



0000101542

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE ARIZONA POWER PLANT AND TRANSMISSION LINE SITING COMMITTEE

IN THE MATTER OF THE APPLICATION)
 OF SALT RIVER PROJECT)
 AGRICULTURAL IMPROVEMENT AND) DOCKET NO.
 POWER DISTRICT, IN CONFORMANCE) L-00000B-09-0311-00148
 WITH THE REQUIREMENTS OF ARIZONA)
 REVISED STATUTES, SECTIONS) Case No. 148
 40-360, et seq., FOR A)
 CERTIFICATE OF ENVIRONMENTAL)
 COMPATIBILITY AUTHORIZING)
 CONSTRUCTION OF A 230kV DOUBLE-)
 CIRCUIT TRANSMISSION LINE)
 ORIGINATING AT THE PLANNED AND)
 PERMITTED ABEL SUBSTATION, NEAR)
 JUDD AND ATTAWAY ROADS IN PINAL)
 COUNTY, TO THE PLANNED AND)
 PERMITTED RS-17 SUBSTATION,)
 ADJACENT TO THE EXISTING MOODY) (Pages 286 through 408)
 SUBSTATION, LOCATED NEAR PECOS)
 AND RECKER ROADS, IN THE TOWN OF)
 GILBERT, MARICOPA COUNTY,)
 ARIZONA, AND INCLUDING A NEW)
 230/69kV SUBSTATION NEAR THE)
 INTERSECTION OF COMBS AND)
 MERIDIAN ROADS, IN OR ADJACENT TO) EVIDENTIARY HEARING
 THE TOWN OF QUEEN CREEK, ARIZONA.)

VOLUME II (Pages 286 through 408)

Arizona Corporation Commission

DOCKETED

At: Mesa, Arizona
 Date: August 6, 2009
 Filed: August 10, 2009

AUG 10 2009

DOCKETED BY	<i>MS</i>
-------------	-----------

AZ CORP COM
 DOCKET CONTROL
 2009 AUG 10 2:05

RECEIVED

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ARIZONA REPORTING SERVICE, INC.

Court Reporting
Suite 502

2200 North Central Avenue
 Phoenix, Arizona 85004-1481
 By: COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658

ORIGINAL

Prepared for:
SITING COMMITTEE

**FOR
INTERNAL
&
INTERAGENCY
USE
ONLY**

Pursuant to the contract with Arizona Reporting Service all transcripts are available electronically for internal agency use only.

Do not copy, forward or transmit outside the Arizona Corporation Commission.

1 INDEX TO EXAMINATIONS

2 WITNESSES PAGE

3 THOMAS NOVY and MICHAEL LLOYD WARNER

4	Cross-Examination by Mr. Marks	307
	Examination by Member Youle	359
5	Cross-Examination by Mr. Sullivan	361
	Cross-Examination by Mr. Nelson	365
6	Cross-Examination by Mr. Robertson	371
	Cross-Examination by Mr. Birnbaum	397

7

8

9 INDEX TO EXHIBITS

10	NO.	DESCRIPTION	IDENTIFIED	ADMITTED
11	SRP-127	Maximum Pole Heights (Germann Alignment)	314	deferred 343
12	SRP-140	Proposed Route Tour	217	305
13	SRP-151	Summary of Route Tour	300	305
14		Exhibits		
15	ME-1	Amended Responses of SRP to First Set of Data Requests from City of Mesa	325	340
16				
17	ME-2	Notice of Presumed Hazard from FAA to SRP, Issue Date 6/16/09	339	340
18				

19

20

21

22

23

24

25

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 ASU Polytechnic Campus, 7001 East Williams Field
5 Road, Mesa, Arizona, reconvening at 1:30 p.m. on the 6th
6 of August, 2009.

7

BEFORE: JOHN FOREMAN, Chairman

8

DAVID L. EBERHART, Arizona Corporation
Commission

9

PAUL W. RASMUSSEN, Department of Environmental
Quality

10

JESSICA YOULE, Department of Commerce

11

PATRICIA NOLAND, Appointed Member

12

MICHAEL WHALEN, Appointed Member

13

MICHAEL PALMER, Appointed Member

14

BARRY WONG, Appointed Member

15

14 APPEARANCES:

15

For the Applicant:

16

JENNINGS, STROUSS & SALMON, P.L.C.

17

By Mr. Kenneth C. Sundlof, Jr.

The Collier Center, 11th Floor

18

201 East Washington Street

Phoenix, Arizona 85004

19

and

20

Salt River Project

21

By Mr. Robert R. Taylor

Salt River Project Law Department

22

1521 Project Drive PAB 341

Tempe, Arizona 85281-0001

23

24

25

1 APPEARANCES:

2

For the Town of Gilbert:

3

CURTIS, GOODWIN, SULLIVAN, UDALL & SCHWAB, P.L.C.
4 By Mr. William P. Sullivan
2712 North Seventh Street
5 Phoenix, Arizona 85006-1003

6

For the City of Mesa:

7

CRAIG A. MARKS, P.L.C.
8 By Mr. Craig A. Marks
10645 North Tatum Boulevard, Suite 200-676
9 Phoenix, Arizona 85028

10

and

11

City of Mesa Attorney's Office
By Mr. Wilbert J. Taebel, Assistant City Attorney
12 20 East Main Street, Suite 850
P.O. Box 1466
13 Mesa, Arizona 85211-1466

14

For the Town of Queen Creek:

15

MARISCAL, WEEKS, McINTYRE & FRIEDLANDER, P.A.
16 By Messrs. James T. Braselton, Gary Birnbaum
2901 North Central Avenue, Suite 200
17 Phoenix, Arizona 85012

18

For Pinal County:

19

MUNGER CHADWICK
20 By Mr. Lawrence V. Robertson, Jr., Of Counsel
P.O. Box 1448
21 2247 E. Frontage Road
Tubac, Arizona 85646

22

23

24

25

1 APPEARANCES:

2

For Demetrios Vlachos; Vlachos Enterprises, L.L.C.;
3 QC Niko 1, L.L.C.; QC Niko W, L.L.C.; V&P Nurseries,
Inc.:

4

DAVIS MILES, P.L.L.C.
By Mr. Shawn Nelson
560 West Brown Road, Suite 300
6 Mesa, Arizona 85201

7

8

9

10

COLETTE E. ROSS
Certified Reporter
Certificate No. 50658

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 CHMN. FOREMAN: Let's go back on the record.

2 It is Tuesday afternoon -- Thursday afternoon,
3 thank you. It was a longer tour than we had
4 anticipated. We have completed the tour. I want to try
5 to give Committee members an opportunity to ask
6 questions about some of the things that we saw and
7 discussed at the stops on the tour. And the record
8 should show the presence of our witnesses and counsel
9 and Committee members.

10 So, are there questions from Committee members
11 about the tour this morning? I had some, but let
12 everybody else have an opportunity to.

13 MEMBER WONG: Yes.

14 CHMN. FOREMAN: Member Wong.

15 MEMBER WONG: Thank you, Mr. Chairman. I would
16 like to reconcile some information that we received
17 yesterday, public testimony, as well as from what we saw
18 at the tour.

19 I was under the recollection that at public
20 testimony last night there was some strong opposition
21 and a number of petitions, signatures, stating that
22 there was numerous houses and residences near or
23 surrounding the Ryan alignment. And I didn't see -- I
24 saw houses there, but they seemed to be pretty far apart
25 and larger properties. I would like to hear, am I

1 missing something? Is that the wrong location? Was
2 there some misstatements? Can anybody answer that? Or
3 was that --

4 CHMN. FOREMAN: Mr. Warner.

5 MR. WARNER: Let me direct your attention to
6 page 16 in Exhibit A of our application.

7 MR. SUNDLOF: Is that an exhibit in the book?

8 MR. WARNER: No, it isn't. It is part of the
9 application itself.

10 CHMN. FOREMAN: The application is Exhibit 1.
11 So we are looking at --

12 MR. WARNER: 1.

13 CHMN. FOREMAN: We are looking at Exhibit A to
14 Exhibit 1, Exhibit A to Exhibit SRP-1.

15 MR. WARNER: Right, Exhibit A for Exhibit SRP-1
16 on page 16 in Exhibit A of the application. On that
17 page is Table 1 A. And it summarizes house counts on
18 the north sides and south sides of each of the
19 alignments. And so you can see what those house counts
20 are within 250 feet.

21 CHMN. FOREMAN: So these would be house counts
22 250 feet of the centerline of the road or the railroad
23 that's mentioned, is that correct?

24 MR. WARNER: That's right.

25 MR. NOVY: It might be easier to address that

1 question if we call up panel map SRP-032. Okay.

2 The person that spoke for public comment that
3 indicated that he had a stack of 2,000 signatures of the
4 people in the Queensland Manor area, that's this
5 subdivision bounded by Queen Creek Road. And they were
6 saying that they were impacted by the Ryan Road
7 alternative.

8 MEMBER WONG: So Mr. Chairman and Mr. Novy,
9 that's, Queen Creek, what is the distance there? Is
10 that a mile?

11 MR. NOVY: One half mile from Queen Creek to
12 Ryan Road. If you have -- back to panel map 31, this is
13 the Ryan Road alignment, and there are 16 homes on the
14 north side of Ryan Road and zero on the south side,
15 obviously.

16 MEMBER WONG: So Mr. Novy, at a half mile
17 distance how pronounced is the visibility of these
18 towers?

19 MR. NOVY: Well, my opinion might be different
20 than the public's, but a good way to look at it is any
21 one of our simulations where we showed the simulation of
22 the 230 structures, most of those were taken from
23 one-eighth to one-quarter mile away. There were no
24 simulations that were farther than a quarter mile.

25 MEMBER WONG: So we will see the simulation.

1 MR. NOVY: Double that.

2 MEMBER WONG: You will be showing the
3 simulation.

4 CHMN. FOREMAN: You showed some yesterday,
5 correct?

6 MR. NOVY: Yes. I am talking about the
7 simulations I showed yesterday. If you want to look
8 back at any of those in your booklet.

9 MEMBER WONG: Would you refer to which exhibit
10 that is.

11 MR. NOVY: Okay. A good one to look at that's a
12 cross section might be the first one on Power Road.

13 CHMN. FOREMAN: Why don't you look at SRP-66,
14 which is a Ryan Road simulation looking east along Ryan
15 Road.

16 MR. NOVY: Well, I was going to point out one
17 that's perpendicular and a quarter mile away instead of
18 parallel with.

19 CHMN. FOREMAN: Okay, all right.

20 MR. NOVY: So actually on the Ocotillo route
21 there was a good one. Let's see. 59. Roy, check 59.

22 MEMBER WONG: So looking at Exhibit SRP-59,
23 that's one quarter mile away, is that correct?

24 MR. NOVY: It will show in the legend of the
25 simulation itself.

1 Actually, Roy, I am looking for No. 61. This is
2 the one taken, I believe it is, Hawes Road looking south
3 at Sonoqui Wash.

4 MEMBER WONG: And Mr. Novy, we are looking at it
5 from a perpendicular point of view?

6 MR. NOVY: Correct.

7 MEMBER WONG: Looking at the legend, that is
8 about one mile?

9 MR. NOVY: That's a quarter mile.

10 MEMBER WONG: Quarter mile. And the residents
11 that you identified, that was a half a mile from Queen
12 Creek Road to Ryan Road, is that correct?

13 MR. NOVY: Yes. This structure would be a
14 quarter mile from where the photograph was taken.

15 MEMBER WONG: Thank you.

16 Thank you, Mr. Chairman.

17 CHMN. FOREMAN: Now, SRP-66 was taken from the
18 corner of Ryan Road and Hawes, which is where stop E was
19 located, is that correct?

20 MR. NOVY: Correct.

21 CHMN. FOREMAN: And so it was looking back to
22 the east, we came from the east to the west to this
23 corner, is that correct?

24 MR. NOVY: No. Actually we took Germann south
25 to Ellsworth and then Ellsworth we took west to this

1 point. So this view is looking east.

2 CHMN. FOREMAN: Germann goes east and west,
3 Ellsworth goes north and south. So we went east on
4 Germann to Ellsworth, then south to Ryan and then back
5 west, yes, to point E.

6 MR. NOVY: Yes, correct.

7 CHMN. FOREMAN: And point E, if you turn around
8 and look back east, is this what you see?

9 MR. NOVY: Well, yes, this is exactly, that's
10 exactly what we see on the top and a simulation on the
11 bottom photograph.

12 CHMN. FOREMAN: Okay. Now, how far -- there are
13 one, two, three, four, five poles that seem to be fairly
14 distinct, and then they recede off into the distance.
15 Can you tell me, it says the poles are 800 feet apart.

16 MR. NOVY: Yes. So let's say we are halfway to
17 the next structure, so it might be 400 feet to the first
18 one, second one would be 1200, a third one 1800, next
19 one 2600, and then the last one you could see is about
20 3400 feet.

21 CHMN. FOREMAN: And 2600 would be approximately
22 a half mile?

23 MR. NOVY: Yes.

24 CHMN. FOREMAN: So you looked at that and you
25 went to the fourth pole down, that would be

1 approximately a half mile.

2 MEMBER WONG: Mr. Chairman, if I may, just
3 another question.

4 CHMN. FOREMAN: Please.

5 MEMBER WONG: Our first stop was at the Moody
6 substation, and I had asked about the surrounding homes
7 in that area. First of all, Moody substation was
8 surrounded by a chain link fence with barbed wire on the
9 top. And then we saw immediately adjacent to that was a
10 single resident home with a fairly large property that
11 might have been like a horse property or something to
12 that effect.

13 Then directly across that road, I think it is a
14 service road, was more houses, a little denser in
15 proximity. Could you describe those properties? Were
16 those properties built subsequent to the substation?

17 MR. NOVY: Again, I think I answered that out
18 there, that I don't know when those houses came. The
19 other -- also I was asked about the school across Pecos
20 Road. I know the school was constructed after the power
21 line, but I can't speak to when the homes adjacent to
22 the power line were built, whether it was before or
23 after the line.

24 CHMN. FOREMAN: I think at that time we asked
25 maybe Mr. Warner or someone if they could look that

1 information up, get that information to us. I think
2 that would be very helpful, too.

3 MEMBER WONG: As to the residence immediately
4 adjacent to the substation, has there been complaints
5 from that homeowner? It seems very close, especially
6 the one pole next to it.

7 MR. NOVY: Gosh, I wouldn't know about that.

8 MEMBER WONG: All right. Thank you.

9 And Mr. Warner, if you would find out about the
10 other homes, subdivision.

11 Thank you, Mr. Chairman.

12 CHMN. FOREMAN: I had a couple of questions.
13 There was a gentleman who spoke last night about the
14 Queen Creek Road alignment. And I understood him to say
15 that he had proposed that the alignment be down
16 Rittenhouse to Queen Creek Road alignment and then
17 across to Signal Butte. And I think at some point we
18 discussed that on the trip.

19 Could you tell us the thinking of SRP with
20 regard to using Queen Creek as an alignment to go east
21 and west?

22 MR. NOVY: After the first round of open houses
23 when we invited the jurisdiction working group and the
24 public to put suggested line routes on the map, Queen
25 Creek Road was on there. I think it was given at least

1 a medium to high sensitivity because of proximity to the
2 Town of Queen Creek.

3 Town of Queen Creek's first resolution was not
4 real specific, but it did say that the line should be
5 located as far north as we could. And it didn't meet
6 that criteria. And I can't say specifically, but in
7 subsequent jurisdiction working group meetings I think
8 the Queen Creek alternative probably came off at the
9 wishes of the town.

10 CHMN. FOREMAN: Okay. When we were at stop U,
11 the Abel substation, we came along what appeared to be
12 the Magma Arizona Railroad. Is that still in use? It
13 appeared that there was asphalt in the location of where
14 the rails were actually located and it was not clear to
15 me that it was still being used.

16 MR. NOVY: I believe it is still being used.

17 CHMN. FOREMAN: Do you know for what purpose or
18 how often?

19 MR. NOVY: It is a privately owned railroad, you
20 know, unlike the Union Pacific, but no, I don't know the
21 specific uses.

22 CHMN. FOREMAN: Okay. All right. I think those
23 are all the questions that I had.

24 Last night I asked counsel to prepare a summary
25 of the route tour exhibits that would show us the

1 simulations and aerial photographs that relate to the
2 stops along the route. They were kind enough to do
3 that. I would like to have this summary of route tour
4 exhibits marked as exhibit, I think next in order is
5 exhibit --

6 MR. SUNDLOF: 151.

7 CHMN. FOREMAN: -- 151. All right.

8 Anything further, Member Wong?

9 MEMBER WONG: Yes, thank you, Mr. Chairman.

10 Another point I wanted to explore further is
11 along the stop. I think that was M, stop M as in mother
12 or N as in Nancy. The Town of Queen Creek expressed
13 concerns about the Rittenhouse route because of its
14 proximity to the core, the city core comprised of -- I
15 think they described it as historic. Can we get more
16 information? Is that historic or is it the town hall,
17 the government center? What is comprised of that core?

18 MR. WARNER: That's part of what they are
19 calling their town center. And perhaps I can direct you
20 to another map that's in the application, SRP-1, that
21 will depict that more accurately and clearly for you.
22 Give me just a moment to find it.

23 Yes. If you will, turn to in the SRP-1 under
24 the A exhibit section, the map that pulls out, it is the
25 last map before Exhibit B begins. And it is titled

1 planned land use, Town of Queen Creek. And the map
2 depicts the area called their town center as a red area
3 that appears south of Rittenhouse Road and the railroad
4 alignment. It is more or less situated between
5 Ellsworth and a little bit north along the railroad and
6 Ellsworth and west of the Ellsworth Road capturing that
7 newly built mall that we saw on the field trip down to
8 Ocotillo Road. This is an area of expressed importance
9 to the city in trying to manage the viability of their
10 downtown area and maintain some of their character. And
11 so that's what it is.

12 MEMBER WONG: And Mr. Chairman, Mr. Warner, what
13 is the approximate distance from that core you just
14 described to the alignment along the railroad track? Is
15 that --

16 MR. WARNER: The older historic areas are
17 further south. You can see those. If we would have
18 driven south on the old Ellsworth alignment you would
19 see some of the old features of the town begin to
20 appear. It is more modern towards the railroad
21 alignment, but the boundary, it abuts the railroad and
22 is on the -- it comes right up to the railroad
23 alignment.

24 MEMBER WONG: So it is fairly close proximity.

25 MR. WARNER: Yes, it is adjacent to it.

1 CHMN. FOREMAN: As to I remember correctly, the
2 area directly south of where we were on the west side of
3 Ellsworth and Rittenhouse, northwest corner of Ellsworth
4 and Rittenhouse, was an open field and it was
5 approximately a half mile to the new library, which was
6 the further north building.

7 MR. WARNER: You will probably have also noticed
8 some of the commercial development that has recently
9 been developed in that area as well. And I think the
10 library is approximately a quarter mile, maybe a little
11 bit further than that, south of the railroad alignment.

12 MEMBER WONG: And Mr. Warner, I remember
13 standing along the railroad track alignment. I think it
14 was by the school --

15 MR. WARNER: Yes.

16 MEMBER WONG: -- school district offices, is
17 that correct?

18 MR. WARNER: That's correct.

19 MEMBER WONG: And as we were viewing, is it
20 Ocotillo --

21 MR. WARNER: Ellsworth.

22 MR. NOVY: That was of the Ellsworth.

23 MEMBER WONG: -- we were directing our attention
24 down the Ellsworth corridor and we were directed to look
25 towards that direction. And I didn't see anything right

1 adjacent to the railroad, so I thought maybe half a mile
2 or three-quarter mile distance before we even got to the
3 core that was described by the Town of Queen Creek. Is
4 that accurate?

5 MR. WARNER: That's correct.

6 MR. NOVY: Let me interject. I think the terms
7 we are using, core, town center and historic district, I
8 think probably Queen Creek should identify those
9 specific areas together. I don't know if it is one area
10 or three distinct.

11 The question we had on the route tour was
12 specifically somebody asked about the town hall, where
13 was the town hall. And I had indicated that it was on
14 Ellsworth south of Ocotillo, and that particular point
15 was at least a half a mile from where we were standing.
16 But maybe Queen Creek would better, when they are up
17 here, describe what they call the town center, the core
18 area, and give definitions to some of those terms.

19 MEMBER WONG: I think that would be very
20 helpful, because --

21 MR. BIRNBAUM: Mr. Chairman, Commissioner Wong,
22 obviously Queen Creek will do that. But so that we
23 don't leave any misperception, allow me to advise the
24 Committee that there is a designated town center and
25 town center plan for historic Queen Creek and the

1 commercial area downtown.

2 The railroad alignment runs through the town
3 center. The town center is on both sides of the
4 railroad alignment. I think you have been asking
5 questions that suggest that it is either adjacent or
6 quarter of a mile away or half a mile away. I don't
7 think that's correct. The town center plan incorporates
8 that line.

9 CHMN. FOREMAN: There is a difference between a
10 planned designated land as town center and buildings
11 that actually indicate a town center. So I think that's
12 the ambiguity. We are trying to deal with the
13 dissonance between what has been designated as the town
14 center and structures that we would normally associate
15 with a town center.

16 MR. BIRNBAUM: I appreciate that, sir. And we
17 will distinguish between the two in the testimony. But
18 it sounded like we were saying that the center is
19 distinct from the line. It is not. The line runs
20 through it. And, in fact, it is also an established
21 statutory redevelopment area. And again, the corridor,
22 the railroad corridor goes through the redevelopment
23 area, and we will address that as well in the testimony.

24 MEMBER WONG: Thank you, Mr. Birnbaum. I am
25 trying to establish the difference.

1 And thank you, Mr. Chairman, for the
2 clarification, is that, similar to the residential
3 concerns of, the actual residential concerns, where
4 residents are physically located in their homes versus
5 future residents, we need to look at the actual physical
6 structures of Queen Creek's core, actual physical versus
7 planned and proposed physical structures. So I think
8 that would be helpful to understand those differences.
9 Thank you.

10 Thank you, sir.

11 CHMN. FOREMAN: All right. I think then we are
12 ready to proceed with cross-examination. Or do you have
13 further?

14 MR. SUNDLOF: Chairman Foreman, maybe at this
15 time I ought to offer into evidence Exhibit SRP-140,
16 route tour, and SRP-151, which was the summary of the
17 route tour exhibits. Both have been marked.

18 CHMN. FOREMAN: Any objection to either?

19 (No response.)

20 CHMN. FOREMAN: No objection, it will be ordered
21 admitting exhibits SRP-140 and SRP-151.

22 (Exhibits Nos. SRP-140 and SRP-151 were admitted
23 into evidence.)

24 MR. SUNDLOF: Thank you. I tender the witnesses
25 for cross-examination.

1 CHMN. FOREMAN: All right. Let's start with
2 Mesa.

3 MR. MARKS: Thank you, Mr. Chairman. If I
4 might, could I take up two brief preliminary matters
5 before I start, as long as I have the microphone in my
6 hand here?

7 CHMN. FOREMAN: Sure.

8 MR. MARKS: One is you asked that we address a
9 question yesterday about planned transmission corridors
10 as they are expressed in the town master plan documents.
11 And I have been informed that the City of Mesa has,
12 although it certainly reflects the existing transmission
13 corridors that we discussed yesterday with SRP, there
14 are no additional transmission corridors contained in
15 the various town planning documents.

16 CHMN. FOREMAN: Thank you for putting that on
17 the record, Counsel.

18 MR. MARKS: And then second, I wanted to clear
19 up a misstatement, an inadvertent misstatement that I
20 made yesterday concerning the status of the two Mesa
21 exhibits. I know I -- I may not have said this, but
22 just in case, I know I stated that Mesa had filed its
23 testimony summaries. I believe I also stated that Mesa
24 had filed its exhibits as well with the Corporation
25 Commission. And that was our intent. It turns out that

1 the copies, the necessary copies didn't get made and
2 delivered on Tuesday.

3 Now, I didn't see any requirement in the
4 procedural order to actually file the exhibits, only to
5 exchange them with the parties which, of course, we did
6 on Tuesday, and they are in all the Committee members'
7 exhibit books.

8 And I also note that Your Honor filed copies of
9 his e-mails with copies of the attachments which
10 included the exhibits on Tuesday. But since I said we
11 filed them, I have gone ahead today and we should be
12 filing those exhibits so they will be part of the ACC
13 record as well.

14 CHMN. FOREMAN: Good.

15

16 THOMAS NOVY and MICHAEL LLOYD WARNER,
17 called as witnesses, having been previously duly sworn
18 by the Chairman to speak the truth and nothing but the
19 truth, were examined and testified as follows:

20

21 CROSS-EXAMINATION

22 BY MR. MARKS:

23 Q. Good afternoon, Mr. Novy, Mr. Warner. My name
24 is Craig Marks and I represent the City of Mesa in this
25 case.

1 And I think, Mr. Novy, you were the one that
2 walked through these various exhibits of the
3 simulated -- well, I wouldn't call it -- the conceptual
4 plan for the transmission line along Germann Road, is
5 that correct?

6 A. BY MR. NOVY: Yes.

7 Q. And I just had a few more questions, if I could
8 direct those to you. First of all, can you hear me
9 okay?

10 A. BY MR. NOVY: Yes, I can.

11 Q. Now, we have -- my eyes aren't good enough here,
12 but SRP-75 is the first of -- are there seven panels?

13 A. BY MR. NOVY: I believe there is eight.

14 Q. Eight panels, okay. And these then begin at the
15 intersection with -- why don't you describe where it
16 starts for the record.

17 A. BY MR. NOVY: It starts at the intersection of
18 the Union Pacific Railroad, so just a little bit off of
19 the exhibit that's currently up there, SRP-127. I see
20 on the left-hand screen is SRP-75.

21 Yes, the hypothetical design, yes, begins
22 immediately east of Sossaman Road on the north side of
23 Germann.

24 Q. And can you indicate with your pointer where the
25 municipal boundaries are for the City of Mesa?

1 A. BY MR. NOVY: I believe the boundary, I am going
2 to point to SRP Exhibit 127, I believe it is Germann
3 Road.

4 Q. And we see then with the first panel, SRP-75,
5 the transmission line extending along the north side of
6 Germann Road with two poles and the lines then being
7 located within the City of Mesa, is that correct?

8 A. BY MR. NOVY: That's correct.

9 Q. And then I see, I think there is a -- well, let
10 me ask this: Is there a little bit of overlap between
11 the panels?

12 A. BY MR. NOVY: I don't believe so.

13 Q. Let's go then to SRP-76. And SRP-76 then is a
14 continuation of SRP-75, correct?

15 A. BY MR. NOVY: Correct.

16 Q. And there we see -- on 75 we saw the line turn
17 roughly at a 45 degree angle to the south of Germann
18 Road and pick up at that pole location to the left side
19 of the exhibit, is that correct?

20 A. BY MR. NOVY: Yes.

21 Q. And then we continue along the entire width of
22 SRP-76 on the south side of the road, is that correct?

23 A. BY MR. NOVY: Yes.

24 Q. And that's in the Town of Queen Creek, is that
25 correct?

1 A. BY MR. NOVY: Yes.

2 Q. And approximately what is the distance that we
3 are looking at here on SRP-76?

4 A. BY MR. NOVY: It is a little bit more than a
5 mile.

6 Q. Are each of these panels roughly a mile?

7 A. BY MR. NOVY: Yes.

8 Q. Let's go on to Exhibit 77. Exhibit 77 then we
9 see one additional pole in the Town of Queen Creek.
10 Then we have another road crossing and it looks like
11 one, two, three poles supporting transmission line on
12 the Mesa side of the road, is that correct?

13 A. BY MR. NOVY: Yes, that's correct. I just want
14 to reiterate that this was just one hypothetical design
15 to show, you know, difficulties in designing on the
16 stretch. We didn't place the poles strategically in one
17 town or another, it is just one hypothetical design.

18 Q. And I do note you said that also for the record
19 yesterday, and I am certainly not trying to put words in
20 your mouth here.

21 Finally, at the end of the panel we see the
22 line -- let's identify, since we have had some public
23 comment since this exhibit was up yesterday, what is the
24 grouping of homes to the north there that the line goes
25 through?

1 A. BY MR. NOVY: Well, there is ten one-acre
2 properties, and I believe, I believe there is nine
3 homes. The last lot on the east does not have a home on
4 it.

5 Q. Is there a name for this subdivision?

6 A. BY MR. NOVY: Yes. It is Queens Park?

7 A. BY MR. WARNER: The name escapes me. Let me
8 look it up.

9 A. BY MR. NOVY: I heard it half a dozen times
10 yesterday.

11 MR. BIRNBAUM: Mr. Chairman, I don't know if you
12 want help or not. The subdivision, as I understand it,
13 is Queens Park.

14 CHMN. FOREMAN: Queens Park. Well, if they can
15 confirm that, that's fine. If they can't, we will have
16 to put you under oath so that the evidence can make it
17 into the record.

18 MR. BIRNBAUM: You get what you pay for.

19 CHMN. FOREMAN: Yes.

20 MR. WARNER: There were several subdivisions
21 approved different times, and I think that is accurate
22 in its characterization of the area, Queens Park.

23 BY MR. MARKS:

24 Q. To your knowledge -- well, were you here
25 yesterday evening for public comment?

1 A. BY MR. NOVY: Yes, I was.

2 Q. Were there residents who identified themselves
3 as being from the Queens Park area who provided public
4 comment last night?

5 A. BY MR. NOVY: Yes, there were.

6 Q. So they were referring to this area then on the
7 north side of Germann Road?

8 A. BY MR. NOVY: Yes.

9 Q. Now, the area to the south, is there a name for
10 that?

11 A. BY MR. WARNER: That area is known as Mini
12 Farms.

13 Q. I wrote down Ellsworth Mini Farms last night --

14 A. BY MR. WARNER: That's right.

15 Q. -- the way it was identified. You would agree
16 with that?

17 A. BY MR. WARNER: Yes.

18 Q. And this is the area that is bounded by Germann
19 Road to the north and Ryan Road to the south, is that
20 correct?

21 A. BY MR. NOVY: Correct.

22 Q. And with your pointer, could you identify
23 approximately where we stopped today on the tour.

24 A. BY MR. NOVY: Yes. We stopped, I think this is
25 88th Place, and yes, we stopped right at this location.

1 Immediately, there was about 150 feet north of the
2 centerline of Germann Road and, I believe it is, 80th
3 Place.

4 Q. And did we stop again in that neighborhood?

5 A. BY MR. NOVY: Yes. The next stop was on
6 SRP-078. Well, I am sorry, it was just barely on 077.
7 Yes, we stopped right in this location. That might be
8 85th Place. And we did the same thing, stopped about
9 150 feet north of the centerline of Germann.

10 Q. And just so everybody is clear, what was on that
11 corner?

12 A. BY MR. NOVY: Well, on the northwest corner,
13 that's the empty lot. On the northeast corner was a
14 fairly new restaurant and two other commercial buildings
15 attached to it. That's this building on the north side
16 of Germann on SRP-078.

17 Q. And I believe you testified that the, again,
18 this is a conceptual drawing, but that the jog to,
19 again, across Germann Road was to accommodate the
20 closeness of that commercial structure to Germann Road,
21 is that correct?

22 A. BY MR. NOVY: The closeness plus the height,
23 plus difficulty in maintaining the line over it.

24 Q. So as we make that jog, that's the single pole
25 on the south side of Germann Road, correct?

1 A. BY MR. NOVY: Correct.

2 Q. And then we go back north again, north of
3 Germann Road, and for the remainder of SRP-78 we are
4 within city limits of the City of Mesa, correct?

5 A. BY MR. NOVY: Yes, that's correct.

6 Q. And what is the north/south road to the east
7 there?

8 A. BY MR. NOVY: That's Ellsworth.

9 Q. Now, a question I had for you as we are going
10 through here, and back up if necessary, I had put up
11 ahead of time Exhibit SRP-127 which has not yet been
12 offered into evidence, but my understanding is that this
13 would be sponsored or be discussed by the expert from
14 Williams Aviation, is that correct?

15 A. BY MR. NOVY: Yes.

16 Q. And this exhibit shows pole heights and
17 approximate locations along Germann Road. Does this
18 roughly correspond with your series of drawings
19 beginning at SRP-75?

20 A. BY MR. NOVY: Yes, it does.

21 Q. So, for example, if I am looking at the last
22 pole north of Germann -- well, let's call it the
23 northwest corner of Germann and Ellsworth there. If you
24 could, with your pointer, show me the corresponding pole
25 on SRP-127.

1 A. BY MR. NOVY: I am pointing to the pole on
2 SRP-78 on the northwest corner of Ellsworth and Germann.

3 Q. And could you show me the corresponding pole on
4 SRP-127?

5 A. BY MR. NOVY: Yes.

6 Q. And that pole would be planned to be 75 feet
7 high, correct?

8 A. BY MR. NOVY: Yes.

9 Q. And SRP-127 shows the poles quite a bit closer
10 together in that area than further east, particularly as
11 we get to the -- let's see. Well, let me just ask you.
12 Where do we start picking up the poles at 120 feet high?

13 A. BY MR. NOVY: At Crismon.

14 Q. And from that point forward it appears to be
15 just to the naked eye that the pole separation is
16 roughly twice east of Crismon as it is in the vicinity
17 of Ellsworth, is that fair?

18 A. BY MR. NOVY: That's exactly what this shows.
19 There are three spans of 400 feet centering around
20 Ellsworth. And from Crismon east, the spans are 800
21 feet, actually they are about 820 feet.

22 Q. I am pretty proud of myself for guessing that
23 closely. And to your knowledge why is SRP proposing to
24 use differing pole heights along Germann Road?

25 A. BY MR. NOVY: A couple of reasons. One is pole

1 heights and span lengths go together. The longer the
2 span, the taller the pole. If you have to go closer
3 together, the pole doesn't have to be as tall.

4 And the other reason was this hypothetical
5 design included information we had on one engine
6 inoperative criteria.

7 Q. So that was related to conditions or to
8 consideration for airport operations, is that correct?

9 A. BY MR. NOVY: Yes, airport operations.

10 Q. So back on SRP-78 then, as we move east then, we
11 stay north of Germann Road and north of -- I am sorry,
12 in the City of Mesa. I think you said that already, but
13 let me just have you confirm that. Is that correct?

14 A. BY MR. NOVY: Yes, that's correct.

15 Q. Can we move on to 79, please.

16 In 79, we continue then roughly halfway, half
17 the distance across the slide, which I believe you
18 indicated would be approximately a half a mile within
19 the City of Mesa, is that correct?

20 A. BY MR. NOVY: Yes, that's correct.

21 Q. And then we cross over from that point south of
22 Germann Road into the Town of Queen Creek, is that
23 correct?

24 A. BY MR. NOVY: Yes.

25 Q. And what is -- what feature are we seeing there

1 to the south?

2 A. BY MR. NOVY: On 079?

3 Q. Of 079, right, I am sorry, as we have crossed
4 into Queen Creek.

5 A. BY MR. NOVY: It looks like agriculture.

6 Q. And to the north?

7 A. BY MR. NOVY: That's a nursery.

8 Q. And if we continue on on 079, I am sorry, to
9 080?

10 A. BY MR. NOVY: On the south side is agriculture,
11 on the north side is more of the nursery, then two
12 residences as you approach Crismon. From Crismon east
13 on the north side is agriculture, on the south side is
14 the Vlachos nursery.

15 Q. And I have seen that referred to in the record
16 as the Vlachos nursery and also the V&P Nursery. Is
17 that the same thing?

18 A. BY MR. NOVY: Yes, it is.

19 Q. And that nursery I saw on the tour today
20 contains a large number of structures, including
21 greenhouses, is that correct?

22 A. BY MR. NOVY: Large is relative, but there were
23 several, yes.

24 Q. And then let's continue on to SRP-81, please.

25 A. BY MR. NOVY: Okay. On the left-hand side of

1 SRP-081, that's the end of the V&P Nursery on the south.
2 On the north there is a residence right at the
3 intersection of Germann and Merrill. As you continue
4 east on the north side there is another nursery.
5 Actually it is a large nursery complex for that entire
6 half mile on the north side of Germann. On the south
7 side is agriculture.

8 Q. And what is the first north/south road that we
9 come to there?

10 A. BY MR. NOVY: That's Merrill Road.

11 Q. And then roughly at the end of SRP-81, we
12 reach --

13 A. BY MR. NOVY: Signal Butte.

14 Q. -- signal Butte or the Signal Butte alignment,
15 is that correct?

16 A. BY MR. NOVY: Right.

17 Q. Let's continue on, please. And, again, the
18 conceptual drawing wrote the line would proceed within
19 the limits of Town of Queen Creek. What do we see on
20 the north side of Germann Road at this point?

21 A. BY MR. NOVY: On SRP-082, on the north side of
22 Germann is a TRW facility.

23 Q. And what do you know about the TRW facility?

24 A. BY MR. NOVY: It is -- I think they develop
25 airbags, an industrial facility, airbags for cars, as

1 far as I know.

2 Q. And could we go on, I think, to the last slide
3 here. And that's -- go ahead and describe just what we
4 are seeing.

5 A. BY MR. NOVY: Exhibit 083 on the south side of
6 Germann Road is agriculture. On the north side there is
7 one residence. At the intersection of Germann and
8 Meridian there is a new 69kV substation. And this is an
9 old aerial photograph, but now a little farther north is
10 a new steel mill.

11 Q. And we saw the steel mill today?

12 A. BY MR. NOVY: Yes.

13 Q. And there is a 69kV line that also goes to the
14 steel mill from the east, is that correct?

15 A. BY MR. NOVY: Yes. The line is -- the steel
16 mill is fed from the 69 substation. The 69 line runs
17 north along Meridian Road.

18 Q. There is something I would like to clear up,
19 Mr. Novy, if you would. And you don't have to put these
20 up on the screen, but I was looking -- for example, at
21 this exhibit we show the line, the Germann alignment,
22 going to Meridian Road and going south, and on SRP-27 we
23 show that as a solid line. Yet, I believe on SRP-137
24 and 55 we show the dotted line down Meridian and the
25 solid line down Signal Butte. And I have seen them

1 referred to variously as one being the preferred
2 alternative on Germann and the other being -- well, I am
3 sorry, Signal Butte being the preferred alternative and
4 alternatively as Meridian being the preferred
5 alternative.

6 Which in the Germann alignment, which is SRP's
7 preference? Or if it doesn't have a preference if you
8 would say it?

9 A. BY MR. NOVY: Right. It is not necessarily a
10 preference. The Germann follows Germann Road to
11 Meridian, then Meridian south, where the Ryan alignment
12 follows Ryan Road to Signal Butte and then takes Signal
13 Butte south. Each of those two alignments have
14 subalternatives.

15 Q. And the subalternative for the Germann Road
16 alignment would be the Signal Butte south from Germann
17 Road instead of Meridian Road?

18 A. BY MR. NOVY: That's correct.

19 CHMN. FOREMAN: We need some clarification here.
20 The SRP preferred route going south from either Germann
21 or Ryan is Signal Butte, not Meridian, is that correct?

22 MR. NOVY: Well, there is only one preferred
23 route and that's Ryan to Signal Butte.

24 CHMN. FOREMAN: Ryan to Signal Butte, okay. But
25 if the Germann Road alternate is selected, of those, of

1 the Germann Road alternate options, is the Signal Butte
2 alternate the preferred alternate?

3 MR. NOVY: Yes.

4 CHMN. FOREMAN: Okay.

5 Member Wong.

6 MEMBER WONG: Mr. Chairman, thank you for that
7 question for clarification.

8 But a further clarification, Mr. Novy, is that,
9 therefore, does that mean that the subalternate for the
10 preferred route would run down Meridian, is that
11 correct.

12 MR. NOVY: Yes, that's correct.

13 MEMBER WONG: And the subalternate for the
14 Germann alternate would be Meridian Road, correct?

15 MR. NOVY: Well, the subalternate for Germann is
16 Signal Butte.

17 CHMN. FOREMAN: The first choice for the Germann
18 Road route is Signal Butte, the second choice is
19 Meridian, correct?

20 MR. NOVY: Yes.

21 CHMN. FOREMAN: First choice for the Ryan route
22 is Signal Butte, second choice is Meridian, correct?

23 MR. NOVY: Correct.

24 MEMBER WONG: That's not what I heard from
25 Mr. Novy earlier.

1 MR. NOVY: Start from the beginning.

2 MEMBER WONG: Start over.

3 MR. NOVY: We considered -- there are three
4 routes. There is a railroad route. The Germann route,
5 whenever I talk about the Germann route, I mean Germann
6 to Meridian. When I talk about the Ryan route, it is
7 Ryan to Signal Butte.

8 When I think the question was asked if SRP were
9 given Germann Road heading east, would we rather have
10 Signal Butte or Meridian, and the answer is if we got
11 the Germann alternative, we prefer Signal Butte.

12 MEMBER WONG: And clarification, because their
13 exhibit appears to be different on the tour, SRP-140
14 exhibit versus the Exhibit SRP-137, the placemat. You
15 have different schematics on your map on the solid line
16 versus the dotted line. Are you aware of that?

17 MR. NOVY: No, I wasn't. But that map was
18 created specifically just to get us around all the
19 alternatives and take a look at the different
20 alignments. So it was really considered to be more as a
21 road map and show all the alignments.

22 MEMBER WONG: So if you would follow me with the
23 placemat, which is your Exhibit SRP-137, let's look at
24 the yellow line, which is the preferred route, Ryan, is
25 that correct?

1 MR. NOVY: I am sorry, please repeat that.

2 MEMBER WONG: So that would be Ryan Road and
3 then to Signal Butte and then back to Rittenhouse, is
4 that correct?

5 MR. NOVY: Yes.

6 MEMBER WONG: That's the preferred, SRP
7 preferred route, correct?

8 MR. NOVY: Yes.

9 MEMBER WONG: And then the same thing with Ryan,
10 but the subalternate on Ryan would be down Meridian,
11 correct?

12 MR. NOVY: Yes.

13 MEMBER WONG: And then looking at the Germann
14 alignment would be along Germann Road and then
15 connecting to Signal Butte and then on to Rittenhouse,
16 is that correct?

17 MR. NOVY: Well, now that I am looking at
18 SRP-138, that was inconsistent with our intent. The
19 Germann Road should have showed a solid blue line from
20 Germann all the way to Meridian, solid blue line down
21 Meridian with just a dashed blue line along the Signal
22 Butte alignment between Germann and Ryan.

23 MEMBER WONG: So Exhibit 137 is not accurate
24 pertaining to the Germann route and the Germann
25 subalternate, correct?

1 MR. NOVY: Correct. But this map does reflect
2 what I just testified to be our preferred, if we are
3 given Germann. If we are given Germann this shows a
4 solid blue line down Signal Butte, and that would be
5 consistent with what we would prefer. But it is not
6 consistent with the way we have shown the solid blue
7 line going on Germann all the way to Meridian and then
8 straight down Meridian.

9 MEMBER WONG: Mr. Chairman, I defer.

10 CHMN. FOREMAN: Member Noland.

11 MEMBER NOLAND: Mr. Chairman.

12 From the beginning, with this map, it has been
13 very confusing. One of the things that would help is if
14 you gave us your preferred routes and then your
15 alternate routes being Alternate 1, Alternate 2, and
16 they matched the dotted lines or whatever else. Now I
17 am totally confused. But I think I have finally got it,
18 and thanks to Member Wong. But I think we need a map
19 that delineates this just a little bit differently with
20 the legend, please.

21 MR. SUNDLOF: If I may, Chairman Foreman, we may
22 want to clear this up on redirect, because, you know, I
23 think the application is fairly clear as to what the
24 alignments are, and I think there is a little bit of
25 confusion here. We can clear it up and we can get

1 whatever maps, of course, that you want.

2 CHMN. FOREMAN: All right. Let's move along
3 then and we will look forward to a new map that will
4 clear that up.

5 Counsel.

6 MR. MARKS: Thank you, Mr. Chairman.

7 I would like to turn to another document, if our
8 friends in the back have it queued up, if I could get
9 ME-1 up, please. And that's probably -- I can't read
10 that from here, so I am sure some of you can with better
11 eyes than me, but this is also in the Committee members
12 exhibit book for the intervenors as well behind the Mesa
13 tab.

14 That helps. Everybody -- okay.

15 BY MR. MARKS:

16 Q. Mr. Novy, have you seen this document before?

17 A. BY MR. NOVY: Yes.

18 Q. And was this prepared by you or under your
19 direction and supervision?

20 A. BY MR. NOVY: Yes, it was.

21 Q. I would like you to turn to the very first
22 question, if you would, question 1-1. And essentially
23 you were asked to provide cost estimates for the three
24 main north of RS-24 alignments and the two alternative
25 north of RS-24 alignments, is that correct?

1 A. BY MR. NOVY: Yes.

2 Q. And I base this upon what was in the
3 application. And just to save time I am going to read
4 your responses, and you can correct me if I misread
5 anything. All right?

6 A. BY MR. NOVY: Okay.

7 Q. And in your response, first of all, you
8 clarified that you didn't have all the information that
9 I had originally requested but that you were showing the
10 total miles, that the total included -- the total cost
11 would include engineering costs, right-of-way
12 procurement costs, material and construction costs, and
13 was as of the date that the response was provided, is
14 that correct?

15 A. BY MR. NOVY: Right.

16 Q. And you hadn't done that type of detailed
17 engineering, that you needed to have a more detailed
18 breakdown, correct?

19 A. BY MR. NOVY: Correct.

20 Q. And for -- let's scroll down, if we could, on
21 that page, please. And for the Ryan alignment, and the
22 Ryan alignment preferred, as I understand it, would go
23 east on Ryan to Signal Butte and then south on Signal
24 Butte, is that correct?

25 A. BY MR. NOVY: Yes, that's correct.

1 Q. And you estimated the cost to that as roughly
2 \$21.6 million, is that correct?

3 A. BY MR. NOVY: Yes.

4 Q. And then for B, for the Meridian Road, as you
5 called it, subalignment, which would proceed down Ryan
6 Road to Meridian Road and then south, you stated that
7 this was 10.67 miles and the cost would be approximately
8 \$22.9 million, correct?

9 A. Yes, that's correct.

10 Q. Now, here is where I was running into trouble
11 with the various exhibits and such. From the -- and I
12 think it will be clear. Let's back up a page further to
13 the question, if we could.

14 I identified the Germann alignment C, and then D
15 as the Germann alignment which was the subalternative,
16 and I took this from your application. So the C, the
17 Germann alignment, proceeds down Ryan Road, and then D
18 is Germann to Meridian Road and south. Are we in
19 agreement on that, at least the way you answered the
20 questions?

21 A. BY MR. NOVY: No. When I gave you the estimate
22 for C, it was Germann to Meridian, Meridian south. And
23 the number I gave you for D, the subalternative was
24 Germann to Signal Butte and Signal Butte down to the
25 railroad.

1 Q. You might want to look at your response on the
2 page here, C and D.

3 A. BY MR. NOVY: Yes, the alignment, that's the C,
4 Germann alignment, 10.38 miles at -- yes, that's
5 actually Germann to Signal Butte, Signal Butte south.

6 Q. And the estimated cost of that, then, to round
7 it off would be \$23.5 million, is that correct?

8 A. BY MR. NOVY: Yes.

9 Q. And then looking at D, which would be Germann to
10 Meridian Road, Meridian Road south, your answer was that
11 the alignment would be 11 miles and the cost would be
12 approximately 24 -- well, let's call it 25.0 million
13 miles -- million dollars, excuse me, is that correct?

14 A. BY MR. NOVY: Yes, that's correct.

15 Q. Thank you.

16 And then finally, for E, if we could scroll down
17 a little further, and that's the north railroad
18 alignment. And by that we are looking at the magenta or
19 that purple alignment on the facing page, SRP-137, is
20 that correct?

21 A. BY MR. NOVY: Yes.

22 Q. And that's as it proceeds where the other ones
23 diverge from it. And you stated that the length of the
24 alignment was 8.44 miles and the estimated cost would be
25 \$18.7 million, is that correct?

1 A. BY MR. NOVY: Yes, that's correct.

2 Q. Now, if I could get up on the right SRP-87,
3 please. Thank you.

4 87 contains some of the same information that
5 you provided in ME-1, question 1-1, correct?

6 A. BY MR. NOVY: Yes.

7 Q. And again, just so we are clear, I just want to
8 make sure we are talking about the same numbers. The
9 north railroad alignment, 8.44 miles, \$18.7 million,
10 corresponds to your answer 1-1.e, is that correct?

11 A. BY MR. NOVY: Yes.

12 Q. And underneath that is the Germann estimate of
13 11 miles at a cost of \$25.0 million, and that
14 corresponds to your answer to ME-1-1.d, correct?

15 A. BY MR. NOVY: Correct.

16 Q. And then finally -- and that again is the
17 Meridian Road alternative. And then finally for the
18 Germann alignment, I am sorry, for the Ryan preferred
19 alignment, which is 1-1.a, we have agreement to the
20 figures of 10.06 miles and \$21.6 million on the two
21 exhibits, is that correct?

22 A. BY MR. NOVY: Yes, that's correct.

23 Q. Thank you. That's all I have on 1-1.

24 If we could go on to DR1-2 please. Scroll that
25 down on the left, please.

1 You were asked for each of the alignments
2 described in DR1, please list the number of property
3 owners from which easements or other property rights
4 will have to be obtained to construct any alignment.
5 And then your response follows, correct?

6 A. BY MR. NOVY: Yes.

7 Q. And just to keep this short, I note for the
8 railroad alignment, that -- let me back up.

9 For the four alternatives before, the two Ryan
10 alignments and the two Germann alignments, you indicate
11 a number of property owners typically in the -- a
12 significant number of property owners for which, from
13 whom or from which you would have to obtain, from whom
14 or from which you would have to obtain easements or
15 other property rights. And this includes both
16 residential and commercial property owners, correct?

17 A. BY MR. NOVY: Yes.

18 Q. In contrast, for the north railroad alignment
19 you state this would only include obtaining property
20 interests from owners of commercial property, is that
21 correct?

22 A. BY MR. NOVY: No, that number doesn't look
23 correct. I don't think I had information on commercial
24 properties only.

25 Q. This was received from SRP. Is there something

1 you wanted to correct then?

2 A. BY MR. NOVY: Yes. I don't believe that the
3 numbers I have from my land department along the
4 railroad alignment included commercial properties only.

5 Q. So you believe there could have been, there
6 could be some residential property owners from whom you
7 have to obtain property rights?

8 A. BY MR. NOVY: I think that's supposed to say
9 residential only.

10 Q. Perhaps on a break if you could see if you can
11 get that information, or, if not, then if you could get
12 that clarified for me, I would appreciate it.

13 Let's move to DR1-3. DR1-3 asks the following
14 or asks you to do the following: Please rank each of
15 the five alignments described in DR1-1 in order from
16 least interference to most interference concerning how
17 much construction of the transmission line will
18 interfere with existing residents, businesses and
19 traffic flows. In formulating your response, please
20 consider both the magnitude and duration of the
21 associated construction activity.

22 And then I have a response that follows. And
23 how did you rank the five alignments in the response
24 from least interference to most interference?

25 A. BY MR. NOVY: I listed the Ryan alignment as the

1 least interference, the Ryan subalternative with
2 Meridian as the second, the north railroad alignment is
3 third, the Germann alignment to Signal Butte fourth, and
4 the Germann to Meridian the most.

5 Q. And let's focus on sort of the first part of the
6 question in 1-3, and that refers to, that discusses
7 construction, or actually in your answer, you talk about
8 construction and maintenance. What are the differences
9 that you would see in constructing the five alignments
10 and why you rank them the way you did?

11 A. BY MR. NOVY: Well, the Ryan alignment, as we
12 proposed, the Ryan to Signal Butte, we believe we could
13 be on the south side of Ryan the entire length and then
14 on the east side of Signal Butte for the entire length.
15 We would only have one angled tower at Ryan and Signal
16 Butte, the intersection, and the rest of it would be
17 tangent structures.

18 They are, you know, tall slender structures. It
19 would be on one side of the road. Our construction
20 activities could be limited to one side of the road. It
21 would be unlikely that we would have to block off a lane
22 of traffic. We could utilize very long distances when
23 we pull the conductor. We could go up to two miles when
24 we are doing long straight tangent lines.

25 So for that reason, the Ryan to Signal Butte and

1 Ryan to Meridian were ranked first and second.

2 The railroad was ranked third. Again, we would
3 have very few crossings of the railroad. And the entire
4 railroad is made up of tangents except for one small
5 angle near Signal Butte. So the same thing would be
6 true. We would probably be able to utilize, drive along
7 our easement parallel to the railroad to conduct all our
8 construction activities. So there would be minor
9 interference.

10 There would be more than on Ryan and Signal
11 Butte, because where we cross major intersections, we
12 would also have to do the temporary structures to
13 prevent conductor from falling down on the major
14 roadways. For that reason, it would have more
15 interference than the Ryan or Germann.

16 I ranked both of the Germann alignments as
17 highest due to the fact that we would be in some front
18 or backyards. We would have to access those. Like if
19 we went through several front or backyards in a row, we
20 would also have to, say, remove the side fences and
21 install gates along the properties so we could drive
22 parallel to our construction, you know, through those
23 properties.

24 The Germann alignment also would have several
25 road crossings where we would have to implement the

1 temporary wood poles to cross over them. Because of the
2 large number of angles, we would have shorter pulling
3 sites, set up more pulling sites, set up shorter
4 distances to pull through the angles. And currently
5 Germann is just a two-lane roadway. And with the road
6 crossings at Germann, it is likely that we would have to
7 use barricades and traffic control during construction.

8 Q. And this was reflected, or this is predicated in
9 part upon the conceptual drawing that we walked through
10 from SRP-75 through 83, I believe, that it was the
11 number of times that you would be crossing back and
12 forth across Germann Road, is that correct?

13 A. BY MR. NOVY: Well, again, that was one
14 hypothetical design. But the same concerns are there,
15 whether we actually cross five times, six times, three
16 times, yes, they are all the same factors and they are
17 all additive.

18 Q. How about the number of poles on Germann versus
19 the other alignments?

20 A. BY MR. NOVY: In that stretch that straddles
21 Ellsworth Road we would need approximately four more
22 poles than we would need in a standard construction.

23 Q. Did that factor into your ranking of the
24 alignments as well?

25 A. BY MR. NOVY: No. That's reflected in the cost,

1 but not in the difficulties during construction.

2 Obviously if you have to install four more poles you
3 would have additional construction costs, but I don't
4 think it would contribute to difficulties.

5 Q. Are there any more difficulties pulling wire
6 through poles closer together or farther apart, or
7 doesn't it matter?

8 A. BY MR. NOVY: That doesn't matter so much. The
9 difference is that they are angles, those structures
10 closer together are close to angles. But just the fact
11 that they go over shorter poles closer together, no,
12 that shouldn't impact pulling.

13 Q. You mentioned construction vehicles. Where
14 would your construction vehicles have to travel
15 generally along the Germann alignment?

16 A. BY MR. NOVY: Well, we pretty much try to stay
17 in our easement, our hundred foot easement.

18 Q. So you would avoid the road as best you could?

19 A. BY MR. NOVY: Yes.

20 Q. You would be traveling -- never mind. Let's
21 move on from there.

22 Let's talk about the maintenance issues then for
23 the five possible alignments and what are the
24 difficulties in maintaining the different alignments?

25 A. BY MR. NOVY: Well, maintenance is usually an

1 aspect of access. You know, we want to, preferably we
2 would like to be able to get the right equipment to
3 every pole along the line and any part of the wire in
4 between. So if we had an alignment that was adjacent to
5 a road right-of-way where there were no homes, we could
6 access the right-of-way from the roadway along the
7 entire length, whereas if we are in front or backyards,
8 home sites, we would typically, you know, if there is
9 not a gate at every one of the residences -- if there is
10 a gate at every residence, theoretically we would drive
11 along the road, unlock the gate, drive our equipment
12 onto the right-of-way. But many times we like to drive
13 from structure to structure along our right-of-way. So
14 access is the most difficult.

15 Q. And just on a pure access or on maintenance
16 alone, if you were only ranking those for difficulty of
17 maintenance, the five alignments, would your order
18 change?

19 A. BY MR. NOVY: If I was doing it on maintenance
20 only?

21 Q. Yes.

22 A. BY MR. NOVY: The first two would not. That's
23 very hard to say. It is a judgment call. I am not in
24 maintenance. I know that the first two would stay the
25 same. I can't predict if it would be harder to maintain

1 a line along the railroad or along Germann. It depends
2 on, you know, where you had the problem. If it was
3 right in somebody's backyard, it would be tougher to get
4 in there. If it was at a railroad crossing, maybe it
5 would be tougher there.

6 Q. And for maintenance of those, where you are
7 going through somebody's backyard, how do you go about
8 getting access? Do you have to call ahead to the
9 resident and tell them that you will be putting a
10 vehicle in their backyard, or is that something that you
11 basically have the right to do when you want to do it?
12 How does that work?

13 A. BY MR. NOVY: I don't know. I am not in -- I
14 don't do maintenance. I am not in that department, so I
15 don't know the answer to that.

16 Q. Well, if you know, what sort of vehicles would
17 be used? I know that is a very vague question, because
18 it is going to depend on the problem, but what sort of
19 vehicles are often used in terms of, for transmission
20 line maintenance?

21 A. BY MR. NOVY: Again, I have a lot of experience
22 in transmission line construction when we go in there,
23 you know, in the beginning. But I really have no
24 experience with maintenance.

25 Q. Would you need some sort of -- if you were

1 maintaining a line from a pole that's 75 to 120 feet
2 high, you would need some sort of a vehicle to get you
3 access up to that line, wouldn't you?

4 A. BY MR. NOVY: Again, I am not prepared to answer
5 that question. It really depends on what the problem
6 was.

7 Q. So you have never seen SRP doing line
8 maintenance before?

9 CHMN. FOREMAN: I think you may have squeezed
10 all the water out of that sponge you are going to get,
11 Counsel. Why don't you move on.

12 MR. MARKS: Thank you, Your Honor. I will.

13 BY MR. MARKS:

14 Q. I would like you to turn, or slide down the
15 page to the last DR, DR1-5. And that referred to, it
16 says please update the status of the Federal Aviation
17 Administration's response to the form 7460-1 submittal
18 for the Germann alignment. Can you read SRP's response
19 to that.

20 A. BY MR. NOVY: The written response on this
21 exhibit says there is no change in the status. The
22 current determination indicates that all of the poles
23 submitted along Germann Road are considered to be a
24 potential hazard by the FAA. SRP's aviation consultant
25 believes this determination is incorrect and is

1 continuing to work with the FAA to address this
2 determination.

3 Q. Could I get ME-2 on the right, please.

4 Mr. Novy, have you seen this document before?

5 A. BY MR. NOVY: Yes.

6 Q. And is this the document essentially you were
7 referring to in your response, or SRP's response, to
8 1-5?

9 A. BY MR. NOVY: Yes, I believe that response from
10 the FAA was used in our response to you.

11 MR. MARKS: I have just a couple more questions,
12 but since I don't want to forget my place, at this time,
13 Your Honor, I would like to move for the admission of
14 ME-1 and ME-2.

15 CHMN. FOREMAN: Any objection to either?

16 MR. BIRNBAUM: Your Honor, I object at this time
17 to their admissions. There is no foundation, and in
18 fact there is an FAA reevaluation under way as a result
19 of the incorrect nature of ME-2. I certainly don't
20 think it should be admitted without appropriate
21 foundation in light of those facts.

22 CHMN. FOREMAN: Is your objection to ME-2 that
23 you believe that it is out of date, or that you believe
24 it is not what it purports to be?

25 MR. BIRNBAUM: Well, it is out of date and there

1 is no foundation if it is being offered as a correct
2 statement of the current position of the FAA.

3 CHMN. FOREMAN: Objection is overruled.

4 Exhibits ME-1 and ME-2 are admitted.

5 (Exhibits Nos. ME-1 and ME-2 were admitted into
6 evidence.)

7 CHMN. FOREMAN: And, of course, Counsel has
8 leave to demonstrate that the contents of ME-2 are
9 outdated or incorrect.

10 You may proceed.

11 MR. MARKS: Thank you, Your Honor.

12 If we could get SRP-127 back up on the screen on
13 either side, 127. I did refer to this in my
14 cross-examination. The witness confirmed that the pole
15 heights and placement corresponded to those that he used
16 in the series of exhibits beginning from SRP-75. And I
17 believe that SRP intends to introduce as an exhibit
18 later, but just to be certain I would like to move now
19 for the admission of SRP-127.

20 CHMN. FOREMAN: Any objection?

21 MR. BIRNBAUM: Well, yes, Your Honor, I have the
22 same objection. Absent the testimony of the consultant
23 who prepared it, there is no foundation for what this
24 exhibit is or what it shows, how it was prepared, who
25 prepared it, or why it was prepared.

1 CHMN. FOREMAN: Mr. Robertson.

2 MR. ROBERTSON: Mr. Chairman, I am taking a
3 little bit different approach from Mr. Birnbaum. I have
4 no objection, subject to the understanding that SRP will
5 establish adequate foundation. Otherwise, I believe
6 there is an absence of foundation at this juncture. I
7 don't want to impede Mr. Marks' cross-examination but at
8 the same time I don't want to establish a precedent on
9 the admission of exhibits that might become unwieldy
10 later in the proceeding.

11 MR. BIRNBAUM: Your Honor, may I add one thing
12 to my foundation objection? Because this explains why I
13 felt compelled to make the last objection.

14 If ME-2, the prior exhibit, were in fact
15 correct, then SRP-127 is wrong. You can't do it. But
16 SRP-127 has been prepared because SRP knows that ME-2 is
17 not correct. So if you admitted them both without the
18 appropriate foundation, you have admitted inconsistent
19 exhibits without explanation.

20 CHMN. FOREMAN: That would mean that this would
21 be the first legal proceeding in history where there was
22 conflicting evidence?

23 MR. BIRNBAUM: But there is no conflicting
24 evidence. There is conflicting exhibits. Once the
25 testimony is in, you can then make an appropriate

1 determination which one or both or neither is
2 admissible. You are being asked to do this way in
3 advance of an appropriate foundation.

4 MR. MARKS: Your Honor, could I respond?

5 CHMN. FOREMAN: No.

6 With regard to the letter, the letter which was
7 ME-2 appeared from its face to have indicia of
8 reliability. No one disputed the fact that it was a
9 letter from someone in the FAA. The threshold for
10 admissibility in an administrative hearing is relatively
11 low, and so I don't have any problem with the
12 admissibility of ME-2.

13 With regard to SRP-127, the, we will call it,
14 prima facie or first blush credibility of what is on
15 SRP-127 is not as obvious as it is from a letter from a
16 federal agency. And so at this point, I can either
17 conditionally admit it subject to establishment of
18 foundation later on, and I would do that with on avowal
19 from counsel that a witness later on will establish
20 foundation for this. If a witness later on is not going
21 to establish foundation for this and in fact if a
22 witness later on is going to say I no longer agree with
23 those, then I am going to sustain the objection.

24 MR. SUNDLOF: Your Honor, as far as I know, our
25 aviation expert will take the stand and will explain

1 this exhibit and determine or explain how these
2 different pole heights were derived.

3 CHMN. FOREMAN: And is it your understanding
4 that he will say that those pole heights have something
5 to do with safety?

6 MR. SUNDLOF: Well, he will say -- no. He will
7 say those pole heights have something to do with the
8 aviation features of the airport.

9 MR. BIRNBAUM: Your Honor.

10 MR. SUNDLOF: That's different.

11 MR. BIRNBAUM: Excuse me.

12 CHMN. FOREMAN: But the aviation features of the
13 airport are features that relate to safety, is that
14 correct?

15 MR. SUNDLOF: Your Honor, I think I better wait
16 for the aviation consultant to explain that, because
17 there is different, there are different standards and
18 different surfaces and different points of view on that.
19 And what he is going to explain, he is going to explain
20 the different criteria that might affect the height of
21 structures outside of the airport, and he can talk about
22 the relevant importance of them and he can lay the
23 foundation as to exactly what this exhibit is. I think
24 the issue of safety may be one of dispute among people.

25 CHMN. FOREMAN: All right. In that case, I am

1 going to sustain the objection with leave, of course, to
2 establish it later on, and also with leave for counsel
3 from Mesa to use it at this stage in cross-examination
4 to the extent that it may have merit in examining one of
5 the witnesses who is not expert in this area, but to lay
6 the foundation, if you will, for later cross-examination
7 of the expert who did generate the numbers that are
8 contained on the exhibit.

9 MR. MARKS: Thank you Your Honor.

10 CHMN. FOREMAN: Do understand the ground rules?

11 MR. MARKS: Yes, I do. And I certainly
12 understand the foundational objection.

13 CHMN. FOREMAN: Okay. Now, Mr. Birnbaum, you
14 had one more.

15 MR. BIRNBAUM: Yes, Your Honor. I apologize for
16 interrupting. I was trying to make this a little easier
17 for the Chair.

18 We don't object to the conditional admission of
19 127 so people can ask questions about it. We know that
20 the aviation consultant will lay appropriate foundation
21 at the appropriate time.

22 My objection was, if you are admitting 127 and
23 ME-2, we just have inconsistent matters in the record.
24 But I made that objection, and we appreciate your
25 recognizing it. So we do not have an objection to the

1 conditional admission of 127 with foundation to be laid
2 later.

3 CHMN. FOREMAN: I assume then that means you
4 don't have any objection to the ruling I just made?

5 MR. BIRNBAUM: No. I think you sustained --

6 CHMN. FOREMAN: Yes.

7 MR. BIRNBAUM: -- my objection. And I am saying
8 I do not object to the conditional admission.

9 CHMN. FOREMAN: So you are now objecting to me
10 sustaining your objection, is that correct?

11 MR. BIRNBAUM: I am now trying to make it easier
12 for SRP to ultimately put this in by allowing its
13 conditional admission now.

14 CHMN. FOREMAN: So why don't you just withdraw
15 your objection?

16 MR. BIRNBAUM: Because my objection is based on
17 its inconsistency with ME-2. So I wanted my objection
18 in the record, and that's why I made it.

19 CHMN. FOREMAN: All right. Your objection is in
20 the record. To the extent that your objection is this
21 should not be admitted because it is inconsistent with
22 other evidence in the record, that objection is
23 overruled.

24 And we will go ahead take a break for about 15
25 minutes. We will start about 12, 13 after the hour.

1 MR. BIRNBAUM: Thank you.

2 (A recess ensued from 2:56 p.m. to 3:15 p.m.)

3 CHMN. FOREMAN: During the break, I made a
4 suggestion to counsel that we try to perhaps change the
5 way we talk about some of the options. And I wanted to
6 see if counsel was comfortable with it.

7 MR. SUNDLOF: Yes. Thank you, Chairman, members
8 of the Committee. I appreciate that there is some
9 confusion in the way we named the alignments, and I
10 apologize for that. I think we need to clear it up
11 going forward.

12 The placemat in front of you is correct per the
13 application. The Germann alignment was intended to be
14 Germann Road to Signal Butte down with an alternative
15 being Meridian. And the Ryan Road alignment is Ryan
16 Road going down Signal Butte with an alternative on
17 Meridian.

18 For ease of discussion we have kind of broken
19 them up into Meridian, you know, the Germann being
20 Germann/Meridian, and Signal -- Ryan being Ryan to
21 Signal Butte. But it doesn't necessarily have to be
22 that way as shown on the placemat, which is Exhibit 137.

23 At the suggestion of the Chairman, from this
24 point forward we will be very clear in our testimony.
25 When we talk about one of them, we will talk about both

1 roads so it is very clear.

2 So you would really have four options in this
3 area. You would have Germann to Signal Butte, Germann
4 to Meridian, Ryan to Signal Butte, and Ryan to Meridian.
5 And I will ask the witnesses from this point forward to
6 be very clear on that tomorrow. We will clear this up
7 with specific maps.

8 CHMN. FOREMAN: Member Noland.

9 MEMBER NOLAND: Mr. Chairman, let me say that I
10 find it very confusing to have a solid and dotted line
11 representing in the legend a preferred and an alternate
12 or subalternate. It is very confusing. And I have not
13 seen it. I have only been on this Committee a year, and
14 I have not seen another instance where things have been
15 displayed that way.

16 If you would do this and make it the preferred
17 and make it the alternate, preferred alternate, that
18 would help me personally a lot. And so the preferred
19 would be the solid line, the alternate would be the
20 dotted line. Does that make sense?

21 MR. SUNDLOF: Yes, it does, Committee Member
22 Noland, it does make sense. I think the preferred is
23 the solid yellow line and the alternate is the dotted.
24 But I hear what you are saying.

25 MEMBER NOLAND: Thank you.

1 CHMN. FOREMAN: Very good.

2 All right. Let's move back to counsel for Mesa,
3 to your cross-examination. You may proceed.

4 MR. MARKS: Thank you, Mr. Chairman. I just
5 have a little bit more.

6 BY MR. MARKS:

7 Q. Back to 1-5 and ME-2, which was the FAA letter
8 that has been admitted. To your knowledge, has SRP
9 received any correspondence from the FAA that supersedes
10 this letter of June 16th, 2009?

11 A. BY MR. NOVY: No. As far as I know, SRP has not
12 received any further correspondence from them.

13 Q. And then if I could get SRP-137 back up, which
14 has been conditionally admitted.

15 MR. SUNDLOF: It is not 137.

16 MR. MARKS: It is 127. Thank you.

17 CHMN. FOREMAN: Which has not been conditionally
18 admitted.

19 MR. MARKS: I am lost. That's right, you
20 sustained.

21 CHMN. FOREMAN: I sustained --

22 MR. MARKS: You sustained the objection.

23 CHMN. FOREMAN: -- Mr. Birnbaum's objection,
24 over his objection.

25 BY MR. MARKS:

1 Q. 127, you stated that the pole heights and
2 placements on 127 corresponded to those that you used in
3 your preliminary design or conceptual design that was
4 referenced in SRP-75 through 83, is that correct?

5 A. BY MR. NOVY: That's correct.

6 Q. How did it come to be that the same pole
7 placements are on the two exhibits?

8 A. BY MR. NOVY: I used the same pole heights and
9 locations on the hypothetical design that we used to ask
10 our aviation consultant to submit to the FAA.

11 Q. And that's what is on SRP-127?

12 A. BY MR. NOVY: Yes.

13 Q. And you attempt -- so you utilized that
14 essentially in the preparation of SRP-75 through SRP-83?

15 A. BY MR. NOVY: Yes.

16 Q. Thank you.

17 From SRP's application I would like to get --
18 and that's Exhibit A-1, as I understand it -- I would
19 like to get Exhibit A-9 to Exhibit A-1 up on, doesn't
20 matter, either side is fine. And then on the other
21 screen, I would like to get SRP-52, if that's possible.
22 And I believe these questions would be addressed to
23 Mr. Warner. But of course this is a panel, so either
24 could answer. I will wait until that's all the way up.

25 Mr. Warner, could you explain the relationship

1 between SRP-52 and Exhibit A-9 to the application.

2 A. BY MR. WARNER: Let me look at A-9. Yes. A-9,
3 which is shown on the right-hand screen, depicts the
4 planned land use for the Town of Queen Creek. A map
5 like that was prepared for each of the jurisdictions.
6 And what is on the screen was the one that was prepared
7 from data acquired from the Town of Queen Creek.

8 The map on the left, which is SRP-052, is an
9 aggregate map that depicts all of the planned land use
10 maps acquired from each of the relevant jurisdictions
11 within the study area. But it categorizes or aggregates
12 the similar land uses into five categories, the five
13 categories of commercial, industrial, mixed use,
14 public/quasi-public, recreation, and residential.

15 Q. And on Exhibit A-9, let me, just to clarify
16 then, so essentially Exhibit A-9 is -- let me strike
17 that.

18 I think what you said is clear. You used
19 Exhibit A-9 along with similar exhibits for the other
20 jurisdictions and essentially combined them and somewhat
21 disaggregated them to come up with SRP Exhibit 52, is
22 that correct?

23 A. BY MR. WARNER: Yes.

24 Q. Exhibit A-9 contains some more specific
25 information as related to the Town of Queen Creek than

1 does Exhibit SRP-052, correct?

2 A. BY MR. WARNER: Yes.

3 Q. And I would like you to -- and where did this
4 information come from on Exhibit A-9 to A-1?

5 A. BY MR. WARNER: It came from the general plan
6 for Queen Creek that was formalized in 2008, I believe.

7 Q. And I would like you to, focusing on the, to be
8 consistent with what we have talked about before, the
9 alignment that runs Ryan Road to Signal Butte and Signal
10 Butte south, describe the specific Queen Creek land uses
11 that we see along those lines in accordance with this
12 plan document.

13 A. BY MR. WARNER: Let me pull out my exhibit for
14 that, because I can't see that screen very well, and so
15 I can reference it in front of me. Give me just a
16 moment.

17 Beginning where the line departs at what we call
18 Node 43, which is the intersection of the railroad
19 alignment, the Town of Queen Creek is located on the
20 south side of -- are we talking about Germann Road or --

21 Q. Ryan Road.

22 A. BY MR. WARNER: Oh, excuse me. Beginning at
23 Node 11 refers along the railroad alignment. The first
24 area is an employment zone, which is basically their
25 light industrial designation.

1 The second area that you pass through that's
2 colored a yellow area is a low density residential area.

3 And then there is a recreation area that is
4 depicted just beneath the line that is a strip of land
5 that separates the mixed use, medium density residential
6 areas to the south, and then some mixed uses also to the
7 south.

8 Then you enter again into sort of a light
9 industrial zone. It is referred to as their employment
10 zones. And then on the south side then you get to a
11 medium density residential, and then you get to their
12 higher use industrial uses on both sides of Ryan Road to
13 Node 13.

14 When you get to Node 13, again it is still in
15 that higher industrial zones on both sides of the
16 alignment as you turn south on Signal Butte. At the
17 corners of Queen Creek on the south side they have
18 depicted an area that's commercial use, commercial
19 services. And then as you continue down Signal Butte on
20 the east side of the alignment on Signal Butte it is
21 designated as their light industrial zone again and
22 employment zone. And on the west side it is medium
23 density residential.

24 Then there is a small portion of what appears to
25 be a neighborhood commercial, I think on the corner, and

1 then a commercial use. And then it is, it appears to be
2 medium density residential down to the railroad
3 alignment at Node 24.

4 Is that enough?

5 Q. That's fine. Thank you.

6 Were you here in the room when Mr. Birnbaum gave
7 his opening statement?

8 A. BY MR. WARNER: Yes.

9 Q. And in his opening statement -- and Mr. Birnbaum
10 can correct me if I am wrong -- I believe he referred to
11 the Ryan alignment going through the town's employment
12 zone. Did you hear something to that effect?

13 A. BY MR. WARNER: Yes.

14 Q. Now, looking at the dark purple area that's
15 referred to as employment type B, and now I would like
16 you to reference page 14 of SRP's application in
17 Exhibit A, if you have that with you --

18 A. BY MR. WARNER: I am just noticing something
19 here that I think I need -- I think that employment type
20 B, there is a typo here. Employment type B should be A
21 and AB, if I am not mistaken. Looks like a typo because
22 their higher density industrial use is the darker
23 purple. And I think that's their employment type A.

24 Q. I am sorry, the darker purple is?

25 A. BY MR. WARNER: Their more intense industrial

1 development.

2 Q. Well, perhaps, if you could, you could look at
3 page 14 of Exhibit A in the application at the top of
4 the page. And if you could look over the descriptions
5 there, you might want to start on page -- well, let's
6 just back up.

7 Let's start on page 12. And there we see a
8 heading, it says Town of Queen Creek, and then it
9 describes the Queen Creek general plan. And then it
10 says that the town is divided into a number of land use
11 descriptions which follow over the next page and a half
12 or so. Have you seen this before?

13 A. BY MR. WARNER: I am sorry, you are on Exhibit A
14 page what?

15 Q. Page 12. It is at the very beginning, near the
16 beginning of the application, the tab marked Exhibit A.

17 A. BY MR. WARNER: Are you referring to the section
18 under employment?

19 Q. About two-thirds of the way down the page there
20 is an underlined bold section that says Town of Queen
21 Creek.

22 A. BY MR. WARNER: Oh, yes, I see that.

23 Q. And perhaps if you could just take a moment to
24 look over the next roughly page and a half, between
25 there and the Town of Florence, the section that follows

1 on page 14. And then I am going to ask you a series of
2 questions about that section. Just let me know when you
3 are ready.

4 A. BY MR. WARNER: Okay, I see that. I am ready.

5 Q. Have you seen this before?

6 A. BY MR. WARNER: Yes.

7 Q. Did you have input in preparing this part of the
8 application?

9 A. BY MR. WARNER: Yes.

10 Q. In fact, did you write this part of the
11 application initially?

12 A. BY MR. WARNER: I did not.

13 Q. But you have reviewed it and it is accurate to
14 the best of your knowledge and belief?

15 A. BY MR. WARNER: I am concerned with that type A
16 and B may be inverted here as well, and that's what I am
17 concerned about.

18 MR. BIRNBAUM: Mr. Chairman, may I interject an
19 objection at this point with your permission?

20 CHMN. FOREMAN: Certainly.

21 MR. BIRNBAUM: The witness is being questioned
22 about a map and a narrative that purportedly relates to
23 the Queen Creek general plan. The witness is having
24 trouble with one potential mistake regarding employment
25 A and employment B.

1 But the problem goes a bit further. The plan
2 you are looking at that's now before the Committee and
3 that Mesa has referred to is not the current Queen Creek
4 general plan. There is a plan update that was adopted
5 on September 2, 2008 that changes a number of things
6 that the witness has referred to. For example,
7 reference was made to a recreational area that no longer
8 exists.

9 So I just fear that the Committee is spending a
10 lot of time hearing unnecessary and incorrect testimony.
11 We on opening statement referred to an exhibit that we
12 will offer later, but you can have now, that we have
13 submitted it to everybody, including the Committee, that
14 will be Queen Creek 1, which is the September 2, 2008
15 update of the Queen Creek general plan.

16 I don't mind any of these questions as long as
17 they are about the correct plan.

18 CHMN. FOREMAN: Well, I will let Mr. Marks
19 decide whether he wants to proceed with the old plan or
20 the new plan or how you wish to deal with that.

21 MR. MARKS: This witness, Your Honor, has
22 testified that this Exhibit A-9 is a component of
23 SRP-52. Both of these have been admitted into evidence.
24 And if it is simply a matter of the lilac should be dark
25 purple or the designations for the dark purple should be

1 employment A versus employment B, I think I can clear
2 that up on the record, and then Mr. Birnbaum, to the
3 extent he wants to put on the witness for further
4 clarification, I would be happy to pursue it further
5 with his witness.

6 MR. BIRNBAUM: Your Honor.

7 CHMN. FOREMAN: Again, I am going to allow you
8 to posit a different reality than Mr. Birnbaum. We are
9 triers of fact and it is our job to reconcile your two
10 parallel universes. But if in fact there is a later
11 plan that reflects the present reality, then maybe
12 lightly touching this area would make more sense.

13 MR. MARKS: And that's all I intended to, Your
14 Honor. Thank you.

15 CHMN. FOREMAN: All right. Then thank you for
16 calling that to our attention.

17 And counsel, proceed.

18 MR. MARKS: Thank you, Your Honor.

19 BY MR. MARKS:

20 Q. Your understanding, Mr. Warner, is that
21 regardless of whether it should have been called type A
22 or type B, that the dark purple area on Exhibit A-9 is a
23 heavy industrial use area, is that correct?

24 A. BY MR. WARNER: That's correct. And that was
25 what was used to analyze the compatibility of this

1 particular route.

2 Q. And I see on Exhibit A, page 14, under the
3 description of employment type B, and I acknowledge this
4 perhaps should be under the description employment type
5 A, but it says this category permits more intensive
6 industrial uses such as, but not limited to, high
7 technology manufacturing, heavy utility and related
8 manufacturing enterprises, chemical processing, large
9 amounts of material transfer, and large and intensive
10 24-hour warehouse operations. Did I read that
11 correctly?

12 A. BY MR. WARNER: Yes, that's correct.

13 Q. And is that your understanding of what is
14 allowed in the heavy industrial zone?

15 A. BY MR. WARNER: Yes.

16 Q. Whether it is designated as A or B?

17 A. BY MR. WARNER: That's correct.

18 Q. And what are heavy utility uses, to your
19 knowledge?

20 A. BY MR. WARNER: Well, I would think that most of
21 the utility uses that I am familiar with are utility
22 operations like transmission lines, substations, power
23 facilities, perhaps even power plants. Those would be
24 the kinds of industrial uses I would see as consistent
25 with these other types of uses and that I would describe

1 as utility uses.

2 Q. And then these uses in turn would be consistent
3 with the general plan as you understand it?

4 A. BY MR. WARNER: Yes.

5 MR. MARKS: Thank you. That's all I have.

6 CHMN. FOREMAN: Member Youle.

7

8

EXAMINATION

9 By MEMBER YOULE:

10 Q. Mr. Novy, I have a couple questions to clear up.
11 On the Mesa Exhibit No. 1 -- let me grab that one, if we
12 could get that back up -- the response to question 1-2,
13 my question concerns the response in C and D. And I am
14 not sure if there is an error or typo or something in
15 there. The Germann alignment number C, which is the
16 shorter of the two routes, shows the minimum impacted
17 individuals or commercial property is 45, and the longer
18 alignment that goes on out to Meridian shows the minimum
19 impacted is less than the shorter route. Can you clear
20 that up for me?

21 A. BY MR. NOVY: Well, my initial impression is
22 based on the same confusion earlier, so where I was
23 mixing up, you know, the C and D. So I would assume
24 that the -- that C, which says Germann alignment, which
25 I now understand to be Germann to Signal Butte, would be

1 45 and 82. I am sorry. So the Germann alignment is now
2 Germann to Signal Butte. And that is, it is shorter and
3 Signal Butte had fewer property owners. So I think
4 those numbers should be switched. I think the minimum
5 38 and maximum 114 should go along with item C and the
6 45 --

7 Q. So the maximum is higher on the shorter route?
8 Do you see my confusion? It is the minimum, maximum.
9 So I didn't know if there was --

10 A. BY MR. NOVY: It can happen. It doesn't matter,
11 you know, the size of the -- or the length of the route
12 doesn't correspond one to one with the number of
13 property owners.

14 Q. No. But wouldn't it be at least the same amount
15 of people impacted as on the shorter route that it
16 follows, or the majority of the time?

17 A. BY MR. NOVY: We are going to get a
18 clarification --

19 Q. Okay.

20 A. BY MR. NOVY: -- on all of these numbers.

21 Q. That would be great, thank you. Because I
22 suspect there is some kind of a typo, as I say, or error
23 in that one.

24 The other question I had, and this relates to
25 Mr. Birnbaum's comments to Mr. Marks on the updated

1 Queen Creek plan being issued in September of 2008, am I
2 correct that -- when did this public process begin? Was
3 it prior to the issuance of the updated Queen Creek plan
4 or afterwards?

5 A. BY MR. NOVY: Yes, public process started in the
6 spring of 2008.

7 Q. So it would have predated this updated plan in
8 September, correct?

9 MR. WARNER: Absolutely.

10 MEMBER YOULE: Thank you.

11 CHMN. FOREMAN: Very good. Town of Gilbert, or
12 should I say City of Gilbert?

13 MR. SULLIVAN: It is the Town of Gilbert.

14 CHMN. FOREMAN: Town of Gilbert.

15 MR. SULLIVAN: Thank you, Your Honor.

16

17

CROSS-EXAMINATION

18 BY MR. SULLIVAN:

19 Q. Good afternoon, Mr. Novy, Mr. Warner. I only
20 have a few questions for you. I believe we are still in
21 the position where we are opposing the one alignment
22 that no one has any real interest in pursuing, so I am
23 not going to burden you with too many questions here.

24 I believe this would be --

25 CHMN. FOREMAN: And hope that you don't change

1 any minds.

2 MR. SULLIVAN: Thank you.

3 BY MR. SULLIVAN:

4 Q. Mr. Novy, I think this would go with you. And I
5 am just going to say four alignments, because there are
6 four major alignments, although there are subcomponents
7 of them that are northwest of the RS-24 substation. Is
8 it still SRP's position that the Ocotillo alignment is
9 the least favorable?

10 A. BY MR. NOVY: Yes, that's correct.

11 Q. And just to highlight some of the reasons that
12 it is the least favorable, is it because it costs the
13 most?

14 A. BY MR. NOVY: Yes, that's one of the reasons.

15 Q. Is it also that it impacts the most existing
16 residences?

17 A. BY MR. NOVY: Yes, that's another reason.

18 Q. Is it also that it is opposed by the Town of
19 Gilbert as well as residents in the vicinity of the
20 line?

21 A. BY MR. NOVY: Yes.

22 Q. And would it also have negative impacts on
23 recreation and environmental areas in the vicinity of
24 the line?

25 A. BY MR. NOVY: I will let Mike answer that one.

1 A. BY MR. WARNER: I am sorry, I was drifting off
2 with your other questions. Can you restate that.

3 Q. Would the Ocotillo alignment also have negative
4 impacts on recreation and environmental areas along the
5 line?

6 A. BY MR. WARNER: I think that depends on the type
7 of recreation use. And let me explain that. I think it
8 is well-known that and most people that live in
9 communities around transmission lines often see
10 transmission lines built compatibly with transmission
11 lines. Some of the more popular trails and parks that
12 are in communities have associated with them
13 transmission lines. So it is not always mutually
14 exclusive that the impact is detrimental to those
15 facilities.

16 Q. You would agree, though, that a recreational
17 area without a 230 transmission line would have better
18 views and more usability than one that does?

19 A. BY MR. WARNER: In regard -- and let me restate
20 it in a different way, perhaps.

21 Recreation uses vary a great deal. And it
22 depends on the purpose of the park. And if your park
23 doesn't have a need for -- well, let's put it this way.
24 If your park is not dedicated, the purpose of that park
25 doesn't have anything to do with its aesthetic appeal in

1 terms of viewing a landscape, and it is focused on other
2 things or the concentration of those things are
3 elsewhere, then it is irrelevant to have a transmission
4 or to not have a transmission.

5 So I guess I am saying the same thing I did the
6 first time. It is not always the case that transmission
7 lines degrade a recreation area.

8 Q. In your summary that was prepared, I believe you
9 did indicate it would impact environmental, cultural,
10 and recreational, is that correct?

11 A. BY MR. WARNER: Yes, I indicated that it was
12 passing through those areas. And when I refer to a
13 direct impact under those circumstances, what I am
14 describing is that the placement of the park would
15 occupy that same area. And so in the case of an active
16 recreational facility, what you might call a ballpark,
17 for example, then it could displace that function or
18 require you to move it to another location on-site, if
19 it was there first.

20 Q. Thank you.

21 I think, Mr. Novy, in your testimony yesterday
22 you went through the Ocotillo line. I am not going to
23 do it again, but I want it just so the record is clear
24 as to which of your exhibits set forth the depiction of
25 where the line is on the aerials, am I correct that the

1 Ocotillo alignment is depicted on SRP-29, 34, 35, 36,
2 40, 41, 42, and that the alternative or a portion of the
3 alternative is on 39?

4 A. BY MR. NOVY: Yes, that's exactly correct.

5 Q. And the testimony yesterday was that those
6 aerials were taken in April through May of 2008, is that
7 correct?

8 A. BY MR. NOVY: Correct.

9 Q. So they would not depict any uses that have
10 occurred since that time almost more than a year ago,
11 correct?

12 A. BY MR. NOVY: Correct, the aerials would not
13 show those, yes.

14 MR. SULLIVAN: I have no further questions.

15 CHMN. FOREMAN: Vlachos.

16 MR. NELSON: Thank you, Mr. Chairman.

17

18

CROSS-EXAMINATION

19 BY MR. NELSON:

20 Q. Mr. Novy and Mr. Warner, I will try not to take
21 too much time. I think that you did a good job of
22 presenting the alternative routes. I would like to just
23 highlight a couple of things, if I may, that have a
24 direct impact on my client's property.

25 If we could have SRP-067 brought up.

1 Mr. Novy, I believe that yesterday you were the
2 one that testified about this picture. That, other than
3 the unfortunate placement of the existing pole, shows
4 what I believe was tour stop F this morning, is that
5 correct?

6 A. BY MR. NOVY: I don't have my tour map in front
7 of me, but there was a stop there, yes. If you say it
8 was F, I will acknowledge that.

9 Q. Okay. Okay. I believe that I am correct that
10 it was F, but regardless of what tour stop this was, the
11 tour did stop here.

12 Take a look at this alignment. The property
13 that's to the right of the picture. Are you familiar
14 with that property?

15 A. BY MR. NOVY: Yes. That's the V&P Nursery.

16 Q. And the simulation shown on the bottom
17 photograph there shows the power lines coming down an
18 agricultural field. Is there any reason that you are
19 familiar with that the line would not be able to go down
20 the south side of Ryan Road?

21 A. BY MR. NOVY: No, none that I know of.

22 Q. There is no existing structures, nothing there
23 that would impede the alignment down Ryan Road?

24 A. BY MR. NOVY: No, there is not.

25 Q. And, in fact, Ryan Road here appears to be

1 little more than a dirt trail, is that correct?

2 A. BY MR. NOVY: Here, yes, and less than that in
3 some places.

4 Q. And the tour today, the Committee arrived by
5 traveling down Merrill Road to this location, is that
6 correct?

7 A. BY MR. NOVY: Yes.

8 Q. And Merrill Road there was a dirt road as well?

9 A. BY MR. NOVY: Yes, that's correct.

10 Q. I would ask that SRP-079 be brought up.

11 Again, Mr. Novy, I am going to go to your -- to
12 the simulation that you created regarding the Germann
13 Road route. I am not trying to pin you down to a
14 specific route, and I understand that it was a
15 hypothetical that was created. But I would like to
16 start here on 079.

17 The route crosses from the north side of Germann
18 Road to the south side. Why was this crossing made
19 shown in SRP-79.

20 A. BY MR. NOVY: Well, beginning at some point
21 along this route, there were more facilities on the
22 north side of Germann than on the south. And so I
23 picked this location because it crossed to the south
24 where there was a nursery on the north side.

25 And more specifically, this particular nursery,

1 looking at Exhibit SRP-079 again, these are the, say,
2 the mass plants that they are growing. But in the front
3 of this nursery, and this is a like a mobile office, and
4 the rest of this area, it is, to me it appears to be
5 more like a little arboretum where a new customer would
6 come in here and they would look around and look at all
7 the products that this nursery sold. And immediately to
8 the east of this there was a residence.

9 So that's why I chose to cross to the south side
10 in this location, to avoid this exhibition or exhibition
11 area of the nursery, plus the residence that's
12 immediately to the east of it.

13 Q. Okay. And then if we go to SRP-080, traveling
14 further east along Germann Road, as we pass Crismon
15 Road, I believe that we arrive at the V&P Nursery
16 property that you discussed?

17 A. BY MR. NOVY: Correct.

18 MR. NELSON: And I would like to, just for the
19 record, indicate that despite the insinuation of counsel
20 the V&P Nursery truck that we saw today was not a plant,
21 it was not something we planned out. It just happened
22 to cross the tour.

23 BY MR. NELSON:

24 Q. But the power line continues along the south
25 side of Germann Road across the V&P Nursery property.

1 Is there any reason why that continued along the south
2 side of the road there on Germann?

3 A. BY MR. NOVY: Well, once you get past the
4 V&P Nursery, Germann Road was more open on the south
5 side. And I didn't want this design to look like even
6 theoretically that SRP would, you know, in a three-mile
7 stretch make seven road crossings.

8 And it is also to show that, you know, that
9 judgment is used, and that it is really hard to
10 designate which side of the road you are going to be in
11 prior to receiving a CEC. If we had a CEC on Germann,
12 we would like to approach landowners on both sides and
13 hear their concerns and, you know, go over all those
14 factors.

15 So I didn't want to indicate that SRP might jump
16 back and forth across the roadway to avoid every, every
17 home, every business, every feature that's in the way.
18 You know, sometimes we go around them, sometimes we
19 negotiate with them, so...

20 Q. And you indicated seven road crossings. As I
21 recall through these, through this series of exhibits,
22 there are five road crossings, if I am not mistaken.

23 A. BY MR. NOVY: Yes. What I meant by the seven,
24 that's the reason why I didn't skip back north until we
25 passed the V&P Nursery and skipped back down again.

1 That would have been seven.

2 Q. And that was going to be my point. If the line
3 had crossed over for the V&P Nursery, as we get to
4 SRP-81 we would see some structures that would
5 necessitate another trip back to the south of the road?

6 A. BY MR. NOVY: Yes. It would require four more
7 angle structures, two more crossings.

8 Q. Okay. Now, going back to 80, if we could,
9 looking at the V&P Nursery property, would it make any
10 difference with regards to the placement of the line on
11 the south side of the road if there was a well located
12 along the northern part of that V&P Nursery property?

13 A. BY MR. NOVY: Yes. Typically SRP tries very
14 hard to avoid wells wherever we can, actually, yes, do
15 whatever we can to avoid wells, because if the well had
16 to be redrilled or maintained or made deeper or
17 whatever, the electric lines wouldn't be compatible
18 with, you know, going over a well.

19 Q. And so it is possible that if that were the
20 case, if there were a well that interfered, there would
21 have to be those two extra crossings of Germann Road?

22 A. BY MR. NOVY: Yes, unless the corridor width we
23 requested gave us enough room to go around it on the
24 south side.

25 Q. Which would involve an even deeper penetration

1 into the V&P Nursery property?

2 A. BY MR. NOVY: Yes, and it may require us to
3 secure more easement than we would prefer.

4 Q. And as you were discussing the process a little
5 bit yesterday, you had talked about the input of the
6 community. Has the, I guess have the Vlachos entities
7 been working with SRP throughout this process in order
8 to help determine the alignments and the preferred
9 routes?

10 A. BY MR. NOVY: Yes. We have had discussions with
11 representatives of Vlachos, yes, and talked to those
12 representatives at open houses throughout the process,
13 yes.

14 MR. NELSON: I have no further questions.

15 CHMN. FOREMAN: Very good. Let's move along to
16 Pinal County.

17 MR. ROBERTSON: Thank you, Mr. Chairman.

18

19 CROSS-EXAMINATION

20 BY MR. ROBERTSON:

21 Q. Mr. Novy, Mr. Warner, good afternoon. How are
22 you gentlemen?

23 A. BY MR. NOVY: Good, thank you.

24 A. BY MR. WARNER: Well, thank you.

25 Q. I think most of my questions this afternoon will

1 probably be addressed to Mr. Novy, but if one of them is
2 better addressed to Mr. Warner, just let me know. Okay?

3 A. BY MR. NOVY: Okay.

4 Q. Mr. Novy, at the end of yesterday's direct
5 presentation on your part, you read from a summary as to
6 why Salt River Project felt that the two preferred
7 routes it has selected, the railroad north route, or, I
8 am sorry, the preferred route in the north, which is the
9 Ryan/Signal Butte, and the railroad south represented,
10 considering a number of factors, the best two routes for
11 this particular project. Do you recall that summary?

12 A. BY MR. NOVY: Yes, I do.

13 Q. Do you recall at the end of the session
14 yesterday afternoon I asked if you might have had that
15 summary available with you today for my
16 cross-examination?

17 A. BY MR. NOVY: Yes.

18 Q. Do you have that available by any chance?

19 A. BY MR. NOVY: Yes, I do.

20 Q. I wonder if you would read that again, please.
21 It will provide some backdrop for some points I would
22 like to make to the Committee.

23 A. BY MR. NOVY: Okay. This was after I presented
24 the table that had the summary of all the routes. To
25 summarize this table, all of the routes in the

1 application are based on line segments that follow
2 prominent linear features identified at the beginning of
3 the project. Examples are existing electric facilities,
4 major roadways, section and half section lines, canals,
5 washes, and railroads.

6 We have listed and talked about existing
7 features along each route that could have an impact on
8 the public, such as proximity to existing facilities --
9 I am sorry -- such as proximity to existing residential
10 areas. We have also addressed criteria associated with
11 other existing facilities such as the airport,
12 commercial and industrial facilities.

13 Other factors that contributed to our selection
14 of a preferred alternative were cost, constructibility,
15 and aesthetics of the proposed line.

16 Using all of these criteria, plus balancing the
17 input from towns, cities, counties, the public,
18 developers, and other stakeholders, we firmly believe
19 that the Ryan to Signal Butte and south railroad
20 alternatives are the best routes for this line. This is
21 true for the specific routes and in comparison to the
22 other alternatives in the application.

23 The Ryan/Signal Butte/south railroad is one of
24 the shortest alternatives, is one of the least expensive
25 alternatives. It has the least impact on existing

1 residential. It has no impact on the airport. It
2 accommodates access to all the potential substation
3 sites. It has received minimal opposition. For these
4 reasons, we urge the Committee to accept the preferred
5 alternative of Ryan to Signal Butte and the south
6 railroad.

7 Q. Mr. Novy, thank you very much for accommodating
8 me in that regard. Up on the left screen is the
9 comparison table which has been identified and, I
10 believe, received into evidence as Exhibit SRP-087. Do
11 you see that?

12 A. BY MR. NOVY: Could you scroll to the bottom.

13 Q. No. My question is do you see SRP-087 on the
14 screen in front of you.

15 A. BY MR. NOVY: Yes, I do.

16 Q. Was that the comparison background that you had
17 in mind when you alluded to -- when you read your
18 summary?

19 A. BY MR. NOVY: Yes, it was.

20 Q. Okay. I would like to make some specific points
21 with reference --

22 Roy, no, I would like to go back to that
23 exhibit, please.

24 I would like to make some specific points
25 through you as the witness with regard to that exhibit

1 to support your summary as it relates to factors
2 supporting the adoption of the south railroad alignment.
3 Okay?

4 A. BY MR. NOVY: All right.

5 Q. Let me direct your attention to Exhibit SRP-087.
6 And I believe the second column, which is captioned
7 miles, indicates that the southern railroad route is the
8 shortest of the southern routes that had been under
9 consideration, is that correct?

10 A. BY MR. NOVY: Yes, that's correct.

11 Q. That exhibit also indicates that the southern
12 railroad route is the least expensive of the southern
13 routes under consideration, does it not?

14 A. BY MR. NOVY: Yes, it does.

15 Q. Now, let's go to the column cost factors. And
16 yesterday you briefly described what that concept or
17 that term means. Could you repeat that definition or
18 description again, please.

19 A. BY MR. NOVY: Yes. Some of the routes had
20 longer lengths and/or higher costs and some had lower
21 costs. So this column explained what factors led to the
22 additional cost or what might make it have a lower cost.

23 Q. Now, going back to Exhibit SRP-087, it also
24 indicates that the southern route is the only route of
25 the southern routes under consideration -- strike that.

1 Going back to Exhibit SRP-087, that indicates
2 that the railroad south route is the only route of the
3 southern routes under consideration that has no cost
4 factors associated with it, is that correct?

5 A. BY MR. NOVY: Yes, sir.

6 Q. And this same exhibit also indicates that the
7 railroad south route is the only southern route under
8 consideration that has no cons associated with it in the
9 other factors pro/con column, is that correct?

10 A. BY MR. NOVY: That's correct.

11 Q. What does cons mean as that term is used in this
12 exhibit?

13 A. BY MR. NOVY: Just features that would make it
14 more or less desirable to build, whether it is cost,
15 physical features, large number of angles, engineering
16 consideration, residences, any feature that might add to
17 the difficulty in construction, aesthetics or cost.

18 Q. And would it be correct to say that cons would
19 imply negative features and pros would imply positive
20 features?

21 A. BY MR. NOVY: Yes, that's correct.

22 Q. So going back to this exhibit again, the
23 railroad south route is the only southern route under
24 consideration with no cons, correct?

25 A. BY MR. NOVY: That's correct.

1 Q. And it is also the southern route among those
2 under consideration with the most pros, is that correct?

3 A. BY MR. NOVY: Yes, that's correct.

4 Q. Now let's go to the testimony that you and
5 Mr. Warner gave yesterday. And I believe it was you,
6 but if it wasn't, if Mr. Warner could indicate if he
7 recalls his testimony, my notes indicate there was
8 testimony with regard to the south railroad route
9 indicating there were no negatives associated with that
10 route. Do you recall that testimony?

11 A. BY MR. NOVY: Yes, I do.

12 Q. Also my notes indicate that -- and I believe it
13 was you, Mr. Novy -- you testified that the public and
14 Pinal County support the south railroad route. Do you
15 recall that?

16 A. BY MR. NOVY: Yes.

17 Q. And do you also recall your testimony that the
18 Arizona State Land Department does not oppose the
19 railroad south route?

20 A. BY MR. NOVY: That's correct.

21 Q. Given your experience in previous Siting
22 Committee proceedings in your years of work on siting
23 projects, would you say any time a project can gain
24 either the support or no opposition from the Arizona
25 State Land Department for a given route that is a

1 definite plus?

2 A. BY MR. NOVY: Yes, that's a plus.

3 Q. Also, if we might direct your attention to the
4 right-hand screen, Exhibit SRP-137, with regard to the
5 railroad south route, the only impacted governmental
6 jurisdictions that are indicated are the Arizona State
7 Land Department and Pinal County, is that correct?

8 A. BY MR. NOVY: Yes, to the best of my knowledge,
9 that's correct.

10 Q. Okay. Now, during the course of your testimony
11 yesterday when you briefly described the Combs route and
12 the Skyline route, the other two alternatives that had
13 been identified among the southern routes, you indicated
14 that Pinal County had responded during the public
15 process they would require further study. Do you recall
16 that testimony?

17 A. BY MR. NOVY: Not that they would require
18 further study. When we solicited input from the
19 jurisdiction working group as far as route alternatives
20 in the south, initially we only had one suggestion and
21 that was the railroad, Union Pacific Railroad to Magma
22 Railroad. And we had then encouraged the group to
23 suggest something else because we wanted to go to the
24 Committee with at least one alternative.

25 So Pinal County and Florence were the ones I

1 think that suggested these routes because they contain
2 69kV along most of the way. So that's why they got on
3 the map for further consideration.

4 Q. And is it your understanding now that Pinal
5 County's position is it opposes both the Combs route and
6 the Skyline route?

7 A. BY MR. NOVY: Yes, I understand that.

8 Q. And is it further your understanding that the
9 Town of Florence is supporting Pinal County's position
10 in that regard?

11 A. BY MR. NOVY: Yes, I believe that also.

12 Q. Let's move now to the subject of substation
13 siting. Strike that.

14 Before we leave the cost comparison table,
15 Mr. Novy, and this goes really more toward the northern
16 routes, but in light of some of the cross-examination
17 from the City of Mesa today, I thought it might be
18 helpful to try and clear up some cost numbers in the
19 context of SRP-087. So if I could direct your attention
20 to the Germann and the Ryan Road line items in the
21 comparison table.

22 Now, I believe during the course of your
23 responses to Mr. Marks' cross-examination, you confirmed
24 that the cost for the Germann alignment was 25 million,
25 is that correct?

1 A. BY MR. NOVY: Yes, and I can clarify that now.

2 Q. I was about to ask you. When we use Germann as
3 it appears on this table and that cost figure, are we
4 talking about Germann/Meridian?

5 A. BY MR. NOVY: Yes, we are.

6 Q. All right. Now, I believe you also confirmed
7 your cost estimate for Ryan as it appears on this table
8 at 21.6 million. And my question would be: As you use
9 Ryan here in the context of this table, would that be
10 Ryan/Signal Butte?

11 A. BY MR. NOVY: Yes.

12 Q. Now, you also gave a response to Mr. Marks when
13 he asked you about some of SRP's responses to the City
14 of Mesa's data request that, if my notes are correct,
15 indicate a cost figure of approximately 23.5 million for
16 what I understood to be the Germann/Signal Butte route.
17 Would that be a correct number and a correct
18 understanding on my part?

19 A. BY MR. NOVY: It sounds correct.

20 Q. Okay. So what we are looking at here is that
21 using the Ryan/Signal Butte route as our starting point
22 with the cost of 21.6 million, a cost of the
23 Germann/Meridian route would be \$3.4 million more
24 expensive, or the difference between 25 million and
25 21.6 million, is that correct?

1 A. BY MR. NOVY: Yes.

2 Q. And similarly, if we were to use the
3 Germann/Signal Butte route figure of 23.5 million, and
4 the Ryan/Signal Butte of 21.6 million, our cost
5 differential there is approximately \$1.9 million, is
6 that correct?

7 A. BY MR. NOVY: Yes.

8 Q. Thank you.

9 Roy, if we could now go to Exhibit SRP-052, I am
10 sorry, 057.

11 And Mr. Novy, let me ask you to confirm my
12 understanding here. There has been quite a bit of
13 reference during the proceedings with regard to Exhibit
14 SRP-052. SRP-057 is really just a subset of a portion
15 of the information depicted on SRP-052, isn't it? More
16 specifically, it shows what is in the area surrounding
17 the intersection of Combs/Riggs Road running west and
18 east and Meridian Road coming south?

19 A. BY MR. WARNER: This exhibit was put together by
20 me and perhaps I will mention --

21 Q. Okay.

22 Perhaps to make it helpful so that there is no
23 mystery, Roy, can you put SRP-052 on the right-hand
24 screen.

25 Mr. Warner, did you want to make any comment?

1 A. BY MR. WARNER: Yes. Let me just remark to the
2 exhibit itself. Yes, this is an aggregate map that was
3 prepared in the same way as Exhibit 052 with
4 aggregating the jurisdictions' planned developments,
5 comprehensive plans --

6 Q. Okay.

7 A. BY MR. WARNER: -- and planned uses.

8 Q. Thank you, Mr. Warner.

9 Mr. Novy, I think at this time my questions will
10 probably come back to you. In the first area of my
11 cross-examination I wanted to identify those factors
12 supporting the Committee's adoption of the railroad
13 south alignment.

14 What I want to explore with you here now is
15 factors supporting adoption of the northwest site for
16 RS-24. And when I refer to the northwest site,
17 directing your attention to SRP-057, I am referring to
18 that area northwest of Node 27. Do you see that
19 indicated on the map with my pointer?

20 A. BY MR. NOVY: Yes, I do.

21 Q. Okay. Now, earlier today on the tour at stop K,
22 we stopped north of Node 27 on Meridian Road
23 approximately two-thirds of the way north along that
24 northwest substation site, did we not?

25 A. BY MR. NOVY: Yes, we did. I believe that was

1 J. And I think K was a little further south.

2 Q. Was that J? I stand corrected. But we did make
3 a stop where you offered comment --

4 A. BY MR. NOVY: Yes.

5 Q. -- on both the northwest substation site and the
6 northeast substation site, is that correct?

7 A. BY MR. NOVY: Yes. We stopped at the northwest
8 one, made a U-turn, paused for a moment, and then we
9 drove back south to location K where we got out of the
10 vehicle.

11 Q. Okay. Let's talk about the northwest substation
12 site for a few minutes. Mr. Russell yesterday testified
13 that use of that site for RS-24 would satisfy the
14 project requirements. Do you recall his testimony in
15 that regard?

16 A. BY MR. NOVY: Yes.

17 Q. Do you further recall his testimony that from an
18 engineering perspective, any location within the
19 northwest RS-24 site would meet the project needs?

20 A. BY MR. NOVY: I remember him saying that, but I
21 don't think he was as familiar as I am with the exact
22 configuration of that site.

23 Q. All right. You indicated yesterday during your
24 testimony and you further indicated today during the
25 tour that SRP has an existing option to acquire

1 sufficient acreage for the RS-24 site within the
2 boundaries of the northwest RS-24 site, did you not?

3 A. BY MR. NOVY: Yes.

4 Q. And actually you have an option to acquire 34
5 acres, and you indicated the substation acreage
6 requirements are 25 acres, is that correct?

7 A. BY MR. NOVY: Yes. And to clarify that, we
8 require about 25 acres if it is a square or a rectangle,
9 reasonably shaped rectangle. Most of our substations
10 are rectangular shaped. So to fit it as efficiently as
11 possibly we need 25 acres.

12 This parcel was offered to us for sale. It is
13 34 acres. We couldn't just bite off 25 of the 34. It
14 is a 34-acre parcel. Unfortunately, it is not a
15 rectangle or square. It is kind of an elongated
16 rectangle with another segment on the south side of it.
17 So that somewhat limits us to how we could move around
18 that 25-acre footprint within the 34 acres.

19 Q. Would it be reasonable to assume you would not
20 have negotiated for and acquired the option unless the
21 34 acres could be used in such a manner as to satisfy
22 your needs for RS-24?

23 A. BY MR. NOVY: Yes, that's correct.

24 Q. Okay. Do you have a laser pencil with you?

25 A. BY MR. NOVY: Yes.

1 Q. If not -- good. Would you, directing your
2 attention to Exhibit SRP-057, indicate where the acreage
3 is within that northwest site that is the subject of the
4 option.

5 A. BY MR. NOVY: Okay. The shaded in area in this
6 northwest corner of Meridian and Combs is bounded on the
7 north by Queen Creek Wash and on the west by the Union
8 Pacific Railroad and on the east by the Meridian Road.
9 So the parcel we are looking at is approximately, I am
10 just going to say about 400 feet south of the wash.

11 There is one narrow property between us and the
12 wash. And eventually if we get an aerial view up here
13 you will be able to see it a lot better, because it is
14 greener than the surrounding areas. But it is
15 essentially 400 feet south of the wash and extends -- it
16 borders on Meridian Road and extends to the west. And
17 it gets within about 600 feet of the railroad. And
18 again, it is like a narrow, for the most part it is a
19 narrow rectangle and it is bordered on Meridian Road.

20 CHMN. FOREMAN: Could we have on the right
21 screen SRP-042.

22 MR. NOVY: So once again it is bordered on
23 Meridian Road. It is this first greenish rectangle and
24 includes this dirt road, and it extends to this part.
25 It is this dark green area I am outlining with my

1 pointer bounded by Meridian Road, and on the west it
2 comes within, at the longest distance, 600 feet,
3 approximately, to the railroad.

4 CHMN. FOREMAN: And Counsel, forgive me for
5 interrupting you, but since we saw this this morning I
6 want to make sure that I understand this.

7 My recollection of what you said at site K this
8 morning, Mr. Novy, was that the area that you had the
9 option for was an area that appeared to me to be alfalfa
10 hay that had recently been cut but not bailed. Is that,
11 so far as you are able to determine, the area that shows
12 green in the upper left-hand corner of Exhibit SRP-042?

13 MR. NOVY: Yes.

14 CHMN. FOREMAN: So, so far as you can tell, the
15 outlines of the field as we saw it today are identical
16 to the outlines of the dark area that you have pointed
17 out in this aerial photograph?

18 MR. NOVY: Yes. It looks very accurate to what
19 we saw out there today.

20 CHMN. FOREMAN: Thank you.

21 I am sorry for interrupting, Counsel.

22 MR. ROBERTSON: Oh, that's fine, Mr. Chairman.

23 BY MR. ROBERTSON:

24 Q. Mr. Novy, you indicated a moment ago that the
25 farthest distance from the Union Pacific Railroad to the

1 western boundary of the acreage that you have under
2 option was approximately 600 feet. What is the shortest
3 distance to the western boundary of the acreage under
4 option?

5 A. BY MR. NOVY: I don't remember measuring the
6 shortest distance. Looking at the map it looks like
7 about half that, maybe 300 feet or so.

8 Q. Okay. Now, Exhibit SRP-057 indicates planned
9 land use compilation. And that was why I wanted that
10 particular exhibit up there. As we go back again to the
11 northwest site for RS-24, quite a bit of that is zoned
12 industrial, is it not, or is planned for industrial use?

13 A. BY MR. NOVY: Yes. It looks like it is purple
14 underneath the hash mark, which would indicate --

15 Q. Correct. And the code under the legend on the
16 right-hand side indicates purple is for industrial for
17 planned land use categories, is that correct?

18 A. BY MR. NOVY: Yes.

19 Q. Okay. Do you know how much of the acreage that
20 you have under option is within the industrial colored
21 area?

22 A. BY MR. NOVY: On this map up here it looks like
23 all of it.

24 Q. Okay. Would you agree that Salt River
25 possessing an existing legal right to acquire the

1 necessary acreage for the RS-24 site in the northwest
2 site represents a major positive or plus for that site?

3 A. BY MR. NOVY: Yes, a bird in the hand.

4 Q. That was exactly going to be my follow-up
5 question. You anticipated it.

6 Now, on the tour today you indicated that you
7 have had oral discussions with the owner of the
8 northeast site. And as I refer to that, I am referring
9 to the site which is northeast of the intersection of
10 Meridian and Combs. Is that correct?

11 A. BY MR. NOVY: Yes.

12 Q. But you do not at the present time have a
13 written option on that site, is that also correct?

14 A. BY MR. NOVY: Well, we don't have a written
15 signed option. We are in negotiations with that
16 property owner and we have discussed it verbally, but
17 no, we don't have a signed agreement.

18 Q. Well, you used a metaphor a moment ago in
19 response to one of my lines of question, a bird in the
20 hand. Are you also familiar with the metaphor many a
21 slip between the cup and the lip?

22 A. BY MR. NOVY: Yes.

23 Q. And oral discussions regarding an option do not
24 always result in a written option, do they?

25 A. BY MR. NOVY: I have confidence in my land

1 department.

2 Q. Let's talk about that site for just a moment.
3 You said that your discussions relate to 40 acres, that
4 you would be negotiating for -- that the owner has 40
5 acres, that you would be negotiating for the eastern 25
6 acres. Do you recall that?

7 A. BY MR. NOVY: Yes, that's correct.

8 Q. Now, if I recall what you said during the tour
9 today, the owner would retain a strip of 15 acres that
10 goes along Meridian Road, or what would be the eastern
11 portion of that 40 acre parcel, is that correct?

12 A. BY MR. NOVY: Yes, that's correct.

13 Q. Would the remainder of that parcel come all the
14 way down to Combs Road?

15 A. BY MR. NOVY: Yes, it would.

16 Q. So the substation site would be fronting on the
17 north side of Combs Road, is that correct?

18 A. BY MR. NOVY: Yes.

19 Q. Now, let's look at the legend over on the
20 right-hand side of SRP-057. What is the zoning for that
21 land? Or I don't mean zoning. What is the planned land
22 use for that land in that northeast corner?

23 A. BY MR. NOVY: It looks like most of it is mixed
24 use, except right at the intersection it says
25 commercial.

1 Q. Okay. Now, you also indicated on the tour
2 today, and I believe you testified yesterday, that the
3 southeast site for RS-24, which is southeast of the
4 intersection of Combs and what would be the railroad
5 alignment, is no longer under consideration by SRP, is
6 that correct?

7 A. BY MR. NOVY: Yes, that's correct.

8 Q. So that basically has been taken off the table,
9 is that correct?

10 A. BY MR. NOVY: Yes.

11 Q. You are aware that Pinal County opposes the use
12 of the northeast site, substation site for RS-24, are
13 you not?

14 A. BY MR. NOVY: Yes, basically your opening
15 statement yesterday.

16 Q. And you are also aware that Pinal County had
17 opposed the use of the southeast side as the substation
18 site for RS-24, are you not?

19 A. BY MR. NOVY: Yes.

20 Q. Let's move now to Exhibit SRP-087 again. And I
21 am going to focus your attention on the Germann line
22 item for the purpose of this next series of questions.

23 And if I recall your testimony of a few moments
24 ago, Germann as it appears on this comparison table
25 would be the Germann/Meridian alignment, is that

1 correct?

2 A. BY MR. NOVY: Yes.

3 Q. Now, SRP does not favor the use of that route,
4 does it?

5 A. BY MR. NOVY: No, we don't.

6 Q. And among the reasons -- directing your
7 attention to this comparison chart -- that you do not
8 are, first of all, it is the longest of the northern
9 routes, is it not?

10 A. BY MR. NOVY: Yes.

11 Q. It is the second most expensive of the northern
12 routes?

13 A. BY MR. NOVY: Yes.

14 Q. It has the most cost factors of the northern
15 routes, does it not?

16 A. BY MR. NOVY: Yes.

17 Q. It has the most cons of the northern routes,
18 does it not?

19 A. BY MR. NOVY: Yes.

20 Q. Now, this exhibit does not contain any
21 comparable information for the Ryan Road/Meridian route,
22 does it?

23 A. BY MR. NOVY: No, this chart doesn't.

24 Q. Okay. Now, let's go to a final area. And I am
25 going to ask you what SRP's position would be with a

1 hypothecated alignment. And here is the background for
2 my question to you. I would like you assume that the
3 Town of Queen Creek and Pinal County have discussions
4 trying to resolve the differences that currently exist
5 between them with regard to use of the Meridian Road for
6 any alternative. Okay?

7 Here is my question. If the Town of Queen Creek
8 and Pinal County could resolve their differences by
9 means of a stipulation that a 500-foot corridor
10 paralleling Meridian Road was to be measured 500 feet
11 west from the centerline of Meridian Road between Ryan
12 Road and Riggs Road/Combs Road, would SRP be willing to
13 accept CEC language embodying and reflecting such a
14 stipulation?

15 A. I don't think I could make that decision right
16 here on the spot.

17 Q. Okay. That's fair enough. And I don't know
18 that we will arrive at such a stipulation. But I did
19 want to inquire as to SRP's position.

20 I have one last question. Roy, if we could move
21 Exhibit SRP-137 up onto the left-hand screen so it will
22 be closer to Mr. Novy and Mr. Warner.

23 THE VIDEO TECHNICIAN: 137?

24 MR. ROBERTSON: 137.

25 BY MR. ROBERTSON:

1 Q. And Mr. Novy and Mr. Warner, this has been a
2 subject of confusion for me throughout the hearings. I
3 wanted to direct your attention to the area that would
4 be north of Combs Road along Meridian Road. We see an
5 indication if we go further north, if the dividing line
6 between Maricopa County and Pinal County is Meridian
7 Road, and I thought I heard testimony earlier in the
8 hearing that that was the dividing line between the
9 county and other jurisdictions, yet there is an area
10 here within SRP-038 which, if we use the legend
11 coloring, would suggest that there is an area west of
12 Meridian Road that is a part of Pinal County.

13 Assist me in clarifying my confusion on that
14 part.

15 A. BY MR. WARNER: Let me point that out. Let me
16 point out the markings up here that depict where
17 Maricopa County is and Pinal County. So the boundary
18 between the two counties is here. The blue depicts the
19 jurisdiction boundaries. So that area presumably would
20 be Maricopa County.

21 Q. Mr. Warner, you dropped your voice at the last
22 minute.

23 A. BY MR. WARNER: Presumably that area would be in
24 Maricopa County and not in the Town of Queen Creek.

25 Q. But in any event, it is not Pinal County, is

1 that correct?

2 A. BY MR. WARNER: That's my understanding.

3 MR. ROBERTSON: Okay. Mr. Chairman, may I check
4 my notes just one minute.

5 (Brief pause.)

6 MR. ROBERTSON: Mr. Novy and Mr. Warner, that's
7 all I have. Thank you, gentlemen.

8 CHMN. FOREMAN: I have a question I want to ask
9 before we move on to Queen Creek just to clarify
10 something counsel for Pinal County raised.

11 Would you put SRP-057 back up. And it may be
12 necessary to look at the exhibit in the exhibit books,
13 but one of the questions that counsel asked was about
14 the land use plan for all of the land that was the
15 subject of the option in the northwest site for RS-24.

16 When I look at it in my notebook, it appears
17 that the southern portion of that land is in a
18 residential rather than mixed use land plan, is that
19 correct.

20 MR. NOVY: Okay. I understood his question to
21 mean the substation site that we are pursuing and having
22 an option, what land use was that. So that's -- my
23 answer that it was all industrial, I intended that
24 answer to mean the parcel that we have an option on.

25 But if you are talking about the entire shaded

1 area, yes, there is also some residential and some
2 commercial right on the corner.

3 CHMN. FOREMAN: I was talking about the area
4 that you had the option on also. So is all of the area
5 that you have an option on presently in mixed use plan
6 area?

7 MR. NOVY: I think it is all in the purple area,
8 the industrial.

9 CHMN. FOREMAN: All in industrial.

10 MR. NOVY: Yes.

11 CHMN. FOREMAN: So on my map it looks like there
12 is a small rectangle that is residential that is on the
13 west, directly west of Meridian Road. And it looks like
14 it has the southern field -- if you look on SRP-42 on
15 the right, there are basically three dark green swatches
16 up there. The southern slice that is a part of that
17 appears to me to be in the residential area and not in
18 the industrial area.

19 MR. NOVY: I think they just can't show enough
20 detail on the map.

21 CHMN. FOREMAN: Okay.

22 MR. NOVY: Because this parcel would be
23 industrial. I think the yellow was intended to be below
24 that. And the yellow might include this little piece up
25 here. But the parcel, it is one 34-acre parcel, and

1 that should all be in the purple designation.

2 CHMN. FOREMAN: So far as you know it is all
3 industrial?

4 MR. NOVY: Yes.

5 CHMN. FOREMAN: Okay. Member Noland.

6 MEMBER NOLAND: That brings up an interesting
7 question. I think maybe Mr. Warner can answer this. I
8 am not sure, whoever.

9 Does SRP have to apply for rezoning? Do they
10 have to follow a general plan being the type of entity
11 that they are.

12 MR. WARNER: As I understand it, jurisdiction
13 for siting facilities of this kind rest at the state.
14 And what SRP's policy is in integrating their
15 development plans with local communities, often
16 jurisdictions have a process for approving development
17 plans, but not the right to deny or allow those kinds of
18 facilities. And I defer to counsel for the utility to
19 direct me otherwise.

20 MEMBER NOLAND: Well, I think it is obvious that
21 the other two sites, the northeast and the southeast,
22 are not designated industrial or any other type. So
23 those have been under consideration and it wouldn't pose
24 a problem.

25 I happen to have been a town manager at one time

1 and dealt with utilities and other entities that I think
2 had the same rights that SRP has, and they did not get
3 rezoning. They did not have to follow our general plan
4 necessarily, though they coordinated with the town.

5 Thank you.

6 CHMN. FOREMAN: All right. Queen Creek, are you
7 ready to start?

8 MR. BIRNBAUM: Ready to go. Thank you, Your
9 Honor.

10

11

CROSS-EXAMINATION

12 BY MR. BIRNBAUM:

13 Q. And good afternoon, Mr. Warner and Mr. Novy. My
14 name is Gary Birnbaum. I represent the Town of Queen
15 Creek.

16 Mr. Novy, I suspect most, perhaps even all, of
17 my questions are directed to you, but please feel free
18 to meet and confer and pass the baton to Mr. Warner
19 wherever you think it is appropriate.

20 Mr. Novy, as the project manager for SRP, am I
21 correct that part of your job is to review the local
22 development and land use plans of local municipalities?

23 A. BY MR. NOVY: Well, actually I just coordinate
24 with the environmental consultant, and I relied a lot on
25 his expertise to put those together. And I coordinate

1 that and incorporate it into the application.

2 Q. Okay. I can't tell if that was the first
3 passing of the buck. But somebody at SRP does in fact
4 review the local municipalities' land use and
5 development plans, is that correct, sir?

6 A. BY MR. NOVY: Yes, we review them.

7 Q. Okay. And do you agree with me, Mr. Novy, based
8 on your experience that that review is in fact required
9 by Arizona law?

10 A. BY MR. NOVY: I am not familiar with that.

11 Q. Are you aware that A.R.S. 40-360.06.A.1 requires
12 specifically express consideration of the plans of local
13 municipalities as part of the line siting process?

14 A. BY MR. NOVY: I am personally not aware of that,
15 but I am sure my legal counsel has considered that.

16 Q. Do you reference that statute at any point in
17 your application?

18 A. BY MR. NOVY: I can't say offhand if we
19 reference it or not.

20 Q. Okay. So whether it is required or not, whether
21 it is referenced or not, is it fair to say that SRP did
22 in fact review and consider the plans of the local
23 municipalities impacted by this line?

24 A. BY MR. NOVY: Yes, I believe we have.

25 Q. Okay. And I assume that one of those

1 municipalities whose plans you reviewed was Queen Creek?

2 A. BY MR. NOVY: Yes, I think that's a good
3 assumption.

4 Q. And did you personally review what you
5 determined to be the relevant Queen Creek plans?

6 A. BY MR. NOVY: Yes. I reviewed the application
7 that was put together, that portion of it by our
8 consultant, yes.

9 Q. Okay. And Mr. Warner, I guess this is for you.
10 Did you personally review the applicable Queen Creek
11 development and land use plans?

12 A. BY MR. WARNER: Yes. And let me add to that,
13 that we repeatedly met with staff from the Town of Queen
14 Creek throughout the process. And if you can take a
15 look at SRP-01, Exhibit J-3, you will see a summary of
16 some of those many meetings that we had with the staff
17 to talk about what was either written in their plans,
18 contemplated in their plans, not yet developed in their
19 plans. We had many discussions about things that were
20 formalized and things that were not yet formalized. And
21 so I think that, I think that we -- it is fair to say
22 that that discussion and review was lubricated pretty
23 well with our team in terms of understanding where they
24 were going.

25 Q. Mr. Warner, I appreciate your answer, but my

1 question was about the plans that you reviewed, not
2 about the discussions you had. I promise you we will
3 talk about the discussions.

4 Was the Queen Creek general plan reviewed?

5 A. BY MR. WARNER: Yes.

6 Q. Mr. Novy, did you review the Queen Creek general
7 plan?

8 A. BY MR. NOVY: By the plan do you mean the
9 exhibits that we have in here, the color coded?

10 Q. I mean the Queen Creek general plan adopted
11 pursuant to state statute which requires that every
12 municipality have a general plan.

13 A. BY MR. NOVY: I have seen part of it; I haven't
14 read it in detail.

15 Q. Mr. Warner, I assume you saw the Queen Creek
16 general plan?

17 A. BY MR. WARNER: Yes.

18 Q. Okay. September 2, 2008 the Queen Creek town
19 council, following the state statutes for general plan
20 amendment and update, updated and adopted an updated
21 Queen Creek general plan dated September 2, 2008. Did
22 SRP review the updated Queen Creek general plan?

23 A. BY MR. WARNER: Yes.

24 Q. SRP's application in this case -- and this is
25 directed specifically to one of the questions that came

1 from the Committee -- SRP's application in this case was
2 filed on June 12, 2009. Did you incorporate in your
3 evaluation in preparing that application the
4 September 2, 2008 Queen Creek general plan update?

5 A. BY MR. WARNER: Yes.

6 Q. Can you explain briefly, perhaps Mr. Warner, why
7 the exhibits that we have looked at do not reflect the
8 updated Queen Creek general plan?

9 A. BY MR. WARNER: I need to examine the difference
10 between the two before responding to that question.

11 Q. Well, if I tell you that, as I did during City
12 of Mesa's examination, that reference was being made to
13 an out-of-date plan, is there some explanation that you
14 can offer for why the application is not based upon the
15 actual plan which in fact changes the land use
16 classifications for the areas around Ryan Road and
17 Germann Road in particular?

18 A. BY MR. WARNER: I am interested in examining
19 those differences before responding.

20 Q. Have you examined the differences since it was
21 raised earlier today?

22 A. BY MR. WARNER: I have not.

23 Q. Is there any reason you can tell me as you sit
24 here now, sir, why the updated Queen Creek general plan
25 was not used, if in fact it was not used?

1 A. BY MR. WARNER: Well, as I previously testified,
2 I believe that we did use it. But I need to examine the
3 differences between what appeared that you are
4 indicating that are apparent in the September versus the
5 general plan that was approved earlier that year.

6 Q. So your testimony, sir, is that all of the
7 evaluations done by SRP utilized the Queen Creek general
8 plan in effect on the date of your application and that
9 is the plan that was adopted on September 2, 2008?

10 A. BY MR. WARNER: That's what my belief is. And I
11 will examine those differences and see if there is
12 something material there.

13 Q. And if, Mr. Warner, it turns out that your
14 belief is incorrect, then the application submitted by
15 SRP, which is required to consider the plans of local
16 municipalities, was based on a consideration of the
17 wrong plan?

18 A. BY MR. WARNER: Is that a question?

19 Q. Yes, sir, that's a question.

20 A. BY MR. WARNER: First of all, as I previously
21 stated, we believe that we did base it on the
22 information that was there.

23 Q. That wasn't the question, Mr. Warner. If in
24 fact the exhibits that you have utilized, at least the
25 one that Mesa showed you, is based on a plan which is

1 not the one that was in effect on the date of your
2 application, then in fact you did not comply with the
3 state law that requires consideration of the local land
4 use and development plans in effect at the time of the
5 application, isn't that correct, sir?

6 A. BY MR. WARNER: No, that isn't correct. The way
7 I understand the question, or the statute, is that we
8 have consideration of those plans. And so that is what
9 is necessary, and to determine our evaluation of
10 compatibility. And that was done.

11 Q. Do you believe, Mr. Warner, that the statute
12 allows you to consider an outdated plan that has been
13 replaced by the municipality?

14 A. BY MR. WARNER: I believe the statute to read
15 more broadly, to consider all of the factors so that you
16 can make an informed decision.

17 Q. Thank you.

18 My question, Mr. Warner is: Do you believe that
19 the statute allows you to consider an out-of-date plan
20 that has been replaced by the municipality?

21 A. BY MR. WARNER: I believe that the statute is
22 more -- is broader, to consider all of the factors that
23 contribute to an informed decision. And I believe that
24 it, it urges you to look at the most relevant
25 information, whether that can be obtained verbally and

1 also through adopted reports that are the most current.
2 And I think those are all important.

3 Q. So, Mr. Warner, should the Committee understand
4 your testimony to be that it is okay to submit an
5 application without consideration of the then current
6 general plan of the municipality in which the line is to
7 be located?

8 A. BY MR. WARNER: I believe that the evaluation
9 needs to be performed with the best availability data
10 that is available, and it has -- and it should consider
11 the most currently adopted plan as well as other
12 planning documents that are relevant to making a
13 decision about compatibleness.

14 Q. Okay.

15 CHMN. FOREMAN: We are at the end of the day.
16 And perhaps it would be a good idea to take the evening
17 recess now. That will allow everyone to refresh their
18 memory about the status of the plan and the statute.
19 And we can start again tomorrow at 9:30.

20 How long do you anticipate your
21 cross-examination will take?

22 MR. BIRNBAUM: I hate to guess, Mr. Chairman,
23 but I would say at least an hour.

24 CHMN. FOREMAN: Okay. We have some redirect
25 that will be coming, I assume.

1 MR. SUNDLOF: I see three or four areas that we
2 are going to clear up so far, yes.

3 CHMN. FOREMAN: How much -- and then you have
4 another witness available tomorrow?

5 MR. SUNDLOF: Yes. We have the panel on the
6 process.

7 CHMN. FOREMAN: Okay. Do you anticipate that
8 the remaining witnesses you have will take the rest of
9 the day tomorrow?

10 MR. SUNDLOF: I anticipate based on the number
11 of lawyers that we will take the rest of the day
12 tomorrow.

13 CHMN. FOREMAN: That was an ineloquently phrased
14 question on my part. Do you anticipate your direct
15 examination will require more than tomorrow?

16 MR. SUNDLOF: No. Our direct examination will
17 not require more than an hour or so.

18 CHMN. FOREMAN: Okay. All right. So we may or
19 may not finish tomorrow. And the reason, of course,
20 that I ask those questions is to determine, well,
21 whether we might be in a position where someone else
22 might be needing to have a witness available.

23 MR. SUNDLOF: Your Honor, we also would have the
24 aviation witness that would follow the panel. So we
25 have yet another witness.

1 CHMN. FOREMAN: And will that witness be
2 available?

3 MR. SUNDLOF: The witness' office is about five
4 minutes away. He has an office near the airport here.

5 CHMN. FOREMAN: All right. So I think that
6 means we probably are not going to finish the
7 applicant's case before late in the day tomorrow, but
8 let's see if we can try and do that tomorrow.

9 I think Tara has talked to you about possible
10 new dates down the line for continuing the matter. But
11 we will have to talk some more about that tomorrow.

12 Are there housekeeping things that we need to
13 address this afternoon?

14 (No response.)

15 MR. MARKS: Your Honor, if I might.

16 CHMN. FOREMAN: Yes, sir.

17 MR. MARKS: City of Mesa, along with most of the
18 other parties, has prepared and filed testimony
19 summaries. The only one that has not is the Town of
20 Queen Creek. And given that we will not be getting to
21 the other parties' cases until sometime in the future, I
22 don't anticipate this happening, but it is possible,
23 given the passage of time or other folks thinking of
24 things, that we would file some sort of an amended
25 summary prior, at least three days prior to the witness

1 being scheduled to testify.

2 CHMN. FOREMAN: Good, because that's what you
3 should do. If as a result of something that has come up
4 so far you need to wander into a new area with the
5 witness, then you should notify everybody else about it.
6 And I am sure Queen Creek will be filing their witness
7 summaries in an appropriate length in advance so that
8 everybody will have a fair opportunity to prepare for
9 cross-examination of Queen Creek's.

10 MR. BIRNBAUM: That is our intent.

11 CHMN. FOREMAN: I encourage continuation of
12 discussions amongst the parties to see if we can narrow
13 the issues that are actually contested. And it seems we
14 have made some really good progress in that area, and I
15 congratulate counsel on that.

16 Any other issues that we need to address this
17 afternoon?

18 (No response.)

19 CHMN. FOREMAN: All right. Very good. Thank
20 you all. It has been a long sometimes hot day. We will
21 see you folks tomorrow at 9:30 in the morning.

22 (The hearing recessed at 4:47 p.m.)

23

24

25

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

3

4

5

6

7

I, COLETTE E. ROSS, Certified Reporter

8

No. 50658 for the State of Arizona, do hereby certify

9

that the foregoing printed pages constitute a full, true

10

and accurate transcript of the proceedings had in the

11

foregoing matter, all done to the best of my skill and

12

ability.

13

14

WITNESS my hand this 10th day of August, 2009.

15

16

17

18



19

COLETTE E. ROSS
 Certified Reporter
 Certificate No. 50658

20

21

22

23

24

25