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AZ CORP COMMISSION
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ARIZONA CORP. COMM
400 W CONGRESS STE 218 TUCSON AZ 85701

Docket No. L-00000F-09-0190-00144

Case No. 144

IN THE MATTER OF THE APPLICATION OF UNS
ELECTRIC, INC. FOR A CERTIFICATE OF
ENVIRONMENTAL COMPATIBILITY FOR THE VAIL TO
VALENCIA 115 KV TO 138 KV TRANSMISSION LINE
UPGRADE PROJECT, ORIGINATING AT THE EXISTING
VAIL SUBSTATION IN SEC. 4, T.16S., R.15E., PIMA
COUNTY, TO THE EXISTING VALENCIA SUBSTATION
IN SEC. 5, T.24S., R.14E., IN THE CITY OF NOGALES,
SANTA CRUZ COUNTY, ARIZONA.

Notice of Filings of

BRIEF OF THE MARSHALL MAGRUDER
REQUEST FOR REVIEW AND EXCEPTIONS TO THE
CERTIFICATION OF ENVIRONMENTAL COMPATIBILITY IN ARIZONA POWER PLANT AND
TRANSMISSION LINE SITING CASE NO. 144

8 September 2009

This filing is the Brief that supports this party's request for review of the Certification of Environmental Compatibility (CEC) of 28 July 2009 and proposes two Exceptions for consideration by the Commission and is filed as required by the ACC Procedural Order of 12 August 2009. These two Exceptions request to

- (1) Move a proposed 138 kV transmission line 200-feet west for approximately 1.3 miles primarily to avoid an area of significant mature-growth bosque and
- (2) Ensure those most visually impacted are able to respond to the Pole Finish Plan to the company.

Mailed to all parties this 8th day of September 2009.

Respectfully submitted,

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Arizona Corporation Commission
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1
2 **BRIEF**

3 of the

4
5 **Marshall Magruder**

6 **Request for Review and Exceptions**

7 to the

8 **Certificate of Environmental Compatibility**

9 in

10 **Arizona Power Plant and Transmission Line**

11
12
13 **Siting Case No. 144**

14
15
16 **By**

17 **Marshall Magruder**

18
19 **8 September 2009**

20
21
22 **In the matter of the Application of UNS Electric, Inc., in conformance**
23 **with the requirements**
24 **of Arizona Revised Statutes §§ 40-360, et seq, for a Certificate of**
25 **Environmental Compatibility authorizing the construction of the Vail to**
26 **Valencia 115 kV to 138 kV transmission line upgrade project.**

27 **ACC Docket No. L00000F-09-0190-00144**

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BRIEF
of the Marshall Magruder Request for Review and Exceptions
to the CEC in Line Siting Case No. 144

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4 **1. Introduction.** I intervened in this case because the ACC Staff did not. I believe it is important there be at
5 least a second party to represent the interests and consider the issues impacting local citizens. It was a
6 pleasure to observe the professional attention given by the Committee to all issues during these hearings.
7 That greatly reduced my concerns. Further, the company's performance has improved. During discovery,
8 the inability of the company to provide relevant information became significant, however as the hearing
9 progressed, this was reduced. There are two areas I respectfully request be reviewed by the Commission.

10
11 **2. Two Areas of Remaining Concern.**

12 **a. Exception One.**

13 During the Line Siting hearings in this case, many residents from Rio Rico who presented very
14 compelling information concerning the impact of the proposed "preferred alignment" route through an
15 mature-growth bosque area in Rio Rico, parallel and adjacent to the "east" boundary of the 100-foot wide
16 Union Pacific Railroad (UPRR) Right of Way (ROW).¹ This party listened carefully and took up that issue.
17 Initially, during the hearings, this party proposed a route that would avoid the largest possible area of bosque
18 impact to the "west" of the UPRR ROW; however, on the last days of the hearings, two letters (via email)
19 containing significant information were received, one from the Santa Cruz County Flood District
20 Administrator, the other from the Avatar (also known as Rio Rico Properties) manager, the owner and
21 developer of thousands of platted lots in the Rio Rico community. Both documents, in my opinion, impacted
22 the Committee's decision when granting the CEC. Both also impacted this party as the Exception Alignment is
23 now reduced in scope from that presented, "real time" during the hearing. Subsequently, upon a more
24 deliberate review of the evidence presented in this record, as summarized in this party's request for Review,
25 this shorter length "west" of the UPRR ROW is considered the Exception Alignment.

26 The Exception Alignment moves the CEC Alignment 200-feet west for approximately 1.3 miles, for about
27 six or so monopoles, alongside a built-up, solid rancher's road that runs parallel and adjacent to the "west"

28 ¹ This Brief used the terms "right of way" (ROW) and easement interchangeably.

1 boundary of the UPRR ROW, that can be used for heavy construction equipment and later maintenance
2 access. There is no significant vegetation growth to the "west" that requires more than a light trim and no
3 mature cottonwood trees are present.

4 The CEC Alignment "east" of the railroad in this 1.3-mile segment (from Kiwi Court to the Cañez
5 Substation) will require extensive vegetation removal. This "east" route expands a 37.5-foot distribution
6 easement to 100-feet with additional mature-growth cuttings. All of the "east" route is on the private
7 property of approximately 25 existing home and platted-lot land owners, that is heavily overgrown with
8 mature-growth mesquite, elderberry, hackberry and other dense native vegetation. Much of the "east" route
9 is at a lower in elevation than the "west" route including the distribution line access road that will need
10 considerable buildup, including culverts that match those under the railroad and requiring a permit from the
11 Flood Control District.

12 Both the alignments between Kiwi Court and Cañez are totally within the floodplain. The issue of
13 floodway impact is discussed in detail in Attachment A, "Rationale for Exception One" that follows.

14 This Brief uses evidence entered into the record, as clearly required by the Procedural Order; however,
15 if other parties introduce any new information or evidence, this party requests equality and permission to
16 both cross-examine such new information and to present my new information.

17 **b. Exception Two.**

18 The most significant complaint by the public concerning transmission lines involves their visual and
19 aesthetic impacts. Deliberately reducing the resultant visibility of the lines and poles and their visual impacts
20 can gain greater acceptance by the public for transmission line projects. Visibility depends on the difference
21 in the contrast of the object (pole in this case) compared to its background, commonly termed camouflage by
22 the military, when the contrast is equal for an object in foreground and its background.

23 After five years of effort by this party, a new attitude finally exists at UNS Electric towards the "finish"
24 color of transmission line monopoles.² The company now will consider public comments on using galvanized
25 steel poles with a permanent dull-gray finish in areas where lighter sky dominates the background and
26 naturally rusted or weatherized steel poles with a dark brown finish in areas where a darker background is

27 _____
28 ² This actually started when a Commissioner proposed and had approved an Amendment to use dulled gray galvanized poles instead of dark brown weatherized poles to the Committee-granted CEC in Line Siting Case No. 137.

1 observed by a majority of the viewing public. This new approach considers the contrast difference between
2 the foreground pole and its natural background.

3 The company will propose which monopole finish it selected along the Project Alignment after approval
4 by the Commission of the CEC that now requires that a Pole Finish Plan be submitted to those who own the
5 land on which the pole is placed to decide which finish to be used within 15 days of being published.
6 Exception Two allows additional impacted landowners within 500-feet to be notified of the pole finish
7 selection, a significant ascetic factor in line siting transmission lines and an additional 30-days to respond.
8

9 3. **Rationale for the Exceptions.** The basis, including citations from the record of this case, for Exceptions One
10 and Two, are presented in Attachments A and B, respectively.

11 4. **Summary of Exception One.**

12 a. **Objective.** To move 200-feet west, for approximately 1.3 miles, the Project Alignment between Kiwi Ct
13 and Cañez Substation.

14 b. **Purpose.** The avoidance of the mature-growth bosque area and removal a segment of a distribution line
15 is to permit an additional growth area of this narrow linear bosque in the Rio Rico community. Further,
16 a "five-year trim" should be used for vegetation management, as long as allowed by other regulating
17 authorities. See Attachment A for the citations, additional details and rationale for Exception One.
18

19 c. **Proposed Changes to the CEC.**

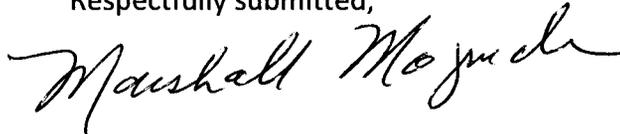
- 20 i. On page 3 at line 19 change "UPRR right of way" to read "easterly of the UPRR right of way (0.5
21 miles) until at Kiwi Court where it crosses over the UPRR and continues within 50 feet from
22 westerly edge of the UPRR right of way, then"
- 23 ii. On page 9 at line 22, add "The Applicant shall use the five-year trim vegetation management
24 process in the entire Rio Rico bosque area to the Sonoita substation as long as allowed by other
25 regulating authorities."
- 26 iii. Conforming changes to the CEC Attachment A for metes and bounds.
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5. **Summary of Exception Two.**

- a. **Objective.** To increase impacted landowners' participation in selection of the pole finish color along the resultant Alignment.
- b. **Purpose.** The Pole Finish Plan process in the CEC severely limits impacted landowners' participation in the review and selection of the finish color to be used on the monopoles. This Exception expands the public's opportunity to participate. See Attachment B for the details and rationale for Exception Two.
- c. **Proposed Changes to the CEC:**
- i. On page 9 at line 21, after "regarding" add "pole surface finish color and "
 - ii. On page 9 at lines 21 and 22, delete "or adjacent ..." to end of sentence to read ", adjacent to all the landowners' property within 500 feet of the centerline of the Alignment."
 - iii. On page 10 at lines 11 and 12, change "directly impacted" to read "within 500 feet of the centerline of the Alignment".
 - iv. On page 10 at lines 12 and 13, change the last sentence to read "The Parties and landowners shall have 45 days to object in writing to the Commission concerning the finish colors proposed in the PFP."

Respectfully submitted,



Marshall Magruder

Attachments

A. Rationale for Exception One

- Enclosure 1 – Letter via email from the Santa Cruz Flood Control District and Floodplain Administrator (dated 8 July 2009) (Exhibits EW-22, UNS-25)
- Enclosure 2 – Email in Response to a Request from TEP for Update to Line Siting and Rio Rico's Position (dated 8 July 2009) (Exhibit UNS-26)
- Enclosure 3 – Picture Showing Clear Cut in the Existing 115 kV Transmission Line ROW in the Mature-Growth Bosque (Exhibit COM-1)

B. Rationale for Exception Two

Attachment B, Figure 1 – The Denman Ross Nine Step Value Scale _____

1 **Attachment A**

2
3 **RATIONALE FOR EXCEPTION ONE**

4 1. **Objective.** To move 200-feet west, for approximately 1.3 miles, the CEC-granted Alignment.

5 2. **Purpose.** The purposes of Exception One are to reduce project impacts on a mature-growth bosque area, to
6 move a distribution line segment, to abandon two existing easements and to permit area for consolidated
7 natural growth in the Rio Rico community. Further, a “five-year trim” is required for vegetation management
8 in this linear bosque area, as long as allowed by other regulating authorities.

9
10 3. **Balance between Public Interest and Need and the Environment.** As required by A.R.S. § 40-360-07 and
11 ACC Procedural Order of 12 August 2009, the following information and citations are required to be included
12 in this filing:

13 *“The Commission shall balance, in the broad public interest, the need for an adequate,
14 economical and reliable supply of electric power with the desire to minimize the effect thereof
on the environment and ecology of this state.”³*

15 The detailed elements of this requirement with supporting citations are in paragraphs 4 and 5 below.

16
17 a. **Broad Public Interest in the Exception Alignment.**

18 Approximately 25 home and residential lot owners will be significantly impacted unless approval of the
19 Exception Alignment when compared to one agricultural property owner impacts. A petition by almost every
20 homeowner (one wasn’t home) and Public Comments presented without opposition, are in the record as a
21 Committee Exhibits.

22 The agriculture landowner is concerned if the transmission line “crosses” the cattle-grazing land, it
23 might impact its possible future as a State Park. The Exception Alignment proposes a 138 kV transmission line
24 alignment about 50-feet from the existing Union Pacific Railroad right-of-way. This does not impact or cross
25 the hundreds of acres of agriculture land west of the railroad for this 1.3-mile line segment.⁴

26
27 ³ ACC Procedural Order of 12 August 2009, 3:2-6.

28 ⁴ This and the preceding sentence, as an approximately 1.3-mile long transmission and distribution line corridor from Kiwi Court to the Cañez Substation, in a 100-foot right of way parallel and adjacent to the western boundary of the UPRR ROW, define the

1 By moving an existing 37.5-foot easement for a distribution line (to be constructed under the 138 kV
2 transmission line on the same monopoles), away from these home and lot owners, then continuous vegetation
3 growth will continue east of the UPRR easement. This distribution ROW has extensive vegetation growth
4 including several large and mature cottonwood, elderberry, hackberry, and mesquite trees along its boundary
5 with the railroad and also in the UPRR ROW that would have to be removed under the existing CEC Alignment.
6

7 The tall growth and dense vegetation between the railroad and these homeowners can absorb train
8 noise and provide a dense visual barrier that will, in almost every case, block most if not all, of their view of
9 the new 138 kV transmission lines to be located west of the UPRR. If east of the UPRR as in the CEC Alignment,
10 these lines and poles will be highly visible to these landowners.

11 There is no "public" to the west of the UPRR other cattle and a few cowboys. This is permanent
12 pastureland necessary to secure agriculture water rights that is critical for all residents of the Rio Rico
13 communities. Further, along most of the west route, these 138 kV and distribution lines and their monopoles
14 will be hidden in the background of trees on the eastern side of the railroad and by maturing of the existing
15 new growth trees farther to the west than the CEC ROW east of the railroad.

16 **b. Need for Adequate, Economic and Reliable Supply of Electric Power.**

17 **(1) Adequate Electric Power.**

18 Exception One makes no change in electric characteristics of the 138 kV line and continues to have
19 the existing distribution line underneath, as granted in the CEC.

20 (a) Existing Distribution Line. This distribution line has only two service lines in this 1.3 mile
21 segment, one to the west of the UPRR, for use by a large water pump complex used to flood the pastures and
22 one to a residence or two east of the UPRR. If there is a concern for the latter customers, then connection to
23 another distribution line that parallels Pendleton Road, a few hundred feet farther east seems very feasible.

24 (b) Possible Impacts of Flooding. There is a concern for access during flooding, but both east and
25 west of the UPRR are well within the 100-year floodplain, thus prohibiting large utility trucks during the few
26 days of an actual 100-year flood on both east and west routes as most of the land west of Pendleton Drive will

27 term "Exception Alignment". The "CEC Alignment" is that contained in the CEC, which is parallel and adjacent to the eastern
28 boundary of the UPRR ROW. The centerlines of these two Alignments are 200-feet apart.

1 be underwater which might also not be available. Two or so of the poles "west" of the UPRR might have less
2 than five feet of flowing water during a 500-year flood, however, overcoming this minor hydraulic pressure
3 impact on these two poles is accomplished by extending the concrete foundation two to four feet above
4 ground level. Designed to new standards for known hydraulic pressures will make them floodproof.

5 (c) Foundations. All poles will require concrete foundation along east or west options as direct
6 placement in the ground would exacerbate underground pole corrosion. Other than having the foundations
7 extend to be above flood water levels, this impact is essentially the same for both options.

8
9 (2) **Economic Costs**.

10 There will be minor cost differences, estimated to be considerably less than 1% of the project cost:

11 (a) For pole foundations. All poles will require concrete foundations in the floodplain, only the
12 cost difference any additional foundation depth, if necessary, for six of so poles west of the railroad.

13 (b) Taller and Turning Poles. There could be four-taller poles to meet the 41-foot clearance for
14 twice crossing over the railroad and a turning pole at each end.

15 (c) Negotiating Easement/ROW. Only one right-of-way Agreement is necessary with the
16 agriculture landowner (Avatar) west of the railroad. This agreement should include access the existing rancher
17 road during construction and maintenance. This should save land acquisition costs when compared to
18 negotiating with approximately 25 landowners for rights-of-way settlements and agreements, as residential
19 land values are significantly higher.

20 (3) **Reliable Electric Power Supply**.

21 There are no significant differences in reliability of electric power supply between the east and west
22 of UPRR alignments. Some possible impacts in reliability include

23 (a) Transmission Line Outages. The only possible difference in transmission line reliability could
24 be considered if there was an outage in this transmission line segment caused by flooding. All poles in the
25 "east" and "west" alignments are in the floodplain. The difference between these two, in terms of Mean Time
26 Between Failure (MTBF), shows no reliability impact, since accurate flood data should result in floodproof-
27 designed structures.

1 (b) Corrective Maintenance during a Flood via an Access Road. A company concern was access
2 during flooding to repair a line failure with impacts on Mean Time to Repair (MTTR). All of the new monopoles
3 in both east and west options will be in flooded waters. The rancher road to the west of the railroad is at a
4 higher elevation than the company's existing distribution line access road in the east easement.

5 Only after importing thousands of tons of landfill to raise the east access road (that is in terrible
6 shape) and rebuilding it to make it useful, could this distribution access road start to reach the capabilities of
7 the existing rancher road west of the railroad. Any buildup on this road must to conform to existing culverts
8 underneath the railroad. All such east access road and culvert construction in the floodplain requires a permit
9 from the Santa Cruz County Flood Control District. (Tr773:1-9)

10 A permit may not be required for a west access road.

11 This difference in east and west access roads may impact the Mean Time To Repair (MTTR) and
12 thus the Availability (A) but does not impact the system reliability when measured in terms of Mean Time
13 Between Failure (MTBF) for the 138 kV transmission line system.⁵

14 Peak demand load requirements are not concurrent during the local major flooding season. Air
15 conditioning impacts, which control peak load, should not be critical during major (100- or 500-year) floods.

16 (c) Loss of the 138 kV Transmission Line. Adequate backup power (68 MW) is available from local
17 generation from the south in Nogales to the Cañez substation and from the north to the Kantor from the Vail
18 or Canoa substations if there were an outage on this 1.3-mile section of the Vail-Nogales transmission line.
19 There are no differences between the CEC Alignment and Exception Alignment for a loss of the line.

20 (d) Loss of the Cañez Substation. This substation and two of the other three in Santa Cruz County
21 are within the 100-year floodplain. Compared to loss of this segment of the 138 kV line, a substation loss has
22 more serious impacts during a 100-year flood, with significantly longer MTTR impacts in terms of weeks and
23 extended widespread regional outages, may occur. A flooded substation outage will dominate the impact of
24 the loss of electric power compared to repair of this segment of the 138 kV line.

25 ⁵ Availability (A) or percent of time the system is operable equals Mean Time Between Failures (MTBF) divided by the sum of
26 MTBF plus the Mean Time to Repair (MTTR) times 100 (to convert to percent). MTTR is the time it takes between the instant of
27 failure or outage and restoration of normal operations. MTTR includes the time it takes for a crew to notified and to start the
28 repair (also called travel time) plus the actual time to repair plus the time to obtain any additional parts or equipment, plus time
to test or confirm repair has been completed, and time to re-establish normal operations. The travel time differences between
the CEC Alignment and the Exception Alignment are the only MTTR impact differences, if any, between the two routes. The
rancher road on the western alignment is elevated and probably more accessible after the high waters of the flood recedes,
than the existing distribution line access road on the eastern alignment that is flooded during much of the monsoon season.

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c. **Environment and Ecology of the State.**

There are several environmental impacts.

(1) **Impact on Environment in the Eastern Route.** The CEC granted a 100-foot transmission line ROW parallel and to the east of the UPRR ROW, superimposed on a 37.5-foot distribution line ROW that crosses through mature-growth bosque with significant habitat impacts.

(a) **Construction and Maintenance Access Road Impacts.** The CEC Alignment will require construction of a new access road, elevating that road with landfill, installation of culverts (thus needed a Flood Control District permit), and clearing additional vegetation growth in the existing 37.5-foot plus vegetation clearing in the remaining 62.5-feet of the 100-foot ROW for the proposed 138 kV line. Maintenance access will be necessary about once every five years.

(b) **Habitat Degradation.** The CEC Alignment isolates the growth that is now extensive along the east part of the UPRR ROW that could “fill-in” if the 37.5-foot distribution easement, in this 1.3-mile segment, were abandoned. By increasing habitat loss and splitting the remaining habitat, impacts on local plant and smaller wildlife will occur. The habitat for many endangered and protected species described in Exhibit B of the CEC are impacted in the bosque may include the Southwestern Willow Flycatcher, Western-Yellow Billed Cuckoo, Pima Pineapple Cactus Needle-Spined Pineapple Cactus, Lesser Long-Nosed Bat, Mexican Long-Tongued Bat, Blue Palo Verde, Velvet Mesquite, and others such as several nesting hawks.

(2) **Impact of the Exception Alignment on the Environment.** Movement to the much less dense new growth and cattle pasture fields to the west of the UPRR, a new 100-foot ROW with distribution under build, will have significantly less environmental impacts. The visual impacts of the monopoles are improved for these homeowners to the east. There are no homeowners west of the UPRR, only cattle.

d. **CONCLUSION Concerning Exception One.**

To balance the need for this Project with the effect on the environment and ecology of the state, only by changing the Conditions in the Line Siting Committee-granted CEC to those in the Exception Alignment, can a resolution of these issues benefit the broader public interest and the environment (without impacting the benefits or meeting the needs of the project) be served by the findings on the matters raised during the course of these proceedings and herein.

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e. **RECOMMENDATION Concerning Exception One.**

Based on this conclusion, then by the Commission's approval of the recommended Exception One changes to the CEC, the effects on the environment and ecology of the state will be balanced to better meet the needs of this project.

f. **Specific Recommended CEC Changes for Exception One.** See paragraph 4.c above on page 7 of this Brief for the recommended changes to the CEC.

4. Scope of this Exception.

- a. The Exception Alignment involves about 1.3-miles of the entire project and moves the CEC Alignment 200-feet west for about six to eight poles as shown in Map 1, in Black with "tic" marks every 700-750 feet to indicate approximately where a pole might be located. No other part of the project is impacted.
- b. The CEC Alignment expands an existing 37.5-foot distribution line, under-slung on 138-kV transmission line monopoles, into a 100-foot Right of Way (ROW) adjacent and East of the Union Pacific Rail Road (UPRR) 100-foot ROW, in Yellow in Map 1 on page 15.
- c. Figure 1 below is a cross-section of the various easements/Rights of Way when looking north.

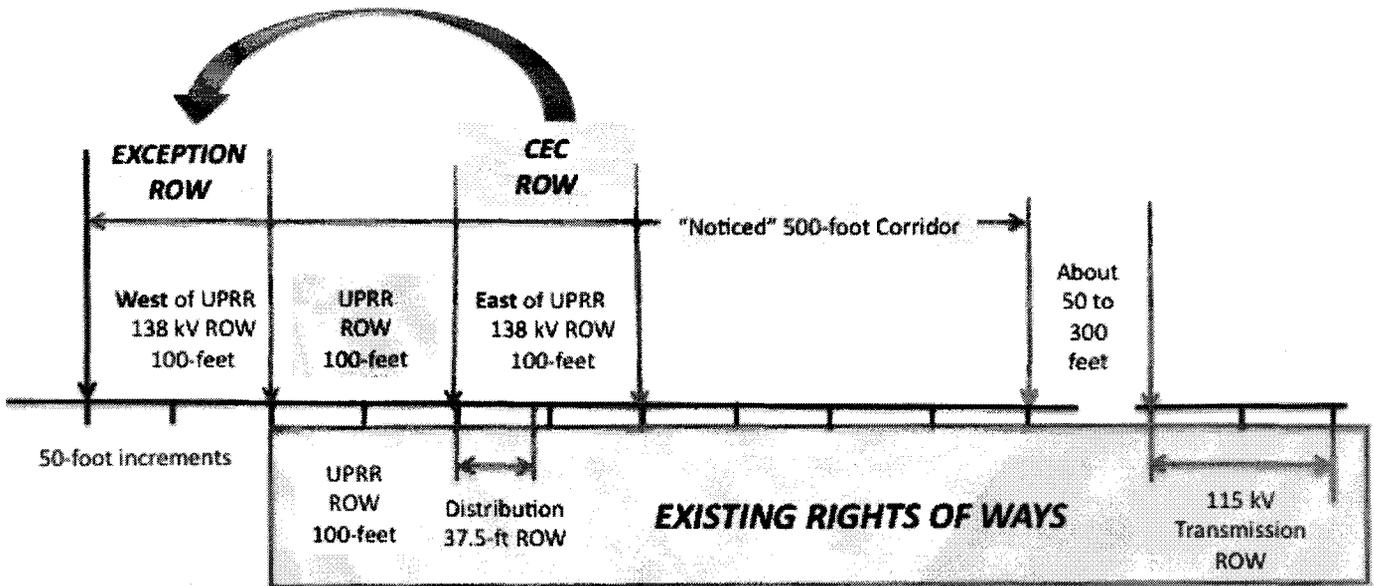
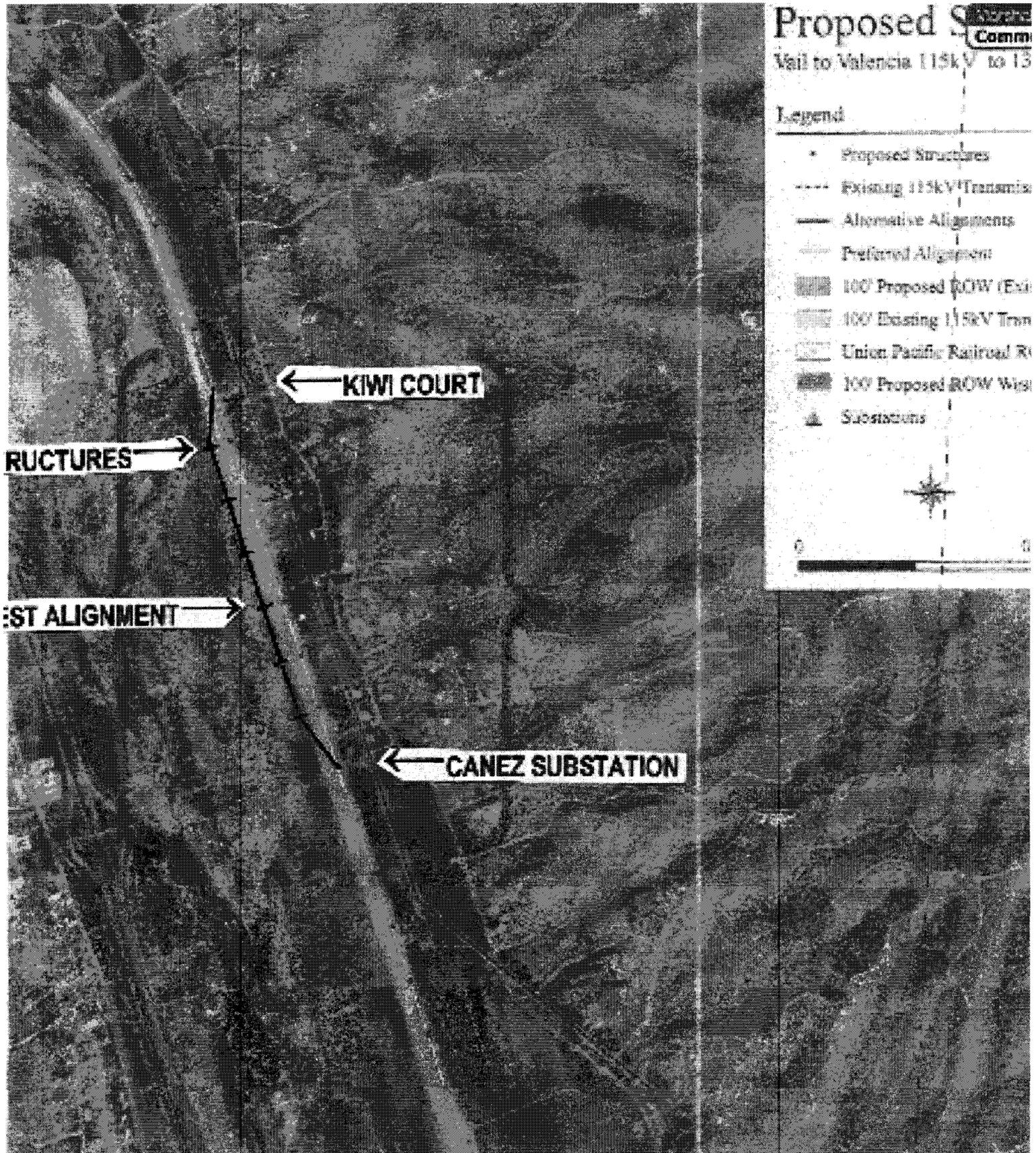


Figure 1. Cross-Section of Rights-of-Ways from East to West. This shows the Existing 115 kV Transmission line 100-ft ROW, Existing Distribution line 37.5-ft ROW, the CEC 138 kV line 100-ft ROW "east" of the UPRR, the UPRR 100-ft ROW, and the combined 138 kV Transmission/Distribution line 100-ft ROW "west" of the UPRR.

Legend

- Proposed Structures
- Existing 115kV Transmission
- Alternative Alignments
- Preferred Alignment
- 100' Proposed ROW (Exi)
- 100' Existing 115kV Tran
- Union Pacific Railroad R
- 100' Proposed ROW West
- Substations



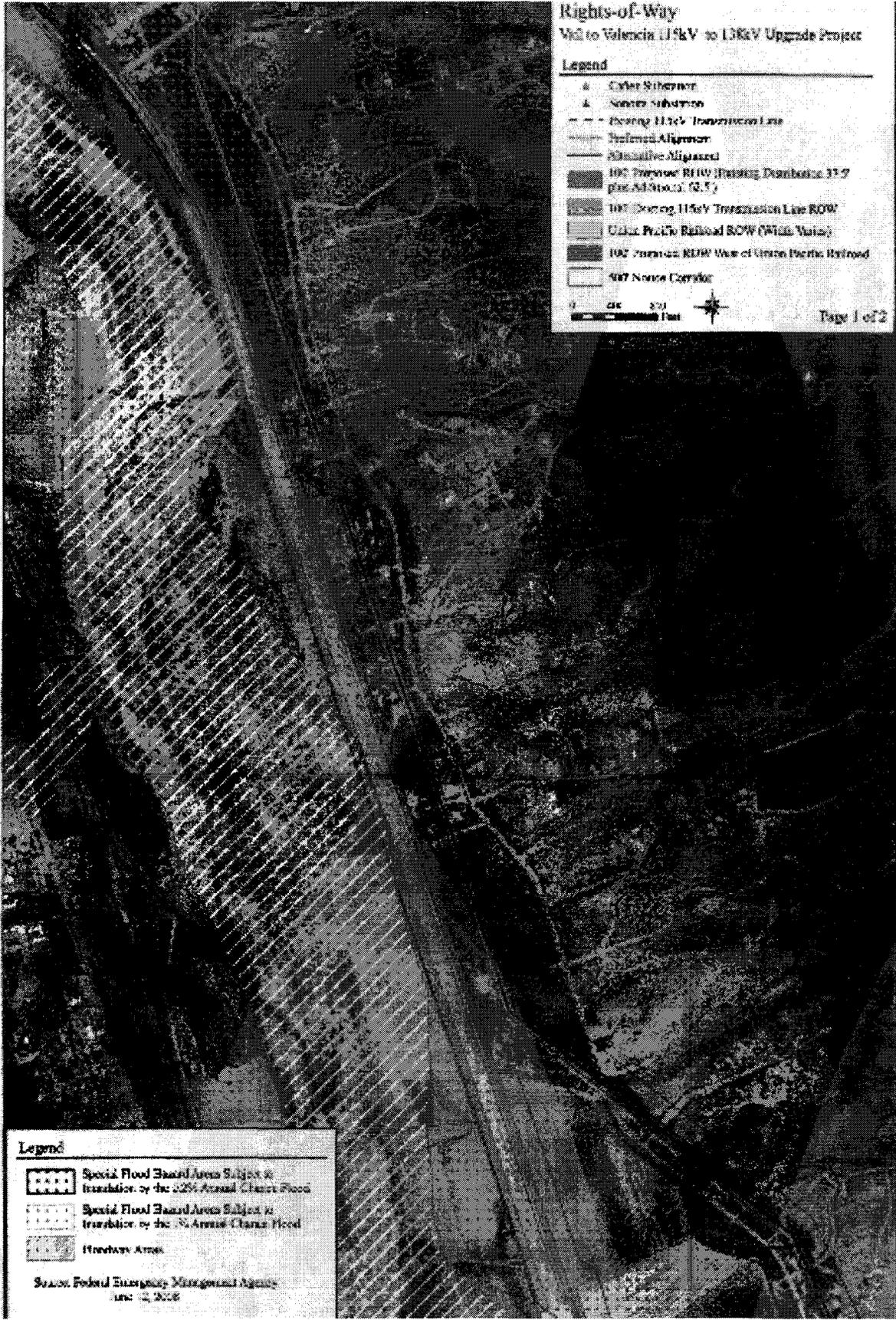
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Map 1. The Area of Interest for the Exception Alignment. The Area of Interest is only between the blue brackets from Kiwi Court, angling to the ranch road west of the railroad, then across to the Cañez Substation shown in the purple ROW, west of the UPRR. "Tic" marks the six or so monopole structures necessary for the Exception Alignment.

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- d. The CEC Alignment crosses through some 25 homeowners' properties, many of which also now include the existing 115 kV transmission line 100-foot (Clear-Cut) ROW and the 37.5-foot distribution ROW.
 - e. Enclosure 3 of this Attachment shows the magnitude of Clear-Cut vegetation clearing, for this cleared down to earth swath through this unique mature-growth mesquite bosque.
 - f. The Existing 115-kV line 100-foot ROW, to be abandoned by the CEC, is without change. (Tr304:9-15)
 - g. In the Exception Alignment, then, 37.5-feet of present distribution ROW and 100-feet of the existing 115 kV ROW are abandoned and traded for 100-feet of new 138 kV ROW west of the UPRR.
 - h. The CEC Alignment is adjacent and east of a 100-foot ROW owned by UPRR, in the Green line shown in Map 1. The Green line also is the company's Preferred Alignment.
 - i. The area West of the UPRR ROW is permanent ranch land because its agriculture water rights are essential for Rio Rico homeowners. A ranch road exists the length of this 1.3-mile western boundary of the Railroad and is the Purple line in Map 1 and under the Black line for the Exception Alignment.
 - j. Exception One requests the CEC be revised to move the centerline of CEC Alignment 200-feet west, so the new 138 kV ROW boundary is adjacent to the western, instead of the eastern, UPRR ROW boundary.
 - k. The Purple line in Map 1 is the 100-foot Proposed ROW West of UPRR that was discussed at length by the Committee. Based primarily on evidence received in the final hours of the hearing, the Committee, in my opinion, rejected a longer "West of UPRR" option I had proposed, and approved the East ROW, a Green line in Map 1, based on a hasty review, incomplete facts and misleading comments (see below).
 - l. Upon re-reading the transcripts, reviewing the evidence presented, Exception One was developed to avoid all the possible causes for the Committee's rejection of the longer "west" (Purple line in Map 1) of the UPRR ROW, with a shorter 1.3-mile proposal (Black line with tics for poles in Map 1) to
 - (1) Avoid both the areas of concern pointed out by the Santa Cruz County Flood Director,
 - (2) Use the existing ranch road (without major new access road development), and
 - (3) Benefit the homeowners by eliminating two easements east of the UPRR.
 - m. The Exception Alignment west of the UPRR ROW is the Black line in Map 1, where "tic" marks are placed at approximately 750-foot intervals, to indicate that 6 or so monopoles necessary from Kiwi Court to the Cañez substation.

The basis for the Exception Alignment is presented, with sources referenced, in detail below.

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Map 2. The 100-year and 500-year floodplains and floodway in the Area of Interest. The blue shaded areas are the floodplains and White-hashed area is the floodway. The Pink line shows a 100-ft ROW west of the railroad, Green line the 100-ft CEC Alignment east of the UPRR ROW (Yellow line), and Blue line the existing 115 kV ROW.

1 **5. Evidence Received in the Final Hours of the Hearing and a Rebuttal.⁶**

2 a. Letter (via email) from the Santa Cruz County Flood Administrator (Ex-EW-22, Ex-UNS-25) is in Enclosure

3 1. This subparagraph "a" provides a comprehensive response to this letter.

4 i. Background. Based on evidence submitted by the Company as collaborated by UNS Exhibit 25 (this
5 emailed letter), both the Existing and Proposed Preferred Alignment East and West of the UPRR are within the
6 100-year and 500-year floodplains. The floodway, always within the floodplain, is where destructive
7 hydrodynamic forces are present. The floodway extends to and includes part of the UPRR tracks, which have
8 been washed out in prior floods and are expected to in future major floods. Segments of a 100-foot wide
9 easement west of the UPRR ROW are just inside the eastern floodway and 100-year floodplains. Map 2 below
10 shows the 100-year and 500-year floodplains and the floodway and presently is in final FEMA reviews to
11 replace the antiquated FEMA flood maps. The validity of the proposed final FEMA maps was not questioned or
12 disputed by any party during this hearing.

13 ii. The Santa Cruz County Flood Control District "Letter" (Exhibits EW-22/UNS-25) dated 8 July 2009
14 (Enclosure 1). This Letter was received via email during the morning hearing on 8 July and provided to all
15 parties during testimony of Mrs. Webb (as Exhibit EW-22 without any maps) and later by UNSE at Exhibit UNS-
16 25 that included two maps. The important points in this letter that may mislead the Committee are below:

17 (a). Exception Alignment compared to that discussed in the Letter.

18 (1). The first paragraph in Enclosure 1 states the "particular area of review for this
19 correspondence is from Avenida Ostion to the Sonoita Substation." (Ex.UNS-25)

20 (2). It should be noted the Magruder rebuttal cross-examination of Mr. Beck was limited only to
21 a portion of this "area of review" (Tr789, 4-7) and not all the area discussed in the letter.

22 (3). The Exception Alignment is for an even smaller area than used by this party when cross-
23 examining Mr. Beck on 8 July 2009.

24 (4). The SCC Flood Administrator refers to two pages of maps in Enclosure 1 that covers about
25 10 miles of the Alignment. During the Beck cross-examination, referred only a smaller area from Avenida

26 ⁶ During the Closing Comments by the Applicant, he was quoted "You know, yesterday, Mr. Chairman, you looked at the fact that
27 evidence appeared to be being created on the fly, and that in all your years of sitting as a judge hadn't had that experience. I
28 would say that and other aspects of this case are unique. Certainly my experience in this case and others is that this is not what
we would typically see in court, at trial, and in a jury trial." (Tr856:5-12)

1 Oston to just south of the Cañez Substation about 2.3 miles. This has been further reduced in Map 1 above
2 that shows in large "brackets" the Exception Alignment, about 1.3 miles in length, from the CEC Alignment at
3 Kiwi Court to the Cañez Substation. Some of the Transcript comments below do not concern the Exception
4 Alignment but are for the alignment used during cross-examination or the much longer alignment in the Flood
5 Administrator's letter in Enclosure 1.

6 Comments. This Exception Alignment is for a smaller length of transmission line than considered
7 by the Committee that does not include the "circled" areas of concern cited by the Flood Administrator.

8 Summary. This objection has been overcome by excluding the two areas of concern.

9 (b). Jurisdiction of the County Flood District (first bullet in the Letter).

10 (1) The Santa Cruz County Flood Plain and Erosion Hazard Management Ordinance #2001-03 (Ex.
11 UNS-26) in ¶13.7A and A.R.S. § 48-360.9(H) statutorily exclude a CEC granted by the Arizona Power Plant and
12 Transmission Line Siting Committee from the Flood District's jurisdiction. (Tr904:9-13) All recommendations by
13 the Flood Control District should receive full consideration by the company.

14 (2) The Ordinance in ¶13.7B and A.R.S. § 48-3601 exempt utility lines and poles from requiring a
15 Floodplain use permit requirements before construction. (Tr800:22-801:3)

16 (3) Access roads and other construction in a floodplain will require a County permit. (Tr802:1-13)

17 Comments. This County has no direct jurisdiction over the utility lines and poles of the project.
18 Access road construction may require a permit from the Flood Control District.

19 Summary. The Flood Control District has jurisdiction over access road construction in this part of
20 the project. The Exception Alignment has an elevated ranch road within the proposed ROW so new road
21 construction appears to not be required.

22 (c). Transmission Line Designated as a Critical Facility by Flood Control (second bullet). The "critical"
23 designation means it is a significant infrastructure element must satisfy the 500-year floodplain rules instead
24 of the 100-year floodplain rules. (Ex EW-19K)

25 (1) During Mr. Beck's cross-examination, if there is loss of this line north or south, there is backup
26 power to supply adequate power for all UNS Electric customers.⁷ (Tr805:15-807:24, 903:14-20)

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28 ⁷ Also, please see additional discussion on this at ¶ 3c(3)(c) on page 11 above.

1 (2) The Cañez, Sonoita and Valencia substations are in the 100-year floodplain. (Tr552:20-23)

2 (3) Therefore having a higher degree of protection for this transmission line appears not
3 warranted compared to, in my opinion, substation facilities with higher criticality if flooded than the
4 monopoles of the 138 kV transmission line. (Tr805:20-806:6, 814:23-815:5)

5 (4) All poles on both alignments in this area are in the floodplain (Tr552:24-553:4), therefore,
6 concrete foundations should be designed to be higher than the appropriate floodplain.

7 (5). Poles in rivers [floodway] may require a 60 to 75 foot deep concrete foundation, and in this
8 case we are in a particular near groundwater, we will just have to drill down. (Tr403:7-12)

9 (6) A 500-year floodplain is 1.5 to 2 feet above the 100-year floodplain.

10 Comments. The Exemption Alignment should not, in my opinion, be a “critical facility” and subject to
11 the 500-year floodplain but remains under the 100-year floodplain rules. Both can be accommodated.

12 Summary. The Alignment options have no impact on selected floodplain for foundation design.

13 (d). Meandering Santa Cruz River into the Railroad Right of Way (third bullet).

14 (1) The Letter contains two maps provided by UNS Electric to the County Flood District in
15 Enclosure 1 on pages 3 and 4. Hand drawn circles show two “areas of concern” because these locations are
16 where the river floodway may cut through the railroad. (Tr772:1-5)

17 (2) During cross-examination of Mr. Beck, it was obvious that one of these two areas of concern
18 was south of the area being discussed. (Tr800:7-16)

19 (3) The second area of concern is now south of the Exclusion Alignment since this exclusion ends
20 at the Cañez Substation. Further, the Exclusion Alignment is well over 500 feet from the river channel, not
21 within the 200 to 500 feet in the Letter where the river might meander. (Tr903:10-13)

22 Comments. The reduced area of the Exclusion Alignment has been selected so that avoids the both
23 areas of concern discussed during cross-examination of Mr. Beck.

24 Summary. Neither the two areas of river meander are in the Exclusion Alignment.

25 (e). Transmission Poles in the Floodway (fourth bullet). As shown in Map 2, none of the
26 approximately six poles in the area contained in the Exclusion Alignment are in the floodway however; the
27 southern two poles maybe on floodway’s eastern boundary in water less than five feet.

1 (1) The resultant hydrodynamic pressure on less than 10 square feet can easily be accounted
2 when flood proofing the foundation design so any minimal erosion by scouring does not impact the structure.

3 (2) Some poles north of Kiwi Court, in Mr. Hays' letter and in the earlier area discussions during
4 this party's cross-examination of Mr. Beck, were in the main floodway.

5 (3) That area is not in this Exclusion Alignment and no fill should be necessary in the floodway.

6 (4) TEP facility designers are experienced with transmission poles in the center and deepest part
7 of floodways as shown in Exhibit MM-16 for such a pole in the middle of a concrete-sided, constricted part of
8 the Santa Cruz River. (Tr585:25-586:2, Tr797:15-17)

9 (5) Concrete sidewalls do not constrict the Santa Cruz River from spreading in the pastureland.

10 Comments. No proposed poles in this Exclusion are in the main floodway thus lowering probability of
11 potential erosion and structure damage that are flood proof using the design standards for transmission poles.

12 Summary. There should be no damage to the monopole foundations or scouring caused by flooding
13 due to distance from the main river channel and the location Exclusion Alignment on the floodway boundary.

14 (f). Damage to Riparian Habitat (fifth bullet). In the smaller area in the Exclusion Alignment, by using
15 "five-year trim" and minimal tree removal (Tr589:8-22), reestablishment of the natural habitat in fallow fields
16 will continue to make progress with minimal disturbance west of the railroad.

17 (1) All trees will be retained in order to prevent channelization. (Tr771:18-772:9)

18 (2) During construction and maintenance trees will only topped using the five-year trim process.

19 (3) There will be no need for any clear-cut removal in the Exclusion Alignment to prevent any
20 channelization in Exclusion Alignment. (Tr773:4-5)

21 (4) Further, a new access road is not required, as only minor changes, if any, to an existing ranch
22 road maybe required for construction and servicing these lines. (Tr794:14-18)

23 (5) Mr. Beck, under cross examination, stated servicing this line will average about once in five
24 years using "bucket" type trucks, as observations can be made from foot, horse, ATV, truck or helicopter with
25 minimal additional traffic on the ranch road after construction. (Tr795:20-25, 796:17-24)

26 Comment. There will be no riparian habitat impacts during construction or use. (Tr772:18-773:9)

27 Summary. There are no issues that remain that involve the riparian habitat with Exclusion Alignment.

1 (g). Flood District's Recommendation (sixth bullet). As expected, placement of any structure in the
2 floodplain should be avoided. This party agrees. However, flooding in the floodplain has very little impact on
3 these poles (Tr811:1-8) that are designed to be floodproof. (Tr798:7-13, Tr903:1-6) In the area considered by
4 the Exclusion Alignment, erosion is not a concern as the floodway is minimal.

5 Comment. This recommendation is consistent, and expected, as all Flood District managers do not
6 want any construction in the floodway or in the floodplain.

7 Summary. All of the Flood District's comments are considered. None prohibit approval of the
8 Exclusion Alignment by the Commission.

9 iii. Meeting with the Santa Cruz County Flood District Manager. On 15 July 2009, with Rio Rico residents
10 Mr. and Mrs. Campana, we met with Mr. John Hays, Santa Cruz County Flood District Administrator. We
11 discussed the flood impact differences between CEC and Exclusion Alignments.

12 (a). He acknowledged his letter was in response to UNS Electric's request from the line crossing at
13 Pendleton Drive to the Sonoita substation. It was not for the Exclusion Alignment.

14 (b). He agreed the County Flood District has no statutory jurisdiction for a CEC and that utility poles
15 were exempt from requiring a permit from his office.

16 (c). Additional information will be necessary to determine if a Critical Facility designation would still
17 apply, however, both the new FEMA 100- and 500-year flood water elevations are now public information and
18 should be used as minimal design criteria by UNS Electric so that all structures are floodproof.

19 (d). He agreed the area is the Exclusion Alignment is outside the floodway areas of concern.

20 (e). Floodproof foundations must be designed to withstand floodway conditions in the Exclusion
21 Alignment. It would to have been very challenging and expensive to do so in the "circled" areas in his letter.

22 (f). The recent "clear cut" existing 115 kV ROW is obvious to everyone in Rio Rico and was a key
23 reason for his concern to protect the riparian growth to the west of the UPRR. (Tr301: 16-302:20) As the new
24 growth trees will remain and using a five-year trim, these concerns has been minimized.

25 (g). He expressed concern that construction of an access road for the CEC ROW east of the railroad
26 would require a permit from his office. For the Exception Alignment, this may not be necessary but additional
27 design details will be necessary before such a determination can be made.

28 (h). No construction in any floodway or floodplain is preferred, as expected by one in his position.

1 (j). Combining the existing distribution with the 138 kV transmission lines into a combined structure
2 with the distribution lines under the transmission lines was suggested by the Committee and met with
3 company approval. (Tr303:11-13, TR303:24-304:8) This greatly benefits impacted landowners.

4 (k). Upon cross-examination of Mr. Beck this east of UPRR distribution line is primarily to service water
5 pump houses for the pasture fields west of the UPRR. (Tr792:2-21)

6 (l). Another distribution line goes along Pendleton Road to the East of the Existing 115 kV ROW for
7 only residential customers. (Tr791:24-792:4)

8 (m). This Exception combines the distribution and transmission lines on one structure when moved
9 from east to west of UPRR and frees up the 37.5-foot distribution ROW on these properties in a critical area of
10 the bosque. (Tr303:24-340:8)

11 (n). UNS Electric has talked to property owners about abandoning or releasing the 115 kV alignment
12 when moving the line to a new alignment in the area of interest. (TR304:9-15)

13 ii. Benefits to Rio Rico Properties if the 138 kV line is West of the UPRR in the area of this Exclusion.

14 (a). Removal of the transmission line right of way and the distribution line easements through
15 residential properties to agriculture land benefits existing land and platted lot owners.

16 (b). The value of unsold platted lots between Kiwi Court and Cañez Substation will increase because
17 there is no 100-foot wide transmission line and no 37.5-foot distribution easement. Some are owned by RRP.

18 (c). Rio Rico Properties is the sole property owner of these combined ROW between Kiwi Court and
19 the Cañez Substation as UNSE can trade the 100-ft 115 kV for the 100-foot combined 138 kV/distribution
20 easements, as testified "if we are giving up 100, we should get a hundred". (Tr303:5-13)

21 (d). No commitments have been made by either UNSE or Rio Rico Properties on the issue of
22 combining the new 138 kV with the existing distribution ROW. (Tr303:14-17)

23 iii. The Rio Rico Properties (Avatar) Email dated 8 July 2009 (Exhibit UNS-26) See enclosure 2.

24 (a). Transmission Line Crossing Grazing Land. The company's response on 8 July 2009 email to a
25 request by UNSE was received during lunch hour on 8 July 2009:.

26 (1). The TEP request stated "You [Rio Rico Properties] indicated that it [the line west of UPRR] was
27 compatible with the current use as leased grazing land."
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1 (2). Rio Rico Properties responded "It might be compatible with the current use, however, we
2 hesitate to have the transmission line go across the leased grazing land due to the possible future State Park."
3 [Emphasis added]

4 Comments. There are only a few poles in this Exception west of the UPRR. None "go across the leased
5 grazing land" but along the western railroad boundary. In this Exception, about six to eight poles will be
6 adjacent to the UPRR ROW and not cross the grazing land. At present at least three distribution lines "cross"
7 east/west this grazing land and all within the floodway.

8 Summary. This Exception is abuts the western UPRR boundary and does not "cross" any grazing land.

9 (b). Possible Future State Park. The response from Rio Rico Properties stated, "we hesitate to have the
10 transmission line go across the leased grazing land due to the possible future State Park." Most believe the
11 grazing land may not be developed into a state park due to the criticality of the agriculture water rights.

12 Comments. It is understandable that a state park might not want transmission lines going across it,
13 but the Exception Alignment, about six poles, will be at the edge of the UPRR ROW and not cross grazing land.
14 Rio Rico Properties has tried for years to make the grazing land a state park without success.

15 Summary. The Exception Alignment does not "cross" any potential state park land or grazing land.

16 (c). Preference for Line Alignment. The email stated, "In my recollection of the meeting we had, I
17 stated that Avatar [Rio Rico Properties] would prefer the transmission line east of the UPRR which was
18 preferred alignment by Unisource."

19 (1) There was one meeting with Rio Rico Properties and UNSE prior to the hearings. (Tr824:6-10)

20 (2) The emails sent to and the one received from Rio Rico Properties were both before noon on 8
21 July 2008. (Enclosure 2, Ex UNS-26)

22 Comments. This is a "recollection" and not a definitive statement of opposing west of the UPRR.
23 Further, the substance of this one "meeting" with Avatar is unknown.

24 Summary. There was no hard opposition to west of the UPRR; only Avatar "preference" is to go along
25 the Preferred Alignment.

26 Iv. Summary of the Rio Rico Properties email. The Rio Rico Properties email did not specifically oppose the
27 Exclusion Alternative with poles placed along the western boundary of the UPRR right of way.

1 c. Public "Notice" issue. During discussions, the issue was raised that concerned providing "notice" to those
2 who might be impacted by the Project.

3 i. This was determined to be the 500-foot wide transmission "corridor" that was in these notices.

4 ii. At one time, the Committee Chairman was sure that a route to the West of the UPRR would require this
5 case be "re-noticed". (Tr288:4-289:5, TR544:2-545:11)

6 iii. Some Committee members were doubtful if the west of the UPRR alignment was within the "noticed"
7 500-foot corridor. (Tr601:9-22)

8 iv. However, later testimony by UNSE eliminated this as an issue. (Tr771:4-9)

9 d. Other Factors Impacting the Mature-Growth Bosque. The natural habitat in this bosque area is suitable for
10 at least seven special species as shown in the Application. Unfortunately, using the "clear cut" vegetation
11 management process destroys and divides the habitat into smaller and possibly not sustainable segments for
12 some of these species. (Tr901:14-902:1)

13 i. "Clear Cut" Impacts on the Bosque.

14 (a). "Clear-cutting is the process of trimming to the ground. (TR307:8-10)

15 (b). Clear cutting was done north of Kiwi and south of Cañez, with "five-year trim" just north of Cañez
16 substation. (Tr306:12-16; 307:3-5)

17 (c). Also trees need to be cleared in the area around all poles, called the "danger zone". (Tr309:3-8)

18 (d). In addition, there needs to be enough clearing so that construction equipment can be brought in
19 is also required. (Tr309:19-21)

20 (e). Further, during construction a patrol truck needs to drive down the right-of-way to carry a sock
21 line that is put into pulleys in order to tension the line that will add "some disturbance along the line that
22 needs to be there for an access road". (Tr312:21-25)

23 ii. "Five-Year Trim" Impacts on the Bosque.

24 (a). The "five-year trim" process removes vegetation so that there is at least a three-foot "safety zone"
25 clearance between vegetation and the lines in order to prevent arcing across the lines. (Tr307:20-23)

26 (b). Using this process, there are dips between the poles, with an approximate 750-foot span length.
27 (Tr312:5-7)

28 (c). The 5-year trim may also cost more since it will have to be repeated more often than "clear cut".

1 (d). The poles will probably be 85 to 90 feet tall. (Tr311:3-5)

2 (e). The company has agreed to use the five-year trim process, as long as permitted by regulating
3 authorities, in this bosque area. (Tr789:8-790:15)

4 iii. Clearance necessary for construction Impacts on the Bosque.

5 (a). Construction will include flatbed trucks carrying sections of poles, a crane, dozers, and other
6 equipment. (Tr315:7-17)

7 (b). In this area of Rio Rico, getting construction equipment to the site will be a challenge. The
8 company will have to work with every landowner along the route using existing driveways or roads to get in to
9 set equipment adjacent to those roads in order to try "to limit the need to clear vegetation." (Tr315:21-316:2)

10
11 **6. Rationale for the Proposed Exception One.**

12 a. The evidence considered of emails from the Santa Cruz County Flood District Coordinator and from the
13 manager of the Rio Rico Properties was rapidly inserted into these proceedings without adequate preparation
14 and thought. In my opinion, the Applicant inadvertently misled the Committee with hasty interpretations of
15 these two emails based on this party's investigations since the hearings.

16 b. Transcript quotes in the prior paragraph are from testimony prior to and related to issues involved with
17 Exception One.

18 c. From the transcripts, some of these misinterpretations include:

19 i. Liability for Poles in Floodway.

20 (a). A Committee member was concerned about the liabilities from placing a pole west of the railroad
21 would "in certain sections" increase the potential for the Santa Cruz River channel to migrate and possibly
22 damage the railroad or the power line." (TR826:1-15)

23 (b). Further, "has it been your experience ... diversion of the water or other items coming down the
24 floodway, that causes damage to other portions of the floodway or channel?" (TR826:5-10,)

25 Comments: This concern is removed based on paragraphs 4 above, in particular 4.a.ii(k) and (l) above.

26 No construction will occur in the floodway based on this Exclusion.

27 Summary: Based on the shorter Kiwi Court to Cañez substation segment in Exception One, areas
28 "circled" in Enclosure 1, pages 3 and 4, are outside of this area.

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2 ii. Put the Poles in the River. The counsel for the Applicant in his Closing Comments stated that “all of
3 those folks have come together and said boy, that would take this line that has been on our property from the
4 time we bought it into the river and away from us... that putting this line in the floodway creates risks”
(Tr878:1-5, 10-11)

5 Comments: The area in this Exception is not “in the river” or in the hydrodynamic part of the Santa
6 Cruz River floodway along the shallow edge with less than five feet of water during a 100-year flood event.
7 Any associated risk can be simply mitigated by using current design standards to ensure all poles have flood
8 proof designs.

9 Summary: There is no risk associated with the poles in Exception One, since design factors are known
10 to ensure they are flood proof.

11 iii. Split among the Residents. The Applicant’s Closing Comments stated that “in light of the split among
12 the residents. I think our preference is to build in the existing alignment because it has less cost.”

13 (a). The company never offered anything but the Existing 115 kV line and Preferred (east of UPRR)
14 Alignments to these residents, no other option was considered. An Alignment West of UPRR never discussed
15 with landowners. (Tr902:23-25)

16 (b) Based on public comment and evidence presented, a Petition (Ex COM-8) was presented with 17
17 lots between Kiwi Court and Cañez Substation to have that segment (this Exception) moved west of the
18 railroad in the area in the Exception. (Tr620:9-17, 622:16-623:24, 774:15-19, 902:12-22)

19 (c). There is no disagreement or “split” among these landowners when offered an option for West of
20 the UPRR, 100% signed the petition (minus one who was not home). (Tr622:13-17, Tr902:23-25)

21 Comments: The counsel’s comment about a “split among the residents” was overstated.

22 Summary: No known “split” exists for the residents between Kiwi Court and the Cañez Substation.

23 iv. Independent Archaeologist and Biologist.

24 (a). The company stated “having archaeologist on-site during all aspects of construction, having a
25 biologist on-site during all aspects of construction are increased costs.” (Tr955:14-18).

26 (b). The aim for having an independent archaeologist and an independent biologist was to have them
27 conduct a pre-construction survey, determine sensitive areas, be on-site when working in pre-determined
28

1 sensitive areas, and available to participate if archaeological or historic resources are uncovered or if special
2 species are located. (Tr911:11-23, 912:21-913:2, 913:11-20)

3 (c). The word "archaeologist" is not in the CEC. (Tr955:13-21)

4 Comments: The Company's counsel implied high costs for these services during "all" construction and
5 omitted a term "independent" before biologist and archaeologist.

6 Summary. An independent, third party, qualified archaeologist to survey before construction, to react
7 if archaeological or cultural resources are found, and to ensure any material is properly handled.

8 v. Two Year Fuse on Construction.

9 (a). The company stated, "Mr. Magruder, he asked for a two-year fuse on the CEC. The application
10 points out "we are projecting to commence construction, break ground in 2011 with completion in 2012."
11 Under his two-year fuse we have come in and seek renewal during the course of construction. We would ask a
12 reasonable time frame be a five-year fuse on the CEC." (Tr958:25-959:6).

13 (b) Also, one Committee member then stated, "I do not agree with Mr. Magruder's suggestion of the
14 time frame other than the five years. So I think we should retain the five-year time frame." (Tr1067:8-11)

15 Comments: Obviously, this was a misunderstanding. The Magruder proposal was for a CEC renewal
16 period to be limited to two-years, after the initial CEC effective period of five years after ACC approval. The
17 limit on renewal is to prevent "forever" CECs and there is no limit on renewals.

18 Summary: Obviously, the company did not understand this at all.

19 vi. Floodway issues for West of UPRR Alignment. Committee members' comments during deliberation:

20 (a). "I would speak against an alignment that would be west of the railroad track alignment in terms of
21 the floodplain issues that have been extensively discussed here." (Tr982:25-983-3)

22 (b). "I do not think that siting to the west of the railroad track is a good idea because of floodway
23 issues." (Tr983:18-20)

24 (c). "I originally had thought that an alignment to the west of the railroad would be a potential and
25 wanted to see if the 500-foot corridor would allow that development. However, based on the floodway and
26 where it comes so close to the railroad tracks in the two areas that were pointed out by Santa Cruz County,
27 and also their oppositions to it and concern about it possibly causing a breach at the railroad areas and then
28 affecting those adjacent landowners, I think we would put TEP or UNS in a very libelous situation. And I would

1 think we would be remiss to not listen to a floodplain official and their concerns about construction and
2 disturbances in that area. It is rough enough as it is, with the natural habitat, keeping that area of the river
3 maintained. So, I can't support the west side, though I know the residents were interested in it, but I don't
4 think they had all the information that we have at this point." (Tr984:3-17)

5 (d). "I have similar feelings... in that particularly for west of the railroad, I think the Committee is on,
6 would be on shaky ground notice-wise to adopt that alignment. I don't think there is any support for that. It
7 seemed like a good idea at first, but the devil is in the details, I don't think it works." (Tr987:13-20) "So I have
8 been leaning all along towards just west of the railroad, but I am open to in the front yard, too, if that works.
9 So that's where I'm at." (Tr987:25-988:3)

10 (e). "I also can't support the west of the railroad route, although that looked very attractive to me
11 before, for the reasons that we have concern and potential flood damage liability." (Tr988:6-10)

12 (f). "I just wanted to state for the record that I also had earlier entertained the possibility of location
13 this segment along the river west of the railroad tracks and along the floodplain as Mr. Magruder had
14 requested and outlined earlier. But after further discussion and additional questions to the applicant about
15 the standard and company's policy, industry standards, the actual floods that have occurred, for example in
16 Tucson, the Rillito Creek ..." (Tr987:16-25) "So if that's the case, that this could also potentially erode the bed
17 of the railroad and could cause some quite severe damage that is unanticipated by is likely if there was such a
18 flood, so therefore, I think it is a more prudent approach we move forward with the safeguarding of this route
19 in the east side of the railroad tracks ..." (Tr998:6-12)

20 Comments: All the issues above have been resolved in Exception One has been reduced based the
21 Committee's considerations. Residual flood risk can be incorporated into a design to meet the appropriate
22 floodproof standards. (Tr798:7-13) The Flood District letter said to avoid two "circled" areas. (Tr772:1-5)

23 Summary: All flood risk elements have been either avoided or can be mitigated by proper engineering.
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Enclosures

to

Attachment A

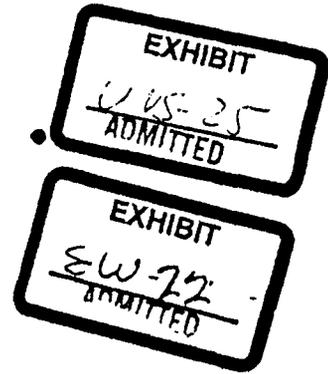
2 Letter via Email from the
3 Santa Cruz County Flood Control District and Floodplain Administrator (dated 8 July 2009)
4 (Exhibits EW-22 and UNS-25)

5 Scott J. Altherr, P.E., CFM
6 General Manager

7 FLOOD CONTROL DISTRICT
8 AND
9 FLOODPLAIN ADMINISTRATION
10 SANTA CRUZ COUNTY

11 July 8, 2009

12 Unisource Electric
13 C/O Mr. Kevin Heller, P.E.
14 TEP CO.
15 Mail Stop OH220
16 P.O. Box 711
17 Tucson, AZ 85702



18 RE: Comments on Unisource Electric Line Proposal.

19 Dear Mr. Heller,

20 I am in receipt the map left with me regarding the proposed routes for a new electric line main to
21 replace the existing line from Tucson to Nogales. The particular area of review for this
22 correspondence is from Avenida Ostion to the Sonoita Substation as that is the area covered by
23 the map provided. However, the comments, in general, should work for the entire set of
24 proposed alignments with Santa Cruz County.

25 In reviewing the proposed alignments, the district has the following comments:

- 26 • Section 3.7 of the Santa Cruz County Floodplain and Erosion Hazard Management Ordinance #2001-03, and A.R.S. §48-3601 exempts the line and poles from requiring a Floodplain Use Permit for construction; however, construction of a following road, especially if culverts or other improvements are to be constructed, will require a Floodplain Use Permit.
- 27 • As the line is the only transmission line for the area, it is recommended the line be considered a Critical Facility/Critical Service under the District's Critical Facility/Critical Service Standards and be protected from the 500-year flood event if placed within the 500-year floodplain of any watershed.
- 28 • In at least two locations, the channel of the Santa Cruz River is already meandering into the railroad right-of-way. As there is a history of the Santa Cruz River meandering during flood events and taking out portions of the railroad tracks, any alignment that is adjacent to the tracks is subject to the possibility of lateral channel migration damaging the power line and poles. In the two noted locations (see returned map) the proposed alignments would be within 100 to 200 feet of the channel bank of the Santa Cruz River, which has the potential of moving up to 500 feet in a single event.
- Verbally, the District was made aware of a proposal to place the line to the west of the railroad tracks. As this would place the line, in certain locations, within the actual channel of the Santa Cruz River, the District would protest such a decision. Furthermore, such an alignment would place the power line and its poles into the floodway of the Santa Cruz River. Section 5.8 of the Ordinance prohibits construction and placement of fill within the floodway.
- Placement to the west of the railroad tracks would also damage what riparian habitat remains or is reestablishing itself along the west side of the tracks, between the river and the tracks. Historically, it has been noted that the well established areas of riparian habitat along the Santa Cruz River have made the channel more stable and less prone to

FOR YOUR REFERENCE:

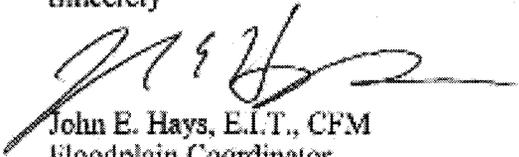
Top page of exhibit only.

5 lateral migration, while areas of disturbance enhance channel instability and channel
6 migration. Therefore, it is the opinion of the District that placing the line to the west of
the railroad runs the risk, in certain sections, of increasing the potential for the Santa Cruz
7 River channel to migrate and possibly damage the railroad or the power line.

- 8 • Generally speaking, the District sees the existing alignment as the best alternative from
the standpoint of protecting the line from flooding and erosion hazards, especially those
9 associated with the Santa Cruz River.

10 Thank you for your consideration and cooperation in regards to this matter. Should there be any
questions regarding this or any other floodplain concern, please feel free to contact me at (520)
11 375-7830 or by email at jhays@co.santa-cruz.az.us.

12 Sincerely

13 
John E. Hays, E.I.T., CFM
14 Floodplain Coordinator

15 C: Scott Altherr, P.E., General Manager
Mary Dahl, Community Development Director
16 Robert Banzhof, Building Official
Jesus Valdez, P.E., County Engineer
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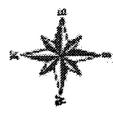
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Proposed Structure

Vail to Valencia 115kV to 138kV

Legend

- Proposed Structures
- - - Existing 115kV Transmissions
- Alternative Alignments
- Preferred Alignment
- █ 100' Proposed ROW (Existing)
- █ 100' Existing 115kV Transmissions
- █ Union Pacific Railroad ROW
- █ 100' Proposed ROW West of
- △ Substations



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Attachment A, Enclosure 2

Email in Response to a Request from TEP for
Update to Line Siting and Rio Rico's Response (dated 8 July 2009)
(Exhibit UNS-26)

UNSE -26
Page 1 of 1

Request for Update on Vail to Valencia Line Siting
Clark Bryner

From: SBreslin@tep.com
Sent: Wednesday, July 08, 2009 1:37 PM
To: Clark Bryner
Subject: Fw: Request for Update on Vail to Valencia Line Siting

From: Sheila Vasquez
To: Breslin, Shannon
Cc: Liz Gutfahr ; Bill Walker ; Gary Grizzle
Sent: Wed Jul 08 12:55:31 2009
Subject: RE: Request for Update on Vail to Valencia Line Siting

Shannon,

In my recollection of the meeting we had, I stated that Avatar would prefer the transmission line to be east of the UPRR which was the preferred alignment by Unisource. It might be compatible with the current use, however, we hesitate to have the transmission line go across the leased grazing land due to the possible future State Park.

From: SBreslin@tep.com [mailto:SBreslin@tep.com]
Sent: Wednesday, July 08, 2009 1:26 PM
To: Sheila Vasquez
Subject: Request for Update on Vail to Valencia Line Siting
Importance: High

Greetings, Sheila. Wanted to follow-up on our discussion of the West side of the railroad. When we met June 19, you and Bill wanted to confirm with Florida HQ about Rio Rico's position regarding potentially siting a portion of the transmission line west of the UPRR once the alignment crosses Pendleton. You indicated that it was compatible with current use as leased grazing land. However, before Rio Rico Properties could make a position firm, you wanted to ensure the line's compatibility with future conveyance to AZ State Parks.

Any update on a firm position?

Many thanks,

Shannon

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Attachment A, Enclosure 3

**Picture Showing Clear Cut in the Existing 115 kV Transmission Line ROW
in the Mature-Growth Mesquite Bosque**



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**Photograph 1 showing clear cutting
of the current transmission line
ROW taken between Palo Parado
Road and Kiwi Court.**

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2 **Attachment B**

3 **RATIONALE FOR EXCEPTION TWO**

4 1. **Objective.** To increase local participation in selection of the pole finish color along the Alignment.

5
6 2. **Purpose.** The Pole Finish Plan (PFP) requirements in the CEC permit limited participation in the selection of
7 the finish to be used on the new monopoles and this exception expands the public's opportunity to
8 participate.

9 3. **Balance between Public Interest and Need and the Environment.** As required by A.R.S. § 40-360-07 and
10 ACC Procedural Order of 12 August 2009, the following information and citations are required to be included
11 in this filing:

12 *"The Commission shall balance, in the broad public interest, the need for an adequate,*
13 *economical and reliable supply of electric power with the desire to minimize the effect thereof*
14 *on the environment and ecology of this state."*⁸

15 The elements of this requirement with supporting details and citations are in paragraph 4 below.

16 a. **Broad Public Interest in this Exception.**

17 The purpose of this Exception is to broaden the public interest in the determination of the finish color
18 for the new 138 kV monopoles from just the landowner on which the pole is placed to now include those
19 landowners within 500-feet of the centerline of the approved Alignment. Furthermore, the response time is
20 increased from the 15-days in the CEC to 45-days to permit adequate time for the company to contact these
21 owners and for them to reach agreement.

22 b. **Need for Adequate, Economic and Reliable Supply of Electric Power.**

23 (1) **Adequate Electric Power.** This Exception makes no change in electric characteristics of the 138 kV
24 transmission line or the distribution line underneath from that in the CEC.

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28 ⁸ ACC Procedural Order of 12 August 2009, 3:2-6.

1 (2) **Economic Costs**. The company initially proposed only a dark brown finish but has now agreed to
2 also include a dulled gray finish. The company plans to work through this issue during public outreach required
3 by the CEC when negotiating pole locations with landowners.

4 (a) **Cost for Notification of Additional Landowners**. There will an increase in the cost of the line
5 for mailing copies of the Pole Finish Plan to additional landowners. The company has an extensive program of
6 outreach planned for all impacted landowners. This Exception supports the company's outreach program.

7 (b) **Cost of the Dulled Gray Finish**. The company testified that dulled gray finished poles were
8 \$1,500 more expensive than self-weathering dark brown poles. (Tr689:13-19)

9 (1) Using the company's estimate of 200 to 240 poles (Ex UNS-1) , then if half are of each
10 finish, the additional cost for 120 poles is estimated to be \$180,000 of the some \$47,000,000 estimated as
11 total project cost, or an increase of approximately 0.38%.

12 (2) This is deemed as a reasonable expense, since the option for a second pole finish can
13 significantly reduce visibility of these monopoles, one of, if not the most common public complaint for siting
14 transmission lines.

15 (3) **Reliable Electric Power Supply**. There are no impacts on the reliability of electric power supply
16 due to this Exception.

17 c. **Environment and Ecology of the State**.

18 (1) **Visual Environment**. There is only environmental impact of this Exception, to reduce the visibility
19 of the new transmission line monopoles by closer matching the contrast of the pole's finish with the
20 background. The closer the contrast of the pole matches that of the background, then the less visible will be
21 the pole. A dark brown pole finish maybe best when the background is darker, such a dark mountain or trees,
22 while the dulled gray galvanized steel finish maybe best when the background is dominantly sky or when the
23 background closer matches gray then dark brown.

24 (2) **Other Environmental or Ecology Impacts**. There are none.

25 d. **CONCLUSION Concerning Exception Two**.

26 **To balance the need for this Project with the effect on the environment and ecology of the state,**
27 **only by changing the Conditions in the CEC to those in this Exception, can a resolution of these issues**
28

1 benefit the broader public interest and the environment (without impacting the benefits of meeting
2 the needs of the project) be served by the findings on the matters raised during the course of these
3 proceedings and herein.
4

5 e. **RECOMMENDATION Concerning Exception Two.**

6 Based on this conclusion, then by the Commission's approval of the recommended Exception
7 Two changes to the CEC, the effects on the environment and ecology of the state will be better
8 balanced to meet the needs of this project.

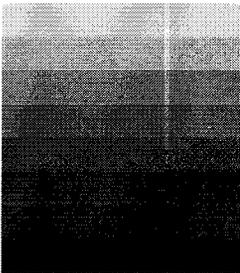
9 f. **Specific Recommended CEC Changes for Exception Two.** See paragraph 5.c above on page 8 of this Brief
10 for the recommended changes to the CEC.
11

12 **4. Scope of this Exception.**

- 13 a. This Exception implements a decision process for those most concerned with seeing the visual impacts of
14 the transmission line poles for the next five decades or more decades.
- 15 b. The company acknowledges the decision process is complex. (Tr890:22-892:17, 893:8-23)
- 16 c. The company position is that it would like the flexibility of using both finishes, depending on the
17 elevation of the pole placement. (Tr598:24-599:2)
- 18 d. These transmission line monopoles can be seen for many miles; however, those who live closest will
19 have the most significant visual impacts. (Tr641:13-16, Ex EW-7)
- 20 e. Finish selection criteria are based on minimizing the visual contrast between the background and pole
21 based on where most observers will see the pole. From the below artist's standard Denman Ross Nine
22 Step Value Scale for visual contrast, a brown self-weathering pole finish value is between 8 and 9 and a
23 dulled-gray finish between 2 and 3. When the background view has a value of 5 or less, a dulled-gray
24 finish should be used and when the background has a value above 5, a self-weathering finish should be
25 used. Terrain and vegetation with angle of predominate viewers should be considered to determine
26 background value. (Ex. MM-10, MM-20, proposed CEC)
- 27 f. As of today, the company has NOT provided landowners any final pole siting or right-of-way information
28 as only a 500-foot "planning corridor" has been granted in this CEC. (CEC2: 25-27)

g. Finish selection criteria should be based on minimizing the visual contrast between the background and pole based on where most observers will see the pole. From the artist's standard Denman Ross Nine Step Value Scale in Attachment B Figure 1 below, for visual contrast, a brown self-weathering pole finish has a value between 8 and 9 and a dulled-gray finish between 2 and 3. When the background view has a value of 5 or less, a dulled-gray finish should be used and when the background has a value above 5, a self-weathering dark brown finish should be used. Terrain and vegetation backgrounds, based on the angle of predominate viewers, should be considered to determine background value.

Denman Ross nine step value scale

value	sample	value name
1		white
2		high light
3		light
4		low light
5		midvalue
6		high dark
7		dark
8		low dark
9		black

Ref: www.handprint.com/HP/WCL/color11.html
(verified 30 June 2009)

Attachment B Figure 1. The Denman Ross Nine Step Value Scale. This is a scale has been used by artists and other communities since 1907 for measuring the contrast of objects. The greater difference in value is used for visual emphasis while a smaller value difference will decrease the visual impact.

- h. In general, in open terrain dulled-gray finish is appropriate from where most observers would view most of the pole against a sky background (low Denman Ross value), while a terrain background (higher Denman Ross value) behind a pole would be appropriate for a self-weathering finish. (Tr548:10-549:1, Ex.MM-10, MM-20)
- i. The Pole Finish Plan (PFP) will indicate where a dulled-gray finish will be used and where self-weathering steel will be used. It is expected between 50 and 60% of the poles in this Project will have dulled-gray finish.) (Tr548:10-549:1, Ex.MM-10, MM-20)
- j. The plans to accomplish this landowner notification is after the Commission has reviewed and ordered the CEC; however, the company will have to determine this information with in 60 days of the Commission decision on granting the CEC. (CEC¶20, 9:16-19)

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- k. The company “shall make good faith efforts to commence discussions [within these 60 days] with private landowners, on whose property the Project Alignment is located, to identify the specific location for the Project’s right-of-way and placement of poles.” (CEC¶20, 9:17-19)
 - l. The company “shall make reasonable efforts to accommodate landowner’s preferences regarding the placement of poles located on or *adjacent to the landowners’ property.*” (CEC¶20, 9:20-22) [Italics added to show that “*adjacent*” landowners’ property are a CEC consideration.]
 - m. The company is expected to “make reasonable efforts to work with private landowners on whose property the Project right-of-way will be located, to mitigate the impacts of the location, construction, and operation of the Project.” (CEC¶21, 9:23-25)
 - n. Therefore, no landowners presently know on whose property these poles will be placed as the CEC only grants a 500-foot wide “transmission line corridor” for the company to locate its 100-foot wide right-of-way. (CEC2:25-27; Exhibit A,12:2-3)
 - o. Within 30 days of the Commission decision approving the CEC, the company will submit a Pole Finish Plan (PFP) for the proposed finish for each part of the Project. (CEC¶23, 10:1-3) The PFP is to be submitted to “landowners whose property is directly impacted.” (CEC¶23, 10:11-12)
 - p. The term “directly impacted” above is not defined in the CEC; however, from paragraph 20 of the CEC it is at least the landowner on which the pole is to be located and on property “adjacent to the landowners’ property.” (CEC¶20, 9:20-22)
 - q. This Exception changes “directly impacted” to include all landowners’ whose property is within 500-feet of the centerline of the Alignment.
 - r. The “Parties and landowners whose property is directly impacted shall have 15 days to object in writing to the Commission.” (CEC¶22, 10:12-13)
 - s. This Exception extends this by an additional 30 days because none of these landowners now know there will be an option to review, approve, or request a change in the finish color of the proposed by the company in the Pole Finish Plan. The 15 days provided for this review unreasonably limits discussions with the company, to permit neighbors to discuss the option, and to agree as to what finish the would want on nearby poles.

- 1 t. This Exception broadens public participation by increasing from just landowners where a pole is to be
2 sited to include those nearby, up to 500-ft from the centerline of the approved Alignment.
3
4 u. The company stated it would not object to giving the Parties 15 days to object to the pole finish.
5 (Tr896:20-23)
6

7 **5. Rationale for the Proposed Change.**

- 8 a. As granted, the CEC Pole Finish Plan (PFP) will be provided only to landowners that are “directly
9 impacted, that is where a pole is to be constructed, and that these landholders with have 15-days in
10 which to file a statement to the company and the Commission. (CEC¶23,10:12-13)
11
12 b. There are many others significantly impacted by the visual appearance of these poles. The objective of
13 the PLP is to reduce this visual impact by choosing the lowest difference in contrast between the
14 foreground dull gray or dark brown pole finish color with the background. This visual impact will extend
15 far beyond most landowners’ viewscape. To limit the number to those within 500-feet of the pole’s
16 location, then those most closely impacted should be informed about the PFP and be able to file a
17 statement with the company and the Commission.
18
19 c. Further, additional time will be needed to develop consensus within impacted neighboring landowners,
20 which may involve several weeks of local discussions. Therefore, adding 30-days for such discussions
21 should be in the public interest and is recommended by this Exception.
22
23 d. A beneficial result of this Exclusion is that it allows additional time so that more will join in the pole
24 finish discussions. The result should be community “buy in” by those most impacted so that complaints
25 will be difficult to make later.
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