like that. Could you come up with an overall
8 cost impact for the Committee's knowledge what the
9 difference will be based on that?

10 MR. BECK: Yes, I will do that.

11 MEMBER PALMER: I can extrapolate that. I could
12 extrapolate if you wanted very quickly. You know, it is
13 roughly \$10,000 a mile differential, roughly. So just
14 calculate how many miles you want to have dull
15 galvanized and how many you want to have brown and you
16 can come up with a cost. But even if it is ten miles,
17 well, then do that math, it is 100,000.

18 MR. BECK: Yes, and that's exactly what I was
19 going to do.

20 MEMBER PALMER: You were already ahead of me. I
21 just did it in my head.

22 MR. BECK: Yes.

23 CHMN. FOREMAN: Counsel, you have ten minutes
24 left. Do you wish to reserve those for your rebuttal?

25 MR. DERSTINE: I will reserve those for my

1 rebuttal. Thank you.

2 CHMN. FOREMAN: All right. Mr. Magruder, we
3 want to be sure to give you the opportunity to present
4 your presentation.

5 MR. MAGRUDER: Thank you, Chairman. I provided
6 a sample of my closing statements that I am going to
7 read, and I will also parallel Exhibit MM-20, which is
8 my plea filing that I submitted to the Docket Control
9 yesterday.

10 Chairman Foreman, Committee members, applicant,
11 intervenor, and the public, as an individual
12 participating in this case, I am most pleased with this
13 Committee and the thorough work that I have witnessed to
14 date. And I feel sad to miss your deliberation. I am
15 sad.

16 As I said in my opening statement, I was unsure
17 if I wanted to support this project. Overall, I have
18 the bare minimum information to say I will now support
19 this project under the conditions set forth in my
20 proposed CEC that I will be emphasizing in a few
21 minutes. In fact, I now support all of the proposed
22 alignments except for in the bosque area, at the
23 southern end of Segment 2 and at the northern end of
24 Segment 3.

25 And after more review, the extra \$890,000 for

1 the hybrid Segment 4, Alternative 2, or the eastern
2 route that was previously discussed with the Committee,
3 I feel that moving that money and those costs to the
4 areas in the bosque area are more important than are the
5 merits of going past the county's complex, three
6 shopping areas, and the wire mess that goes in Segment 4
7 at the Valencia substation.

8 I am very disappointed at not receiving more
9 than minimal scraps of cost information. The
10 application said the cost would be between 24 and
11 \$47 million. If the preferred alignment was chosen it
12 would be \$25 million. Personally I would have been
13 fired with that type of an estimate in anything I did in
14 my engineering experiences.

15 My areas of concern in this plea include four:
16 the bosque issue involving Segments 2 and 3; the
17 assignment of a qualified independent archeologist and
18 biologist to the program, see my Conditions 3 and 5; the
19 content of the restoration and mitigation plan in my
20 Condition 13; and many minor wordsmithing changes in
21 Tables 2 and 3 of Exhibit MM-20.

22 If we look at page 4 of that exhibit, I would
23 like to go through it one at a time. In Section 3.1 we
24 are talking about the line routing in the Rio Rico
25 bosque area. I have two minor corrections. On line 6

1 and a half and 7 and a half change Josephina to Avenida
2 Ostion. I made a mistake. I am sorry, I put in the
3 wrong word. And if you flip the page to page 5, about
4 line 10 and a half, change COM-6, question mark, to read
5 MM-16, to my exhibit. That's why I couldn't find them
6 when I drafted those. So with those corrections, my
7 plea stays as originally written.

8 Looking at the bosque area, there are four
9 options that have been discussed: One, using existing
10 easement; second, east of the railroad; third, west of
11 the railroad; and as brought up yesterday and actually
12 briefly mentioned during the previous hearings, along
13 Pendleton Road.

14 The environmental issues are discussed in my
15 plea, with a caution do not clear-cut in that bosque
16 area, use the five-year trim. The cost for a mile or
17 two of repeated trims is insignificant compared to the
18 overall impact in that area.

19 The bosque also contains unique species that
20 require habitat protection. As one can see, it is
21 fairly narrow. And it is a narrow strip with slices
22 such as clear-cut that have and can have terrible
23 environmental consequences. Again, the benefits of a
24 five-year cut I believe were clearly shown when the view
25 graph, when the slide showed yesterday clear-cut and

1 five-year trim.

2 Landowners' issues primarily are the impact of
3 the easement and the rights-of-way. If the east of the
4 railroad route is chosen, many will lose their front and
5 backyards. Our planning and zoning committee looks very
6 closely at every tree in the bosque along this part of
7 our county from the international wastewater treatment
8 plant to north of Tubac. They have told them where to
9 put their driveways when you come in with a lot. They
10 told them where they can put their houses, to not cut
11 down the old growth trees.

12 The awareness shown in yesterday's petition by
13 every landowner living there but one that they couldn't
14 reach shows that awareness is probably greatly increased
15 through the public process of the landowners in that
16 area. And I believe that we will see even more
17 protection of that habitat in the future.

18 There are about 40 pieces of property. We have
19 17 landowners. 20 of those properties are the horse
20 lots to the north that have no residents. So a great
21 percentage have already agreed that they would like to
22 see the route west of the railroad.

23 West of the railroad was never presented to
24 those landowners by the company. Once they had an
25 opportunity, they, as a group, agreed.

1 Next issue is flooding. Floodproof designs are
2 possible. And they can be designed for the stresses and
3 hydrodynamic forces of a 100-year floodplain or 500-year
4 floodplain. Engineers understand those words and how to
5 design something to survive and to build a mechanical
6 structure to meet those forces under those conditions.
7 At most, 16 poles in my view, looking at the map from
8 the applicant, could be involved west of the railroad,
9 maybe even less.

10 But rivers do meander. I understand meander.
11 And rivers are unpredictable. But they are predictable
12 at least at the 1 and .2 percent of possibility of
13 flooding and the forces involved. The flood district
14 manager only circled three poles. As I pointed out
15 yesterday, that if a line was out either north or south
16 of the Cañez substation, power would still be available
17 to customers. This is important because even though
18 this line is very important, 15, 30-minute delay, you
19 got power. And I think that's pretty good for the only
20 radial line coming into our county.

21 I could go through, and I have it written down
22 here, the N-1, N-2, and N-3 flood criteria for the NERC
23 reliability measurements, but there are three years, 30
24 years and 300 years mean time between failure. So
25 choosing a 100-year floodplain we would be between N-2

1 and N-3, which is pretty high criteria in the NERC world
2 on meeting reliability criteria.

3 I have shown in my plea a foundation inside a
4 floodplain. It doesn't look beautiful but there are
5 numerous of those that this company is using. Mr. Beck
6 and others have stated that concrete in the water table
7 is not a concern, which was something that the Chairman
8 asked us to check on.

9 A CEC granted by this Committee cannot be
10 negated by the county, at least that's the way I read
11 their exemption rules. Actually our county has taken a
12 position in other issues I have worked with that they
13 have no power, no authority over any kind of power line.
14 I can't get them, I can't get them to read -- do more
15 than just give some words. They will not make a
16 decision.

17 The cost issue is also important. As I
18 testified yesterday, as testified yesterday, if an
19 existing right-of-way was traded west of the railroad to
20 the east of the railroad, it might save \$735,000. That
21 is shown in my plea document. When we do that, there is
22 then about a 2.1, \$2.2 million difference between the
23 existing and the west of the railroad option, or about a
24 \$1 million difference between east of the railroad and
25 west of the railroad.

1 Then I said if there was a nominal hundred
2 thousand charge, just to pick a number, these numbers
3 reduce to \$1.2 million between the existing and west of
4 the right-of-way. And they are actually the same
5 between east and west of the right-of-way. The numbers
6 are in my plea document.

7 I also did a trade study. I like the trade
8 study I have on page 7. I looked at four factors,
9 environmental, landowner, flooding, and cost impacts on
10 page 5 of my plea, and I weighted them at 35, 20, 30 and
11 15 points respectively. Results of my trade study -- we
12 have done trade studies. You just weigh and compare.
13 And you do it in an objective manner. And I have given
14 my rationale below.

15 I came to the conclusion that the Pendleton Road
16 was the best option. The next best option was west of
17 the railroad. The next best was the existing line. And
18 the worst was east of the railroad. I have the
19 rationale and discussion in detail. I don't have time
20 to cover it now.

21 CHMN. FOREMAN: Mr. Magruder.

22 MR. MAGRUDER: Yes, sir.

23 CHMN. FOREMAN: Does your rationale take into
24 consideration the potential problems with Arizona
25 Department of Transportation concerns about having power

1 poles, especially large power poles, close to roadways
2 where they might create problems with the cars that go
3 off the roadway?

4 MR. MAGRUDER: Not on the -- in the road, I did
5 not take that into consideration. But these, I have
6 seen crashes of cars that have run into the existing 115
7 kilovolt line that exists in Segment 2. The cars have
8 been demolished. The pole doesn't look like it was
9 scratched. Just if that has happened, the cars have run
10 into these things.

11 CHMN. FOREMAN: Yes, I think that's the reason
12 that the Arizona Department of Transportation is so
13 concerned about it.

14 MR. MAGRUDER: Okay. It doesn't knock down the
15 pole.

16 CHMN. FOREMAN: It does tend to kill people.
17 Member Palmer.

18 MEMBER PALMER: Mr. Chairman, Mr. Magruder, did
19 you also factor in the likelihood that there would be
20 required turning structures on Pendleton Road because of
21 the meandering of that road, and either that or create a
22 straight line that has variable distance from the road?

23 MR. MAGRUDER: More towards the latter, because
24 the road varies. It might be on the east side of the
25 road at one pole, the next pole might be on the west,

1 and it might -- which does reduce some of the meandering
2 and might reduce the number of turning structures.

3 MEMBER PALMER: Turning structures.

4 MR. MAGRUDER: That's the way I thought about
5 it. Okay?

6 Again, tradeoff studies, in fact I would like
7 the Committee to take out all my numbers, put in your
8 own numbers and use that as a way to help make your
9 decision. And this is a way that you might want to do
10 that. That's my guess. Anybody else can use it. In
11 fact, in my engineering experience we will give the same
12 blank form to ten people and all ten turn it in. And
13 that's a way we come up with ways that we can, as a
14 group can come up with answers for trade studies. I
15 forget the name of that statistical process, but we do
16 that.

17 I also am interested in the issue of Corten
18 versus dull galvanized steel. I would like to read that
19 when I talk to that when I look at that condition. At
20 the bottom of page 9 in Table 1 in my plea, I go through
21 all of the changes that we are going to look at in just
22 a second, one each at a time. I will not display the
23 deletions. I will only show you the additions when we
24 look at that in just a second. But I have pages of
25 information that go through every one of those. And

1 then the Table 2 will discuss the other stuff.

2 So let's look, can we look at the CEC for just a
3 second? And I appreciate the company helping me on
4 this. Okay. If we start down at the top, you can
5 see -- let me get my paper out. It will be a little
6 easier.

7 Up at the top I put on the dates of the meeting
8 we have in Chandler. I think that should be included.
9 And then on line 13 and 14 a little bit further, I
10 incorporated herein the application, because I think it
11 is important that the application be made a part of the
12 CEC. I am used to this in engineering where a
13 specification is made a part of a contract.

14 CHMN. FOREMAN: Why?

15 MR. MAGRUDER: Comments, the comments in the
16 application, let's say, concerning species or concerning
17 areas that are not discussed in detail in the CEC are
18 lost for history and for future reference if not
19 incorporated in the CEC.

20 CHMN. FOREMAN: Why not incorporate then the
21 entire transcript and all of the exhibits? Then you
22 would have a much better historical record.

23 MR. MAGRUDER: I don't want to do that. I think
24 just the company submitted an application and you
25 approve the application with the following conditions.

1 And to me, I think that's a fairly simple way to do
2 that. And it is just my opinion. That's why I have the
3 word in there. It is a small change.

4 Next page, page 3, top, the next page I put pro
5 persona in italics because it is a foreign word.

6 Next I indicated on lines 13 to 15 or so, Pima
7 County and City of Nogales so that the jurisdictions of
8 these start and stop points are listed. In this sample
9 one that I was working from -- and let me explain. My
10 modifications are to the company's CEC. They are not to
11 anyone else. So I would incorporate, these are my
12 comments on top of the company's.

13 There was a thing called a general location map,
14 which I have not seen yet, submitted in the CEC. I
15 think that's -- either take out that expression or put a
16 general location map in with the CEC. Frankly I think
17 the map would be nice to have in the CEC.

18 Next is as explained in the application, lines
19 17 to 21, more wordsmithing. But I wanted to make it
20 more precise to say that you are moving the
21 interconnection to TEP from WAPA, that it is a single
22 circuit transmission line. And aging wooden poles,
23 let's just say existing. Aging, I don't find it a
24 precise word.

25 The next little bit lower I talk about coming

1 from the substation from which the alignment extends.
2 An alignment means the route. And it is defined also in
3 this document earlier.

4 Next, on the next page I put Santa Cruz County
5 so we know at the top of line 1 that we have gone
6 from -- Kantor is Santa Cruz County -- so we have gone
7 now from Pima County to Santa Cruz County.

8 The CEC is granted. I think it said approved.
9 The CEC is granted by the Commission -- by the
10 Committee. The Committee grants the CEC. And I think
11 that the CEC should, if you say the word, not approved
12 by the Committee, it is, the CEC was granted. Maybe you
13 don't like the word. That's not important.

14 I did add the word single circuit down a little
15 bit lower.

16 Now we have two sections. The top in yellow is
17 from the company's submission, the one in blue is mine.
18 The reason they are different is, one, and I am not sure
19 if this is still the company's submission because it is
20 for the preferred alternative, not the existing, mine in
21 the blue is my words that would go to the western route.
22 Again, it is highlighted. That is not at all firm.
23 That's a decision that hasn't been made yet.

24 The alignment doesn't need to be in blue down
25 below. Continue down further. I put in "and," made it

1 clear exactly where the 1250 foot wide corridor started.
2 And you will see next resumes a 500 foot wide corridor
3 as we walk through the project.

4 Next page, we will now talk about the
5 conditions. In Condition 1, all I did was put
6 parentheses around BLM.

7 Condition 2, no change. Condition 2a shows up
8 as 22 or 21 or something with a company. It really fits
9 much better right here. I don't believe there is any
10 word changes.

11 Condition 3, I added in the words from Case No.
12 111, slightly condensed, on the retention of an
13 archeologist to be for the program, to conduct a
14 construction survey prior to construction and to be
15 on-site during key activities at critical areas and also
16 shall confer with American Nations and historical
17 societies to determine the sensitive areas.

18 As I said in my testimony, the Santa Cruz Valley
19 is an archeological site from one end to the other. And
20 every time we put in a road we dig up stuff. I do not
21 believe that the company or the construction company as
22 previously worded with the words that follow can make
23 those decisions.

24 MEMBER MUNDELL: Mr. Chairman, can I just
25 interrupt for a second?

1 CHMN. FOREMAN: Member Mundell.

2 MEMBER MUNDELL: Mr. Magruder, I don't have all
3 the numbers memorized. Was 111 the original CEC that
4 was granted by the Commission from Tucson to Nogales?

5 MR. MAGRUDER: To Nogales.

6 MEMBER MUNDELL: 345 line?

7 MR. MAGRUDER: 345.

8 MEMBER MUNDELL: That is one of the benefits of
9 being around for awhile because I remember this, and we
10 actually, the Commission actually included language in
11 that CEC.

12 MR. MAGRUDER: That is correct. And this is
13 slightly modified because I think I used the words where
14 new routes are being developed. So I -- because we have
15 some places that are new routes.

16 MEMBER MUNDELL: So yours isn't as strict as the
17 former condition or the original condition that the
18 Commission ordered in the previous case?

19 MR. MAGRUDER: That is correct.

20 MEMBER MUNDELL: Okay, thank you.

21 MR. MAGRUDER: I slightly reduced the scope.
22 And further on the archeologists and the biologists,
23 later, when I talk about the restoration and mitigation
24 plan, the task and the duties of these two professionals
25 will be specified in that plan later by the company so

1 we will know exactly what they are going to do and limit
2 their work so they don't charge a million dollars.

3 CHMN. FOREMAN: Member Youle.

4 MEMBER YOULE: Mr. Chairman, Mr. Magruder, I do
5 not know, and maybe Mr. Mundell would know, whether the
6 State Historical Preservation Office, and later I think
7 it is Fish & Game you have with the biologists, actually
8 are willing to say this individual or firm is
9 satisfactory to us. Sometimes they don't like to make
10 those kinds of commitments.

11 Would it serve your purpose equally well if
12 that's the case to just say an independent archeologist
13 or an independent biologist rather than making it
14 contingent on getting the agency to approve a specific
15 individual.

16 MR. MAGRUDER: I understand your comment. This
17 is -- those words were copied. I don't mind making the
18 change. I understand the sensitivity of a government
19 agency to say somebody is qualified. But that was in
20 the previous version.

21 MEMBER YOULE: That's why I wasn't sure how that
22 worked.

23 MEMBER MUNDELL: I am not -- I don't recall the
24 rationale at this point for that particular phrase.

25 MEMBER YOULE: But that might be an alternative

1 that would be fine.

2 MR. MAGRUDER: That's fine. It is the
3 independent that I think is really important. And
4 qualified person, I don't know how you measure
5 qualification.

6 MEMBER MUNDELL: I think we utilized that term
7 because we don't want, as Mr. Magruder said, just a
8 person hired --

9 MEMBER YOULE: An existing employee or
10 something.

11 MEMBER MUNDELL: Well, and I think the Chairman
12 can relate to this. You know, you can get an expert
13 almost to say anything, you know, who pays their fee.

14 CHMN. FOREMAN: It usually works slightly in
15 reverse. You can get somebody who wants to testify to
16 almost anything to call themselves an expert.

17 MEMBER MUNDELL: Either way. In any event, I
18 think that was the rationale for the phrase. But if
19 there is some other phrase that serves the purpose, you
20 know, that would certainly be something we can, you
21 know, we can vote on.

22 MEMBER YOULE: Or we can slip in it, you know,
23 not objected to by an agency so that you don't have --

24 MEMBER MUNDELL: Then I just have one last
25 question for Mr. Magruder, quickly. Did you mean Native

1 American? You said American Nations. What does that
2 mean?

3 MR. MAGRUDER: That was a quote. But we could
4 say Native American. That's fine with me.

5 MEMBER MUNDELL: I just wanted to make sure. It
6 said American Nations. I didn't know what --

7 MR. MAGRUDER: We have the Tohono O'Odham
8 Nation.

9 MEMBER MUNDELL: But I am saying, Native
10 American or --

11 MR. MAGRUDER: I prefer Native American.

12 MEMBER MUNDELL: I just want to make sure I
13 understood what the term was.

14 CHMN. FOREMAN: Mr. Magruder, we are sensitive
15 to your doctor's appointment, so please proceed.

16 MR. MAGRUDER: I am trying. And I have similar
17 wording in Condition 5 for the biologists, and I won't
18 read that.

19 No. 7, what I put on there, if you could extend
20 the CEC for, come in and request for a CEC and to extend
21 for up to two years. And that's in Condition 7.

22 But Condition 8 is independent from it which
23 allows them to ask for an extension. So once they get
24 extended for two years they can come back again and ask
25 for another two years.

1 That's my intention, not to forever prohibit the
2 company if they can't complete the project. But we have
3 some CECs, and I don't want to go back and mention
4 Case 111, but extended forever. It is indefinite. So
5 it doesn't expire. And I am just saying come in every
6 two years. If they got to keep extending, that's fine.
7 That was my intention on writing that in there.

8 No. 10, very quickly, I just put a sign at least
9 three feet by three feet. I know Ms. Webb has more to
10 talk about it. But it previously said similar to a
11 roadway sign. And I have no idea what the measurement
12 of a roadway sign means. And I think three feet by
13 three feet at least gives you some objective standard.

14 And then No. 11, I took and added the sentence
15 from the company's No. 12, which only is less than one
16 line in length, and complete it with 11 because they are
17 similar because they are similar type issues.

18 And I added in a new one on No. 12 which is
19 about monopole finish. And I go into discussing visual
20 criteria. My sister-in-law, who I stayed with in
21 Washington for the last ten days, is a professional
22 artist. She has taught art courses for the last 30
23 years. And I asked her how do you measure background
24 versus foreground intensity. And she said, oh, you use
25 the Denman Ross scale, which has been around since 1907.

1 It is the standard way to look on a black on
2 white gray scale scheme. Five is in the middle. Light
3 is low numbers. High is dark numbers. And in detail,
4 it actually shows 8 and 9 would be where the Corten
5 would be. And I would say looking at the background 2
6 and 3 would be the scale of the gray. And using 5 as a
7 reasonable cutoff between the two, there could be an
8 objective way to at least say it is high or low, it is
9 dull gray, it is dark brown. And that would be to aid
10 in the decision from the viewpoint of the largest number
11 of viewers.

12 I know this is relative. I know that it is hard
13 to do. And frankly, in the next line siting case, if I
14 ever do this again, on day one in my opening statement I
15 am going to start talking about what finish do you want
16 for every segment in every route. Because that should
17 be handled in that preferably in the open houses before
18 they ever come to this Committee. It shouldn't be late.
19 And because it is so late, I have an addition that we
20 need to know within ten days of when the Committee makes
21 that decision so that the review process, the parties,
22 if we object, I am not even saying I am going to object,
23 we come forth and do it before the Commission.
24 That's --

25 CHMN. FOREMAN: Mr. Magruder, you have three

1 minutes.

2 MR. MAGRUDER: Okay. Restoration --

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

4 MEMBER EBERHART: Thank you, Mr. Chairman, just
5 a quick question for Mr. Magruder.

6 You have seen the applicant's proposed addition
7 to the CEC regarding pole colors. Do you have an
8 objection to that? Yours is much more stringent, but
9 could you live with --

10 MR. MAGRUDER: I could live with two more
11 changes, change 30 days to 10 days and upon granting by
12 the Committee instead of approval by the Commission,
13 because I won't be able to make a comment. And I talked
14 it over with Mr. Foreman and Mr. Beck, and he said we
15 just need somebody to walk down the line and make a
16 judgment. Somebody has got to.

17 And I am not saying I am going to object. I
18 also feel it would probably be 50 percent of each color.
19 And the application says between 200 and 240 poles. So
20 at \$1,500 a pole, that's \$150,000 is what we are talking
21 about on a 25, \$30 million project. I think it is not a
22 major cost.

23 MEMBER EBERHART: Thank you.

24 MR. MAGRUDER: The next subject is the
25 restoration and mitigation problem, which is almost

1 verbatim from Case No. 111. And it specifies construct
2 roads to minimize wildlife; use existing roads when
3 possible; minimize vegetation disturbance; have an
4 implementation plan for revegetation; specify how
5 temporary access and roads will be extinguished;
6 establish contact with Fish & Game and SHPO; specify how
7 the final preparation site will encourage natural
8 vegetation; consider possibly putting a reserve to mark
9 off mature trees that will not be reduced; specify
10 vegetation management plans that would not allow
11 clear-cut in the bosque area; specify nonnative seeds
12 and plants; specify plan to preserve topsoil; specify
13 how to imprint so water will land, will stay in the
14 area; how to protect topsoil; how to apply proven
15 restoration methods; how to prevent spread of noxious
16 needs from vehicles used by and during construction and
17 maintenance, because I have had to have my car steam
18 cleaned when I brought it from France back to the United
19 States so I didn't bring back seeds from France to the
20 United States; and, lastly, to discourage the use of
21 unauthorized off-highway vehicles in the area being
22 considered.

23 I know this is long, but the company's proposal
24 has four sentences. The first sentence in their
25 proposal says submit a plan. The second and third

1 sentence says if practical at the end of the sentence,
2 which means nothing is guaranteed to be done. And the
3 last sentence says establish contact with Fish & Game
4 and SHPO. I consider theirs extremely weak, and frankly
5 I have little confidence that much would be done.

6 The next subject is, very quickly, 15.

7 CHMN. FOREMAN: One minute.

8 MR. MAGRUDER: I know.

9 Databases are needed by the Realtors, by the
10 different jurisdictions. And this is an ARCVIEW and
11 ESRI product that gives the GIS database so that other
12 entities can use the same database to show the corridor
13 that's finally approved, I mean the right-of-way that's
14 approved. Because it has been done.

15 And then No. 17, that was my comment in Case 111
16 because of the corrosion caused by electromagnetic and
17 electric fields on a gas line that is steel. It needs
18 protection. So I slightly rewrote subparagraph A and
19 added subparagraph C because that is important. That
20 was a condition in 111, and that condition is really
21 only to prevent a fire from a natural gas line break
22 from melting the wire.

23 I have some others that are mostly wordsmithing,
24 even though it looks like they are greatly underlined.

25 CHMN. FOREMAN: Thank you very much.

1 MR. MAGRUDER: I would like to thank you very
2 much for allowing me to appear, and I am extremely sorry
3 I have to leave. I will answer any questions as I pack
4 my material to get out of here, if there are some.

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

6 Are there questions?

7 Member Mundell.

8 MEMBER MUNDELL: Just quickly, first of all,
9 Mr. Magruder, on Condition 15, and maybe Ms. Webb can
10 answer this also and also the utility, but are there any
11 other entities that we should include on that list that
12 copies -- it says copies go to, I don't know if it is
13 Patagonia. It lists --

14 MR. MAGRUDER: I have been through all the
15 entities and early submissions to the company. They
16 have incorporated the entities that I have suggested.

17 CHMN. FOREMAN: Well --

18 MEMBER MUNDELL: Ms. Webb, you can wait until
19 your turn and use your time.

20 I wanted to make sure, you are leaving us and I
21 want to make sure if there were any other entities,
22 towns, counties, cities that you wanted on the list.
23 But you said they have got it?

24 MR. MAGRUDER: I think they have got them all
25 and the company incorporated mine. We have been working

1 on this for about a month. And they have incorporated
2 all the entities that I have suggested in earlier
3 revisions.

4 MEMBER MUNDELL: The only one I would say maybe
5 is Vail, but I don't know if Vail is incorporated or
6 not. Maybe.

7 MR. MAGRUDER: It is not incorporated.

8 MEMBER MUNDELL: It is not. Well, have a safe
9 trip, Mr. Magruder. We are going to miss you. And
10 thank you for your participation.

11 CHMN. FOREMAN: Member Wong.

12 MEMBER WONG: Thank you, Mr. Chairman. I just
13 wanted to echo Member Mundell's comment. Mr. Magruder,
14 thank you for your time, energy and effort. And we
15 appreciate citizens like yourself.

16 MR. MAGRUDER: Briefly, I just have to have an
17 operation today.

18 MEMBER WONG: And, Ms. Webb, you provide a
19 valuable service to us and provide a lot of valuable
20 alternative information. So thank you very much for
21 your efforts.

22 MR. MAGRUDER: Thank you, very much, Mr. Wong.

23 CHMN. FOREMAN: Member Eberhart.

24 MEMBER EBERHART: Mr. Magruder, I will keep this
25 even shorter than Mr. Wong's, but I think I am smarter

1 and know more about this case because you were involved
2 than if you had not been involved. So thank you for
3 your participation.

4 MR. MAGRUDER: Thank you for your comments.
5 That's why I came, because I thought I could have some
6 valuable information to add to the case.

7 MEMBER EBERHART: Thank you.

8 CHMN. FOREMAN: All right. We will take a
9 break, approximately 15 minutes. Be back at 11:15. We
10 will start at that time with Ms. Webb's closing.

11 (A recess ensued from 11:00 a.m. to 11:15 a.m.)

12 CHMN. FOREMAN: All right. Let's go back on the
13 record.

14 Ms. Webb, it is now time when you have the
15 opportunity to present your closing statement. You may
16 proceed.

17 MS. WEBB: Okay. Thank you, Mr. Chairman.
18 Thank you, members of the Committee. And thank you,
19 UNS Electric staff and so forth. I would thank
20 Mr. Magruder, but he is gone.

21 Actually this experience has been not bad as far
22 as it goes. And thank you, Chairman, for being very
23 helpful with the instructions how to do this. I think
24 eventually as we go along and do this sort of thing, we
25 can get a little packet or little listing to put

1 together on the website if somebody wants to intervene,
2 how to make it easier for everybody, because I know this
3 is, I have observed it, seems to be very painful for the
4 Committee as well to do this for the intervenors.

5 So I think, as I mentioned yesterday when I
6 testified, that everything has to start with a
7 beginning. And so it is, I think it is going to be
8 difficult with people, but there were people who went
9 before, Mr. Magruder intervened before me, and other
10 people who have intervened before me. So I definitely
11 think it is a process.

12 I want to look at solutions. So I will briefly
13 touch on the public outreach.

14 There was not a meeting in the
15 Vail/Corona/Cienega corridor, Rita Ranch area. Rita
16 Ranch is probably three miles north of the Vail
17 substation. The Vail substation was the topic of
18 controversy.

19 Well, Mr. Chairman, if I am wrong on -- I don't
20 know if I can use it. It wasn't a public comment so it
21 is not an exhibit. Am I allowed to use it in my close?

22 CHMN. FOREMAN: You should only refer to matters
23 in evidence and reasonable inferences that you can draw
24 from what is in evidence.

25 MS. WEBB: Mr. Beck testified that there had

1 been a peaker plant approved by the City of Tucson in
2 his testimony. That -- those -- and he did reference
3 that back to when I made comments about my letters. And
4 he said that was the subject of this matter. But it is,
5 it is all the subject of this matter when it is related
6 to cumulative impacts. And there is nothing in the
7 statutes that say you as the Committee cannot consider
8 cumulative effects. You can consider cumulative
9 impacts. And it is not just considered a cumulative
10 impact as far as negative. It can also be a positive,
11 what positive things are going to come out of these line
12 siting cases.

13 In the Rita Ranch, Rita Ranch is three miles
14 north of the proposed project. Green Valley
15 Coordinating Council was contacted in this case. Green
16 Valley is to the west of this project, and it is also in
17 the west of the portion that is going to be left alone.
18 Sahuarita was contacted in this project. Sahuarita is
19 on the west of this project a considerable distance.
20 There is an area that is in the study area called
21 Deweyville, Voyager RV Resort, and also Trails West.
22 But in the study area, that was not contacted on the
23 mailing labels.

24 CHMN. FOREMAN: Ms. Webb, let me ask a couple
25 questions here because I am not sure how to deal with

1 the argument that you are making. Do you claim that the
2 notice that was provided to members of the public with
3 regard to this application was legally insufficient in
4 any way?

5 MS. WEBB: No.

6 CHMN. FOREMAN: If it is not legally
7 insufficient, what power does this Committee have to
8 grant the remedy that you seem to be suggesting we
9 should grant, which is this citizens advisory committee?

10 MS. WEBB: I am going to jump right over there.
11 I can turn the page. I will flip to that.

12 Arizona Revised Statutes 40-360.1, organization
13 and membership of the Committee, the Committee may
14 utilize the staff resources of its constituent agencies
15 as well as necessary consultants.

16 Now, I understand that there may be a little bit
17 of a difficulty trying to find a statutory requirement
18 to allow a citizens advisory council for regional
19 transmission planning or related to this project.

20 Now, do I think on a level that's the most
21 appropriate and logical? I think that's the best way to
22 go. I think we should be included just the way other
23 incorporated jurisdictions are included. But in that
24 case, we could have an oversight committee for the
25 lifetime of this project.

1 Now, given Mr. Beck testified that they just put
2 in the right-of-way application for the existing --
3 well, the areas that are up in the air, under contention
4 for BLM property, for the BLM property that little
5 portion, the 200 by 100, they put in the right-of-way
6 application for that in the little piece down by
7 Nogales. Plus, if the preferred alignment is chosen
8 through that area in the northern portion, or if it is
9 determined -- is that me? Anyhow, what I am saying is
10 and then plus do they have to put in their lease for the
11 State Land Department?

12 All of those are going to take quite some time,
13 at least two to three years. But we can have the
14 citizens oversight council to assure that these issues
15 are done, because historically, I was just in front of
16 the Commission. It was eight months ago. Many other
17 members of the public were in front of the Commission
18 eight months ago. And the directive was given to have
19 aggressive upfront outreach to the communities, and not
20 only the communities, the customers.

21 CHMN. FOREMAN: Well, the Commission may have
22 expressed those sentiments, but the Committee has no
23 enforcement power. Is it your contention that the
24 language in A.R.S. Section 40-360.01(F) that says that
25 the Committee may utilize the staff resources of its

1 constituent agencies authorizes us to order a utility to
2 create a community advisory Committee, is that your
3 argument?

4 MS. WEBB: Well, I haven't quite finished yet.

5 Now, the BLM, what they can do, because
6 typically BLM is in the rural areas and so the impacted
7 communities through the affected areas and reasonable
8 and future, foreseeable, they can help other agencies
9 create these committees, not necessarily the -- that
10 exact name. And so they often will encourage their
11 nonfederal organizations to go ahead and create
12 communities to work with.

13 So yes, I do legally think, as well as necessary
14 consultants. And I think this organization could be a
15 necessary consulting organization. Because I have shown
16 through the evidence that, number one, that
17 environmental mitigation does not occur on these access
18 and construction roads. I have shown that even in newer
19 cases the encroachments are still occurring. I have
20 asked and I have shown evidence several times over the
21 last year that I would like to be involved in
22 transmission planning. It is just not happening.

23 I am not saying this is something that I want to
24 happen for the next 25 years. I think that this could
25 become autonomous. However, at the beginning there

1 needs to be accountability, just like with the BTA.

2 They have certain regulations and rules.

3 And it is not to say that this Committee
4 would -- I think Mr. Derstine would ever be responsible
5 for filing all these, but I put in my CEC we would work
6 with the companies to come up with a set of rules, and
7 they are not necessarily rules but a set of suggestions
8 and policies and guidelines that would be approved by
9 the Commission so that, rather than us having to come
10 back later and file a compliance complaint, which then
11 makes it so we have to file these, I mean a lot of
12 copies, and then go in front of the Commission and argue
13 our point, and then if we call up Staff and we say --

14 Anyhow, what I am saying is this is a process
15 that can be proactive rather than reactive. And we can
16 help the environment and we can help our communities
17 prior to and also save money and time in front of the
18 Commission and so we don't spend \$3.1 million to date on
19 environmental costs which includes the public outreach
20 and another 2 million that's going to have to be spent.
21 That's what I am saying. So statutorily this is just
22 one particular area that can be used.

23 MEMBER WONG: Mr. Chairman, just make a comment.

24 CHMN. FOREMAN: Member Wong.

25 MEMBER WONG: Thank you, Ms. Webb. And I

1 understand what you are trying to address, the issue
2 about outreach. And continue, but just be mindful the
3 time limitation that you give matters you want to
4 discuss. So please make sure you address those as well.
5 Thank you.

6 MS. WEBB: Let's move on from that. So let's
7 move on to my CEC.

8 Mr. Gellman, do you have my full version, not
9 the redline one?

10 I would also like to say that I misspoke. In my
11 original -- not one of my original, one of my east of
12 Wilmot Road, but I was trying to squeeze my writing down
13 so I just put down turn south. So I misspoke. So you
14 guys have a copy in front of you.

15 What I did is I took the company's copy that
16 Marshall had, I mean Mr. Magruder had made his changes
17 to, and then I made my changes to Mr. Magruder's copy.
18 I mean the wordsmithing things, I am going to pass over
19 those I am not in disagreement with most of his
20 wordsmithing.

21 I agree, I really think a location map should be
22 available. I would also like to see, I really would
23 like to see a surveying type map without -- not
24 something that looks like it is overlaid and
25 highlighted. I would like to see the outlines with the

1 land forms underneath so it makes it easier for common
2 people to be able to read and understand it. No changes
3 to the description of the wood H-frames.

4 Okay. A little further down, it says on page 2,
5 extends westerly in a 50 foot right-of-way adjacent and
6 parallel to the other lines. To clarify the statement,
7 the point that Mr. -- I mean that Member Noland brought
8 up about the right-of-way, I understood Mr. Beck to say
9 that he could not commit to what the right-of-way would
10 be with State Land. And I think 100 foot or less is a
11 wonderful step in the right direction, but I think the
12 problem with that is more than likely they probably -- I
13 can't speak for you, but that leaves the opportunity
14 open to stay within just 100 foot and shares an access
15 road.

16 I really would like to see and shares an access
17 road. Just about every line up in that area has its own
18 access and construction road, and I drove on most of
19 them the other day so I could see what those were.

20 Next, on page 3, I would really, really like to
21 see, because this project is being applied for for the
22 entire line, it is not excluding the area that was made
23 in the previous decision, I would like to see the
24 restoration/mitigation plan provided for in Condition 13
25 applied to the entire line, not just the portions that

1 are going to be really constructed. That would take
2 care of the problems with access and construction roads
3 along the route.

4 Okay. I was cognizant of the cost issue and
5 that was my concern with the wood H-frames. Again, I am
6 not married to the wood H-frames. That is in that
7 upland land. I observed that SWTC has a lot of H-frames
8 in that area that they are currently using. Okay. So
9 that was that thing.

10 Now, with the road, as I testified to yesterday
11 with my conversation with Mr. Hays, the floodplain
12 coordinator with Santa Cruz County Flood Control
13 District, off the cuff his idea is that all of them are
14 bad in that area. They should be able. My compromise
15 was to put it on the road.

16 And as far as the curves, most of that land on
17 the west side of Pendleton, as you can see from the
18 maps, is owned by Avatar, Rio Rico Properties. So part
19 of my solution would be in their right-of-way, and also
20 in the road right-of-way, if they could share. And
21 that's not an ADOT road. It is a county maintained road
22 according to Mr. Hays when I asked about that particular
23 solution. And it is my understanding that the spans are
24 supposed to be 750 to 850, which was reiterated this
25 morning. So the height on those structures would be

1 quite tall, and you could mitigate quite a few of the
2 curves and turns in that particular situation.

3 Okay, next. The wood H-frame we already talked
4 about. I would really like to see the applicant acquire
5 the permits they did not acquire for the previous
6 decision to amend the current transmission line
7 right-of-way.

8 Okay. In 3, I didn't really think about it, but
9 also getting SHPO, or especially the budget cuts written
10 out and independent, I am quite happy with the word
11 independent as far as agencies. I can -- that would be
12 fine with me.

13 And again on 4, I think Mr. Magruder misspoke
14 with, he said 5. I think it is 4 A. Independent is
15 fine for biologists as well. Or another thing that I
16 really have been thinking about and I noticed what
17 happened in the agency outreach letters, I think it
18 should be may be autonomous agencies within the
19 government. Because sending something to Pima County
20 and expecting it go to the autonomous agencies would be
21 also equivalent agencies, like the president when you
22 would like it to go to the BLM or to, I don't know, DOE
23 or something like that.

24 So maybe something that could help in the future
25 would be to put something that says it goes to the

1 specific or appropriate governmental agencies so that
2 the -- because from speaking with Mr. Hays, my
3 understanding was that he didn't receive any of the
4 information that I noticed had been put in the book on
5 the agency outreach letters. There were three to Santa
6 Cruz County. So perhaps if it says the appropriate
7 governmental agency in some of these cases or the
8 appropriate autonomous government agency, that would be
9 very helpful.

10 Okay. 10, this is a sign color one, I mean sign
11 size. I would really -- three by three, I think I am
12 good on that one unless you can't see if from a moving
13 car on the freeway. This has just been a problem in
14 this case. And we have discussed it and I believe that
15 the applicant has modified the language in their CEC for
16 this one. But I think it is going to be very important
17 to get a font size and font color as well as the size of
18 the sign, because the signs that we have in our current
19 case look just like a -- very similar to the state land
20 signs where they are posted.

21 I think this is really important, because people
22 aren't going to look, especially if they are driving. I
23 know I passed by several times before I noticed it until
24 I went on the website and saw that they posted their
25 notice and went and looked for them, and the ACC

1 website.

2 Okay. So monopole finish. All right. I
3 noticed, and I thank you, that's actually very new on
4 the northern portion about the color. A lot of our
5 business in our area is tourism. If we use the dull
6 gray galvanized on the portions in Santa Cruz County
7 where there isn't -- where there aren't a lot of trees.
8 And when you are driving you virtually cannot see these
9 poles. If you see the line going towards, oh, I can't
10 remember which telescope, the Catholic one along hills,
11 they have got the black or the Corten poles, and you can
12 see them from the freeway. They are really dark. And
13 so it is -- I think maybe the -- and Marshall and I have
14 had this -- Mr. Magruder and I had this discussion, this
15 may be a little much, but I think there might be
16 something in between the two that could be a compromise
17 position on the color.

18 Okay. And then that brings me to the next
19 point. I didn't spontaneously ask to have an opinion
20 about Santa Cruz County, but if I am asked to have
21 an opinion, I take it very, very seriously. And I
22 didn't -- I do care about Santa Cruz County. I love the
23 area. But that's not the first time that I have heard
24 comments about having an opinion. I seem to have now
25 formed an opinion about Santa Cruz County or --

1 But I understood the Chairman's request was to
2 have, not have an opinion, but if I had an opinion about
3 Santa Cruz County, to give my opinion on segment, all of
4 them in my pleading. And I took that very seriously and
5 I went down to Santa Cruz County and I looked at the
6 routes. And it is not like I just strayed off and
7 wandered into those places.

8 And so I just, if somebody gives me a task, I
9 take it seriously. And may not do it the way other
10 people do it, and I may not do it the best, but I at
11 least take it seriously.

12 MEMBER MUNDELL: Mr. Chairman, to that point.

13 CHMN. FOREMAN: Member Mundell.

14 MEMBER MUNDELL: I may have missed something,
15 Ms. Webb. Was somebody critical or sarcastic or
16 whatever word you want to use about you having an
17 opinion on Santa Cruz County?

18 MS. WEBB: I think maybe you weren't in the room
19 during the open meeting or during the statement by the
20 applicant, where there was something about I now had an
21 opinion in Santa Cruz County or something along those
22 lines, so...

23 MEMBER MUNDELL: Okay. You are right, I wasn't
24 in the room. And so I wanted to clarify what you were
25 saying.

1 MS. WEBB: Uh-huh. But I don't want people to
2 think I am a complete -- I mean I understand that I am a
3 little different, but I am not off out, you know, in all
4 these things all over the place.

5 Okay. What is really important to me in this
6 mitigation plan is that I do like previously what was
7 just said, the part about (f), specify the coordination
8 processes with the local agencies, rather than Arizona
9 Game & Fish and Historic Preservation Office, or
10 applicable autonomous agencies within government.
11 Because I know Pima County historic preservation is
12 very, very active and very strong. And although a lot
13 of it is in Santa Cruz County, they did have an opinion
14 in the application about the a lot of the area just
15 south of Santa Cruz County.

16 Also that just might be a good way to go with
17 that. That would also then cover Arizona Game & Fish
18 and SHPO. If you put applicable government agencies
19 regulating or applicable government agencies or agencies
20 who have an interest.

21 I really have a big interest in (p), specify and
22 apply best methods to discourage unauthorized
23 off-highway vehicles in the right-of-way for all
24 segments. I just went down and visited state lands and
25 drove on in and drove down Kantor on state land through

1 the Santa Rita range. And I understand there are some
2 other areas that were -- I drove down to the Kantor
3 substation from the end of Wilmot on the state land.
4 And the gate, you just flip up the chain and you drive
5 on down. And there were, again, several access roads
6 and it is in the Santa Rita experimental range.

7 But I understand other areas, I think especially
8 along the extra high voltage lines, there is a key you
9 can get if you want to use the state lands and you just
10 get the key from TEP and that's how you access the
11 trails. That has just been that particular area.

12 Okay. 15, again I don't want to beat this horse
13 to death, but under agencies, autonomous agencies, Vail
14 is not incorporated. That's why we run into a lot of
15 these problems. It can't be incorporated. There are
16 several issues behind this. But I don't know what
17 agencies could be provided to in Vail.

18 MEMBER MUNDELL: Say that again. I couldn't
19 hear you.

20 MS. WEBB: I don't know what agencies could be
21 provided to in Vail, maybe Arlan Colton in Pima County.
22 Again, the autonomous agencies in Pima County that are
23 involved with planning might be a good way to phrase
24 something like that.

25 Okay. Let's go down to the other part down

1 here. 21, if any of this project is considered a
2 critical facility service as defined by the flood
3 control district and floodplain administrator of Santa
4 Cruz County constructed in the floodway or floodplain,
5 recommendations from the Santa Cruz County, City of
6 Tucson, or Pima County flood control director or
7 floodplain coordinator shall be considered along with
8 the industry standards for such construction to include
9 determination that there is no alternative site as
10 determined by an Arizona registered civil engineer.

11 And you may wonder why City of Tucson and Pima
12 County. Because a large portion of this line in the
13 northern end is Pima County and City of Tucson and is in
14 a flood prone area. And I think that the recommendation
15 for any new construction needs to be considered by those
16 two entities, the City of Tucson and Pima County.

17 The joint citizens advisory council originally,
18 and I have been asking for this, is just the joint
19 advisory council. I mean the citizens advisory council
20 for regional transmission issues. I think we are going
21 to disagree that the transformer is not a part of this
22 project, because if they were to go in front of the
23 Commission for a rate thing on a transformer without
24 sharing this, it would be a lot more difficult to get
25 that. So I do believe that this is a portion of this

1 project.

2 If it goes in front of the BLM, it is going to
3 be considered a portion of this project since there is
4 no difference then for rates with the BLM. It is still
5 going to be a portion of this project for future
6 foreseeable and cumulative impacts if they get the
7 preferred alternative.

8 I just think, and I don't know it is the
9 southeast, I think it is the Southern Arizona -- I think
10 that's wrong -- Southern Arizona Transmission Study
11 group. That was a, is just a group that's between -- it
12 has got a whole bunch of different agencies in southern
13 Arizona that work together on regional transmission
14 process. And they say they have got the eye of the
15 Commission now and it is in the BTA.

16 And that brings to me to a point that I am so
17 glad Member Noland brought up.

18 CHMN. FOREMAN: Five minutes.

19 MS. WEBB: The member of the audience that
20 brought up the dark monopoles or the transmission poles,
21 he works for SWTC. He was here for three days to go
22 ahead because they have some projects going in front of
23 the Committee here soon. So I am not to say he didn't
24 live in that Sycamore Park subdivision.

25 MEMBER NOLAND: I didn't hear you. I am sorry.

1 Can you clarify that? You are not saying that he didn't
2 live out there?

3 MS. WEBB: No. He does live in Sycamore Park,
4 what he told me afterwards when -- I know that he worked
5 for SWTC.

6 MEMBER NOLAND: But he lives in the area?

7 MS. WEBB: Yes, yes.

8 MEMBER NOLAND: Okay.

9 MS. WEBB: He worked for SWTC and he was there
10 specifically to watch the proceedings for three days. I
11 gave him a binder in the hopes we can work on regional
12 transmission planning issues.

13 The New Tucson substation is going in according
14 to the 10-year plan in 2010 and that's --

15 CHMN. FOREMAN: Member Noland.

16 MEMBER NOLAND: Mr. Chairman, I have got a
17 couple questions to ask Mrs. Webb, but I don't want to
18 take her last five minutes. So if you will indulge me
19 after she completes her time, I just need to verify a
20 couple of things. Thank you.

21 CHMN. FOREMAN: We gave Mr. Magruder a few extra
22 minutes. We can give Ms. Webb something.

23 MS. WEBB: The reason why I set this up on a
24 CEC, I thought it would be the easiest way to do this.
25 I tried to make it very, very simple and streamlined

1 with the 10 days so we would have time after this is
2 granted by the Committee to go in front of the
3 Commission with a request for review if it did not work
4 out.

5 So if you had the two advisory councils, and I
6 would recuse myself because obviously conflict of
7 interest, it doesn't have to be me, to have the two
8 advisory councils, one for Santa Cruz County, one for
9 Pima County, and then they would meet with the applicant
10 within ten days to go ahead and just work on a set of
11 guidelines. There could be dynamics, they could change,
12 but just to go ahead and figure out who would be on
13 these committees as far as people in the communities.

14 Then after that, they -- so then there would be
15 time to go in front of the Commission if a decision
16 didn't -- that didn't work out. Then in 60, 60 days of
17 the Commission decision granting the CEC, the utilities
18 would work with either their advisory or oversight
19 council to determine a set of guidelines to comprise
20 their CAC or COSC and the consequences for noncompliance
21 to be approved by the Commission. So it would be the
22 applicant and the utilities working together to work on
23 the set of rules for noncompliance so that we could be
24 proactive rather than reactive.

25 And I think that's so important, because

1 sometimes after the fact there is just nothing you can
2 do to fix it if the damage has already been done. And
3 also it saves us from having to file a whole bunch of
4 paperwork, paper, and do the whole process. And also it
5 saves taxpayers, too, because we don't have to go before
6 the law judges and commissions and all this sort of
7 thing.

8 Okay. In areas where existing right-of-ways are
9 to be utilized and there are distribution lines, every
10 effort to underbuild will be done. And I left this sort
11 of so that could be worked on. And this actually is up
12 to the utilities to go ahead and make the effort to do
13 it without having to have -- because there hasn't been
14 instruction on it. This is what I am trying to say.
15 And in the past there has been instruction on the
16 previous items I have talked about. And I really think
17 there needs to be something in writing with some rules
18 and regulations. This one there hasn't been
19 instructions, to my knowledge, on underbuilding and it
20 would be an opportunity to show that the utilities are
21 willing to move forward and do something.

22 I am done?

23 CHMN. FOREMAN: One minute.

24 MS. WEBB: Okay. So as I said, I think with
25 these solutions that I have offered that it offers an

1 opportunity for, first of all, make this public process
2 more streamlined. It offers an opportunity for
3 taxpayers like myself and ratepayers like myself to not
4 have to spend the vast amount of money and time to do
5 this. It would also make it possible to become a party
6 of interest and offer a demonstration at the beginning.

7 Also it would help me, somebody -- as you can
8 see I love to advocate, I love to advocate for the
9 utility company. And I think if there was open back and
10 forth communication, I think we can really work on this.
11 Because we are not stopping transmission lines,
12 especially with renewables into the future.

13 And I thank you for your time.

14 CHMN. FOREMAN: All right. Member Noland.

15 MEMBER NOLAND: Thank you.

16 The one thing that I would like to clarify,
17 because I know you probably gave us this information in
18 the beginning, but on the list of registered
19 nongovernment organizations that you gave us, do you
20 represent any of those organizations.

21 MS. WEBB: Member Noland, by law I cannot
22 represent anyone but myself.

23 MEMBER NOLAND: Are you a member of any of those
24 organizations?

25 MS. WEBB: Yes.

1 MEMBER NOLAND: Which ones?

2 MS. WEBB: Hilton Road Community Association and
3 the Vail Preservation Society.

4 MEMBER NOLAND: Are you an officer?

5 MS. WEBB: Well, it is in transition. I am
6 co-director of the Vail --

7 MEMBER NOLAND: Can you just speak a little
8 slower and a little closer to the microphone.

9 MS. WEBB: We are in transition, but I was or am
10 sort of still the co-director for the Vail Preservation
11 Society. And the Hilton Road Community Association is a
12 little bit more pickiesque. We are sort of -- we don't
13 have officers.

14 MEMBER NOLAND: Okay. So you are not
15 representing any particular group, you are here
16 representing yourself, is that correct?

17 MS. WEBB: I am here representing myself, yes.

18 MEMBER NOLAND: And I wanted to be sure that I
19 have your position clear on the finishes of the poles.
20 I think I heard you say that you believe all of the area
21 except maybe in the bosque area should be the dull
22 galvanized poles. Am I wrong in that?

23 MS. WEBB: I am always so confusing.

24 MEMBER NOLAND: Other than where you said keep
25 the wood poles along the upper hillside area, where they

1 are replacing poles or where they are going to use new
2 poles, you prefer the dull galvanized poles except
3 where?

4 MS. WEBB: The only place that I have absolute
5 100 percent opinion on is against existing steel lattice
6 structures. I prefer dull gray galvanized.

7 MEMBER NOLAND: I misunderstood that then. I
8 apologize.

9 MS. WEBB: But the bosque area I would say would
10 be the area that I would say 80 percent, because I
11 would -- if those people, the people who live there
12 prefer the dull gray galvanized in the bosque area, then
13 I would have to defer to their opinion. But I think
14 that would be an appropriate use of Corten.

15 The other areas, I was in the same meeting with
16 Mr. Beck when he said to Mr. Magruder that all they
17 would have to do is just walk up and down the line and
18 it wouldn't take very long or something along those
19 lines that was very similar. And so I believe that
20 there is appropriate use of different colored poles, but
21 I think that to say one should be one color or one
22 should be another color in those open areas is very
23 difficult to say on that.

24 MEMBER NOLAND: Thank you.

25 Thank you, Mr. Chairman.

1 CHMN. FOREMAN: Any other questions?

2 Member Palmer.

3 MEMBER PALMER: Thank you, Mr. Chairman.

4 Mrs. Webb, are you familiar with the -- we don't
5 have a specific mission statement, but if you were going
6 to condense our mission to several words, how would you
7 describe the mission of this Committee?

8 MS. WEBB: Do you want me to do it as we or you?

9 MEMBER PALMER: Well, as we, in other words.

10 MS. WEBB: We are the last agency standing
11 between the environment or protecting the environment or
12 balancing the environment between the -- that would be a
13 short -- so that would be a statement, a vision
14 statement versus a mission statement, but yes.

15 MEMBER PALMER: Mr. Chairman, I have some
16 reservations about citizen advisory committees, because
17 I have been involved with them for many, many years in
18 various capacities. And my concern is, you know, our
19 mission statement is to mitigate environmental impact,
20 and in some cases could deny the issuance of a CEC when
21 the evidence suggests that the impact, negative impact
22 is greater than the benefit accrued.

23 And this particular Committee, although it has
24 changed in composition over the last eight years since I
25 have been a member, is a remarkable assemblage of

1 people, not only the designees of agencies, but the at
2 large members, and members like Mr. McGuire, who is
3 representing ranchers. So we have a broad spectrum. We
4 have engineers, we have lawyers, we have ranchers, we
5 have elected officials, interesting array. Nowhere can
6 an array be found like this that I have been aware of in
7 Arizona. And they are very committed to their mission.

8 And I understand, you know, your desire to have
9 some front end coordination and exposure of the will of
10 a group of people, supposedly representing the greater
11 number. But that's not always the case with the
12 citizens advisory group. And sometimes they get bogged
13 into minutia and not dealing with the greater issue.

14 And I have some confidence that the utilities
15 are able to do some advance planning. And they are
16 charged with that task. They have to deal with lots of
17 federal and state agencies in dealing with their task of
18 providing, you know, cost effective and environmentally
19 sensitive electric power in the grid.

20 So I am opposed in principal to doing this
21 citizens advisory committee in this instance because of
22 my eight years experience on this Committee and knowing
23 what this Committee has done in the past on cases where
24 there were evidence, there was evidence of environmental
25 damage and how we reacted to that.

1 CHMN. FOREMAN: All right. Any other questions
2 before we go to rebuttal?

3 Member Mundell.

4 MEMBER MUNDELL: It is really not a question,
5 but it is hopefully, because I know Mr. Gellman has
6 followed the actions of the Commission for years, first
7 as a Staff attorney and now representing the utility,
8 and I don't recall if he was still on Staff when we had
9 the case in Pinal County, but we added some language
10 that I think will somewhat address what Ms. Webb is
11 talking about where we ordered SRP and APS to work with
12 the counties on the front end to establish utility
13 corridors in their long-term planning.

14 I am surprised that -- well, maybe not
15 surprised, but I looked for it in this CEC, but what it
16 did was it tried to alleviate the problem that occurred
17 in the Peoria case where you had all that development
18 and they were pointing fingers at us and the Commission
19 and Line Siting Committee and saying who is going to be
20 sort of the focal point for long-term planning. So in
21 the SRP case in Pinal County, we ordered the utility,
22 because they don't have jurisdiction over the county
23 between -- or the city to, it goes further than this
24 condition, to work with the county and the cities to
25 establish utility corridors long term.

1 And it somewhat will alleviate, I think, the
2 concern that Ms. Webb has, maybe not totally, but at
3 least you are thinking long term. And this county and
4 Pinal County can learn from the mistakes that occurred
5 first what I saw in the east valley with the Santan
6 plant where the city, Town of Gilbert, changed the
7 zoning from agricultural to residential right around the
8 plant, and then we saw in the west side in Peoria where
9 you have these massive developments with no really
10 thought how you are going to provide utilities to these
11 hundreds of thousands of people and you probably need
12 utility corridors and that was not done.

13 So I would hope that, Mr. Gellman, you can find
14 that language from that CEC in Pinal County that we can
15 at least discuss after lunch hour. And I will see what
16 my colleagues want to do with it. But it somewhat
17 addresses the issue, I think also from a long-term
18 planning perspective will not only be beneficial to the
19 citizens of Pima County and Santa Cruz County but also
20 to the utility, because it will alleviate some of this
21 friction that occurs between the populace and the
22 utility when we are siting these transmission lines that
23 we all know long term in the big picture we need to live
24 in a modern industrial society.

25 Thank you for your indulgence, Committee

1 members, but I think that will help solve the problem in
2 the long term.

3 CHMN. FOREMAN: Member Wong.

4 MEMBER WONG: Thank you, Mr. Chairman.

5 Ms. Webb, I apologize if I didn't hear your
6 closing argument about siting, location siting of the
7 corridor. I know Mr. Magruder in his closing
8 reemphasized his interest in siting part of the power
9 line along the floodplain and flood zone and that area.
10 Did you state -- or what is your position? Is that your
11 desire, to see a similar position? Would you talk about
12 that again.

13 MS. WEBB: I think it is a very slippery slope
14 to move poles closer to an ever evolving floodway. I
15 think and I observed, I observed that there are several
16 culverts under the railroad track. I think from the
17 photo you can see in two locations on the north and
18 south that that floodway and channel is very close to
19 the railroad.

20 And that said, if you are going to site the line
21 on the east side of the railroad track, the location
22 that is in contention by the neighbors is predominantly
23 in the floodplain, not the floodway. And I believe if
24 you are going to site it on the east side of the
25 railroad track, which in my opinion and echoing the

1 opinion of the floodplain coordinator, is not a very
2 good idea because I think it is just getting closer to
3 an evolving water way, that's my opinion, but if you are
4 going to site it on the east side, as I stated, the area
5 in contention is predominantly, if you look at the FEMA
6 floodplain maps, in the floodplain not the floodway, and
7 there are existing access roads, the ranch road and the
8 railroad road, that could be used if the county were to
9 say we are not going to grant you an access road -- I
10 don't believe in that either -- however, it is something
11 workable. And from Mr. Magruder's testimony there are
12 several variances that have happened and occurred in
13 front of the board of supervisors. So I just honestly
14 believe if you are going to site next to the east side
15 of the railroad tracks, it would not hurt in the
16 contentious area to site over on the west side for that
17 portion.

18 MEMBER WONG: So, Mr. Chairman --

19 MS. WEBB: So my alternative is the road.

20 MEMBER WONG: Sorry.

21 MS. WEBB: My alternative is Pendleton Road.

22 MEMBER WONG: You would support the utility's
23 routing which would be to the east side of the railroad
24 track?

25 MS. WEBB: Only if it is all the way east over

1 to Pendleton Road.

2 MEMBER WONG: Towards the Pendleton Road side.

3 MS. WEBB: On Pendleton Road or close to, not
4 the east alignment and not the existing alignment.

5 MEMBER WONG: So you are not advocating siting
6 towards on the west side of the railroad tracks?

7 MS. WEBB: If you are going to site -- if your
8 choice is to site on the east side of the railroad track
9 in the preferred alignment, I am advocating the
10 contentious area, that you site those poles on the west
11 side of the railroad track, given that it is in the
12 floodplain, not the floodway, according to the FEMA
13 floodplain maps, the predominant, majority of it. I am
14 not saying that is set in stone, but...

15 MEMBER WONG: Thank you.

16 CHMN. FOREMAN: All right.

17 Rebuttal, 10 minutes.

18 MR. DERSTINE: I want to just touch on two
19 issues that came up in discussing some of the
20 conditions, I think primarily directed to Mr. Magruder's
21 proposed form of CEC.

22 The first was his Conditions 3 and 4a that
23 related to archeologists and biologists. Our
24 archeological and biological provisions are contained at
25 13, Condition 13. That Condition 13 is the standard

1 condition relating to construction mitigation of
2 environmental impacts. It was used in several past
3 prior cases. I think it is recognized by, Mr. Chairman,
4 your standard condition packet where you directed us to,
5 wherever we deviate from those standard conditions, to
6 identify it.

7 We used the standard condition. The standard
8 condition is appropriate here. There is no reason to
9 deviate from it I think for the simple reason that
10 condition is used and applied in other cases. That is
11 that the company, through its environmental consultant,
12 has already conducted an environmental survey that
13 identifies sensitive environmental issues, and, going
14 forward, once the CEC is granted, they must comply with
15 all applicable environmental laws that pertain to that
16 segment or that portion of the line. If it is BLM land,
17 if it is on state lease land, they all have their own
18 environmental requirements. The company must comply
19 with those and they will comply with those.

20 This language that Mr. Magruder has proposed is
21 from Case 111. That was a 345kV line that was sited
22 over the Coronado National Forest. There are issues
23 pertaining to jaguar population, Harris hawks,
24 heightened environmental concerns. And separate
25 language was crafted back in that case several years

1 ago. It may have been appropriate there. It probably
2 was given that case and the route that was adopted. But
3 in this case --

4 MEMBER MUNDELL: Excuse me, Counsel. The
5 Commission determined it was appropriate.

6 CHMN. FOREMAN: Member Mundell.

7 MEMBER MUNDELL: Thank you, Chairman. You said
8 it may have been appropriate. The Commission determined
9 it was appropriate.

10 MR. DERSTINE: Point taken, absolutely. The
11 Commission determined it was appropriate, and for the
12 reasons set forth in that case.

13 But the factors that are present in Case 111 and
14 the reason for crafting the having archeologists on-site
15 during all aspects of construction, having a biologist
16 on-site during all aspects of construction are increased
17 costs, significant increased costs that are not
18 warranted here. There is no -- there has been no
19 evidence of environmental impacts that would warrant
20 this company having to retain an archeologist and
21 biologist to be present, to be on staff.

22 The mitigation measures that are set forth in
23 Exhibit C, D, E and F are to be followed. The statutes
24 which govern environmental compliance and when an
25 archeologist has to be called out, those are on the

1 books. That's the law, and the law will be followed.
2 And the condition that's set forth, the standard
3 condition used by this Committee in prior cases is the
4 appropriate condition for this case.

5 MEMBER MUNDELL: Mr. Chairman.

6 CHMN. FOREMAN: Member Mundell.

7 MEMBER MUNDELL: Thank you, Mr. Chairman. Sorry
8 I didn't go through the Chair last time, but I got
9 excited there, talking about a previous --

10 CHMN. FOREMAN: We are all delighted when you
11 get excited.

12 MEMBER MUNDELL: Pride of authorship, thank you,
13 David.

14 But let me ask this question. I understand your
15 general analysis. And there were some unique factors in
16 Case 111, but what about the bosque area in this case?
17 You wouldn't think it would be appropriate if you had to
18 be extra vigilant in that area?

19 I understand you cited the reasons, some of the
20 factors in that previous case, but at least from my
21 perspective I think you could make a pretty strong
22 argument that we need to be very careful. And I don't
23 know what your position is on the clear cutting versus
24 the five year. So I appreciate some comment. Maybe you
25 are going to address that in your presentation.

1 MR. DERSTINE: I guess the two issues you raise
2 as to the clear cutting over the five year, I guess that
3 depends on -- I mean Mr. Beck already testified that if
4 requested and appropriate we would, the Committee would
5 live with the five-year trim as opposed to clear cutting
6 within the bosque.

7 MEMBER MUNDELL: The utility would live.

8 MR. DERSTINE: Absolutely. As to, you know,
9 special or extraordinary mitigation efforts, you know,
10 we recognize that the bosque is significant and
11 environmentally significant. And the laws on the books
12 cover that and protect it. So again, in terms of a need
13 for a new condition tailored to the bosque and requiring
14 that an archeologist be on site when we are placing the
15 poles either in the preferred line on existing line and
16 have a biologist on staff and on hand to do that, again,
17 I think the laws on the books, the condition that has
18 been used by this Committee in past cases covers that
19 and protects that in those instances.

20 MEMBER MUNDELL: Thank you.

21 MR. DERSTINE: The only other --

22 CHMN. FOREMAN: Member Youle.

23 MEMBER YOULE: As I recall, on your biological
24 studies you did show some potential adverse impact to,
25 for instance, desert tortoise and some other listed

1 species.

2 MR. DERSTINE: Right.

3 MEMBER YOULE: In those areas would you be
4 opposed to having someone, an independent biologist,
5 present when there is the potential of impacting some of
6 those species?

7 MR. DERSTINE: Member Youle, there is an
8 Exhibit C starting around, around page 27 --

9 MEMBER YOULE: Right.

10 MR. DERSTINE: -- that specifically addresses
11 the assessment of desert tortoises and how encountering
12 those habitats would be addressed. It says through the
13 employment of a biological monitor outlined in the
14 conservation measures of this report, impacts to the
15 desert tortoise and habitat are anticipated to be
16 minimum. But there are procedures in place and have
17 already been recognized to address concerns over desert
18 tortoise or other species.

19 MEMBER YOULE: I assume then you would not be
20 opposed to putting that language into the Condition 13.

21 MR. DERSTINE: I would not be.

22 MEMBER YOULE: Thank you.

23 MR. DERSTINE: The only other thing, if I have a
24 minute to briefly address, is that the times used that
25 was argued for by Mr. Magruder, he asked for a two-year

1 fuse on the CEC. The application points out we are
2 projecting to commence construction, break ground in
3 2011 with completion 2012. Under his two-year fuse we
4 have to come in and seek renewal during the course of
5 construction. We would ask a reasonable time frame be a
6 five-year fuse on the CEC.

7 And that would conclude my remarks.

8 CHMN. FOREMAN: Member Wong.

9 MEMBER WONG: Thank you, Mr. Chairman.

10 Mr. Derstine, I have some questions regarding
11 siting transmission lines and towers within the
12 floodway, floodplain area as Mr. Magruder addressed.

13 I am looking at a Magruder Exhibit MM-16. Does
14 that look familiar? It has a tower and the transmission
15 line. I am not sure if it is in Tucson or somewhere in
16 Pima County.

17 MR. DERSTINE: Okay, I have seen this.

18 MEMBER WONG: I have this. And looking at this,
19 and also there was reference yesterday to a photograph
20 of a flood on the Rillito Creek that Mr. Beck -- I
21 think, Mr. Beck, you said that was your company's
22 transmission line or tower that toppled or was damaged,
23 is that correct?

24 MR. BECK: Member Wong, that is correct, yes.

25 MEMBER WONG: So the question is: Under what

1 circumstances did your company decide to site within
2 that floodway, floodplain, that zone, that Rillito Creek
3 situation -- and I am not -- the MM-16 exhibit, is this
4 yours as well? If you could, talk about that.

5 MR. BECK: I touched on that within my
6 testimony, I believe, to the fact that historically one
7 of the reasons for using the river system for siting was
8 cost and public interest. The public didn't seem too
9 concerned about transmission lines out in rivers, and it
10 was cheaper right-of-way for the companies. So in
11 Tucson's case, a lot of our 138kV system was put into
12 washes.

13 We see the fallacy. The fallacy of the cost
14 issue just doesn't exist because, when we do have
15 problems, they are major, they are long lasting, and
16 they are very expensive to go in and remediate,
17 especially now with a lot more environmental concern
18 than was in existence at the time those lines were
19 originally built. A lot of our lines were built in the
20 early '70s just as the environmental issues were kind of
21 coming to light.

22 So historically we did put lines in the river.
23 To the extent they are there and we have right-of-ways,
24 if they fail we have gone back and replaced them in line
25 because it's a lot cheaper to replace a few structures

1 than to resite the line and move outside of the river.

2 But our preference is not to put new lines in rivers.

3 MEMBER WONG: Therefore, Mr. Beck, in the past,
4 you say that was the past policy but not the current
5 policy of your company?

6 MR. BECK: Our current policy is to avoid any
7 rivers or washes.

8 MEMBER WONG: In the instances in the past where
9 you did site them and build them within the rivers or
10 washes, was that as a preferred and/or alternative route
11 or was that placed -- was that determined by the
12 Commission or other governing body?

13 MR. BECK: Well, starting in '71 or '2 when the
14 CEC process came into being, they were -- they went
15 through a CEC process, but as you may or may not be
16 aware, a lot of those early CECs were very perfunctory
17 and may not have included any alternatives and they
18 have, "This is our proposed route."

19 MEMBER WONG: So just to clarify again, you
20 just, did you just state that your current policy, your
21 company's current policy is not to site within a
22 floodplain, river, or river's bed, is that correct?

23 MR. BECK: To avoid if at all possible. I mean
24 if you have no alternatives we can and will build in
25 those areas, but our preference is not to place our

1 lines into those hazardous conditions.

2 MEMBER WONG: Thank you.

3 MEMBER MUNDELL: To that point, Mr. Chairman.

4 CHMN. FOREMAN: Member Mundell.

5 MEMBER MUNDELL: Mr. Beck, when you say it is
6 your policy, is that a written policy? Informal policy?
7 Is that a policy that has been adopted by a board of
8 directors? What do you mean when you say it is the
9 policy?

10 MR. BECK: It is an informal policy of the
11 engineering department that our preference is, for
12 reliability reasons, not to place lines in jeopardy.

13 MEMBER MUNDELL: So that's the policy,
14 quote-unquote, not only in this case but in every case
15 going forward. And then when did that policy begin?
16 That's a multifaceted question. I should break it up.

17 MR. BECK: I think the policy concerns really
18 came to light in the '80s when we had a series of
19 several so-called 100-year floods, and we lost portions
20 of our system both in the Phoenix area and in the Tucson
21 area. And we realized the difficulty and issues of
22 dealing with flooding conditions in our lines.

23 And also another point that has been raised,
24 that has come up over the years, is the channelization
25 of the washes, which I also mentioned. To the extent

1 that these washes and rivers get channelized to protect
2 the banks, that is a very good thing for those outside
3 of the banks of the wash, but it makes it even worse for
4 the objects that are within the washes today.

5 MEMBER MUNDELL: Thank you, Mr. Chairman.

6 Thank you, Mr. Beck.

7 CHMN. FOREMAN: Member Wong.

8 MEMBER WONG: Thank you, Mr. Chairman.

9 Mr. Beck, that raised another issue. You said
10 it was a company policy. Is there an industry standard
11 or a, not a policy, but is there an industry standard
12 and position about transmission lines and towers and
13 poles within floodplains and flood washes?

14 MR. BECK: I am not aware of an actual industry
15 policy. I think if you were to canvas SRP and APS, who
16 had similar issues with lines in washes, they would
17 probably say similarly that they would try to avoid
18 those washes if at all possible.

19 Now, in some cases, in very heavily developed
20 areas, urban areas, the washes are a very good
21 opportunity for looking at siting of lines, and
22 sometimes those are the only really available options.
23 But the preference would be not to, but I don't know
24 that there is an industry policy per se.

25 MEMBER WONG: Thank you, Mr. Beck.

1 CHMN. FOREMAN: All right. Very good. We will
2 take a lunch recess. We will resume at, we better make
3 it 1:45 if we are going to eat lunch here, but we will
4 try and be back 1:30, 1:45, start definitely by 1:45
5 with deliberations on the CEC.

6 MR. DERSTINE: Thank you.

7 (A recess ensued from 12:13 p.m. to 1:38 p.m.)

8 CHMN. FOREMAN: Let's go back on the record.
9 And the record should indicate the presence of applicant
10 and counsel and Ms. Webb. Mr. Magruder, as previously
11 noted, had a previously scheduled medical procedure this
12 afternoon that he needed to go to that and has waived
13 his presence for the remainder of our hearing this
14 afternoon.

15 There are a number of ways that we can deal with
16 the decisions that have to be made here. As some of you
17 have noted, seriously and humorously, I am a linear
18 thinker, so I like to start at one end and go to the
19 other end. But I am willing to be flexible.

20 MEMBER PALMER: In a linear way.

21 CHMN. FOREMAN: So if somebody wants to jump in
22 and do things a different way, why, just say so.

23 What I would like to do, or what I would suggest
24 we ought to do is, number one, start with a discussion
25 and vote on the question of need. There hasn't been a

1 great deal of debate on that. I am assuming that we
2 have consensus on it, but let's find out for sure. Then
3 I thought we would start with the segments and do
4 alignments, and then we can go through the language of
5 the draft CEC and conditions. Now, we may lapse over
6 into the language as we go through some of these other
7 areas, and I guess I don't have a problem with that.
8 But just as a way to address things I thought that might
9 work.

10 So let's start with the question of need. Is
11 there anybody who feels that need has not been
12 demonstrated, or wants to --

13 MEMBER PALMER: I am sorry, would you do that
14 again.

15 CHMN. FOREMAN: Is there anyone who believes
16 that need has not been demonstrated for this
17 application?

18 (No response.)

19 CHMN. FOREMAN: All right. Could I have a
20 motion then that we, the Committee, find that the
21 modification and changes that are proposed are needed.

22 MEMBER PALMER: So moved.

23 MEMBER YOULE: Second.

24 MEMBER RASMUSSEN: Second.

25 CHMN. FOREMAN: Let's just do a voice vote. Is

1 there anyone opposed?

2 (No response.)

3 CHMN. FOREMAN: All right. No opposition, by
4 unanimous consent the Committee finds that there is need
5 for this modification.

6 So let's go and start with Segment 1.

7 MEMBER WONG: Point of order, if I may,
8 Mr. Chairman.

9 CHMN. FOREMAN: Sure.

10 MEMBER WONG: Not to slow you down, but I think
11 if we would have an affirmative vote as opposed to a
12 passive vote. You said did anybody oppose. Did I miss
13 that? Did you ask everybody --

14 CHMN. FOREMAN: I asked if there was anybody
15 opposed. No one said anything, so I just said by
16 unanimous consent.

17 MEMBER WONG: I would like all in favor say aye.

18 CHMN. FOREMAN: Do you want a roll call vote?

19 MEMBER WONG: Not necessarily roll call, but I
20 would prefer an affirmative vote.

21 CHMN. FOREMAN: All right. All those in favor
22 signify by saying aye.

23 (A chorus of ayes.)

24 CHMN. FOREMAN: Opposed, no.

25 (No response.)

1 CHMN. FOREMAN: No noes, all ayes. We will find
2 again that need has been demonstrated unanimously.

3 Let's go to Segment 1. Let's assume that we are
4 talking about a corridor width of 500 feet and a
5 right-of-way width of 100 feet or less. And let's then
6 see what you folks think about the preferred route as
7 opposed to the alternative. Is there anybody who is in
8 favor of the alternative route?

9 MEMBER PALMER: Mr. Chairman, I would like to
10 discuss this, because I mean I am in a bit of a
11 quandary. If the preferred route is taken, there is a
12 possibility that they are going to get entangled with
13 BLM regarding jurisdiction and right-of-way issues. And
14 I am confused about that, because apparently this
15 property, this amount of land, was ceded back to the
16 county. And not being a lawyer, I don't want to get
17 enmeshed in that.

18 But what would the appearance be if we chose the
19 alternative route as a means for them avoiding at least
20 an environmental assessment, would be the minimum
21 probably required -- and that would be required for the
22 whole route because a couple hundred feet may be under
23 the jurisdiction of BLM.

24 CHMN. FOREMAN: Well, as I remember the
25 testimony and statements of the applicant in this case,

1 if you took the preferred route and we authorized a
2 500-foot corridor, they would have the option of placing
3 the right-of-way on the west side of Wilmot Road near
4 the area of where the BLM land is located, so they could
5 avoid the BLM issue that way. Is that correct?

6 MR. BECK: That is correct.

7 CHMN. FOREMAN: So that would be a possibility.

8 MEMBER PALMER: The other means of avoidance
9 would be adopting the alternative route, that would also
10 avoid BLM issues.

11 CHMN. FOREMAN: It would. But it would put us
12 in a position of doing something that the State Land
13 Department has indicated that they oppose. And we have
14 discussed before and I am on record as saying that I
15 think the statutory scheme that we have undervalues the
16 interests of the State Land Department, which is the
17 interests of the school children of the State of
18 Arizona. And it seems to me that there is a sensible
19 argument that they can make that running the alternative
20 route the way it is run would run right through the
21 middle of a potentially developable parcel --

22 MEMBER PALMER: Right.

23 CHMN. FOREMAN: -- and in that way diminish the
24 value of it.

25 And so if the company is willing to accept the

1 risk of dealing with the BLM -- and I pulled out my
2 handy little calculator yesterday and calculated out
3 that a parcel of land 100 feet wide and 200 feet long
4 amounts to .049 acres. If BLM is going to hang them up
5 over .049 acres and they are willing to accept the risk
6 of that, then I am okay with having them do that.

7 I also understand or understood from the
8 testimony that the company believes that there is a
9 possibility that they may be able to convince the BLM
10 that no environmental assessment of any kind is needed.
11 Is that correct?

12 MR. BECK: We feel there is a potential to be
13 able to do that, yes.

14 MEMBER PALMER: Mr. Chairman, so it is
15 imperative that we provide for a 500-foot corridor which
16 would allow them the flexibility of avoiding BLM issues.

17 CHMN. FOREMAN: I think that's -- well, that's
18 their argument and I find that persuasive. Anybody else
19 have thoughts on that?

20 Member Eberhart.

21 MEMBER EBERHART: Well, not on that specific
22 issue, but another issue for the preferred alternative.
23 In the CEC it says that this will parallel two existing
24 138kV lines. And my question is: Commission Staff has,
25 over the past year or two, been very interested in the

1 separation distance between lines for reliability
2 purposes. And I don't remember what the testimony was
3 as far as what the applicant is willing to commit to as
4 far as the separation distance between the proposed line
5 and the existing lines.

6 CHMN. FOREMAN: I am not sure that there was any
7 testimony on that point.

8 Mr. Beck.

9 MR. BECK: No, I don't believe it was actually
10 in this case. You may or may not recall that in other
11 cases Tucson Electric Power has taken a position that
12 that separation is a nonissue. We understand that Staff
13 does have that concern. To the extent we commit to a
14 separation between the new and the existing, that will
15 impact the ability to get less than 100-foot
16 right-of-way in that corridor adjacent to the existing
17 right-of-way. So we can go with the separation
18 requirement if the Committee felt that was necessary.
19 But in the company's position, we don't feel it was
20 necessary.

21 CHMN. FOREMAN: My understanding of the history
22 on this is if the Committee has never imposed a
23 condition that would require two lines to be separated
24 by the height of the tallest pole, which I believe is
25 the position that Staff has taken. There is one

1 exception to that, and I think that was in, oh, 141,
2 where APS agreed to move a line away from an existing
3 line the width of the tallest pole supporting the line
4 because one of the lines was wood, and they felt that
5 the wood structure would not be as resilient as the
6 metal pole, and therefore felt that there was some basis
7 for moving the second line away the height of the wood
8 poles, so in case one of the wood poles fell.

9 But it is my understanding here that if we find
10 that, maybe we should talk about that explicitly, that
11 all of these wood poles need to be, it is appropriate
12 for them to be changed into the metal poles, that that
13 issue would go away.

14 And it is also my understanding that there have
15 been no prior pole failures, no prior metal pole
16 failures which have caused the sort of perpendicular
17 fall that would be guarded against by the extra width in
18 Arizona. Is that correct, Mr. Beck?

19 MR. BECK: That is correct, Mr. Chairman. At
20 least as far as TEP's system, UNS' system goes we have
21 not had pole failures in a perpendicular direction that
22 caused any other problems in the system.

23 Also just to point out, that, relative to the
24 separation issue, there are engineering standards from
25 NERC and FERC that identify what separation is required

1 for various reasons. But it is not set as a standard
2 where it says you will be 100 feet or the height of a
3 pole. So we will meet all the NERC, FERC requirements.
4 So there is a basis for our separation.

5 CHMN. FOREMAN: And that is still the case, that
6 there is no NERC or FERC requirement of pole separation
7 that is consistent with the Staff's position with regard
8 to pole separation, is that true?

9 MR. BECK: That is correct.

10 CHMN. FOREMAN: Okay. Member Eberhart.

11 MEMBER EBERHART: Yes. I don't want to beat
12 this dog to death, but just a couple more questions. Do
13 you know offhand, the existing 138kV lines, are they the
14 double timber poles, the H-pole type?

15 MR. BECK: You know, I am not sure. I know at
16 least one of them is a lattice structure.

17 MEMBER EBERHART: And just tentatively or
18 preliminary engineering, did you come up with any
19 recommended separation between the existing line and the
20 proposed line?

21 MR. BECK: That's part of our detailed design
22 engineering, and we haven't started that. We kind of
23 hold off on that until we get a route that we know is
24 going to be working.

25 MEMBER EBERHART: Okay. Thank you.

1 The existing poles, are we planning to go to the
2 north side of those existing lines?

3 MR. BECK: It would be on the south side.

4 MEMBER EBERHART: On the south side? And do you
5 know the nearest line to the south, the nearest existing
6 line, you don't know if that's lattice or timber?

7 MR. BECK: We will see if we have any
8 information that might tell us that.

9 MEMBER EBERHART: I am just wondering if timber
10 or approximate height of the existing lines.

11 MR. BECK: We will get that information shortly.

12 CHMN. FOREMAN: Well, let's deal then with a
13 subsidiary issue. Let's deal with the issue of whether
14 the applicant should be authorized to replace all the
15 wooden structures with monopole metal structures. Is
16 there anybody who opposes that portion of the
17 application?

18 MEMBER PALMER: Mr. Chairman.

19 CHMN. FOREMAN: Member Palmer.

20 MEMBER PALMER: If we can be more specific, the
21 placement of those wooden structures that are in
22 proximity to the substation and could be impacted by the
23 proposed lines?

24 CHMN. FOREMAN: Well, let's just talk about the
25 entire route. Let's just talk about the entire route.

1 My understanding is the application asks to replace
2 wooden structures not only in Segment 1 but Segment 2, 3
3 and 4, is that correct?

4 MR. DERSTINE: That is correct. I only want to
5 clarify I guess to the extent the discussion is focused
6 on 1A, we are not replacing any wooden structures in 1A.
7 That is all new line construction. So 1A involves no
8 replacement issues. But to the extent you are talking
9 about the entire remainder of the project, yes.

10 CHMN. FOREMAN: But my understanding is, and
11 correct me if I am wrong, between the Nogales tap and
12 the Kantor substation, there are wood lattice
13 structures, is that --

14 MR. DERSTINE: No.

15 CHMN. FOREMAN: Oh, okay. So the wood lattice
16 structures are south of the Kantor substation.

17 MR. DERSTINE: Only south of Kantor, from the
18 Nogales tap south to Kantor. That's the segment of the
19 line in Segment 1 that has already been replaced and
20 rebuilt on steel monopoles.

21 CHMN. FOREMAN: And in that segment all you want
22 is the authorization to increase the voltage in the
23 present line, correct?

24 MR. DERSTINE: Correct.

25 CHMN. FOREMAN: All right. Now, with that

1 understanding, it seems to me it would be sensible for
2 us to vote on whether or not the applicant should be
3 authorized to replace all of the existing wood
4 structures with steel monopoles.

5 MEMBER PALMER: What do you mean by
6 authorization, Mr. Chairman? That they have an option
7 or you compel them as a condition of the CEC?

8 CHMN. FOREMAN: Well, they have asked for that
9 authority. Correct?

10 MR. DERSTINE: Yes.

11 CHMN. FOREMAN: And so the question is
12 whether they can --

13 MEMBER PALMER: But it would still be optional
14 as to when, or would that be subject to the expiration
15 date?

16 CHMN. FOREMAN: I think it would be subject to
17 the expiration that we have in the conditions.

18 Member Mundell.

19 MEMBER MUNDELL: Just to be clear, in your
20 comment now you are talking about south of the Kantor
21 substation all the way to the end of the project in
22 Nogales?

23 CHMN. FOREMAN: Correct.

24 MEMBER MUNDELL: Okay. I just want to be clear,
25 because in Section 1, I mean there is no pole

1 replacements, nothing, no improvements, correct? All
2 you are doing is energizing the line up to 138?

3 CHMN. FOREMAN: Well, no, they are building --

4 MEMBER PALMER: South of Nogales.

5 MEMBER MUNDELL: South of the Nogales tap, yes,
6 I am sorry. South of the Nogales tap all you are doing
7 is upgrading or increasing from 115 to 1 --

8 CHMN. FOREMAN: 38.

9 MEMBER MUNDELL: -- 38. So Mr. Chairman, is
10 there some reason why we can't go segment by segment on
11 these poles? I thought Ms. Webb had some concerns about
12 wooden poles somewhere. But I guess you are trying to
13 make sure no one has to agree with her position, we just
14 go make it quicker?

15 CHMN. FOREMAN: The issue of wood poles was
16 raised, and I thought as long as it is on the table,
17 let's resolve it, get it out of the way.

18 MR. BECK: Mr. Chairman, just to clarify for the
19 record, the southernmost line that we would be building
20 next to in Segment 1A is lattice steel structures.

21 CHMN. FOREMAN: So they would not be next to any
22 wood poles, correct?

23 MR. BECK: Correct.

24 CHMN. FOREMAN: All right. With that
25 understanding, there are two issues, and we will deal

1 with that after we do the first one. The first issue is
2 should the applicant be authorized to tear down the wood
3 structures and replace them with steel monopoles as set
4 forth in the application.

5 MEMBER RASMUSSEN: I so move.

6 CHMN. FOREMAN: Do we have a second?

7 MEMBER EBERHART: Second.

8 MEMBER YOULE: Second.

9 CHMN. FOREMAN: All right. Any further
10 discussion?

11 Member Wong.

12 MEMBER WONG: Mr. Chairman, that motion then
13 would apply for the entire route, not just a particular
14 segment, correct?

15 CHMN. FOREMAN: Correct.

16 MEMBER RASMUSSEN: Correct.

17 MEMBER WONG: Thank you.

18 CHMN. FOREMAN: Any further discussion?

19 (No response.)

20 CHMN. FOREMAN: All right. Those in favor say
21 aye.

22 (A chorus of ayes.)

23 CHMN. FOREMAN: All those opposed, no.

24 (No response.)

25 CHMN. FOREMAN: Ayes have it unanimously. The

1 Committee has authorized replacement of the wooden
2 structures with steel monopoles.

3 Now let's deal with the spacing issue. We
4 apparently have no wooden structures that any portion of
5 this line will be adjacent to, is that correct, I guess
6 depending on what we do with the distribution line on
7 the Segment 2?

8 MR. BECK: That is correct.

9 CHMN. FOREMAN: Okay. All right. Let's address
10 that later.

11 MR. DERSTINE: The statement is certainly true
12 with regard to Segment 1.

13 CHMN. FOREMAN: All right.

14 MR. BECK: And/or with regard to transmission
15 poles.

16 CHMN. FOREMAN: All right. So right now we have
17 no requirement that you place it a certain distance from
18 other lines. So I am willing to just leave that as it
19 is until we get down to Segment 2 and discuss the
20 distribution line.

21 Is there anybody who wants to talk about an
22 offset for lines now?

23 Member Wong.

24 MEMBER WONG: Yes. Mr. Chairman, I am
25 interested in incorporating in the CEC some of our

1 discussion earlier about abandonment of right-of-ways,
2 transmission line right-of-ways, and retention of those
3 existing lines that are attributed to distribution
4 lines. And Mr. Beck had identified a certain route of
5 those existing distribution lines which would be needed
6 to be retained and not abandoned. So can we phrase that
7 and address that?

8 CHMN. FOREMAN: Sure. Let's do that when we
9 talk about lower Segment 2 and Segment 3, because that's
10 where the issue comes up. And I agree that's a
11 significant issue.

12 But for right now, is there anybody who wants to
13 talk about stipulating a mandatory distance between
14 lines that are going close to each other?

15 Member Eberhart.

16 MEMBER EBERHART: Thank you, Mr. Chair. I want
17 to acknowledge that Staff does have a good point. It is
18 a balancing act, though, for the Committee and the
19 Commission to stipulate a mandatory minimum separation,
20 because that automatically then could mandate much more
21 right-of-way, much more expense for the applicant that
22 may not be needed.

23 I am comfortable in this case that if they meet
24 the FERC and other regulatory regulations, and given the
25 testimony that the existing line nearest the proposed

1 line was on steel lattice poles, I think I am satisfied
2 that if they are designed in accordance with the other
3 regulations we should be okay.

4 CHMN. FOREMAN: Okay. All right. That I think
5 brings us back, then, to the particular route in
6 Segment 1. I don't think we approved the preferred
7 route.

8 MEMBER RASMUSSEN: Mr. Chairman, I would move
9 approval of preferred alignment from the Kantor
10 substation to the Vail substation as shown in Segment 1
11 of the graphics on the screen.

12 CHMN. FOREMAN: With the 500-foot corridor?

13 MEMBER RASMUSSEN: Yes, sir.

14 CHMN. FOREMAN: Is there a second to that
15 motion?

16 MEMBER WHALEN: Second.

17 CHMN. FOREMAN: It has been moved and seconded
18 that the Committee approve the alignment, preferred
19 alignment in Segment 1 from the Vail substation to the
20 Kantor substation. Is there any further discussion on
21 that?

22 (No response.)

23 CHMN. FOREMAN: All right. No further
24 discussion. All in favor say aye.

25 (A chorus of ayes.)

1 CHMN. FOREMAN: All opposed.

2 (No response.)

3 CHMN. FOREMAN: No noes. So the Committee
4 unanimously adopts or approves the preferred alignment
5 for Segment 1.

6 All right. Now let's go to Segment 2, and let's
7 deal with Segment 2 from the Kantor substation down to
8 the location where the preferred alignment diverges from
9 the existing alignment. Is there anybody who wants to
10 be heard on that portion, the upper part of Segment 2?

11 Member Eberhart.

12 MEMBER EBERHART: Just I support the preferred
13 alignment in this segment.

14 CHMN. FOREMAN: May I take that as a motion to
15 adopt it?

16 MEMBER EBERHART: Please do.

17 CHMN. FOREMAN: Is there a second?

18 MEMBER YOULE: Second.

19 CHMN. FOREMAN: All right. It has been moved
20 and seconded that the Committee approve the upper
21 portion of Segment 2 from the Kantor substation to the
22 location north of the bosque where the preferred
23 alignment diverges from the existing alignment. Is
24 there further discussion?

25 (No response.)

1 CHMN. FOREMAN: All right. All those in favor,
2 then, of the motion adopting approving the preferred
3 alignment say aye.

4 (A chorus of ayes.)

5 CHMN. FOREMAN: Opposed, no.

6 (No response.)

7 CHMN. FOREMAN: The ayes have it. And again,
8 unanimously, the Committee has adopted the preferred
9 alignment down to the place where it diverges from the
10 existing alignment in Segment 2.

11 Now, Segment 2 below that point we have, I guess
12 there were, four options identified by Mr. Magruder, one
13 west of the tracks, which could be dealt with legally
14 with this application, because the 500-foot corridor is
15 from the preferred route which would reach across the
16 tracks. We have got the preferred route, which is east
17 of the railroad tracks. We have the existing route,
18 which is further east. And then we have an alignment
19 suggested by Ms. Webb in the last day or two that would
20 follow Pendleton Drive. And it appears that that
21 alignment would require renoticing and rehearing of this
22 matter.

23 Anybody wants to be heard on that?

24 Member Rasmussen.

25 MEMBER RASMUSSEN: Mr. Chairman, I would speak

1 against an alignment that would be west of the railroad
2 track alignment in terms of the floodplain issues that
3 have been extensively discussed here. I would just say
4 I would favor the alternate alignment, i.e. the existing
5 alignment that is currently under use.

6 I think an alignment immediately east of the
7 railroad tracks with the attendant additional service
8 roads, coupled with the service roads to the railroad,
9 would really cut a fairly wide swath of railroad and two
10 service roads, plus a new alignment in that particularly
11 sensitive area. So I think, and maybe with proper
12 amendments in terms of maintenance, I would favor from
13 an aesthetic and environmental standpoint the alternate
14 proposal, the blue alignment over the one that is
15 currently being used. Thank you.

16 CHMN. FOREMAN: Member Youle.

17 MEMBER YOULE: I agree with Member Rasmussen in
18 terms of I do not think that siting to the west of the
19 railroad track is a good idea because of floodway
20 issues. And I do not believe and could not support a
21 wholly new route on Pendleton Drive that has not been
22 noticed. I think that at this point in the proceedings
23 we should take a look at basically the preferred and the
24 alternative alignment. On those two, I am not quite
25 decided yet.

1 CHMN. FOREMAN: Member Noland.

2 MEMBER NOLAND: Thank you, Mr. Chairman.

3 I originally had thought that an alignment to
4 the west of the railroad would be a potential and wanted
5 to see if the 500-foot corridor would allow that
6 development. However, based on the floodway and where
7 it comes so close to the railroad tracks in the two
8 areas that were pointed out by Santa Cruz County, and
9 also their opposition to it and concern about it
10 possibly causing a breach at the railroad area and then
11 affecting those adjacent landowners, I think we would
12 put TEP or UNS in a very libelous situation. And I
13 think we would be remiss to not listen to a floodplain
14 official and their concerns about construction and
15 disturbance in that area. It is rough enough as it is,
16 with the natural habitat, keeping that area of the river
17 contained.

18 So I can't support the west side, though I know
19 the residents were interested in it, but I don't think
20 they had all the information that we have at this point.

21 Number two, I cannot support the Pendleton
22 alignment. I have not heard one resident in that area
23 support that alignment or suggest that alignment. And
24 it would -- it is outside of the 500-foot corridor and
25 would require renotice and rehearings. And I just don't

1 think it is a viable option, in my opinion.

2 CHMN. FOREMAN: Member Wong.

3 MEMBER WONG: Thank you, Mr. Chairman.

4 I am going to offer a substitute motion which
5 would adopt the preferred.

6 CHMN. FOREMAN: Actually I don't think we have a
7 motion on the floor.

8 MEMBER RASMUSSEN: I didn't have a motion, no
9 motion.

10 CHMN. FOREMAN: He just expressed an opinion.

11 MEMBER WONG: I move adoption of the preferred
12 route in Segment 2, which is beginning at the point
13 where it deviates from the existing route and parallels
14 the railroad track immediately to the east side of the
15 railroad track.

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

17 MEMBER McGUIRE: I second.

18 CHMN. FOREMAN: Second.

19 Member Eberhart.

20 MEMBER EBERHART: I have a legal question.

21 Assuming that Mr. Wong is talking about a 500-foot
22 corridor, if that 500-foot corridor would overlap the
23 alternative alignment, is there anything that would
24 preclude the applicant from using either one of the
25 alternatives based on the dealings with the landowners,

1 right-of-way acquisition process, detailed engineering,
2 is there a way that the Committee can kind of punt and
3 leave it up to the applicant in this area?

4 CHMN. FOREMAN: I think that that's a practical
5 impossibility. I believe for at least a portion of the
6 line that we are talking about, and I thought for the
7 entire distance, the preferred route is more than 500
8 feet from the existing route. Is that true?

9 MR. BECK: I believe Clark is bringing that up
10 right now so we can do a measurement for you.

11 It appears that would preclude the opportunity
12 to have two options. It is 360 feet between the two
13 center lines.

14 CHMN. FOREMAN: Okay.

15 MEMBER EBERHART: So a 500-foot corridor
16 centered on either one of the alignments would mean a
17 250 foot wide swath.

18 MR. BECK: Yes, so they wouldn't overlap in this
19 area.

20 MEMBER EBERHART: However, there is no reason
21 for a 500-foot corridor to extend west of the railroad
22 right-of-way. So if the 500-foot corridor began at the
23 railroad right-of-way and went east, then we would
24 perhaps be okay. Would I be accurate?

25 CHMN. FOREMAN: We have the notice problem then.

1 And I think then the right-of-way that was noticed was
2 500-foot corridor centered on the eastern boundary of
3 the railroad right-of-way. Is that correct?

4 MR. BECK: Well, actually my testimony stated 50
5 foot to the east of the eastern edge of the railroad
6 right-of-way.

7 CHMN. FOREMAN: That's the center of the
8 500-foot corridor?

9 MR. BECK: Correct.

10 CHMN. FOREMAN: Okay, all right. So creative
11 idea, but unfortunately not.

12 Member Eberhart.

13 MEMBER EBERHART: Mr. Chairman, okay, I have
14 similar feelings to Member Youle in that particularly
15 for west of the railroad, I think the Committee is on,
16 would be on shaky ground notice-wise to adopt that
17 alignment. I don't think there is any support for that.
18 It seemed like a good idea at first, but the devil is in
19 the details, and once you get into the details, I don't
20 think it works. Also, the same for the Pendleton Road
21 alignment, I don't think there is any support for that,
22 at least not from me.

23 But I am still undecided on the existing route
24 or the preferred, because we seem to have conflicting
25 testimony from the landowners in that area. So I have

1 been leaning all along towards just the west of the
2 railroad, but I am also open to in the front yard, too,
3 if that works. So that's where I am at.

4 CHMN. FOREMAN: Well, let me throw my two cents
5 worth in here. I reject the Pendleton Road route for
6 the reasons that have already been articulated. And I
7 also can't support the west of the railroad route,
8 although that looked very attractive to me before, for
9 the reasons now that we have concern and potential flood
10 damage liability.

11 With regard to the preferred route, balanced
12 against the existing route, I come down on the side of
13 the preferred route for the reasons that Member
14 Rasmussen articulated to support his support of the
15 existing route. I think that there would be less damage
16 to the existing trees if we chose the preferred route
17 and allowed -- and put a condition in requiring the
18 applicant to attempt to avoid or minimize damage to
19 existing trees. There is already an existing road
20 there. We would have to put in a condition that would
21 minimize impact upon existing buildings which are
22 already there.

23 But there is already an existing distribution
24 line there. And so to me, the additional impact of the
25 line on the west side of the homes on the east side of

1 the railroad tracks would be de minimis because of the
2 existence of that distribution line. And then it is
3 just a question of what kind of impact do you have on
4 the trees. And if we can minimize that, I think that we
5 would have less damage to the trees on the east than on
6 the existing.

7 We also would allow, and if we put a condition
8 in that would require abandonment of the right-of-way
9 for the existing route after the existing structures are
10 taken away, then we allow for revegetation of that
11 existing right-of-way, and at least within 10 or 20
12 years, we might have a continuous bosque environment all
13 the way across that area where we now have the scar down
14 through it. And it seems to me that you will never have
15 revegetation of the area over near the railroad tracks
16 because of the existence of the railroad tracks.

17 So coming out of that, if you look both short
18 term and long term, it seems to me that the chances of
19 having the kind of robust bosque environment that the
20 local folks would like to have, and I think the rest of
21 the state would like to have, the better route is the
22 preferred route, which is east of the railroad tracks
23 but west of the homes. So that's the reason I come down
24 on that side and support the motion of Member Wong.

25 Okay, I am sorry, Member Noland.

1 MEMBER NOLAND: Mr. Chairman, I could support
2 Member Wong's motion if it included the wording that
3 Mr. Magruder had suggested and had asked Mr. Beck about
4 and if it could be done, and that was that it be done to
5 a five-year trim rather than clear-cut. And I think
6 that's an important point. And I think it goes to what
7 you were saying also about the protection of the various
8 vegetation or trees that are in that area, I think. But
9 I really, I feel like we have to include that somehow.

10 I also am not sure, I think it was Mr. Magruder
11 that testified, and I don't remember if it was affirmed,
12 that the distribution line is not for any of the homes,
13 that it may be for the agricultural areas and pumps.

14 MR. BECK: That was what his testimony was. I
15 personally do not know.

16 MEMBER NOLAND: So the other option in there to
17 relieve some of the congestion would be to have the
18 distribution line and the transmission line on the same
19 poles. That would require a taller pole. You know,
20 there is the, you know, devil is in the detail there,
21 but do you want less poles but higher poles? I don't
22 know. And that was another consideration that I thought
23 we might have to take into account.

24 CHMN. FOREMAN: And I do think we should address
25 that. And then if I remember correctly, the company has

1 expressed a concern about collocating the lines, because
2 it would then require them legally to accommodate
3 communication lines which might also increase the pole
4 height.

5 So let me ask a factual question, Mr. Beck.
6 When you said that if we put, if you were authorized to
7 put the line on the preferred route and the lines were
8 collocated, would the pole -- I think you said the poles
9 would be 15 to 20 feet higher?

10 MR. BECK: Yes, approximately 15 to 20 feet
11 higher. And also keep in mind that to the extent we put
12 the distribution line onto the transmission, we will
13 have to put additional poles in, not only higher, but
14 additional poles because of the span length issue.

15 CHMN. FOREMAN: Okay, good point. Thank you for
16 raising it.

17 Member Wong.

18 MEMBER WONG: Thank you, Mr. Chairman.

19 I think we have many other ancillary issues that
20 I agree, Mr. Chairman, that we do need to address as I
21 addressed early about the issue of abandonment and
22 revegetation. I think the revegetation issue, maybe we
23 should move that in tandem with a clear-cut versus a
24 trimming, because that deals with mitigation and how you
25 lessen the impact.

1 CHMN. FOREMAN: Well, would you accept an
2 amendment to your motion that would require the company
3 to use the five-year trim as opposed to tree removal for
4 all mature trees along the preferred alignment and would
5 require the company to use reasonable efforts to
6 revegetate the present right-of-way with native species
7 of plants?

8 MEMBER WONG: I would entertain that. But we
9 want to address the issue of abandonment separately, is
10 that correct? Do you want to address that separately?

11 CHMN. FOREMAN: Okay, then let's address it
12 separately and we can address the revegetation issue.

13 MEMBER WONG: In tandem with that.

14 CHMN. FOREMAN: In tandem rather than sticking
15 it on.

16 MEMBER WONG: Then I will address the issue of
17 the five-year trimming versus the clear-cut, because
18 that has a direct impact and correlation to this
19 particular route.

20 I would amend my motion to include that in
21 preparation for this new -- this preferred route, that
22 the applicant would adopt as part of its maintenance of
23 its lines to have a five-year trimming process and
24 not -- and in lieu of any clear-cut.

25 CHMN. FOREMAN: Does the second accept that?

1 MEMBER MCGUIRE: Yes.

2 CHMN. FOREMAN: Second accepts it.

3 Member Youle.

4 MEMBER YOULE: I would propose one slight change
5 in that, Member Wong, which is just that so long as it
6 is allowed or does not conflict with the federal
7 vegetation management.

8 CHMN. FOREMAN: The FERC, WECC standards, is
9 that what you mean?

10 MEMBER YOULE: FERC, NERC.

11 CHMN. FOREMAN: FERC, NERC.

12 MEMBER YOULE: Yes.

13 CHMN. FOREMAN: FERC, NERC, okay. Do you accept
14 that, Member Wong?

15 MEMBER WONG: And further amended so that the
16 trimming procedures do not conflict with any federal
17 statutory or regulatory requirements.

18 CHMN. FOREMAN: Okay. Very good. All right.
19 Member Eberhart.

20 MEMBER EBERHART: One other issue. Yesterday
21 there was testimony, or you wanted to have sheets
22 distributed that the company, the applicant does have
23 quite a bit of flexibility as far as the span. Lengths
24 of the spans dictate how much right-of-way they need in
25 that area. So we may want to -- and I don't know what

1 minimum right-of-way the applicant would agree to, but I
2 think by putting the poles closer together, number one,
3 they have to buy less right-of-way, and the poles are
4 shorter so there is less obstruction to viewshed. So I
5 would like to see something in the motion that addresses
6 the applicant trying to minimize the amount of
7 right-of-way that they have to acquire in this segment.

8 CHMN. FOREMAN: Do you have some wording that
9 you feel comfortable?

10 MEMBER EBERHART: Is there something that the
11 applicant would be open to?

12 MR. BECK: I am sure to the extent needed we
13 could craft some language. As a course of business,
14 that would be our intent to do that. To put it into
15 words, we can probably come up with some language for
16 you.

17 CHMN. FOREMAN: Could you live with a 250-foot,
18 or, I am sorry, 300-foot corridor directly east of the
19 railroad right-of-way? That would be a way of
20 accomplishing the end that Member Eberhart has in mind
21 but would give you some flexibility to deal with -- I
22 know we have seen the picture of the buildings that are
23 in that area. And now that you will have to work your
24 way around, would that work?

25 MR. BECK: It would be workable from our

1 standpoint. I am not sure if that addresses Member
2 Eberhart's concerns.

3 MEMBER EBERHART: Mr. Chairman, I am assuming
4 that they are planning to go as far west with this new
5 line as they can to try and minimize any impact on the
6 residents -- I am hoping that would be the case -- and
7 reduce the amount of right-of-way easement that they
8 need. But the chart that they handed out yesterday
9 showed that, for example, a 600-foot span between poles,
10 they would only need 51 feet of right-of-way. So it is
11 a give and take. You have more poles, but they need
12 less right-of-way and it impacts the viewshed less
13 because the poles don't have to be as tall.

14 So I don't want to tie their hands, but -- and I
15 am not sure tinkering with the corridor does anything
16 for that. So I am open to leaving the corridor 500
17 feet, but just some kind of commitment from the
18 applicant that the right-of-way will be minimized to the
19 extent practical or something like that.

20 MR. BECK: Yes, we can work some language like
21 that.

22 CHMN. FOREMAN: Member Mundell.

23 MEMBER MUNDELL: Just from a procedural
24 perspective, could we vote on, unless everyone is,
25 unless people are going to have a position based on the

1 length or the width of the right-of-way -- I mean we got
2 Mr. Wong's motion on the floor with his amendment to
3 deal with making sure they are in compliance with
4 federal regulatory and statutory provisions, and then we
5 have this other issue that we don't have any language in
6 front of us, unless we want to -- I am not sure how you
7 want to proceed. I am just trying to make sure.

8 CHMN. FOREMAN: I am trying to see if all my
9 Committee members have said what they want to say about
10 Mr. Wong's motion and then I am going to call for a
11 vote.

12 MEMBER MUNDELL: Okay. I didn't know if you are
13 going to add this other language. Okay, I
14 misunderstood.

15 CHMN. FOREMAN: Member Wong.

16 MEMBER WONG: Mr. Chairman, I think if
17 Mr. Eberhart desires to have --

18 I understand you are trying to reduce the
19 quantity of numbers, reduce the footprint of the number
20 of poles, is that correct.

21 MEMBER EBERHART: No. I am trying to reduce the
22 impact on the neighbors, not -- there may be a few more
23 poles, but instead of giving away 100 feet of their
24 land, they may only have to give up 51 feet of their
25 land.

1 CHMN. FOREMAN: Why don't we try to --

2 MEMBER EBERHART: This could be --

3 CHMN. FOREMAN: -- work on this motion and get
4 whatever we are and deal with pole separation and things
5 like that.

6 Member Palmer, do you want to talk to that?

7 MEMBER PALMER: Just a point of clarification.
8 The reason for the differential in right-of-way
9 requirements has to do with blowout from siting lines
10 alongside.

11 CHMN. FOREMAN: Yes, at least that's what
12 Mr. Beck said.

13 MR. BECK: That is correct.

14 CHMN. FOREMAN: All right.

15 Member Wong.

16 MEMBER WONG: Mr. Chair, I just wanted to state
17 for the record that I also had earlier entertained the
18 possibility of locating this segment along the river
19 west of the railroad tracks and along the floodplain as
20 Mr. Magruder had requested and outlined earlier. But
21 after further discussion and additional questions to the
22 applicant about the standard and the company's policy,
23 industry standards, the actual floods that have
24 occurred, for example, in Tucson, the Rillito Creek --

25 I was in Phoenix when there was floods up in the

1 Salt River that took down some transmission towers. And
2 I recall, in fact I was in law school at the time, in
3 '83, I remember the Rillito floods. It actually eroded
4 the banks and took down some office buildings and homes
5 into the river.

6 So if that's the case, that this could also
7 potentially erode the bed of the railroad and could
8 cause some quite severe damage that is unanticipated but
9 is likely if there was such a flood, so therefore, I
10 think it is a more prudent approach that we move forward
11 with the safeguarding of this route on the east side of
12 the railroad track as I had proposed in my motion as
13 amended.

14 CHMN. FOREMAN: All right. Let's then vote on
15 the motion. The motion is that the Committee approve
16 the proposed -- the preferred route on the portion of
17 Segment 2 from the place where the preferred route
18 diverges from the existing route to the Cañez
19 substation, with the additional requirement that in
20 placing the poles and maintaining the line on the
21 preferred route, that trees be trimmed given what has
22 been called the five-year trim rather than trees being
23 clear-cut, so long as that does not violate any federal
24 statute or regulation.

25 Have I accurately articulated the motion?

1 MEMBER WONG: Yes, Mr. Chairman.

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

3 (A chorus of ayes.)

4 CHMN. FOREMAN: All those opposed, no.

5 (No response.)

6 CHMN. FOREMAN: Again by unanimous vote, the
7 Committee has approved the alignment.

8 Now, let's go back and talk about the
9 right-of-way abandonment and pole -- let's talk about
10 right-of-way abandonment.

11 Do I hear a motion that would require the
12 applicant to abandon the right-of-way along the -- well,
13 I take that back. Let's not discuss that issue now
14 until we do Segment 3, because we got the same issue
15 coming up in Segment 3, so we can discuss both of them
16 together. So let's go to Segment 3 and then we will
17 come back and pick up the pole height and right-of-way
18 abandonment issues then.

19 Member Youle.

20 MEMBER YOULE: One differentiation between the
21 Segment 2 abandonment issues and I think the Segment 3
22 abandonment issues is UNS had talked about trying to use
23 in negotiations with landowners, where they had a
24 portion of the right-of-way up in Segment 2, to get the
25 new right-of-way. It looks like there is a greater

1 space down in Segment 3 on the abandonment, so that I am
2 not sure that you have the same landowners involved on
3 those two. And maybe that's something we can ask, it is
4 a factual matter, because we may want to treat those
5 slightly differently to reduce costs on obtaining some
6 of the new rights-of-way in the bosque area.

7 CHMN. FOREMAN: Member Noland.

8 MEMBER NOLAND: Well, Mr. Chairman, I have a
9 little problem with that. I think all people should be
10 treated equally. I don't think you should hold some
11 hostage in order to get what you want in another area
12 and give the abandoned land outright to others. So I
13 have a real problem with that and I can't support that.

14 I think they have to negotiate as they
15 negotiate. If we're going to say abandon it, we say
16 abandon it. Then they have to negotiate with everyone
17 on the other right-of-way on an equal basis.

18 MEMBER YOULE: Good point. I hadn't thought
19 about that.

20 MEMBER EBERHART: Mr. Chairman.

21 CHMN. FOREMAN: Member Eberhart.

22 MEMBER EBERHART: Just a legal question. Does
23 this Committee have the authority to require them to
24 abandon the right-of-way to the existing landowners?

25 CHMN. FOREMAN: A good question, and I think the

1 answer is yes.

2 MEMBER EBERHART: Thank you.

3 CHMN. FOREMAN: Does the applicant disagree?

4 MR. DERSTINE: I don't think I disagree with the
5 legal question of whether or not the Committee has the
6 right to condition the CEC on the abandonment.

7 I do want to address the issue that Member Youle
8 raised, however. In the bosque area, where you have the
9 same landowner who now voted to adopt the preferred
10 route and move us to the western edge of the property in
11 which the same landowner has the existing line on the
12 eastern side, an order that directs the company to
13 simply abandon then the existing line in favor of the
14 new preferred route puts the company at a real
15 difficulty in negotiating for the new right-of-way.

16 The preference would be, as Mr. Beck expressed,
17 where we are dealing with the same landowner, that we be
18 able to negotiate. We are happy to abandon the existing
19 right-of-way in favor of you granting us a right-of-way,
20 tailored and narrowed as best we can for the new route
21 that has been approved by the Siting Committee. But to
22 have you order us outright to abandon it and then we
23 have to pay for new right-of-way where we already own
24 right-of-way creates a problem and does increase real
25 costs.

1 CHMN. FOREMAN: Member Mundell.

2 MEMBER MUNDELL: I understand your position in
3 your negotiation standpoint, but how would you suggest
4 we draft it then? Otherwise we are just sort of taking
5 it on faith that you are going to abandon it.

6 I understand your position on it puts you in a
7 difficult negotiating position, but I am wondering
8 again, and I will repeat my question, how do we then
9 know you are going to do it?

10 MR. DERSTINE: Well, I guess give us a chance to
11 maybe craft some language. If it is, in general, that
12 the company is directed to agree to abandon right-of-way
13 in connection with negotiations to secure new
14 rights-of-way for alignment, something along those, we
15 can craft something. But to direct us outright to say
16 give it up and we are forced to buy new right-of-way,
17 that's the problem. I understand the crafting and
18 smithing of the language poses a hurdle, but let us see
19 what we can put together on that.

20 MEMBER MUNDELL: Thank you, Mr. Chairman.

21 CHMN. FOREMAN: Member Eberhart.

22 MEMBER EBERHART: Mr. Chair, just another legal
23 question. And I guess I should have gone to law school
24 and learned some of this.

25 MR. DERSTINE: Hasn't helped me.

1 MEMBER EBERHART: Does the applicant have
2 condemnation authority if these landowners don't want to
3 sell?

4 MR. DERSTINE: We do.

5 MEMBER EBERHART: Thank you.

6 CHMN. FOREMAN: Let me just throw in my two
7 cents worth here on this issue. I think it would make
8 more sense to have language that would indicate that the
9 applicant shall abandon the right-of-way after
10 reasonable efforts to revegetate using native species.
11 And I think that the way that that should be addressed
12 to the homeowner is, okay, if you don't want us to do
13 this, then we won't do this, but the directive of the
14 Committee was to revegetate to the natural species.

15 In other words, if somebody wants to put a
16 swimming pool in there, I am not sure that we want to --
17 you know, it is their property, I guess they can go
18 ahead and do that. But my sense of the comments that we
19 got was that the interests of most of those people was
20 trying to see that there was an uninterrupted bosque
21 going across there.

22 And I would think that if they were given
23 language like that that they would, I would think that
24 that would help you, frankly, in negotiating the
25 easement on the other side. And we will try and work

1 with you on narrowing that right-of-way or the easement
2 requirements on the other side.

3 But I do think that Member Noland's point is
4 well taken, that there are going to be some people who
5 don't have the problem of the easement going from one
6 portion of their property to the other, and they
7 shouldn't be treated differently than those that do.

8 MR. DERSTINE: No, we are in a difficult spot
9 there. And I understand the equality of treatment
10 issue. And so it is, it is how do we get there and get
11 this done.

12 I think your point on revegetation it taken. It
13 is difficult for the company to revegetate. And if you
14 have to abandon and you are holding that as the carrot
15 to revegetate, so we have got these different pieces in
16 play, how do we get new right-of-way, negotiate for that
17 without letting the landowner know we have got to pay
18 them X number of dollars or go through the process of
19 condemnation and they have got their property back.

20 CHMN. FOREMAN: Member McGuire.

21 MEMBER MCGUIRE: I don't think revegetation is
22 even an issue. All you have got to do is quit trimming
23 it and it will be there. There is nothing that you can
24 plant in there that would compete with this stuff.

25 CHMN. FOREMAN: That may be true, but we are

1 dealing with something from an environmental point of
2 view. There is a specific species of tree that makes up
3 that bosque.

4 MEMBER MCGUIRE: Mesquite.

5 CHMN. FOREMAN: Mesquite. And I would be
6 concerned if we had skylarking palo verde that got
7 itself situated in there.

8 MR. MCGUIRE: Nothing can compete with mesquite.

9 CHMN. FOREMAN: Member Eberhart.

10 MEMBER EBERHART: Mr. Chair, just a couple
11 thoughts on this whole issue was if we made the
12 abandonment conditional on the existing right-of-way not
13 being in use for a power line for a period of six months
14 or a year or something like that, in other words, allow
15 them the flexibility that we are not ordering them to
16 abandon it so that they can negotiate, but yet if they
17 do abandon it then it is their obligation to revegetate
18 it and the land goes over to the owner.

19 CHMN. FOREMAN: I do not think we have the legal
20 authority to force the property owner to revegetate.

21 MEMBER EBERHART: No, I don't mean that.

22 CHMN. FOREMAN: So I think the language that
23 could best be drafted would be to say that require the
24 company to make a reasonable effort to revegetate, which
25 may simply mean putting a couple little mesquite trees

1 in there and let them do their thing, unless the
2 property owner objects. If the property owner objects
3 and says I want to build a swimming pool there, then
4 that's -- it is private property and it is fee property,
5 and I think they have got the right to do that.

6 As I said, my sense is that most of them want
7 that uninterrupted bosque along there and they are going
8 to be willing to accommodate, work with the company to
9 make reasonable efforts to revegetate, but if they don't
10 want to, this Committee I do not believe, I don't
11 believe the Corporation Commission has the legal ability
12 to force them to revegetate.

13 MEMBER EBERHART: You know, and I was more
14 concerned about the actual abandonment issue rather than
15 revegetation issue, because I think that's, they always
16 had the -- say, for example, the applicant just can't
17 come to terms with any of the 25 landowners along there,
18 or however many it is. They always have the ability to
19 come back to us and start over with a new --

20 CHMN. FOREMAN: They have the right of
21 condemnation. They can.

22 MEMBER EBERHART: Correct. But I mean, I am
23 just saying that allowing them some flexibility in the
24 abandonment I think is a reasonable way to approach it.

25 CHMN. FOREMAN: I certainly agree with that.

1 Member Mundell.

2 MEMBER MUNDELL: Mr. Chairman, you sort of said
3 what I was thinking, I mean to their concern.

4 I mean the abandonment would occur at the time
5 of purchase or eminent domain, whatever comes sooner. I
6 mean if you are worried about your negotiating ability,
7 if we write -- it is wordsmanship, you know, the way we
8 draft it. But if the landowner is reading it and it
9 says you don't have to abandon it until you either
10 purchase it or eminent domain, they know you have that
11 hammer. You didn't need to go to law school, you
12 brought up a good point when you said that.

13 MR. DERSTINE: I was going to say the same
14 thing.

15 MEMBER MUNDELL: It doesn't matter as long as we
16 don't make you do it on the front end.

17 MEMBER YOULE: Right, subsequent to securing the
18 new right-of-way.

19 CHMN. FOREMAN: Member Whalen.

20 MEMBER WHALEN: In reality they can't because
21 that line has to stay in service the entire time until
22 it is taken out of service with the new line.

23 CHMN. FOREMAN: Yes. You are going to have to
24 build the new line before you abandon the old line.

25 MR. DERSTINE: Right.

1 CHMN. FOREMAN: Member Wong.

2 MEMBER WONG: I think the parties -- this
3 Committee has made itself clear what we expect, and I
4 think the parties aptly understand what we desire. Is
5 that correct? I think it is a matter of putting this in
6 writing, finding the right words.

7 MR. DERSTINE: Correct.

8 MEMBER WONG: Let me see if I can express this
9 as we discussed, is that there will not be any
10 abandonment until a new line is energized. Is that
11 correct?

12 MR. DERSTINE: Correct.

13 MEMBER WONG: So I am not going to make a motion
14 yet, but let me think out loud. We are talking about
15 abandonment. This is abandonment of not using a
16 structure. There is abandonment of dismantling the
17 structure, removing. And there is the legal abandonment
18 process which you have to take the steps to legally
19 abandon the legal rights to the property, which then
20 results in the reversion of that property to its
21 previous landowner.

22 I think a good analogy is when a city abandons
23 its alley, the property owners on both sides of the
24 alley, they divide that alleyway in half down the
25 middle. Both sides of the properties on either side

1 gain up to that center line property. So that's an
2 example of a legal abandonment which results in
3 reversion of the legal title, of that fee title back to
4 its immediate previous owners of that property.

5 And then what I heard also from the Committee is
6 that the abandonment, let's just say legal abandonment
7 would then occur upon the placement in service of the
8 new transmission line.

9 And then we talked about revegetation of the
10 abandoned property, of the corridor, if the property
11 owner, which would be the recipient of the abandoned
12 property, consents to the revegetation, is that correct?

13 I am talking in segments here. Let's see if we
14 can put this in a motion.

15 CHMN. FOREMAN: You are helping me crystallize
16 my thinking of it. The more I think about it the more I
17 think this is a nonissue. The more I think that the
18 applicant is going to have to acquire the right-of-way
19 for the new line before it abandons the old line. And
20 so the leverage problem is not going to be an issue.

21 They are going to have to acquire their
22 right-of-way for the new line, and so I think we should
23 just leave the right-of-way abandonment issue alone
24 with -- save this issue, and that is to require the
25 applicant to make reasonable efforts to revegetate any

1 abandoned right-of-way on the existing line unless there
2 is an objection raised by the landowner.

3 MEMBER WHALEN: Second.

4 CHMN. FOREMAN: Does that make sense? And if we
5 do that, and we don't deal with the abandonment issue at
6 all, I don't think it is going to be a problem, because
7 I think that they are going to have to acquire the new
8 right-of-way before they abandon the old right-of-way.
9 So it is not going to, it is not going -- I think it is
10 going to go away.

11 MEMBER YOULE: Mr. Chairman.

12 CHMN. FOREMAN: First of all, does the company
13 object to that approach?

14 MEMBER MUNDELL: Can I ask a clarifying
15 question, Mr. Chairman?

16 CHMN. FOREMAN: Sure, Member Mundell.

17 MEMBER MUNDELL: Are you suggesting, I mean
18 there is going to be language requiring them to abandon?

19 MEMBER YOULE: Right.

20 MEMBER MUNDELL: You sort of said the issue. I
21 understand what your thought process is, but I think
22 they need to make clear they still have to abandon the
23 old right-of-way.

24 CHMN. FOREMAN: Okay. Yes, that was an
25 assumption.

1 MEMBER MUNDELL: Maybe it was implicit in your
2 statement about revegetation.

3 CHMN. FOREMAN: Yes, and you are correct.

4 Does the applicant have a problem with that? We
5 don't need to all look so enthusiastic all at the same
6 time.

7 MEMBER NOLAND: Can I ask a question?

8 CHMN. FOREMAN: Yes, Member Noland.

9 MEMBER NOLAND: I don't understand the
10 revegetation issue. And there is some of that area that
11 was clear-cut. There is some area that's going to be
12 under development that they will really be excited that
13 you are abandoning is because it enhances the
14 development of that area, and that would be the Rio Rico
15 Properties. If it were left up to the property owner,
16 yes, but then how far does it go and what do you do?

17 It seemed to be fairly vegetated around it other
18 than what they had to do to maintain. There was some
19 pastures in there. How are you going to revegetate a
20 pasture? And, you know, people can use that as part of
21 their dealing tool with right-of-way or whatever.

22 I think the revegetation issue on abandoned
23 property, if people are going to want the property, they
24 are going to want the property. They will take it
25 however they -- they will do with it what they want.

1 They take it as it is.

2 CHMN. FOREMAN: Well, and that would be another
3 issue, and that is just to leave this alone, just to not
4 interfere, let the local --

5 MEMBER NOLAND: Yes.

6 CHMN. FOREMAN: -- owners revegetate where they
7 want to revegetate. And we do have to remember, and I
8 am glad that Member Noland pointed this out, there is a
9 substantial part of this line south of the Cañez
10 substation where, if the present line is abandoned down
11 to where the distribution line is, you don't have the
12 bosque, you are up on higher ground. And at that point,
13 you don't have the revegetation issue that we have been
14 concerned about.

15 So maybe the other option, then, instead of
16 wading in here and risking making a mess of it, maybe
17 the thing to do is just not deal with it, or let the
18 homeowners who are along there, the property owners who
19 are along there deal with it in their negotiations with
20 the company.

21 Member Wong.

22 MEMBER WONG: I think it is important that we at
23 least put a provision about legal abandonment process.
24 Vegetation, I agree with Member Noland, that the
25 property, adjacent property owners will receive

1 additional land in fee simple in their name. This
2 should be -- that's additional land to their holdings.
3 We can decide if we want to revegetate, but I think the
4 issue of legal abandonment needs to be addressed as part
5 of the CEC. So allow me to try some language and then I
6 can always withdraw the motion.

7 I move that the CEC provisions state as follows
8 regarding the legal abandonment process of existing
9 transmission line routes which are not distribution
10 lines, that the legal abandonment process shall commence
11 within a reasonable time following the new transmission
12 line's use, active use, and that the legal abandonment
13 process be concluded within a reasonable time
14 thereafter.

15 CHMN. FOREMAN: Okay. Is there a second to that
16 motion?

17 MEMBER McGUIRE: Second.

18 CHMN. FOREMAN: Second by Member McGuire.

19 Is there further discussion?

20 MEMBER EBERHART: Mr. Chairman.

21 CHMN. FOREMAN: Member Eberhart.

22 MEMBER EBERHART: I am just curious if the
23 applicant has any opinion on the motion one way or
24 another or do they -- would they have different language
25 that they would prefer. I think it is important to put,

1 as Mr. Wong wants to do, put something in the CEC to
2 address the issue and make sure that the issue gets
3 taken care of. But I want to do it in a way that is
4 acceptable to the applicant. Let me say it that way.

5 CHMN. FOREMAN: All right.

6 Member Palmer.

7 MEMBER WONG: My motion is not done yet.

8 MEMBER PALMER: I am sorry.

9 MEMBER WONG: And further -- that is a law
10 school trick, Mr. Eberhart -- that part of the existing
11 transmission line that is not a distribution line shall
12 be -- excuse me. The applicant shall remove all
13 structures related to the previous transmission line --

14 CHMN. FOREMAN: That are no longer in use.

15 MEMBER WONG: -- that are no longer in use.

16 CHMN. FOREMAN: All right.

17 Member Palmer.

18 MEMBER PALMER: Yes, Mr. Chairman. I hesitate
19 to be a dissenting vote on this, but I am still confused
20 as to why there is a compelling need for us to direct
21 them to do business. If they have a fee simple
22 right-of-way control over some property, and that was a
23 result of siting a line to provide power to Santa Cruz
24 County and now they are proposing through the CEC to
25 divert from that existing route, creating two

1 rights-of-way. One right-of-way has a real value to
2 them as a piece of property. And they are no doubt
3 going to sell it. And in that process they are going to
4 remove the poles.

5 I mean, can anybody cite an example where
6 right-of-way was left unattended by an owner for no
7 apparent reason?

8 CHMN. FOREMAN: I think there is an answer to
9 that. I think the answer is that the right-of-way is an
10 easement and not fee land, is that correct?

11 MR. BECK: Yes, that is correct. But I would
12 like to point out, kind of along those lines, there is a
13 cost and a liability to the company related to
14 maintaining rights-of-way that we are not using with any
15 valid purpose. So it is absolutely not in our best
16 interest to maintain a right-of-way or an easement that
17 we are not using. So I know you have a concern
18 regarding maybe the trust issue, but we also have an
19 accounting side from the company perspective.

20 CHMN. FOREMAN: You have an incentive to do
21 that, but do you have a problem with Member Wong's
22 language that you commence removal of structures on the
23 previously used route after they are no longer in use
24 within a reasonable amount of time you conclude that
25 removal?

1 MR. BECK: Again, the concern from the company's
2 standpoint is that -- and I will use Rio Rico Properties
3 as an example. We have the existing alignment across
4 Rio Rico Properties. It is probably in their best
5 interest with the new alignment that you have approved
6 to get it out of the middle of their properties. They
7 have an incentive to work with us to, at a lower cost,
8 at least maybe transfer the existing right-of-way over
9 to the new alignment.

10 To the extent we have a specific order that says
11 once we build a new line you will relinquish the
12 right-of-way, they have absolutely no reason to give us
13 any kind of a break on the property along the railroad.
14 They can hold out for their price. True, we have
15 condemnation authority, but that's time and money. Also
16 we will pay fair market value for that condemned piece
17 of property, and then they will obtain, get back that
18 100-foot right-of-way across the property that they have
19 today at no cost.

20 MEMBER PALMER: Mr. Chairman.

21 CHMN. FOREMAN: Member Palmer.

22 MEMBER PALMER: I think it is moot whether it is
23 fee simple or easement. You paid money for it, and you
24 are accountable for that money and that expenditure.
25 And if you allow that to lay fallow with no use and have

1 poles sticking out of the ground, it is a bad reflection
2 on your company, but it is also not cost effective.

3 MR. BECK: Right.

4 MEMBER PALMER: So I maintain they are very
5 highly motivated to sell that unused easement. And it
6 is certainly in Rio Rico's interest to buy it. So it is
7 kind of a private market sort of a situation.

8 CHMN. FOREMAN: Member McGuire, you are a second
9 of Member Wong's motion. Do you accept the additional
10 language that would require removal of the structures
11 within a reasonable time after the new line is --

12 MEMBER MCGUIRE: Yes, because I think they are
13 going to do it anyway, so yes, absolutely.

14 CHMN. FOREMAN: Okay. Let's, Member Wong,
15 before we vote --

16 MEMBER WONG: Yes, Mr. Chairman.

17 Mr. Beck, in light of what Member Palmer
18 expressed, can you cite us an example or examples where
19 your company has a similar fact situation as we are
20 engaged in now, where you have a new route and then,
21 without any requirement from the Commission, that you
22 took steps to, you took action on abandonment, legal
23 abandonment or somehow disposing of your previous
24 right-of-way.

25 MR. BECK: I can't give you a specific example,

1 but constantly we are in the process of relinquishing
2 rights-of-way or changing alternate rights-of-way as
3 needed as parts of the system, either we build new parts
4 or we remove and abandon old parts.

5 So we have a history of abandoning rights-of-way
6 that we are not using, both on a distribution as well as
7 a transmission system, not so much on transmission,
8 because typically once you build a transmission line not
9 very often do you remove a transmission line. But to
10 that extent, I am not sure if we actually have an
11 example where we have removed a transmission line and
12 abandoned that right-of-way, but we do it on
13 distribution all the time.

14 MEMBER WONG: Mr. Chairman, Mr. Beck, so you are
15 saying there is not a clear example of a parallel
16 situation as we are in now, but you said -- did you just
17 say that your company historically has a process to
18 legally abandon or dispose of right-of-way, is that
19 correct?

20 MR. BECK: That is correct. And as my colleague
21 just pointed out, we did have an example on our 138kV
22 transmission system of moving three structures as part
23 of a project, obtaining new right-of-way for the new
24 alignment, and then abandoning, ceded the old
25 right-of-way.

1 MEMBER WONG: How can you help amend this motion
2 so that this would not be a potential impediment for
3 your negotiation, let's say, with the same property
4 owner, but with a different right-of-way you are trying
5 to acquire? How would you phrase some language that
6 would assist you in that endeavor?

7 MR. BECK: If I had some language I would offer
8 it up immediately. You know, some more generic language
9 that just says if we have right-of-way associated with
10 the old project that is no longer used and useful, maybe
11 sometime certain we will -- my concern is with the word
12 abandonment. Once you have ordered us that we will
13 abandon the right-of-way, any, if you want to call it,
14 leverage or opportunity for a swap pretty much goes
15 away. If you were the property owner, would you have
16 any interest in swapping a piece of property from this
17 side of your property over to this side if you knew we
18 were going to give this back to you eventually at no
19 cost? That's the concern. And it adds to cost of the
20 project.

21 MEMBER WONG: I would like to hear from
22 additional members about how we can massage this
23 further.

24 CHMN. FOREMAN: Member Mundell.

25 MEMBER MUNDELL: I think -- not I think. Member

1 Wong really, I thought, addressed the issue. We have
2 got sort of two different issues here. You got legal
3 abandonment and you have got your process of how you are
4 going to be in the best position to negotiate either a
5 swap or a purchase or however you are going to acquire
6 the land for the new route. And so that's what, you
7 know, I am having a disconnect on some of your argument.

8 I mean I understand you want to be -- you don't
9 want to be put in the position of having to if they know
10 you have to give it up. I wasn't sure, at least I
11 wasn't suggesting you give it up for free, but also you
12 want to have to abandon it at some point in time so you
13 don't have two rights-of-way for a transmission line,
14 your existing one and your new one. That's really what
15 I have been focusing on in this discussion, as opposed
16 to some of the other issues that have been articulated.

17 MR. BECK: I understand your concern. I guess
18 back to Mr. Palmer's point, if you look at this as a
19 free market and we maintain two rights-of-way, there is
20 a cost associated with that to the company and is it in
21 the Committee's best interest to tell us to get rid of
22 that piece of property through this siting process.

23 If we are going to make a bad business decision
24 and be stupid on that business decision, and I
25 understand you have authority to do it, but if it

1 impacts the ability to negotiate for swapping that
2 right-of-way, it raises the cost to customers. Is that
3 in the best interest of our customers?

4 CHMN. FOREMAN: Member Mundell.

5 MEMBER MUNDELL: Let's, you know -- no, not
6 raising the cost to customers. Like I said, I want to
7 make sure that, from my perspective, at some point in
8 time you abandon the property, because we do -- you
9 know, if you are looking at it from a quality of life
10 environmental perspective, which this Committee has the
11 authority and ultimately the Commissioners have, to
12 balance, you know, protecting the environment on the one
13 hand and making sure we have reliable, economical
14 electricity on the other, I am looking at it from that
15 perspective.

16 And you are a monopoly, by the way. So you talk
17 about free enterprise, so let's make sure we are not
18 talking about free enterprise here. We are talking
19 about a monopoly who has an interest easement and fee
20 simple piece of property, and we are looking at giving
21 you authority to acquire more, a bigger easement or more
22 fee simple property for this line pursuant to statute
23 and the ability to use your eminent domain authority.

24 So I am trying to figure how do we get rid of
25 the old property and give you the new property, you

1 know, when we grant the CEC.

2 CHMN. FOREMAN: Let me toss a couple of pennies
3 in here. I don't think it is possible to accommodate
4 both of those interests, so we have got a conflict. It
5 seems to me that Member Mundell has identified the
6 important factor, and that is that the legal
7 responsibility of this Committee is to balance the need
8 against the environmental impact. And having two
9 rights-of-way through this bosque area especially is a
10 significant impact on the local environment. And so we
11 have not only, I think, the legal right but the
12 responsibility to address that issue.

13 That being said, we would like to do it to
14 minimize cost. We would like to do it in a way that
15 encourages the applicant to work with the local
16 landowners to see that this change that we have
17 authorized occurs quickly, and with the least cost and
18 aggravation possible.

19 And coming back to the, frankly, to the point
20 where I think the best we are likely to be able to do is
21 use the language that Member Wong originally
22 suggested --

23 MR. BECK: Mr. Chairman, if I may.

24 CHMN. FOREMAN: Sure.

25 MR. BECK: Here is a suggestion for some

1 wording; whether it will work, we will see. UNS shall
2 release the existing rights-of-way once all new
3 replacement right-of-way is acquired. Does that achieve
4 your interests?

5 CHMN. FOREMAN: Well, it seems to me that you
6 want to go, maybe at the risk of arguing for the
7 company's position, that you want to say that will
8 release existing rights-of-way once the newly authorized
9 line is operational, and that would be consistent with
10 Member Wong's.

11 MR. BECK: That's a very valid point, yes.

12 CHMN. FOREMAN: All right. Have we -- and the
13 question was whether you could live with a reasonable
14 time after the new line becomes operational.

15 MR. BECK: I think once the new line is
16 operational and has been validated that it is working, I
17 mean we don't need a time period after that per se.

18 CHMN. FOREMAN: Okay. All right.

19 Member Wong, are you willing to accept that
20 language?

21 MEMBER WONG: Mr. Chairman, I don't know what
22 the word release means. I understand what legal
23 abandonment means. That's a very specific term of art.
24 I mean it is very defined. I know what that is and it
25 could be determined. But what does release mean?

1 MR. BECK: But probably the correct term is
2 relinquish as opposed to release.

3 CHMN. FOREMAN: Relinquish means get rid of.

4 MEMBER EBERHART: Quitclaim.

5 CHMN. FOREMAN: If you relinquish it, you give
6 it up, you no longer have it.

7 MEMBER WONG: Mr. Beck, you are trying to avoid
8 the word abandonment?

9 CHMN. FOREMAN: Yes.

10 MR. BECK: Well, I think this gets to your needs
11 that we will get rid of that right-of-way, but we will
12 do it when we have got the new right-of-way and the line
13 is operational. So it is part of the negotiating
14 process with that landowner. They don't -- I mean it is
15 not a given that they are going to get their land back.
16 They won't get it back until such time we have been able
17 to negotiate with each and every landowner that we need
18 to. But I think it accomplishes the interests of the
19 Commission that we don't maintain two rights-of-way.

20 MEMBER WONG: I am not comfortable with those
21 words. I think words such as take legal steps necessary
22 to dispose of right-of-way, terms like that, so there is
23 a legal process. I am not amending yet, I'm just
24 discussing about terminology.

25 CHMN. FOREMAN: I like the word relinquish.

1 MR. BECK: That is the legal term that is
2 related to release of property.

3 MEMBER WONG: Are you comfortable with that?

4 CHMN. FOREMAN: Yes. I think that achieves the
5 end that you have articulated and is not -- it is clear
6 enough and precise enough that it is not something that
7 can be abated.

8 Member Eberhart.

9 MEMBER EBERHART: It has been amended so many
10 times and so much work, it would really help me to know
11 what I am voting on if I could see it on the screen.
12 Could we take a five-minute break and ask somebody to
13 type it up and look at it?

14 CHMN. FOREMAN: Member Noland.

15 MEMBER NOLAND: One more clarifying thing. I
16 would say relinquish property or rights, because if it
17 is an easement for someone, it is not a property that
18 would be relinquished. It would be a right.

19 MEMBER WONG: All rights.

20 MEMBER NOLAND: All rights, correct.

21 CHMN. FOREMAN: Member McGuire.

22 MEMBER MCGUIRE: I just had a thought that never
23 occurred to me. Suppose -- I mean is it possible if
24 they could, they could, if they didn't come to agreement
25 with somebody, they could sell that right-of-way to

1 somebody else if it was big enough, and therefore damage
2 the owner's property by taking a chunk out of it?

3 MEMBER NOLAND: Sure.

4 CHMN. FOREMAN: I am not sure of the answer to
5 that question. And what is more, I am not sure we want
6 to get in the middle of that one.

7 MR. McGUIRE: I know I don't want to prolong
8 anything, but that thought just occurred to me. What if
9 that right-of-way is two or three acres in the middle,
10 in a swath out of somebody's property that they sold as
11 a right-of-way, not anticipating that that could become
12 somebody else's property other than the power company?

13 CHMN. FOREMAN: I would think it would be very
14 difficult to sell to a nonutility a utility easement in
15 the middle of somebody else's property and have them be
16 able to use it. I think --

17 MEMBER McGUIRE: Well, if it is an easement,
18 yes.

19 CHMN. FOREMAN: And my understanding is that
20 that's what we are talking about. We are talking about
21 easements. We are not talking --

22 MR. BECK: That is correct.

23 MEMBER McGUIRE: Okay. So you couldn't offer it
24 to somebody else --

25 MR. BECK: No.

1 MEMBER MCGUIRE: -- as an inducement?

2 MEMBER RASMUSSEN: The term I was thinking of is
3 vacate the use as an electrical utility corridor, vacate
4 the property and its use.

5 CHMN. FOREMAN: Vacate use still could be read
6 to mean that there is still a legal right there, so...

7 MEMBER RASMUSSEN: Yes.

8 CHMN. FOREMAN: I like relinquish.

9 Member Eberhart.

10 MEMBER EBERHART: Mr. Chair, just a couple other
11 questions regarding this. Is this only regarding
12 Segment 2? Because in Segment 4 there is also an
13 abandoned trailer park where they have been negotiating
14 and this issue could be an issue. And also where the
15 preferred alignment is in Segment 3 would be an
16 abandoned existing alignment.

17 CHMN. FOREMAN: I know it involves Segment 3. I
18 don't believe the trailer park area would involve an
19 abandonment. I think that that's going to be solved by
20 the wide corridor. Is that correct?

21 MR. BECK: Well, it is effectively the same
22 issue. We have a wide corridor, but we are going to
23 move the right-of-way from where it is to somewhere else
24 on that property.

25 CHMN. FOREMAN: So you are correct, Member

1 Eberhart. It is both at the end of 2 and 3 and in 4.
2 So this policy that we would adopt and put in the
3 conditions would address all of those.

4 So let's do take a break. It is about that
5 time. And it is getting late in the afternoon and we
6 need to come to resolution on this. We will take 15
7 minutes and we will be back at 3:30.

8 (A recess ensued from 3:14 p.m. to 3:29 p.m.)

9 CHMN. FOREMAN: Let's see if we can get started.

10 We have up on the screen some language. It has
11 changed even since I went back to the cookie plate. So
12 let's take a look at that. We have a motion on the
13 table.

14 Member Wong, are you willing to accept the
15 language that is on the screen as replacement language
16 for the language that you had articulated for your
17 motion?

18 MEMBER WONG: Mr. Chairman, I think that's
19 clarifying language. How about if we try just twisting
20 that around a little bit. What if we begin the sentence
21 with once all new replacement rights-of-way have been
22 acquired, the new 138kV line is a commercial operation,
23 comma, UNSE shall remove all unused facilities and
24 relinquish the 115kV rights-of-way where no distribution
25 is attached to the existing transmission line.

1 MEMBER WHALEN: Period.

2 MEMBER WONG: Period.

3 Mr. Beck, what do you think?

4 MR. BECK: I think that works well.

5 MEMBER WONG: Mr. Chair, if I may, I withdraw my
6 earlier motion if Mr. McGuire would withdraw his second.

7 MEMBER WHALEN: Yes.

8 MEMBER McGUIRE: Sorry.

9 CHMN. FOREMAN: You will withdraw the second of
10 the original motion so that this can replace it?

11 MEMBER McGUIRE: Yes.

12 MEMBER WONG: Thank you, Mr. Chairman. I move
13 the following motion: Once all new replacement
14 rights-of-way are acquired and the new 138kV line is in
15 commercial operation, comma, UNSE shall remove all
16 unused facilities and relinquish the existing 115kV
17 rights-of-way where no distribution is attached to the
18 existing transmission line, period.

19 CHMN. FOREMAN: Okay. And there is a second for
20 that, Member McGuire? Member McGuire, you second it?

21 MEMBER McGUIRE: Second it, yes.

22 CHMN. FOREMAN: All right. Do we have further
23 discussion?

24 (No response.)

25 CHMN. FOREMAN: All right. All in favor of the

1 motion say aye.

2 (A chorus of ayes.)

3 CHMN. FOREMAN: Opposed say no.

4 (No response.)

5 CHMN. FOREMAN: Again the ayes have it
6 unanimately. We will adopt that. And we will add it as
7 a condition at the end of the other conditions when we
8 get to discuss those.

9 Now, let's go back and deal with -- oh, I am
10 sorry. Member Noland.

11 MEMBER NOLAND: I just wanted to clarify that I
12 didn't either vote aye or nay.

13 MEMBER EBERHART: I didn't either.

14 CHMN. FOREMAN: Do you want to clarify?

15 Member Palmer.

16 MEMBER PALMER: It was a fruit smoothie, no
17 alcohol in this, so everybody is aware. Where else can
18 you pay \$7 for a fruit drink?

19 CHMN. FOREMAN: All right. Member Eberhart, do
20 you want to clarify?

21 MEMBER EBERHART: No.

22 CHMN. FOREMAN: Okay. All right. Very good.
23 Let's go then to the alignment for Segment 3. Do I hear
24 a motion to adopt the preferred alignment for Segment 3?

25 MEMBER RASMUSSEN: So moved.

1 MEMBER WHALEN: Second.

2 CHMN. FOREMAN: That's a motion and second to
3 adopt the preferred alignment for Segment 3. Is there
4 any discussion?

5 (No response.)

6 CHMN. FOREMAN: All right. No discussion, all
7 in favor say aye.

8 (A chorus of ayes.)

9 CHMN. FOREMAN: All opposed, no.

10 (No response.)

11 CHMN. FOREMAN: Unanimously we have adopted the
12 preferred alignment for Segment 3.

13 Let's go to Segment 4. Is there a motion to
14 adopt the preferred alignment for Segment 4?

15 MEMBER PALMER: So moved.

16 MEMBER YOULE: Second.

17 CHMN. FOREMAN: Motion and seconded for
18 Segment 4. Is there any discussion?

19 Member Noland.

20 MEMBER NOLAND: Mr. Chairman, just a
21 clarification. Do we need the same wording as it
22 applies to the mobile home park and/or would that foul
23 up the line along the Old Nogales Highway and trying to
24 relinquish that unless there are distribution lines in
25 the same area? Because we are going to do that detour

1 if we agree with this, then I don't know exactly what
2 they are planning to do with the old transmission, the
3 existing transmission line.

4 MR. BECK: Member Noland, the issue along Grand
5 Avenue is with distribution underbuild, so there will be
6 distribution remaining.

7 MEMBER NOLAND: Then what about the same wording
8 for the mobile home park area?

9 MR. BECK: I guess my assumption was this would
10 be a general condition that applied to the whole CEC.

11 MEMBER NOLAND: Okay. Thank you. But that was
12 only for that motion?

13 CHMN. FOREMAN: No. It was a motion of general
14 application.

15 MEMBER NOLAND: Okay.

16 CHMN. FOREMAN: Member Whalen.

17 MEMBER WHALEN: Mr. Chairman, do we have any
18 issue on the issue for the property for the county
19 complex with the BLM, or is that issue not necessary as
20 part of this motion?

21 MR. BECK: I don't believe it has any impact
22 whatsoever on this.

23 MEMBER WHALEN: Okay, thank you.

24 CHMN. FOREMAN: And again, I think the issue
25 here is -- and remind me, see if this correctly captures

1 your testimony, Mr. Beck -- my understanding is that the
2 500-foot corridor issue does not help you finesse the
3 legal issue associated with the BLM involvement with the
4 land near the county complex. This is just one where
5 you folks disagree about whether the BLM has any
6 interest in that land, and that is something you will
7 have to resolve as you try to construct this line, is
8 that correct?

9 MR. BECK: That is correct. As we go forward
10 with the permitting process we will deal with the BLM on
11 that.

12 CHMN. FOREMAN: Okay. All right. Very good.
13 With that proviso, all in favor of the motion
14 which is to approve the preferred alignment for
15 Segment 4 signify by saying aye.

16 (A chorus of ayes.)

17 CHMN. FOREMAN: Opposed, no.

18 (No response.)

19 CHMN. FOREMAN: All right. Very good. Now
20 let's move to conditions. So let's move to the CEC and
21 then we will work our way through it into the
22 conditions.

23 My copy of the CEC, let's go ahead and start on
24 the CEC there. We will need to add July -- oh, back up.
25 We will need to add July 8 and 9 as dates to June 2, 3,

1 4, and July 8 and 9, 2009.

2 Oh, I am sorry. Yes, probably.

3 I think you probably ought to put an and after 3
4 and before 4.

5 Member Eberhart.

6 MEMBER EBERHART: Just for wordsmithing, I don't
7 think this building is located in Chandler.

8 CHMN. FOREMAN: All right. So...

9 MEMBER WHALEN: I think it is a mailing address,
10 though.

11 CHMN. FOREMAN: I am not sure where to put the
12 Wild Horse Pass Casino.

13 MEMBER NOLAND: This isn't the casino.

14 MEMBER EBERHART: Does the location --

15 MEMBER WHALEN: Gila River Indian community.

16 MR. JERDEN: Chandler.

17 MEMBER WHALEN: It is a mailing address, yes.

18 MEMBER EBERHART: Mr. Chairman, does the
19 location even need to be specified?

20 CHMN. FOREMAN: Well, I think we need to at
21 least indicate that it is in two different areas, and
22 sort of call attention to the fact that the general
23 location of where we met. So...

24 MEMBER WONG: Maricopa County.

25 CHMN. FOREMAN: We could say that. I think

1 that's a little broad. I think mentioning the city or
2 the town that we are in makes some sense.

3 MEMBER MUNDELL: Why don't we say near Chandler,
4 Arizona.

5 MEMBER NOLAND: We are never going to get done
6 here.

7 MEMBER PALMER: What do you mean here?

8 CHMN. FOREMAN: Put near Chandler.

9 All right. Let's -- moving right along, we will
10 have a motion at the end that will count the votes on
11 that and will be put in there. There will be one final
12 motion that we will deal with the CEC of the project.

13 Member McGuire.

14 MEMBER MCGUIRE: I hate to be picky but my name
15 is spelled wrong on that.

16 CHMN. FOREMAN: Well, we need to get that done
17 right.

18 CHMN. FOREMAN: It is M-c. I think we need to
19 take the A out, too.

20 MR. DERSTINE: It is struck but it is hard to
21 see.

22 CHMN. FOREMAN: Oh, it is?

23 All right. Now, other issues. Let me -- it is
24 never too early to take roll. Foreman is here.

25 Eberhart, Member Eberhart.

1 MEMBER EBERHART: Yes, present.
2 CHMN. FOREMAN: Member McGuire.
3 MEMBER MCGUIRE: Here.
4 CHMN. FOREMAN: Member Mundell.
5 MEMBER MUNDELL: Present.
6 CHMN. FOREMAN: Member Noland.
7 MEMBER NOLAND: Here.
8 CHMN. FOREMAN: Member Palmer.
9 MEMBER PALMER: Here.
10 CHMN. FOREMAN: Member Rasmussen.
11 MEMBER RASMUSSEN: Here.
12 CHMN. FOREMAN: Member Whalen.
13 MEMBER WHALEN: Here.
14 CHMN. FOREMAN: Member Wong.
15 MEMBER WONG: Here.
16 CHMN. FOREMAN: Member Youle.
17 MEMBER YOULE: Here.
18 CHMN. FOREMAN: Now, with regard to the language
19 that's up here, we can do a couple things. We can go
20 through and look at specific language in the CEC and
21 conditions, go line by line like we have done before.
22 Or we can go through and hit some of the conditions and
23 then I can direct that the applicant put together a CEC
24 draft that summarizes our conclusions, and I can try and
25 wordsmith that out before I have to sign it.

1 Member Eberhart.

2 MEMBER EBERHART: Mr. Chair, just a general
3 question of the applicant, because it seemed to me
4 listening to Mr. Magruder there were several, I think,
5 constructive things in his proposed CEC that I thought
6 made it a better document. But I didn't know at what
7 level he had interfaced with the applicant and they had
8 agreed or not agreed to some of his provisions. So I
9 wanted to ask the applicant had they met with
10 Mr. Magruder and incorporated those items, and Ms. Webb.

11 CHMN. FOREMAN: As a part of the preparation
12 process, I direct the parties to meet and confer and
13 discuss the language. At the prehearing conference they
14 assured me that they had done that. And I had directed
15 them to do it again between the first three days'
16 hearings and today. And I think that the differences
17 between the proposed language you can see from the
18 redline versions that they have provided.

19 Is that accurate, Counsel?

20 MR. DERSTINE: Yes. But certainly in early
21 discussions over the form of the CEC, those discussions
22 continued up to a couple days ago. The most recent
23 version I think that Mr. Magruder proposed with his CEC
24 did contain additional changes. Some of those were
25 within the past couple days. So I don't believe we have

1 really had a real opportunity to review and pass on a
2 lot of the tweaks and word changes and that sort of
3 thing. The major substantive provisions and conditions
4 we had talked about.

5 MEMBER EBERHART: Thank you.

6 CHMN. FOREMAN: Member Noland.

7 MEMBER NOLAND: Mr. Chairman, I know there were
8 several areas that we agreed we wanted to come back and
9 discuss. One of them specifically is the pole --
10 decisions on the types of poles. And I think that was
11 one of the major things that we want to get nailed down
12 per Mrs. Webb's suggestions on that and her closing, and
13 also Mr. Magruder's. So that's, that's a key one for
14 me.

15 CHMN. FOREMAN: All right. Well, then let's go
16 to the revised Condition 23 that the applicant has put
17 together, take a look at that language.

18 MEMBER NOLAND: Once again, I go to the end.

19 CHMN. FOREMAN: Now, I think a concern that was
20 expressed about this condition was giving the parties --
21 and my own thought is the landowners whose property is
22 directly impacted -- an opportunity to object in writing
23 to the Commission to the pole finish plan that is
24 contemplated by this. And so I would put on the table a
25 sentence at the end of this that would read, if we could

1 just start at the end after Commission Staff, the
2 parties --

3 Well, I think you were using capital P earlier.
4 Are you not or --

5 MR. DERSTINE: Yes.

6 CHMN. FOREMAN: Yes.

7 -- and landowners whose property is directly
8 impacted shall have 15 days to object in writing to the
9 Commission.

10 Now, so that was my attempt over the lunch hour
11 to try and address that issue.

12 MEMBER YOULE: Mr. Chairman.

13 CHMN. FOREMAN: Member Youle.

14 MEMBER YOULE: Do you need to add the landowners
15 to the prior sentence, too, so they get a copy of the
16 plan?

17 CHMN. FOREMAN: I think we do. The landowners
18 whose property is directly impacted, that is to say the
19 people who actually have a pole on their property, it
20 seems to me ought to be people that the applicant ought
21 to talk to. So applicant have a problem with that?

22 MR. DERSTINE: No.

23 CHMN. FOREMAN: So let's see. So in the
24 sentence -- yes.

25 MEMBER YOULE: Actually the pole probably goes

1 on the property, not the landowner.

2 CHMN. FOREMAN: Another way to phrase that is --
3 in the last sentence, whose property is directly
4 impacted. That gets the pole off of the landowner and
5 onto the land. Any other thoughts on that?

6 Member Eberhart.

7 MEMBER EBERHART: Mr. Chair, I am just wondering
8 if we are going down a slippery slope here allowing veto
9 authority to individual landowners. We could end up
10 alternating color, every other pole being different
11 colors. I am just wondering if we are being --

12 CHMN. FOREMAN: I don't read this as a veto. I
13 read this as a requirement of consultation. And if
14 there is an objection, then you allow -- this court,
15 this Committee does not have enforcement power. It must
16 rely upon the Commission to enforce what it intends.

17 I think what we all envision is exactly what I
18 think Mr. Beck has talked about, and that is walking the
19 property with the property owner and having them say yea
20 or nay to putting the pole here and having it this
21 color, putting the pole there and having it that color.

22 And this condition, it seems to me, just puts in
23 place a procedure where that is formalized and provides
24 an opportunity for the Commission then to review the
25 situation if there is a disagreement.

1 MEMBER EBERHART: And who do they meet with on
2 state land?

3 CHMN. FOREMAN: Pardon me?

4 MEMBER EBERHART: Who would they meet with on
5 state land?

6 CHMN. FOREMAN: A representative of state land.
7 Member Mundell.

8 MEMBER MUNDELL: Thank you, Mr. Chairman.

9 I would agree with what you just said. And just
10 from a procedural perspective, you know, the Commission
11 has an informal complaint process, and the Staff gets
12 involved, and I assume something similar will be
13 occurring here. You first have the Staff try to work
14 with the utility and the landowners to resolve in an
15 informal fashion. And then if that doesn't work, they
16 can file a formal complaint. And you are right, it is a
17 process that can be gradually elevated depending on how
18 strong a disagreement is.

19 CHMN. FOREMAN: Member Noland.

20 MEMBER NOLAND: I would like to ask Mrs. Webb if
21 that would somewhat address her concerns and what she
22 was asking for in her closing remarks.

23 MS. WEBB: Thank you, Member Noland. And Member
24 Eberhart sort of addressed the huge issue that's up in
25 our area, which is the majority owned by state land.

1 And I think we have a very strong -- I can't think of
2 the word because my brain is totally fried right now.
3 We have a huge responsibility to the future. And that's
4 what happened in our area previously, is that a lot of
5 these lines I think were sited probably prior to a lot
6 of the strong -- the Committee the way it is now. And
7 if it is state land, I don't know what could happen with
8 that.

9 So I don't know if this is necessarily
10 fulfilling -- perhaps if that sentence in there, a
11 portion of the northern portion -- but I think we have
12 to take into consideration that a lot of our area is
13 seen in this case and where people drive, and that's a
14 huge viewshed area driving south down to Nogales and
15 then also going east/west on the Interstate 10. So I
16 think with the state land issue in our area, it creates
17 a different situation than perhaps it would in the more
18 private landowner areas.

19 MEMBER NOLAND: Mr. Chairman, however, I think
20 that Mrs. Webb could still comment to the Commission
21 being an intervenor, and it leaves that open for you to
22 make your comments as well as a representative from the
23 State Land Department and so on, so it does get that
24 forward, but either you or Mr. Magruder as the
25 intervenors in this.

1 Thank you.

2 CHMN. FOREMAN: The concern that I have in this
3 area is that this is essentially an aesthetic issue.
4 You can't trivialize it because of that. But the
5 problem, as I learned in first year philosophy is that
6 aesthetic tastes vary dramatically from individual to
7 individual. And we saw that in the public comment
8 process at Rio Rico. We had people come in and say you
9 are an idiot if you don't use brown poles, and then
10 other people came in and said you are an idiot if you
11 don't use galvanized poles. I guess both of them may be
12 right, but not necessarily for that reason.

13 So again, I think the best we can do is
14 encourage the company as much as possible to engage in
15 communication with the local stakeholders, but then
16 understand that there are lots of people who have a
17 stake in this. You have got people who are driving
18 along the highway. You have got people whose interests
19 are not going to be contemplated regardless, because
20 they haven't yet arrived.

21 So I think ultimately we are going to have to
22 force the company just to use its best judgment, keeping
23 in mind the interests that we raise and the interests
24 that are expressed to them by local folks who are -- who
25 want to express an opinion. And then, if there is a

1 dispute, the Commission is going to have to sort it out.

2 CHMN. FOREMAN: Member Noland.

3 MEMBER NOLAND: Mr. Chairman, then I would move
4 that we adopt the language for item 23 that is currently
5 on the screen.

6 CHMN. FOREMAN: Okay.

7 MEMBER EBERHART: Second.

8 CHMN. FOREMAN: We have moved and second. All
9 right. Further discussion?

10 (No response.)

11 CHMN. FOREMAN: All right. Let's vote. All
12 those who favor the motion which would adopt as a
13 condition the revised Condition No. 23 that's presently
14 on the screen signify by saying aye.

15 (A chorus of ayes.)

16 CHMN. FOREMAN: All opposed say no.

17 (No response.)

18 CHMN. FOREMAN: We have unanimously adopted the
19 language that's on the screen as a revised condition.

20 Now, are there other particular conditions that
21 the parties would like to address? I have a few, but if
22 others have particular condition...

23 I would like to go to Condition 6. And although
24 I appreciate Mr. Mundell's historical note to us that
25 this language has been used in the past, I do not think

1 that this language is strong enough. And I favor the
2 language that I admit that I drafted, which was in the
3 original proposal that was sent out to the parties, that
4 would say that applicant shall not assign this
5 certificate or its interests in the project authorized
6 by this certificate without prior approval of the
7 Commission, and have that replace the remainder of the
8 first sentence that's up there.

9 Now, I think the second sentence that was in the
10 original draft is roughly equivalent to the third
11 sentence that's in this draft. But I think that there
12 should be an explicit requirement that the Commission
13 approve it. Again, we don't have the enforcement power,
14 but there are assumptions that this Committee makes and
15 that I would assume the Commission makes in approving
16 something like this that include the identity of the
17 applicant. And if we have a different applicant, we may
18 have different circumstances, and those different
19 circumstances need to be addressed by the Commission.
20 And that's the reason that I believe this language is
21 superior to the language that was proposed by the
22 applicant.

23 So do I hear a motion to adopt the original
24 language rather than the other language that was
25 proposed by the applicant?

1 MEMBER MUNDELL: I move that we adopt the
2 original language as you just proposed.

3 MEMBER YOULE: Second.

4 CHMN. FOREMAN: We have a motion and second. Is
5 there further discussion?

6 (No response.)

7 CHMN. FOREMAN: All right. Let's vote. All in
8 favor of the language of Condition 6 that has been
9 proposed that would require prior approval of the
10 Commission signify by saying aye.

11 (A chorus of ayes.)

12 CHMN. FOREMAN: Opposed, no.

13 (No response.)

14 CHMN. FOREMAN: The ayes have it unanimously.
15 We have adopted the language for paragraph 6.

16 Now, I also would like to take a look at --

17 MR. DERSTINE: Mr. Chairman, can you -- I just
18 want to make sure we get the language down properly in
19 terms of we have got 6 on there that I think now
20 follows -- scroll down -- the new 6, applicant shall not
21 sign --

22 CHMN. FOREMAN: Take the old, the red
23 underscored language out. And so start, yes, starting
24 right there, going back up to there, take that out. And
25 then the second sentence, just -- yes, you have got

1 without a prior approval, and then any assignment shall
2 require the assignee to assume all responsibilities of
3 the applicant listed in this certificate. That's fine.
4 Yes, there it is, right there.

5 Okay. Have we got it? All right. Let's go to
6 paragraph 20.

7 MEMBER YOULE: Excuse, Mr. Chairman. Did you
8 end up putting in the sentence that you referred to
9 earlier in the -- about being filed with Docket Control?
10 Is that part of the original or not?

11 CHMN. FOREMAN: I don't believe so.

12 MEMBER YOULE: On Condition 6, the second
13 sentence.

14 CHMN. FOREMAN: No. The second sentence, that's
15 the second sentence that the applicant had proposed,
16 that's out. The second sentence now will be the
17 original second sentence.

18 MEMBER YOULE: So do they not have to file the
19 notice with Docket Control?

20 CHMN. FOREMAN: Correct. They will just have to
21 file with the Commission.

22 MEMBER YOULE: Okay.

23 CHMN. FOREMAN: Which will end up putting it
24 into Docket Control.

25 MEMBER YOULE: Thank you.

1 CHMN. FOREMAN: All right. No. 20. Now, I
2 would like to add after located on the landowners'
3 property at the end of 20, on or adjacent to the
4 landowner's property. So I would like to include in the
5 group of property owners that are consulted here not
6 only people who have the line running over their
7 property but people who have the line running right
8 adjacent to their property.

9 MEMBER NOLAND: Immediately adjacent?

10 CHMN. FOREMAN: Yes, adjacent. Yes, to me
11 adjacent means --

12 MEMBER NOLAND: Adjacent.

13 CHMN. FOREMAN: -- adjacent. Now, there is one
14 other thought that I had about that sentence. I think
15 we have already got it covered. But you could go back
16 to earlier in that sentence and it says preferences
17 regarding the placement of the poles, and you could put
18 the color and placement of poles. I think that's
19 already covered in 23 now. So my preference would be to
20 leave it out since we don't want to deal with it twice.
21 But this tacks down the placement of pole issue would be
22 considered here.

23 So do I hear a motion to adopt paragraph 20 as
24 we now have amended it?

25 MEMBER McGUIRE: So moved.

1 CHMN. FOREMAN: Is there a second?

2 MEMBER YOULE: Second.

3 CHMN. FOREMAN: Okay. We have got a motion and
4 second to approve paragraph 20 of the conditions as
5 amended. Is there a discussion?

6 (No response.)

7 CHMN. FOREMAN: All right. Let's vote on it.
8 All those in favor of the motion which would adopt the
9 language that is presently on the screen signify by
10 saying aye.

11 (A chorus of ayes.)

12 CHMN. FOREMAN: All opposed, no.

13 (No response.)

14 CHMN. FOREMAN: Very good. The ayes have it
15 unanimously. We adopt the language in paragraph 20.

16 Now, are there other -- those are the ones that
17 I was interested in. I gave some alternative language
18 to counsel this morning for the findings of fact and
19 conclusions of law. I don't know whether you have had
20 those typed up.

21 MR. DERSTINE: We do not have them typed up at
22 the moment, but they are fine with the applicant.

23 CHMN. FOREMAN: Okay. I tried to wordsmith the
24 findings of fact and conclusions of law, the new
25 language I like better, but it was drafted to not change

1 the meaning any. So my -- because of the lateness of
2 the hour and the robust deliberative power of this
3 Committee, my inclination is not to address the issue
4 unless someone would like.

5 Are there other issues then with regard to the
6 wording of the CEC and the conditions that members would
7 like to address?

8 MEMBER MUNDELL: Mr. Chairman.

9 CHMN. FOREMAN: Member Mundell.

10 MEMBER MUNDELL: Thank you.

11 On Condition 15, Ms. Webb, I asked you during
12 sometime in the proceeding whether Vail was
13 incorporated, and you said no. And then is there an
14 entity -- in Sun Lakes and some of these unincorporated
15 areas, you know, they don't have a mayor or council, but
16 they have these organizations that basically serve in
17 that capacity. And I am trying to remember what the
18 name of it is now. I can't. It is not a homeowners
19 association.

20 MEMBER NOLAND: Like a coordinating council.
21 Green valley has a coordinating council. They aren't
22 incorporated.

23 MEMBER MUNDELL: Thank you, Member Noland.

24 It is not a homeowners association, but a
25 coordinating council or something. Is there something

1 similar in Vail, or is there some entity? Because you
2 are an individual person representing yourself, so is
3 there some entity in Vail similar to what I have just
4 described that you would suggest we send a copy of the
5 CEC to?

6 MS. WEBB: Thank you, Member Mundell. No. I
7 mean I have provided a long list of NGOs to the company
8 in the past, but I don't know if this is an appropriate
9 place for it. We do not have something such as the
10 Green Valley Coordinating Council, which -- so I
11 honestly don't know.

12 MEMBER MUNDELL: Okay, that's fine. You are
13 going to get your copy because you are an intervenor,
14 but I didn't know if there was some entity that you
15 thought should receive it. But that's fine. I will
16 withdraw my question.

17 CHMN. FOREMAN: And I am sure Ms. Webb will
18 alert those organizations to which she belongs of the
19 status of the CEC and in that way communicate that
20 communication.

21 There is one other condition that I would like
22 to take a look at, and that's No. 12. I would like to
23 reinsert the language and dulled surfaces for
24 transmission line structures. Now, that leaves the
25 option to the company to use either the Corten or

1 weathered brown or the dull galvanized, but I want to
2 make sure that we don't have any shiny poles. No shiny
3 poles. And I mean --

4 MEMBER NOLAND: Mr. Chairman, I would move that
5 we adopt the nonshiny language for item 12 that's on the
6 board.

7 CHMN. FOREMAN: Okay.

8 MEMBER YOULE: Second.

9 CHMN. FOREMAN: Second. Is there a discussion?
10 (No response.)

11 CHMN. FOREMAN: All right. No discussion. All
12 those in favor of adding to the applicant's final draft
13 of Condition 12 the previously deleted language and
14 dulled surfaces for transmission line structures signify
15 by saying aye.

16 (A chorus of ayes.)

17 CHMN. FOREMAN: Opposed, no.

18 (No response.)

19 CHMN. FOREMAN: Ayes have it unanimously. We
20 have adopted that language.

21 CHMN. FOREMAN: Member Wong.

22 MEMBER WONG: Can we revisit that motion about
23 the relinquishment that we had passed? The reason I ask
24 to revisit that is because the language, Mr. Chairman,
25 that you and I saw that was being drafted at the

1 beginning of the last break was changed to what we
2 adopted.

3 So I had a chance to think further about some
4 additional language, and I think it is important that we
5 have written notification to the Commission that this
6 relinquishment process has occurred and has concluded so
7 that the Commission Staff is aware of that. Otherwise,
8 we will have our Staff chasing this act and we don't
9 know when that is going to commence.

10 So, therefore, before I make the motion, I would
11 like to have an appendage to that by saying that upon
12 the completion of the relinquishment process that the
13 applicant notify in writing to the Commission that this
14 process has commenced and is concluded and describe the
15 process of relinquishment.

16 Mr. Beck, the applicant, Mr. Derstine, is
17 that --

18 MR. DERSTINE: I think it is, I think it is
19 acceptable. But what has been pointed out to me is that
20 compliance with this and the other provisions of the CEC
21 are covered by the self-certification filing that the
22 company does and has to do, is required to do with the
23 Commission on an annual basis. So on an annual basis,
24 there is a filing with the Arizona Corporation
25 Commission in which we certify we complied with this and

1 the other provisions of this CEC, as well as other
2 matters.

3 So I mean if you think this is a, you know, a
4 provision that there should be a separate certification
5 on filing on, you know, I can't say that that creates a
6 lot of issues, but it does require a duplication, us
7 having to file something that we would already file in
8 terms of our certification and compliance file with the
9 Commission.

10 CHMN. FOREMAN: How about this, the applicant
11 shall include in the self-certification letter required
12 by Condition No. 19 notice of the relinquishment of any
13 rights-of-way. So the Commission Staff would then be
14 aware of the process as it --

15 MR. DERSTINE: Keep dictating, he is getting it
16 all.

17 I think that language is fine.

18 CHMN. FOREMAN: So you need to delete the upon
19 completion of relinquishment process and start the
20 sentence with the applicant. So at the beginning of the
21 sentence --

22 MEMBER MUNDELL: Do you want to say specific
23 notice or just notice? That's fine.

24 CHMN. FOREMAN: Notice.

25 MR. DERSTINE: Do you want to reference --

1 MEMBER WONG: Thank you, Mr. Chairman. Thank
2 you for that further clarification.

3 Would you remind me, which number is this
4 condition?

5 CHMN. FOREMAN: 23.

6 MEMBER WONG: It is No. 23?

7 CHMN. FOREMAN: Correct.

8 MEMBER WONG: Mr. Chair, I move an amendment to
9 Condition No. 23 to include the following: The
10 applicant shall include in the self-certification letter
11 required by Condition No. 19 notice of the
12 relinquishment of any rights-of-way, period.

13 CHMN. FOREMAN: Is there a second?

14 MEMBER NOLAND: It is not 23.

15 MR. BECK: Mr. Chairman, I think there is a
16 problem with the number maybe.

17 MEMBER NOLAND: Yes.

18 CHMN. FOREMAN: I am sorry, I thought it was 23.

19 Oh, okay.

20 MR. DERSTINE: Mr. Chairman, I think this would
21 be a new condition, so this will be Condition No. 25.

22 CHMN. FOREMAN: 25, okay, good. Thank you.

23 With that amendment, I assume the second accepts
24 that.

25 MEMBER WONG: That would be Condition No. 25,

1 excuse me.

2 CHMN. FOREMAN: All right. Is there further
3 discussion?

4 (No response.)

5 CHMN. FOREMAN: All right. All those in favor
6 then of adopting the new amendment to -- the amendment
7 to new Condition 25 that would include the language
8 articulated by Member Wong signify by saying aye.

9 (A chorus of ayes.)

10 CHMN. FOREMAN: Opposed, no.

11 (No response.)

12 CHMN. FOREMAN: The ayes have it. We
13 unanimously adopt new amended Condition 25.

14 Now, are there any other conditions or specific
15 portions of language in the proposed CEC that members
16 wish to discuss?

17 Member Mundell.

18 MEMBER MUNDELL: Thank you, Mr. Chairman. I
19 know we had a bunch, we had some lengthy discussion on
20 whether we needed a biologist on site, and we talked
21 about the desert tortoise. And I wasn't sure if we were
22 going to revisit that issue or everyone is satisfied
23 that those species will be protected the way the CEC is
24 drafted.

25 You know, we talked about having -- Mr. Magruder

1 wanted it similar to Case 111, and then I asked should
2 we just limit it to those areas, you know, mesquite
3 area. And then I think Jessica had talked about the
4 desert tortoise. And I didn't just want us to forget
5 about it and decide we don't want to do anything.
6 That's fine, but I think we at least need to chat about
7 it.

8 CHMN. FOREMAN: Okay. Anybody else want to be
9 heard on that?

10 MEMBER MUNDELL: Let me ask this question, maybe
11 this will help clarify to the company. You know, in
12 your -- as was noted, there is the issue of the desert
13 tortoise, correct?

14 MR. DERSTINE: Yes.

15 MEMBER MUNDELL: Okay. How will you, during the
16 construction, if we don't include the language that
17 Mr. Magruder wanted, how will you ensure that that
18 species is protected during the construction of the
19 transmission lines?

20 MR. DERSTINE: I am getting it all in front of
21 me.

22 I am directed to and I will direct you to, it is
23 page 27 of Exhibit C of the application itself. In
24 there it provides that the species assessment, well,
25 species information as well as species assessment, it

1 says it is possible for the project to negatively impact
2 the Sonoran Desert tortoise as Member Youle pointed out.
3 It provides:

4 Although impacts to the desert tortoise are
5 expected to be low, there is a potential of crushing an
6 unseen tortoise. To limit impacts to the desert
7 tortoise, conservation measures will be implemented.
8 Through the employment of a biological monitor as
9 outlined in the conservation measures of this report,
10 impacts to the desert tortoise and their habitat are
11 anticipated to be minimal.

12 What Member Youle suggested, and which I think
13 the company is fine, was express reference to the
14 various species assessment and protection provisions of
15 Exhibit C of the application, indicating expressly what
16 the company already understands it has an obligation to
17 do. And that is to follow all environmental guidelines
18 as well as the specific language in the exhibits to the
19 application.

20 MEMBER MUNDELL: That's sort of what I was
21 looking for, is some language.

22 MR. DERSTINE: I think we have some.

23 MEMBER MUNDELL: It appears there is not
24 support for the language that was in 111. And so I
25 appreciate your suggestion having some specific

1 reference at least, again, because you are going to have
2 thousands of pages of documents and the Commissioners
3 are going to look at this CEC, and we have heard all the
4 testimony about the desert tortoise, but I think we
5 ought to have some reference to it and make sure there
6 is protection for it and that you all are --

7 MEMBER YOULE: Mr. Chairman.

8 CHMN. FOREMAN: Member Youle.

9 MEMBER YOULE: I agree with Member Mundell. We
10 might be able to solve it, too, by referencing the
11 conservation measures that you have set forth beginning
12 at page 33 in that same document. If we could
13 incorporate those, that might be an easier way of doing
14 it. Because I think they also cover a biologist, but
15 they are a little broader and go to some of the
16 endangered plant species as well.

17 MEMBER MUNDELL: Do you have some language you
18 want to throw out? Oh, you are, okay. Thank you,
19 Mr. Chairman. I was going to start writing some down,
20 but if you are already doing it...

21 MEMBER YOULE: My suggestion is that you just
22 incorporate the conservation measures section beginning
23 at page 33 and the condition, rather than just focus
24 solely on the desert tortoise, because it is a little
25 broader in that same document that we were referring to.

1 MEMBER MUNDELL: Right, that's even better.

2 MEMBER NOLAND: Mr. Derstine, will you put that
3 microphone in front of your mouth.

4 MR. DERSTINE: Yes, I will.

5 MEMBER NOLAND: Thank you.

6 MEMBER MUNDELL: Mr. Gellman doesn't need to.

7 MEMBER NOLAND: But Mr. Gellman isn't talking
8 right now.

9 MEMBER MUNDELL: I know. Now. He hasn't talked
10 the whole time.

11 MR. DERSTINE: I think we are trying to pull up
12 some language. Maybe we can do it on the fly. But we
13 are fine with that and we can incorporate that specific
14 language.

15 MEMBER YOULE: Okay.

16 MR. DERSTINE: And I think we would do that at
17 Condition 13.

18 MEMBER YOULE: Does that work? Great. Did you
19 want a motion on that then, or do you want to wait for
20 the language?

21 CHMN. FOREMAN: Let me try some language here,
22 see how this sentence -- this would be a good place, I
23 think perhaps at the end then of paragraph Condition 13
24 in the proposed CEC, language similar to this might be
25 helpful:

1 Applicant shall employ an independent biologist
2 to assess whether the site ultimately selected for new
3 portions of the transmission line impacts any endangered
4 species. If any endangered species are impacted, the
5 applicant shall use reasonable efforts to minimize any
6 impact.

7 MEMBER YOULE: Mr. Chairman, I think we need to
8 say endangered or threatened.

9 CHMN. FOREMAN: Endanger or threatened? And
10 those are terms of art that are contained, specific
11 species that are referenced in federal -- okay.

12 Does that work for you, Member Mundell?

13 MEMBER MUNDELL: Thank you very much,
14 Mr. Chairman, for your writing that down. In fact, as
15 you know, the statute actually indicates that we are
16 supposed to make special consideration for endangered
17 species, our own --

18 CHMN. FOREMAN: Yes.

19 MEMBER MUNDELL: -- state statute. So I
20 appreciate your language.

21 CHMN. FOREMAN: That is what I was trying to
22 hit. The statute refers to endangered, and I think we
23 can stretch it to include threatened. All right.

24 Now, let's see what -- the applicant shall
25 employ an independent biologist to assess whether the

1 site ultimately selected for new portions of the
2 transmission line impacts any endangered or threatened
3 species, period. If any endangered or threatened
4 species are impacted, comma, the applicant shall use
5 reasonable efforts to minimize any impact.

6 MEMBER YOULE: Mr. Chairman.

7 CHMN. FOREMAN: Yes.

8 MEMBER YOULE: I think the applicant has already
9 employed --

10 MR. DERSTINE: It has already been done.

11 MEMBER YOULE: -- an independent biologist.

12 That's what the report is about. And it says it does
13 impact in certain places. I think Mr. Magruder was
14 worried they would be on site during construction to --

15 CHMN. FOREMAN: My understanding of what is in
16 the application, and correct me if I am wrong, is that
17 the site was evaluated by biologists who said that the
18 locations described in the preferred and alternate
19 routes were habitat in which threatened and endangered
20 species were located. But I am not sure, because the
21 application doesn't obviously know where the precise
22 poles are going to be located and where the final line
23 is going to be located, whether there were any,
24 specifically any examples of, for example, the desert
25 tortoise that were going to be directly impacted or

1 going to be impacted by the pole placement. So while
2 the application deals with the general possibility of
3 impact, it doesn't say they actually are impacted.

4 And what I was trying to address here is this
5 would require a biologist to go out, take a look at the
6 new line and find out whether there are any endangered
7 species that are along the line as it exists. If there
8 are, then either do something to protect them or move
9 them someplace else.

10 MR. WARNER: Let me address just a couple other
11 things that you mentioned.

12 The assumption that the line was examined
13 already by a biologist, that was correct. So that was
14 performed. Obviously these animals move over the course
15 of years, so it is contemplated that prior to a
16 construction that another survey would be performed to
17 evaluate whether or not the impacts would occur for
18 those species in proximity to where the line was being
19 located. And that was contemplated as part of this in
20 areas where those sensitivities were determined to exist
21 based on the pre -- as part of the evaluation. And
22 those are conservation measures.

23 In addition, in some cases it was contemplated
24 that a biologist should be on-site during construction,
25 and that was also contemplated as part of those

1 provisions. And so those three steps are part of the
2 overall conservation measures that were contemplated as
3 part of the overall study.

4 So the first step was study it to determine the
5 sensitivity. Once those were determined, the second
6 step is we have got to look at this one more time before
7 we get into it. The third one is we think in this area,
8 in order to get it right, you have got to have somebody
9 in the field while construction is occurring.

10 CHMN. FOREMAN: And if you do find something,
11 then the fourth step is you do something about it, you
12 either protect them where they are or move them.

13 MR. WARNER: Or you delay the construction
14 activity until the birds have hatched and gotten out of
15 the nest and you go through that and do that.

16 CHMN. FOREMAN: And so you addressed that in
17 your testimony?

18 MR. WARNER: That's right.

19 CHMN. FOREMAN: So is the language up on the
20 board, am I understanding that's consistent with your
21 understanding of what you have done already or
22 contemplated doing?

23 MR. WARNER: There are a couple of awkward
24 things in there. First of all, the term endangered and
25 threatened species refers to a federal protection for

1 federally listed species, but it doesn't address the
2 terminology that is used for state protected species.
3 And so you might consider different language, like
4 sensitive or protected species or special status
5 species. And that's a broader language that might apply
6 to those that are protected by state and federal
7 agencies.

8 CHMN. FOREMAN: Would those include all of the
9 endangered and threatened species under the federal law?

10 MR. WARNER: Yes. But it might be simpler just
11 to point to the provisions that are already outlined in
12 the report and just say point to this report and it says
13 what the conservation measures are. And I think that's
14 where Ms. Youle was referring to.

15 CHMN. FOREMAN: Okay. That gets us into a
16 procedural difficulty that I have, and that is
17 incorporating portions of the application into the CEC.
18 I would rather rearticulate them in the CEC, because it
19 is problematic for a member of the public who goes to
20 the Corporation Commission and wants to know what has
21 been authorized, and they get there and then they say
22 no, in order to find out what is required here you have
23 to go to another document called the application and it
24 is back in the storehouse.

25 MR. WARNER: What about the possibility of

1 pulling those conservation measures out and then just
2 using those?

3 MEMBER YOULE: Or attaching them as an appendix,
4 as set forth in Appendix C to this CEC.

5 CHMN. FOREMAN: I'm okay.

6 MEMBER NOLAND: I am good with that.

7 CHMN. FOREMAN: I am good with that. Can you do
8 that, can you put the application up and pull that
9 portion of the application out and make it, incorporate
10 it into the document as --

11 MR. DERSTINE: You mean in the body or as an
12 exhibit?

13 CHMN. FOREMAN: As an appendix. You are going
14 to have Appendix A that gives the legal description of
15 location of the line. Make this Appendix B or Exhibit B
16 or whatever and that will describe what it is you are
17 going to do.

18 All right. If we are going to do that, then
19 let's go back to the language and rework the language.

20 MEMBER MUNDELL: Mr. Chairman, while they are
21 doing this, I just want to say I agree with you from the
22 citizen's perspective, having it all in one place and
23 trying to do it by reference or incorporation. So I
24 think it is a great suggestion to put it in the body of
25 the CEC or incorporate it as we are going to do in an

1 appendix.

2 CHMN. FOREMAN: All right. Let me ask this.
3 With this, addressing this issue, is there any other
4 portion of the CEC that any member wants to deal with,
5 or are we to the point where we can vote on the whole
6 thing?

7 Member Noland.

8 MEMBER NOLAND: Only to clarify, I did not agree
9 with Mr. Magruder's suggestion of the time frame other
10 than the five years. So I think we should maintain the
11 five-year time frame.

12 CHMN. FOREMAN: Okay.

13 MEMBER NOLAND: I don't have the condition in
14 front of me, but I think we just ought to stick with
15 that.

16 CHMN. FOREMAN: All right. Then let us -- do I
17 hear then a motion to adopt the CEC with the conditions
18 that have been approved?

19 MEMBER MUNDELL: Mr. Chairman, are we going to
20 finalize some verbiage, too, for the Appendix B, which
21 is the mitigation measures? I mean I just wanted to
22 make sure we have the language. What are we going to
23 say in the body of the CEC?

24 MEMBER YOULE: Plus we need to move it, I think.

25 CHMN. FOREMAN: All right. Well, then, let's

1 see what we are going to do there. I just want to make
2 sure that Patty has a chance to vote on it.

3 MEMBER MUNDELL: It will only take a minute or
4 two.

5 CHMN. FOREMAN: All right. I am looking at
6 Exhibit C to the application beginning on page 33.

7 MR. DERSTINE: Correct.

8 CHMN. FOREMAN: If you start directly below
9 conservation measures, which is about two-thirds from --
10 three-fourths of the way down.

11 MR. DERSTINE: We have copied all that way.

12 MEMBER NOLAND: He already copied.

13 CHMN. FOREMAN: And you go to where you have
14 ended.

15 MR. DERSTINE: Taken all the way to the end, to
16 the conclusion.

17 CHMN. FOREMAN: So you went by native plants all
18 the way to conclusions?

19 MR. DERSTINE: All the way to native plants on
20 page 35 and ended there.

21 CHMN. FOREMAN: Okay. Well, the concern that I
22 have is you have -- in this exhibit there is a reference
23 to Table C-7, and there is a reference to Attachment A.
24 And so we will want you to include Table C-7 and
25 Attachment A. Attachment A looks like a series of

1 guidelines for some of the animals that are referred to.
2 So with that proviso, and let's --

3 MR. DERSTINE: That's a direction for us to do
4 that, but it will be included.

5 CHMN. FOREMAN: All right. So then do I hear a
6 motion to amend Condition 13 to add the language in the
7 first sentence that complies with all conservation
8 measures as set forth in Exhibit B, and includes as
9 Exhibit B the measures on pages 33 through 35 of the
10 application including Table C-7 and Attachment A to
11 Exhibit C?

12 MEMBER MUNDELL: So moved.

13 MEMBER YOULE: Second.

14 CHMN. FOREMAN: Further discussion?

15 (No response.)

16 CHMN. FOREMAN: All in favor of the motion
17 signify by saying aye.

18 (A chorus of ayes.)

19 CHMN. FOREMAN: All opposed, no.

20 (No response.)

21 CHMN. FOREMAN: Ayes have it unanimously. We
22 have added the articulated language.

23 Now, is there a motion to approve the CEC?

24 MEMBER RASMUSSEN: So move.

25 CHMN. FOREMAN: Is there a second?

1 MEMBER MCGUIRE: Second.

2 CHMN. FOREMAN: We have a motion and a second to
3 approve the CEC as we have amended it and discussed it
4 and set forth on the record. Is there further
5 discussion?

6 (No response.)

7 CHMN. FOREMAN: All right. We are going to do a
8 roll call vote. So Member Eberhart.

9 MEMBER EBERHART: Thank you, Mr. Chairman.
10 Briefly I would like to explain my vote.

11 I wanted to thank the applicant. I know this
12 was a lot of work, but this case went -- I think there
13 was a lot more information for the Committee than the
14 last case you did. I think it would have -- and
15 hindsight is 20/20, but if the alternative west of the
16 railroad had been included as part of the information
17 presented to us at the start, I think we could have
18 eliminated that in our minds as a viable alternative
19 much earlier and saved everybody some time. So my
20 suggestion is next time, even if there is some
21 alternatives that don't make sense, you might want to
22 include them anyway. But a good job, I think.

23 Also, Ms. Webb, and Mr. Magruder, I already
24 thanked him, but I think we made a much more informed
25 CEC decision based on your involvement.

1 I did want to thank the applicant also for their
2 flexibility and willingness to work with the intervenors
3 on all the issues. And also thank you for the tour that
4 the Committee was able to go on. I think that helped a
5 lot in understanding particularly in Segment 4 the
6 issues faced there.

7 So with that, I vote aye.

8 CHMN. FOREMAN: Member McGuire.

9 MEMBER MCGUIRE: Aye.

10 CHMN. FOREMAN: Member Mundell.

11 MEMBER MUNDELL: Aye.

12 CHMN. FOREMAN: Member Noland.

13 MEMBER NOLAND: Aye.

14 CHMN. FOREMAN: Member Palmer.

15 MEMBER PALMER: Aye.

16 CHMN. FOREMAN: Member Rasmussen.

17 MEMBER RASMUSSEN: Aye.

18 CHMN. FOREMAN: Member Whalen.

19 MEMBER WHALEN: Aye.

20 CHMN. FOREMAN: Member Wong.

21 MEMBER WONG: I will also explain my vote,
22 Mr. Chairman.

23 Mr. Chairman, I also want to comment that this
24 was a very, I think a quite thorough vetting of the
25 issues. I thank the applicants for thoroughness of

1 presenting the facts and issues, and also echo
2 Mr. Eberhart about the tour was very helpful and
3 insightful as to get a firsthand look about the specific
4 site in question.

5 And, Mrs. Webb, thank you very much for your
6 continued interest in sharing your views and the views
7 of your neighbors, taking the time and energy to present
8 and learn how to participate in this process, which is
9 not, not an easy process for somebody not schooled in
10 this process.

11 I do want to state and follow up from what
12 Mrs. Webb said, is that she had expressed some concerns
13 about the scope of outreach. I would ask the applicant
14 in the future to err on the side of having a broader
15 outreach as opposed to a narrower outreach in terms of
16 public participation before coming before this
17 Committee.

18 And also I think there was an issue raised by
19 Mrs. Webb about the posting of notice to the public and
20 perhaps, and I noticed that as well during the tours,
21 maybe in certain areas that we have larger signs, in
22 especially urban areas where there is so much clutter
23 competing for individuals' attention, that in those high
24 urban areas where there is much signage that we have a
25 little larger sign out there. And the analogy would be

1 that some of the cities and towns, when they have zoning
2 notices they have actually four-by-eight signs on the
3 road that draws attention and have the appropriate font
4 sizes for people driving through. So keep that in mind
5 and hope others do the same going forward.

6 So with that, I vote aye, Mr. Chairman.

7 CHMN. FOREMAN: Member Youle.

8 MEMBER YOULE: Aye.

9 CHMN. FOREMAN: And the Chair votes aye also.

10 So by a vote of 10 to zero the Committee
11 unanimously approves the CEC as amended.

12 Congratulations to the applicant.

13 I, too, appreciate the effort that the applicant
14 has put into this. I think that the intervenors did and
15 the public comment have helped us deal with this
16 application.

17 I will say that I am dissatisfied with the
18 intervention process, and I think that it puts burdens
19 on those who intervene, especially those who lack legal
20 training or experience, that I think interfere with
21 their ability to effectively communicate information to
22 us, which is their major point. And I would like very
23 much to see the statute and procedures modified so that
24 people who are in a position where they are directly
25 impacted by these applications have the ability to

1 inform the process without having to assume the burdens
2 of being a party. I think, as I said, it puts an unfair
3 burden on them.

4 Ms. Webb has tried very, very hard to deal with
5 all of the rules and regulations and tried to do what I
6 have asked her to do, and Mr. Magruder the same. But
7 because they are parties and there is no distinction
8 between their type of parties and any other type of
9 parties, they both had to do some things that really
10 just made work for them, increased the amount of money
11 they had to spend, and, as I said, I think interfered
12 with the quality of the information that they had to
13 present to us.

14 So I am hopeful that at some point someone will
15 take up my previously expressed desire to reexamine the
16 procedures of this Committee and allow us to engineer
17 some sort of public participation mode other than the
18 ones that we have now that will make sense for people
19 who are impacted by what we do.

20 I would like, I direct the applicant to prepare
21 a clean copy CEC with the amendments that have been
22 discussed on the record and present it to me within five
23 business days of today's date so that I can go over it.
24 And then we will try and work out and make sure that all
25 of the motions that have been made and ruled upon by the

1 Committee are correctly reflected in the final language
2 of the CEC.

3 Member Noland.

4 MEMBER NOLAND: Mr. Chairman, somewhat in the
5 same vein of your discussion about the very difficult
6 process for intervenors, we have discussed at certain
7 points the cost, the multiple copies, all of those types
8 of things, the things that then have to be mailed to all
9 of us. And at our next hearing, I am preparing a
10 letter, and before I send it on to the Commission, I do
11 want to share it with the other members requesting them
12 to effect a change in the rules with regard to the
13 copies and allow them to be posted on a secure portal
14 through the website so that only one copy would have to
15 be filed with Docket Control. We would have access to
16 that portal.

17 It would stop the rule for having to mail
18 certified and all of the different copies, which I
19 talked to the Corporation Commission Staff about,
20 because it is very difficult for all of us to be
21 constantly going to the post office. And then if you
22 add up all the costs involved in just the mailing, let
23 alone the paperwork and the trees that we are mowing
24 down, I think that would be one small step in this
25 process. It doesn't deal with all of the rules you are

1 talking about, but I believe it is the Commission's
2 rules, not a statutory requirement.

3 So I am going to ask them to address those and
4 look at them and maybe at some point we would ask to be
5 on the agenda and be able to give some input.

6 CHMN. FOREMAN: Well, as I told you all, I tried
7 to get that accomplished some time ago and I have been
8 spectacularly unsuccessful in getting anything like that
9 to happen. But I appreciate your thoughts and welcome
10 your willingness to do that.

11 Is there anything else that we need to address
12 here today?

13 MEMBER WONG: Just wanted to thank you --

14 CHMN. FOREMAN: Member Wong.

15 MEMBER WONG: -- thank you, Mr. Chairman, for
16 facilitating and moving us forward on a timely basis. I
17 appreciate that. Thank you.

18 CHMN. FOREMAN: I attribute it to my cat herding
19 skills.

20 MR. DERSTINE: Let me join on behalf of the
21 company and thank you, Mr. Chairman, all the members of
22 the Committee, thank you for good service, your
23 consideration, your time.

24 Let me also thank Mrs. Webb and Mr. Magruder
25 again for their participation. I know it is not an easy

1 process and they -- we haven't always agreed at times
2 and many times we have disagreed. But, you know,
3 Ms. Webb and I have communicated extensively through
4 this case and the past case. I enjoy working with her
5 and Mr. Magruder as well. And we appreciate their
6 participation. So thank you all.

7 CHMN. FOREMAN: Do I hear a motion to adjourn?

8 MEMBER EBERHART: Just a point. Did you
9 announce a vote and successfully benched? I just want
10 to make sure you did.

11 CHMN. FOREMAN: Yes, I believe I did. It was
12 10/0.

13 All right. Do I hear a motion?

14 MEMBER WONG: I move we officially adjourn.

15 MEMBER NOLAND: Second.

16 CHMN. FOREMAN: All in favor.

17 (A chorus of ayes.)

18 CHMN. FOREMAN: Opposed.

19 (No response.)

20 CHMN. FOREMAN: We are adjourned. Thank you
21 all.

22 (The hearing concluded at 4:47 p.m.)

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

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

WITNESS my hand this 13th day of July, 2009.

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658