

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of) Deliberative
SATSOP COMBUSTION TURBINE PROJECT) Session
AMENDMENT NO. 5) Pages 1 - 85
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A Deliberative Session in the above matter was held on Wednesday, September 29, 2010, at the Utilities and Transportation Commission Building, 1300 South Evergreen Park Drive S.W., Room 206, in Olympia, Washington at 9:15 a.m., between the Energy Facility Site Evaluation Council.

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CHAIR LUCE: Good morning. My name is Jim Luce. I am Chair of the Washington State Energy Siting Council. Today is Wednesday, September 29. The time is 9:15. I apologize for starting a little late. We were waiting for additional members. We are in the Washington Utilities and Transportation Commission Building, Room 206, Olympia, Washington, and the purpose of today's meeting is as I said to discuss in deliberative session and open session the proposed site certificate agreement and order for the Grays Harbor Energy Project units.

Now I will just ask Council Members to identify themselves moving from my left to my right.

MS. ADELSMAN: This is Hedia Adelsman, and I represent the Department of Ecology.

1 MR. MOSS: My name is Dennis Moss. I'm with the
2 Utilities and Transportation Commission.

3 CHAIR LUCE: I'm Jim Luce. I'm the Chair.

4 MR. FRYHLING: I'm Dick Fryhling. I represent the
5 Department of Commerce.

6 MS. McDONALD: Mary McDonald, Department of
7 Natural Resources.

8 MR. MOSS: Let me just alert to everyone in this
9 hearing room you have to push the button on the microphone
10 and ensure that the red light is illuminated or the
11 microphone will not be working.

12 MS. McDONALD: Oh, okay. Mary McDonald with the
13 Department of Natural Resources.

14 MS. WILLIS: Terry Willis with the Grays Harbor
15 County Commissioners.

16 CHAIR LUCE: This morning's meeting will be
17 facilitated by our Administrative Law Judge Bob Wallis.
18 There is an agenda that's been provided to Council Members.
19 So at this point in time I will turn the meeting over to Bob
20 Wallis, our Administrative Law Judge and Al Wright, Manager.
21 They are supported by Kyle Crews, Assistant Attorney
22 General. So, Gentlemen.

23 JUDGE WALLIS: Thank you, Mr. Chair. Let me just
24 identify the goals and materials and the agenda for today.
25 Our goal at the end of today's session is to have a couple

1 of documents that the Council Members are satisfied with and
2 basically could go out and people would be willing to sign.
3 We have had some comments on the drafts from Dennis Moss and
4 Jim Luce. Manager Wright and I and those two gentlemen went
5 through the comments yesterday, and we will be working from
6 a draft that includes those comments.

7 In general, the four of us agreed that the result
8 would be satisfactory as an order and offer it to you as
9 suggestion. The agenda would have us take a look at the
10 Draft Council Order first, then the Draft Site Certification
11 Agreement, then look at the status of the Site Certification
12 Agreement's attachments and permits, identify Applicant's
13 comments. The Applicant did provide some comments largely
14 of a technical nature, and staff has not had the opportunity
15 to go through those item by item. It appears that most of
16 those will be very helpful in producing an accurate and
17 precise document for the site certification agreement, and
18 the decision that you make today would be subject to the
19 review of the Applicant's comments and inclusion of
20 technical suggestions that are appropriate.

21 Toward the end of the meeting we will identify
22 those comments and see that you get a copy of them. We'll
23 discuss the completion schedule, some challenges that may
24 appear, and the schedule of submission to the Governor.
25 Then we'll take a look at any future Council sessions that

1 would be necessary for you to review and give your final
2 approval, and the goal at least depending on the air permit
3 schedule on sending the package to the Governor.

4 Are there any questions about what we want to do
5 today?

6 Okay. What I would suggest is that we begin with
7 the Council order and go through it page by page. As I
8 indicated, most of the suggestions that are included here
9 are agreed to be appropriate, and apart from a few on which
10 there was some discussion, which we will stop over, what I
11 would suggest is that as we go through page by page if you
12 have questions or comments that you'd like to offer we'll
13 take those up and then proceed to the next page. Is that
14 acceptable to everybody?

15 MS. ADELSMAN: Yes.

16 JUDGE WALLIS: Okay. Very good.

17 MS. ADELSMAN: I'm sorry. Do we have people on
18 the phone?

19 JUDGE WALLIS: Let me ask is there anyone on the
20 telephone bridge line?

21 No one is responding.

22 Okay. On page 1 of 23 of the draft order are
23 there any comments or questions?

24 Page 2?

25 MS. McDONALD: I had a question.

1 JUDGE WALLIS: Ms. McDonald, could you bring that
2 microphone closer.

3 MS. McDONALD: Okay. I had a question on the
4 paragraph that starts, "The Council has carefully
5 considered" and the second sentence. It seems seemed like
6 there was -- it was pretty confusing just because there was
7 so many double negatives. Is that the way it has to read or
8 I guess when I'm talking about the double negatives it's
9 "while not resulting in unmitigated, significant". It just
10 seemed like, I don't know, I was going to see if we could
11 propose the sentence "with significant energy benefits with
12 known probable adverse environmental impacts mitigated."

13 CHAIR LUCE: That's equally confusing.

14 MS. McDONALD: You think so?

15 CHAIR LUCE: Yes.

16 MR. MOSS: I might add that lawyers are accustomed
17 to double negatives. We use them all the time.

18 JUDGE WALLIS: I agree. I'm sure that this is
19 traditional language that has been used in many.

20 MS. McDONALD: I figured that, but, oh, wow. I
21 mean I had to read it three times to figure out which way we
22 were going.

23 JUDGE WALLIS: Well, let's ask the English
24 language committee to take a look at that and straighten it
25 out. Will that satisfy your concerns?

1 MS. McDONALD: Okay. Yes. Who's the English
2 language committee?

3 CHAIR LUCE: The lawyers.

4 JUDGE WALLIS: Mr. Wright and myself, Mr. Moss and
5 Mr. Luce.

6 MS. ADELSMAN: The plain talk people.

7 CHAIR LUCE: Enough with plain talk already. I'm
8 tired of that phrase.

9 MS. ADELSMAN: Except that is what the Governor
10 wants.

11 CHAIR LUCE: I just said I'm tired of it, not that
12 the Governor's tired of it.

13 JUDGE WALLIS: Is there anything else on page 2?

14 Let's move to page 3.

15 If there's nothing, let's move to page 4. We did
16 note that the shorthand description of the project site is
17 not exactly the same in every reference. I think Elma and
18 Satsop and Montesano each had at least one mention, and
19 again we will go back to the application or make an
20 executive decision as to what town gets honor of mentioning
21 with regard to the location of the project.

22 CHAIR LUCE: Does the representative from Grays
23 Harbor have a preference?

24 MS. WILLIS: I would say because -- I don't think
25 we have a preference. I think it's equally important that

1 Satsop and Elma be recognized. I might suggest that because
2 the Satsop PDA or Satsop site is right next door to it and
3 they are partners maybe the Satsop name might be attached to
4 it.

5 MS. ADELSMAN: Could I ask the original Satsop
6 Site Certification what does it say? I mean why are we
7 changing whatever we had in the original one? I don't know
8 what the original said.

9 JUDGE WALLIS: The original document referenced
10 Satsop is my understanding.

11 MS. ADELSMAN: So why are we changing it from the
12 original? I mean the site didn't move.

13 JUDGE WALLIS: No, it did not. It is proposed
14 that the name be changed from Satsop to the Grays Harbor
15 Energy Project.

16 MS. ADELSMAN: Yes, but it has nothing to do with
17 the location.

18 JUDGE WALLIS: That's correct. That's correct.

19 MS. ADELSMAN: We are amending the site
20 certification agreement so why do we even discuss?

21 JUDGE WALLIS: I think there appears to be a
22 consensus that Satsop would be the appropriate reference.

23 CHAIR LUCE: Accepted.

24 MS. ADELSMAN: Okay. Good.

25 JUDGE WALLIS: Anything else on page 4?

1 Page 5?

2 Page 6? Again, on page 6 there is reference to
3 the process that Council used to reach its decision, and it
4 is through the document technically inconsistent, and we
5 will modify the language to reflect that this was not an
6 adjudicative proceeding, use language that does not use the
7 adjudicative terms to make things a little bit more clear.

8 MS. ADELSMAN: I'm sorry. Are we talking the
9 process of relating to different decisions like the SEPA
10 process, the lands use consistency process, and you have the
11 site certification agreement?

12 JUDGE WALLIS: Yes, there was a hearing on the
13 NPDES and a hearing I believe on the PSD permit. The others
14 were not hearings but were open meetings, and instead of
15 testify which often signifies remarks during a formal
16 hearing we will use the term comments.

17 MS. WILLIS: Question on that. On the terminology
18 of testify would you have had to swear in people before they
19 made comments?

20 JUDGE WALLIS: I don't believe it would be
21 necessary, but it is so often used in that context that I
22 think it is a little bit more clear here to say that people
23 have commented.

24 Anything else on page 6?

25 On page 7? Again, the sidebar comments refer to

1 technical use of the term evidence.

2 Page 8?

3 Page 9?

4 Page 10?

5 MS. WILLIS: Mr. Chairman, on page 10 talking
6 about the Mitigation Measures No. 2.

7 JUDGE WALLIS: Yes.

8 MS. WILLIS: This has to do with the Traffic
9 Management Plan.

10 JUDGE WALLIS: Yes.

11 MS. WILLIS: One of the things that I remember
12 came up which was concerning to the neighbors up there was
13 traffic flow in the mornings having to do with crossing
14 guards or something allowing the pedestrians to walk across
15 safely while also letting the traffic move away from the
16 site. That was the neighbors going to work. Obviously, if
17 you have -- so I was wondering if this could be worked into
18 there? If it's in the Traffic Management Plan, then I'm all
19 right with that that it would be there, but I thought this
20 was important enough that it needed to be drawn out as
21 something that needed to be addressed. It was an issue in
22 the original building of the original site.

23 CHAIR LUCE: I agree, and that's why we changed
24 the word from "encourage" to "require", and when the
25 original project was developed this issue came up with the

1 neighbors, and the developer used I think an off-duty
2 officer during peak traffic periods to manage the traffic so
3 that the local neighborhood flow was not impeded and
4 directed the construction traffic in a certain way to assure
5 that end.

6 MS. WILLIS: So you're saying that officer will
7 take care of actually the crossing of the pedestrians also?

8 CHAIR LUCE: Yes. The issue is also addressed in
9 the site certificate agreement.

10 MS. WILLIS: Thank you.

11 MR. MOSS: Judge Wallis, let me interrupt just for
12 a moment and go back to page 8. I notice there in paragraph
13 B the water indication is use you up to 6.5 cubic feet per
14 second of water, and I don't know how we're going to
15 consider, if at all, the comments we received from the
16 Applicant on the drafts, but I do recall from reading those
17 comments that the correct number is 6.8. Now that's
18 something uncontroversial I'm sure and should be technically
19 correct. So I just want to point that out and to suggest
20 that to the extent we have other sources of information that
21 give us the information that we have something technically
22 incorrect we should certainly at least take that into
23 account.

24 JUDGE WALLIS: Yes. I will emphasize what I
25 indicated at first, and that is while staff has had the

1 opportunity to briefly review the submission from the
2 Applicant, the staff recognizes that there are a large
3 number of technical suggestions that appear to be very
4 appropriate, and we will review those very carefully. And
5 all of us want to have a document that is technically
6 accurate so we will indeed go through this and through their
7 submission with a fine tooth comb and ensure to the best of
8 our ability that the document is technically accurate.

9 MR. MOSS: Briefly in that connection, just to
10 point out that I meant to imply nothing with regard to
11 staff's scrutiny of the document. This correction at least
12 came in at 2:16 yesterday afternoon so clearly there has not
13 been an opportunity for changes to be made. Thank you.

14 MS. ADELSMAN: Just in a follow up to that, I
15 haven't had a chance to look at what the Applicant
16 submitted. Did the application I thought it was at 6.5.
17 What's in the application request or in the request for
18 amendment?

19 MR. WRIGHT: It's in the original one.

20 MS. ADELSMAN: 6.8?

21 JUDGE WALLIS: Mr. La Spina in the back of the
22 room is looking through the document.

23 MR. WRIGHT: 6.5.

24 CHAIR LUCE: We will get it right. So you want to
25 move ahead and then Mr. La Spina will tell us what he finds

1 in the application.

2 JUDGE WALLIS: Okay. How about page 11?

3 CHAIR LUCE: Now is this the noise section?

4 JUDGE WALLIS: This is the noise section.

5 CHAIR LUCE: Mr. Wright, would you care to comment
6 on this particular section because I know that you had some
7 observations about it?

8 MR. WRIGHT: As you know, the wording of sections
9 traditionally between the site certificate agreement and the
10 order vary somewhat. In the case of noise and the
11 complexity of the noise issue we have in the resulting
12 order, what you have in front of you here in pages 10, 11,
13 and 12 are in the opinion of the staff, without again
14 qualifying we haven't looked at what the Applicant has said.
15 We believe this best reflects all of the discussions that
16 we've had to date and the indications you've given us at
17 your other deliberative sessions, and we think it's the best
18 description of where we are with the noise discussion.

19 I bring this up because in the site certificate
20 agreement when we get to that the description there is not
21 as good as this one. It has some errors in it and it has
22 some confusing language, and my recommendation, staff's
23 recommendation is we simply keep the language the same in
24 both documents, and that this be the noise language that you
25 use. So when you go through this now, I just want to point

1 out keep in mind that that's also going to be language that
2 we're recommending you shift over to the site certification
3 agreement and it be consistent in both documents.

4 CHAIR LUCE: I think that's good advice.

5 MS. ADELSMAN: I'd like to go back to page 8 one
6 more time. I'm so sorry. I'm slow. I think it's my cold.
7 When we talk about water use, we talk about it in terms of
8 how much they could withdraw which is the instantaneous and
9 what is the total. So I can't recall in the application
10 whether it's all just the instantaneous how much they could
11 take, but is there an annual maximum withdraw? None.

12 MR. WRIGHT: The maximum they can take with Units
13 3 and 4?

14 MS. ADELSMAN: Yes, that's still what we call
15 instantaneous withdrawal. Usually water we express in how
16 much you can take instantaneously and the total per year.

17 MR. WRIGHT: There was never in the original
18 documents any volume, any reference to an annual volume in
19 terms of acre feet or any other, at least that I saw. It
20 was all up to a maximum withdrawal rate in cfs.

21 MS. ADELSMAN: All right.

22 MR. LA SPINA: Chair Luce?

23 CHAIR LUCE: Mr. La Spina.

24 MR. LA SPINA: I have the clarification you
25 requested earlier, sir.

1 CHAIR LUCE: Yes.

2 MR. LA SPINA: Page 326 of the application appears
3 to have a mathematical error. It cites the 9.2 number and
4 it cites the total requirement for 16 cfs, but unfortunately
5 it also mentions 6.5 as the additional water. So there
6 appears to be a mathematical error in the application.

7 CHAIR LUCE: All right. Then you'll remedy that
8 in the next draft. Thank you.

9 Hedia, does that answer your questions?

10 MS. ADELSMAN: Yes, because I recall it was 6.5,
11 but now I could see the math. So the 16 is the max. Okay.
12 You know, just I'm not trying to be picky, but normally to
13 be correct we really should propose a withdrawal up to 6.5
14 cfs. I mean the use is really at least in the water world
15 is the total volume of withdrawal, and we're not putting a
16 total volume in here but we're saying what could be
17 withdrawn. It's just one of the terminologies.

18 CHAIR LUCE: Okay.

19 MR. WRIGHT: We can take care of that.

20 JUDGE WALLIS: Very good. Next page 11. There
21 are sidebar suggestions that terminology and numbers be
22 checked. We've done that in paragraph 4, Section 3, and
23 predesigned engineering is not a correct term to use so that
24 term will be deleted. Is there anything else on page 11?

25 Page 12?

1 MS. ADELSMAN: You know, in some places we say
2 certificate holders and, you know, other places it says
3 certificate holder. So you may want to check that out.

4 MR. WRIGHT: There's a comment somewhere about
5 that apparently. I haven't gone back. The definition
6 somewhere talks about the certificate holder implies the
7 plural as well as the singular.

8 JUDGE WALLIS: Yes.

9 MS. ADELSMAN: Sorry.

10 JUDGE WALLIS: Yes.

11 CHAIR LUCE: Next.

12 JUDGE WALLIS: Page 13? There was some discussion
13 regarding carbon emissions in the mitigation process, and
14 the order contains slightly different language than the site
15 certification agreement because the order refers to a
16 suggestion that the Council will be encouraging the
17 Applicant in the decision process in picking a mitigation
18 project to explore eligible sites from Grays Harbor County.

19 MS. WILLIS: Mr. Chairman, I appreciate the
20 language that was implemented to go into this paragraph, and
21 I also want to point out that while this has kind of new and
22 different language from what maybe you've seen in other
23 contracts and things, it also obligates the County to step
24 up and do their part in this too which I think this is very
25 important to recognize, that it does not go without

1 involvement from the County to meet their obligations too in
2 this process.

3 CHAIR LUCE: In both cases the Applicant by virtue
4 of its decision to elect itself the independent qualifying
5 organization holds itself harmless from any question as to
6 whether the mitigation has been satisfied. I think that's
7 the underlying key here is the statute recognizes the
8 Applicant has a path. That path is it chooses the applicant
9 and then it's held harmless.

10 JUDGE WALLIS: Anything further on 13?

11 Page 14?

12 Page 15? There was discussion about the third
13 paragraph on page 15 regarding the standards for application
14 if the Applicant does not begin construction within five
15 years, and the resulting language refers to the necessity
16 that later in the preconstruction phase if it goes beyond
17 five years there is a burden on the Applicant to demonstrate
18 that the standards remain applicable.

19 CHAIR LUCE: In other words, the Applicant is
20 grandfathered for the first five years. They get the
21 standards as they're set forth in 463-62. If they don't do
22 anything during the first five years, after that point in
23 time the Council by rule, not by just Council kind of feels
24 differently, but by rule or the state, Dennis, your
25 language.

1 MR. MOSS: There's another pertinent change in the
2 law.

3 CHAIR LUCE: Or another pertinent change in the
4 law then the Applicant is required to follow that as well.
5 We just discussed that in Montesano at some length.

6 MS. ADELSMAN: They say the language later on in
7 the site certification agreement I believe that talks about
8 I want to say that after the ten years then the application
9 is --

10 CHAIR LUCE: Ceased.

11 MS. ADELSMAN: Ceased.

12 CHAIR LUCE: Poof.

13 MR. MOSS: Term of art.

14 MS. ADELSMAN: But then we have the first five
15 years, the second five years. So maybe when we get to that
16 language I will -- it doesn't recognize that maybe in the
17 second five years the Applicant will have provided
18 information and maybe even a new standard would have been in
19 place to satisfy us from going beyond.

20 CHAIR LUCE: Let's talk about that when we get to
21 the order.

22 MS. ADELSMAN: Okay, yeah. I don't think it's
23 in -- well, it's not in the order.

24 MR. MOSS: In the SCA.

25 CHAIR LUCE: I mean in the SCA.

1 MS. ADELSMAN: Thank you.

2 CHAIR LUCE: Now, I think there was a small
3 change, wasn't there, at the bottom of page 15, Grays Harbor
4 Energy will present verification compliance?

5 MR. WRIGHT: It should read "following Grays
6 Harbor Energy and County approval as verification of
7 compliance" is how it was suppose to read.

8 CHAIR LUCE: Okay. Great. Anything else on 15?

9 MR. WRIGHT: If I might, I just want to point out
10 to you that this section is in the order only. There's no
11 reference of it in the SCA at all because it is a directive.

12 CHAIR LUCE: We don't want to trigger Washington
13 State rules and regulations.

14 MR. WRIGHT: You don't trigger anything relative
15 to EFSEC. This is all EFSEC's kind of a little more than
16 advice, but it's EFSEC telling somebody else to do
17 something. It's not something you're ordering or not
18 something you're requiring in your permit.

19 CHAIR LUCE: So we don't trigger the Advisory
20 Council rules and regulations.

21 MR. WRIGHT: You don't trigger the advisory
22 committee.

23 JUDGE WALLIS: Page 16?

24 Page 17?

25 Page 18?

1 Page 19?

2 Page 20?

3 MS. ADELSMAN: Just one question on page 20. It
4 says again five years from when all state and federal
5 permits and so on. So if there was some delays in say the
6 PSD with EPA or anything like that, whatever the last permit
7 they obtain is going to be the date we use. I mean we have
8 the NPDES.

9 MR. WRIGHT: If they don't have the permits,
10 you're not going to authorize construction. This provision
11 only kicks in after you've authorized construction. So you
12 wouldn't authorize construction without all the appropriate
13 permits.

14 MS. ADELSMAN: The authorization happened with
15 just knowing that the last permit was obtained; is that
16 right? I mean there is no specific action from us now you
17 can go. I couldn't remember.

18 MR. WRIGHT: No, I think you do. I think they do
19 require you to authorize construction and you wouldn't. I
20 mean this is somewhat of an after-the-fact provision; that
21 you've already authorized construction and then this kicks
22 in. This isn't like the 5-year, 10-year provisions.

23 MS. ADELSMAN: Okay. So just my question, and I
24 hope I'm making it clear, is why don't we say from the time
25 the Applicant is authorized to commence construction instead

1 of referring to all the state and federal permits and all of
2 that? I mean if that's the case why don't we just clearly
3 state it?

4 MR. WRIGHT: I assume we could. This is one of
5 the boilerplate provisions that came along with the standard
6 order. I mean there's no prohibition to rewriting it.

7 CHAIR LUCE: I would say if it has a history,
8 Hedia, and it's been --

9 MS. ADELSMAN: Yes, it just doesn't state what are
10 the state permits, what are the federal permits.

11 CHAIR LUCE: Why don't we ask staff to take a look
12 at that which they will.

13 MS. ADELSMAN: Okay.

14 JUDGE WALLIS: On page 21 there is an inaccurate
15 reference in paragraph 35 to renewable energy. This is not
16 a renewable energy project.

17 MS. ADELSMAN: You wish.

18 JUDGE WALLIS: However, it does produce carbon
19 emissions at a lower rate than many of the alternatives to
20 fossil fuel generation facilities.

21 CHAIR LUCE: So would the Applicant be selling
22 RECs I mean, you know?

23 MS. ADELSMAN: I do have a problem with the whole
24 paragraph. I mean it is not a renewable, and they said the
25 project will enhance the public's opportunity to enjoy

1 aesthetic and all the other staff. I'm not sure what that
2 means.

3 CHAIR LUCE: It means that it's straight out of
4 our statute and that's what we find --

5 MS. ADELSMAN: But how does it enhance? Okay.
6 The project we have in front of us which is 22 acres of
7 industrial I mean there is no standards there.

8 CHAIR LUCE: It's boilerplate language which can
9 be deleted if you want to delete it.

10 MS. ADELSMAN: I thinks it's unnecessary.

11 CHAIR LUCE: Fine. Then delete it.

12 MS. ADELSMAN: It creates --

13 CHAIR LUCE: Fine. It's done, deleted.

14 MR. WRIGHT: What are you deleting?

15 CHAIR LUCE: Oh, this last sentence. I mean you
16 could say, I mean basically what the order says and what the
17 site certificate says is the project will provide abundant
18 power at reasonable cost consistent with sound business
19 principles and enhance the public's -- I mean those are the
20 policy directives we operate under, but, Hedia, says delete
21 and delete it.

22 MS. ADELSMAN: I think you could just leave the
23 first sentence, "The Applicant has agreed to appropriate
24 environmental mitigation requirements" and leave it at that.

25 MR. CREWS: Period.

1 CHAIR LUCE: Delete the last sentence.

2 MS. ADELSMAN: And the renewable resource one too.

3 CHAIR LUCE: Well, obviously, yes.

4 MR. WRIGHT: Done.

5 MR. CREWS: Done.

6 CHAIR LUCE: Compared to alternatives such as coal
7 it doesn't accomplish its purposes but that's okay.

8 MS. ADELSMAN: I don't think no one is going to
9 get into a debate about that.

10 CHAIR LUCE: That's fine. That's fine.

11 JUDGE WALLIS: Page 22?

12 MS. ADELSMAN: Can I also go back -- I'm so
13 sorry -- to No. 36? It says relatively low carbon emission.

14 CHAIR LUCE: Where are you going back to?

15 MS. ADELSMAN: Page 21, No. 36. Using an energy
16 source with relatively low carbon is all relative. I mean
17 we're not talking about having an alternative in front of us
18 that uses, you know, coal. So I'm wondering what does this
19 -- why do we even need it? I mean I'm okay with the project
20 will contribute to the diversity and reliability, blah,
21 blah, blah. But with relatively low carbon emission I mean
22 this has a major emission.

23 CHAIR LUCE: Hedia, I don't want to debate it, but
24 it's true. Okay? Compared to other sources natural gas is
25 the bridge fuel. It has been recognized as having

1 relatively low -- relative to what? Relative to coal.

2 MS. ADELSMAN: Well, we don't have coal in front
3 of us.

4 CHAIR LUCE: Look. I'm not going to fall on my
5 sword over this. It's true, it's accurate.

6 MS. ADELSMAN: It's still -- anyway.

7 CHAIR LUCE: We will leave it as it is. Thank
8 you. Moving ahead.

9 JUDGE WALLIS: Page 22? Do we have everyone's
10 name spelled correctly on page 23?

11 CHAIR LUCE: Delete my middle name, please. "O"
12 is acceptable, Oliver is not.

13 MR. WRIGHT: Now we all know what it is.

14 CHAIR LUCE: Cromwell. Now that's my personality
15 is I'm Cromwell.

16 MR. MOSS: Actually, Mr. Wallis, I do use my
17 middle initial in my signature which is J.

18 MR. FRYHLING: You can do the same thing for
19 Richard put an "L" in there. That's the way I sign my name,
20 Richard L.

21 CHAIR LUCE: What's "L" stand for?

22 MR. FRYHLING: Louis.

23 CHAIR LUCE: Hedia, what's your middle initial?

24 MS. ADELSMAN: It's my ex last name Rieke. I
25 don't use it. Keep it simple.

1 JUDGE WALLIS: Any other changes to names?

2 MS. ADELSMAN: No, at least not in mine.

3 CHAIR LUCE: I think in the spirit of the Kittitas
4 Valley opinion we should put in James "Loose Cannon" Luce.

5 MS. MCGAFFEY: Judge Wallis, I'm wondering whether
6 before the Council turns to the SCA whether I could address
7 just a couple of the substantive comments that I submitted?

8 CHAIR LUCE: Let's get through the order first I
9 think.

10 JUDGE WALLIS: Let's proceed with the order.

11 CHAIR LUCE: I mean the SCA.

12 JUDGE WALLIS: Or the SCA and following that then
13 we'll determine process from that point.

14 MS. ADELSMAN: So I'm sorry. Are we then talking
15 about coming back again to the order with the Applicant's
16 comments?

17 JUDGE WALLIS: Well, the Applicant has raised some
18 substantive points that staff has not had the opportunity to
19 explore at this point, and what I suggest we'll do is we'll
20 take a brief recess and staff will discuss, and then we'll
21 make the recommendations to the Council on process at that
22 point.

23 On the site certification agreement I don't
24 believe that we have gone through the corrected table of
25 contents, but when the text of the document is completed

1 then staff will go through and ensure that the table of
2 contents reflects the pages that are actually there and have
3 all the points that are listed.

4 Okay. On page 1, there was some discussion about
5 whether we are talking about Amendment No. 4 or Amendment
6 No. 5. Staff's consensus after a discussion was to
7 recognize the fact that a fourth amendment was proposed but
8 was not acted upon for reasons not the Council's
9 responsibility; therefore, we felt that No. 4 should refer
10 only to the document that was proposed and this should be
11 termed Amendment No. 5.

12 CHAIR LUCE: And there was a sentence that you
13 were proposing to add to the second paragraph?

14 JUDGE WALLIS: Yes, to clarify that. To identify
15 the year of the proposal and state that it was not acted
16 upon.

17 On page 2 there was some discussion about lawyer
18 language, and now the preference in that some of us to the
19 heretos and wherefores which have been used since time had a
20 memorial, maybe it's time to forget that approach and pardon
21 me the expression the use of plain language.

22 CHAIR LUCE: So we're going to plain talk this
23 one.

24 MS. ADELSMAN: Yes.

25 JUDGE WALLIS: And we will scrub the document and

1 do our best to eliminate all of those technical but
2 increasingly obscure terms.

3 MS. ADELSMAN: Thank you.

4 CHAIR LUCE: And we're going to delete the backup
5 diesel fuel since there isn't any.

6 JUDGE WALLIS: Yes.

7 On page 3? There is a reference on page 3 to
8 Amendment No. 4 that will be corrected to Amendment No. 5.

9 MR. WRIGHT: Judge Wallis, you want to catch the
10 "shall" on page 2? That's different I think than the
11 discussion than the other heretofore language. Under
12 article definition there was the decision to change the word
13 "shall".

14 CHAIR LUCE: To "may"?

15 MR. WRIGHT: I think "will".

16 CHAIR LUCE: "Will", okay. That's correct.
17 Right.

18 MS. ADELSMAN: I'm sorry. What's the word?

19 MR. MOSS: I'll just comment on that, Mr. Wright
20 and Judge Wallis. We simply did discuss this yesterday, and
21 I was pointing out this is largely a stylistic matter. I
22 think something that's scrivener's changes that can be made
23 I don't know that we really need to get into any detailed
24 discussion of that today because there is some confusion.
25 So perhaps I think the staff working in coordination with

1 Judge Wallis will be able to make scrivener's changes to
2 which no one would object that would capture my stylistic
3 concern to the extent it has any merit.

4 JUDGE WALLIS: Yes, it is proposed in this matter
5 to change "shall" in the third line to "will".

6 MS. ADELSMAN: Okay.

7 JUDGE WALLIS: Page 4? Again in numbered
8 paragraph 3 there is a stylistic change indicating at the
9 end of that first line of paragraph 3 put the term "must" in
10 there and remove "shall" from the subparagraphs.

11 MS. ADELSMAN: Are you talking about Article 2?

12 MR. MOSS: Three.

13 MS. ADELSMAN: What page?

14 JUDGE WALLIS: Article 3, page 4.

15 MS. ADELSMAN: So we are on page 4. Okay. Thank
16 you. So the paragraph before that that's the one I had a
17 question about it, No. 2.

18 JUDGE WALLIS: Yes.

19 MS. ADELSMAN: It says the construction has not
20 commenced within ten years, then the agreement shall cease.

21 JUDGE WALLIS: Yes.

22 MS. ADELSMAN: But it doesn't -- I'm trying to
23 think about in relationship to No. 3 later on that says you
24 have five years. Then you have five years, and the second
25 five years it says they shall -- you see it? -- certify and

1 then an agreement are necessary or appropriate. So it looks
2 like under the second five years there could be an extension
3 for the construction.

4 JUDGE WALLIS: Yes. There is no prohibition in
5 this document of the proposed amendment to extend the terms
6 of the agreement.

7 MS. ADELSMAN: So we don't treat No. 2 to say
8 unless it has been. It seems like No. 2 for me just says
9 haven't done it in ten years, it's gone. But then in No. 3
10 we set some processes for the first five years and the
11 second five years.

12 JUDGE WALLIS: Yes.

13 MS. ADELSMAN: So I'd like to see a sentence that
14 ties 2 to 3 somehow. Do you follow my concern or shall I --
15 No. 3 stands by itself as No. 3 it says ten years it's gone.

16 JUDGE WALLIS: Yes.

17 MS. ADELSMAN: I mean No. 2, excuse me. But in
18 No. 3 we say, okay, so you have six months to do this and
19 then during the first years, during the second five years,
20 you certify, and I'm wondering in No. 2 we shouldn't say
21 unless they have satisfied whatever we are about.

22 CHAIR LUCE: Unless appropriate amendment has been
23 made for extension pursuant to paragraph 3(b) or some such
24 thing. I don't think it's necessary. I think it speaks for
25 itself. No. 2 is getting to the point if the Applicant or

1 the site certificate holder has done absolutely nothing
2 period, zero, Nada, then poof, it ceases. However, under
3 3(b) the Applicant can make a request for an extension.

4 MS. ADELSMAN: Correct.

5 CHAIR LUCE: So I have no objection to putting
6 some sort of clarifier in there, but I think it's there by
7 definition.

8 MS. ADELSMAN: So what if we say at least from my
9 perspective has not commenced and they haven't really asked
10 for any extension? It just seems to me like there is a
11 disconnect, at least in my own mind. Maybe not in others.

12 CHAIR LUCE: Maybe staff can find something that
13 can satisfy that.

14 MR. WRIGHT: I think this is what you want. I
15 don't know the history of how this language got in here, but
16 I read this as the fact that you have put three conditions
17 in, you intended to have three conditions. First five
18 years, second five years, at the end of the second five
19 years you can ask for an extension at nine years and ten
20 months, but at ten years you're gone.

21 CHAIR LUCE: Right.

22 MR. WRIGHT: I mean the fact that you put the
23 third one in there implies that that's what you intended.

24 MS. ADELSMAN: So even if they ask for an
25 extension you're sorry?

1 MR. WRIGHT: At ten years and one month you're too
2 late. You have to put a new application in. That's how I
3 read this and I assume that was the intent.

4 CHAIR LUCE: It is the intent.

5 MR. WRIGHT: If that's not the intent, then we
6 need to change it.

7 CHAIR LUCE: No. The Applicant does absolutely
8 nothing for ten years, the site certificate agreement
9 terminates.

10 MR. WRIGHT: That's what this says.

11 MS. ADELSMAN: I'm sorry. Go ahead.

12 CHAIR LUCE: No. I think --

13 MS. ADELSMAN: I was going to say what if the
14 Applicant does something in the second five years?

15 CHAIR LUCE: I think that's covered by 3(b).

16 MR. WRIGHT: Then you would have a modified permit
17 and it would proceed under whatever the modifications are.

18 MS. ADELSMAN: Maybe my problem is construction.
19 It's the word construction has begun. I understand if the
20 Applicant does nothing, doesn't even come to us. I
21 understand that. It's gone. But what if they come back in
22 the second half and the construction isn't going to happen
23 in ten years but they put in enough?

24 JUDGE WALLIS: The statutes and the Council rules
25 provide that a site certificate holder can ask for an

1 amendment to that site certificate agreement.

2 MS. ADELSMAN: Before the ten years?

3 JUDGE WALLIS: Yes, because under this provision
4 after ten years all of the rights under the agreement will
5 cease. So up until that ten-year deadline the statute
6 allows the Applicant to come in or the SCA holder to come in
7 and to request an extension of time to begin construction.
8 There may be some external force that applies. There may be
9 no change in the environmental records, whatever, but the
10 Council would at that point have the opportunity to decide
11 whether to grant the extension or to deny it or to grant it
12 with appropriate conditions.

13 MS. ADELSMAN: No, I agree with all of that. My
14 only thing is it says if construction. What if they under
15 the second half they got an extension? So this one is so
16 clear it says you haven't constructed.

17 CHAIR LUCE: The comment was mine, Hedia, and I
18 went back and reviewed the statute and I'm comfortable that
19 it's correct the way it's written.

20 MS. ADELSMAN: I didn't even look at your comment.

21 CHAIR LUCE: Yes.

22 MS. ADELSMAN: Okay.

23 CHAIR LUCE: I think it's consistent with the
24 statute.

25 Next.

1 JUDGE WALLIS: On page 5? In paragraph 6, there
2 is a typo that's identified. The staff review along with
3 the Chairman and Member Moss suggested adding a sentence
4 that if the Council identifies any inadvertent omission it
5 will correct this document by resolution. So that the
6 process is clear if an inadvertent omission is identified,
7 then the Council has a process by which the omission could
8 be rectified.

9 MS. ADELSMAN: I think that's a good idea.

10 JUDGE WALLIS: Anything else on 5?

11 On page 6?

12 Page 7?

13 Page 8? In the earlier discussions it was
14 suggested that some minor changes in language could be used
15 to clarify that carryover paragraph.

16 CHAIR LUCE: The same ones that were used in the
17 order.

18 JUDGE WALLIS: Yes.

19 Page 9?

20 MR. WRIGHT: Judge Wallis, there is on Item C in
21 the middle of the page, the certificate holder does not
22 retain environmental monitor. Actually EFSEC at least
23 tradition has it that in these matters EFSEC retains the
24 environmental monitor.

25 CHAIR LUCE: I think that's appropriate.

1 JUDGE WALLIS: Page 10?

2 MR. FRYHLING: Under aesthetics and landscaping
3 No. 2 there, "The Certificate Holders agree to landscape
4 project lands within the fenced perimeter in a manner
5 compatible with the surroundings, using indigenous plants
6 and vegetation where possible." I guess I would like staff
7 to identify the fenced areas. Two sides of the plant has a
8 large cement barrier wall so where are we landscaping and do
9 they have to submit a plan to us?

10 MR. WRIGHT: Okay.

11 MR. FRYHLING: Understand what I'm saying? We do
12 have a law there, but you can't see anything, but I know at
13 one end of the plant there we do have a fence, but I don't
14 think we discussed this at all in the past.

15 MR. WRIGHT: We can add that definition. I guess
16 I'm asking do you want -- if you want a plan developed and
17 submitted tell us that.

18 MR. FRYHLING: Well, only if it's needed. If it
19 isn't needed then why do we have this statement in there?

20 CHAIR LUCE: Because it's probably more needed on
21 the two areas where there is no wall.

22 MS. ADELSMAN: Would this be part ultimately of
23 the stormwater plan or something during the construction?

24 MR. WRIGHT: Not landscaping wouldn't be, no.

25 JUDGE WALLIS: This is I believe a carryover

1 provision from the existing site certification agreement.

2 MR. FRYHLING: Is this part of 1 and 2?

3 MR. WRIGHT: Yes, it is.

4 MR. FRYHLING: Have we enforced any landscaping?

5 MS. ADELSMAN: Didn't you see the pretty plants or
6 not?

7 MR. FRYHLING: Jim, did you enforce anything?

8 MR. LA SPINA: No, we didn't.

9 CHAIR LUCE: Well, let's enforce it this time.

10 MR. FRYHLING: All right.

11 MS. ADELSMAN: What does it mean? That's what I
12 want to know.

13 CHAIR LUCE: I understand.

14 MR. MOSS: Before we get too far down this path,
15 as I understand it based on the photographs I've seen, this
16 is a bare industrial site and there's no real landscaping
17 issue there I think; and so let's not go too far down the
18 path when we're doing something that's contrary to the facts
19 on the ground.

20 MS. ADELSMAN: I agree with that.

21 MS. WILLIS: Mr. Chairman, can I comment?

22 JUDGE WALLIS: Ms. Willis.

23 MS. WILLIS: The site does have some landscaping,
24 some very nice landscaping between the wall that was put up
25 and the road of which Keys Road is mentioned here, and I

1 think they went beyond. If this is actual language from the
2 original contract, they actually went beyond what they
3 needed to do. Because I'm looking at this, and it says
4 there's a berm in No. 3. It says the berm will be vegetated
5 with indigenous plant species in a random arrangement to
6 simulate native patterns. That language would allow them to
7 have left the blackberries to grow up and the weeds that
8 wanted to move in there because that's what we have growing
9 in those areas.

10 So I'm thinking you're putting a lot of thought
11 into this that they have already taken care of. I
12 understand why the language needs to be there. I think
13 originally the original language was maybe somewhat
14 inappropriate. So if you'd like to put more thought into
15 this one I think the company has already taken care of what
16 they were suppose to do.

17 CHAIR LUCE: I think at least we could delete this
18 last sentence in No. 3. I mean this is micromanaging beyond
19 anything that's realistic.

20 MS. ADELSMAN: Just a minute. Three is
21 different --

22 MR. FRYHLING: No. 3 is actually something that
23 has been done.

24 CHAIR LUCE: No, no, I'm talking vegetation with
25 indigenous plant species in a random arrangement to simulate

1 native patterns. I mean that's micromanaging beyond all
2 reasonableness.

3 MR. FRYHLING: But I was trying to get the
4 clarification on where the fenced area is and what they
5 should have there and why do we have it there.

6 MS. ADELSMAN: We are talking within and outside
7 of the project.

8 MR. MOSS: Since the site is apparently fully
9 developed in this sense, perhaps the thing to do would be
10 just to eliminate the existing language and say the
11 certificate holders agree to preserve the aesthetics and
12 landscape in the condition that is consistent with what
13 exists today, language to that effect.

14 CHAIR LUCE: This is one I would not fall on my
15 sword by any stretch of the imagination; however, I will say
16 this: That, you know, I don't know what the project is
17 going to look like when 3 and 4 are up and that may change
18 somewhat, Terry, from what exists today. And I'll assume
19 that as matters currently stand the site certificate holder
20 has done a really good job, but, you know, I don't
21 understand -- well, I think this keeps the option open to
22 make sure that it is appropriately landscaped when 3 and 4
23 go in. Other than that I wouldn't have a problem.

24 MS. ADELSMAN: There's an issue even with No. 1 in
25 what does it mean to be compatible with adjacent areas? I

1 mean this is a big industrial site.

2 CHAIR LUCE: I give up. Choose the language.

3 MS. ADELSMAN: I like what Dennis offered as
4 language.

5 MR. FRYHLING: I buy that too.

6 MS. ADELSMAN: Just to recognize that this is a
7 site that has been developed, and going to be adding
8 additional development and whatever they've done they have
9 to maintain, to continue, especially outside of the site
10 itself.

11 CHAIR LUCE: Okay.

12 MS. ADELSMAN: So anyway.

13 CHAIR LUCE: So Dennis will make the appropriate
14 changes and deletions and get together with staff. All
15 right?

16 MR. WRIGHT: Okay.

17 MR. MOSS: I'm happy to work with staff on the
18 appropriate language.

19 JUDGE WALLIS: Thank you.

20 CHAIR LUCE: So much for that.

21 JUDGE WALLIS: Page 11?

22 Page 12? Provision on Archaeological Site
23 Protection at the top of page 12. We recognize that this
24 site is not pristine. It has been graded. It is unlikely
25 that any culturally significant artifacts will be recovered;

1 however, it is possible during excavation that something
2 will come up, and this is an indicator that if that happens
3 the Applicant should be prepared to take the appropriate
4 steps.

5 MS. ADELSMAN: I would like to name the tribes
6 that we know which ones have that as part of their area and
7 just not to say local tribes. So we have the Chehalis. I
8 mean who would that be?

9 CHAIR LUCE: My only concern, Hedia, would be if
10 you name one, you exclude another, and I don't know who
11 claims these as ceded lands. I mean this is --

12 MS. ADELSMAN: We have maps that would show.

13 CHAIR LUCE: Well, our maps might not be -- they
14 may not agree with our maps. All tribes who -- I know
15 Chehalis, but I can imagine a lot of people have fished in
16 these rivers or camped in these rivers so I'm always nervous
17 about trying to identify specific tribes in a situation like
18 this. How about we defer to the -- this language is really
19 shooting from the archaeological group in the state. How
20 about we defer to them?

21 MS. ADELSMAN: Yeah, I mean if I a was tribe, I
22 would like to not be called the local tribes.

23 CHAIR LUCE: How about tribes? We don't know who
24 they are. Okay?

25 MS. ADELSMAN: I think we know more.

1 MS. WILLIS: Mr. Chairman.

2 CHAIR LUCE: Yes, Terry.

3 MS. WILLIS: I would agree with your language that
4 you might want to remove the word local in it and just leave
5 the word tribes because as we know there are several tribes
6 in Grays Harbor, and that there were other tribes in the
7 Satsop area that are not identified or they're identified
8 within other groups. So I kind of like the fact that you're
9 recognizing there are tribes period and not identifying them
10 by name.

11 CHAIR LUCE: Good. Let's do that. All right.
12 Thank you.

13 JUDGE WALLIS: Anything else on 12?

14 Page 13? Paragraph L, Construction Traffic, does
15 carry a requirement that the certificate holder retain a
16 traffic monitor at peak periods to assure compliance.

17 CHAIR LUCE: Terry, that's what the intent was.

18 MS. WILLIS: I was lost in thought on something
19 else.

20 CHAIR LUCE: Construction L, last sentence, "The
21 Certificate Holder shall retain the services of a traffic
22 monitor at peak traffic periods to assure compliance with
23 the intent of this provision."

24 MS. WILLIS: Yeah, my only concern was when we
25 talked about it earlier, I know you referenced a couple of

1 issues and one was which way the traffic as far as cars
2 would be leaving the site and which exits they would
3 actually use to get on SR-12.

4 My reference was to actually pedestrian traffic
5 walking across the street from where they might park to the
6 facility and the use of crosswalk monitors, guards, whatever
7 you want to call them, in order to facilitate that crossing
8 where cars leaving the area wouldn't be stopped for long
9 periods of time because of a flow of pedestrians. I'm not
10 sure that the language is actually hitting on that.

11 CHAIR LUCE: We will put that in.

12 MS. WILLIS: Pardon?

13 CHAIR LUCE: I'm not sure we need that actually in
14 the SCA, but you can put that in the order.

15 MS. WILLIS: Okay. Okay.

16 CHAIR LUCE: Why don't you come up with some
17 language. Your point is well taken. I recall that it
18 wasn't just the construction traffic. It was the employees
19 going across the road and holding up the neighborhood
20 traffic trying to get to work.

21 MS. WILLIS: Exactly. Imagine yourself trying to
22 go to work, you've 15 minutes to get there, and you sit for
23 ten minutes while -- because, remember, we can't run over
24 our pedestrians in Washington State or threaten them with
25 your vehicle. So as long as there was a flow of

1 pedestrians.

2 CHAIR LUCE: Actually it's very bizarre, but
3 unless you are in an identified crosswalk you can run over
4 them.

5 MS. WILLIS: Which I believe there is an
6 identified crosswalk at this particular site. That's if
7 we're splitting straws.

8 CHAIR LUCE: Come up with some language that
9 conforms to what's your intent.

10 MR. MOSS: That however, Mr. Chairman, implicates
11 another statute called vehicular homicide.

12 Not to belabor the point, but, one, I guess I
13 don't have any strong objection to having such fine detail
14 in the order. I do note that the first sentence here would
15 seem to me to address any concern about this because it
16 requires the development and implementation of the traffic
17 management plan in consultation with the Grays Harbor County
18 Department of Public Works which I assume would be fully
19 familiar with all of these issues.

20 CHAIR LUCE: Right.

21 MR. MOSS: The second point I would like to make
22 here is consistent with what we've changed in the order. We
23 probably should use the word "require" instead of
24 "encourage" in the third line of this.

25 CHAIR LUCE: Terry, would that first sentence

1 satisfy you?

2 MS. WILLIS: Definitely, thank you.

3 CHAIR LUCE: So we don't need to make any changes
4 since they're going to have to work with the Department of
5 Public Works. Okay.

6 Thank you, Dennis.

7 JUDGE WALLIS: Page 14?

8 MS. ADELSMAN: On page 14. Okay? So you could
9 see page 13 we use the withdrawal which is the right way to
10 do that. We don't have Attachment 3 attached to this which
11 I would really like to see it because I remember there was
12 some specific language. But then it talks about in the top
13 may obtain additional water from an another valid water
14 right, and my question is who determines that? And the
15 Department of Ecology does a preliminary determination of
16 the extent and validity of the right so it's a water right
17 holder that has a valid water right. There is a process to
18 do some kind of preliminary determination.

19 JUDGE WALLIS: In the review yesterday that --

20 MS. ADELSMAN: Review with who?

21 JUDGE WALLIS: -- that second full paragraph, the
22 underlying paragraph is suggested for removal. So that
23 would not appear in the document.

24 MS. ADELSMAN: Say again? I'm sorry. The second
25 paragraph that says following construction?

1 JUDGE WALLIS: The second full paragraph on page
2 14.

3 CHAIR LUCE: Again, "during periods in which the
4 withdrawal restrictions..."

5 MS. ADELSMAN: I'm sorry.

6 CHAIR LUCE: Page 14.

7 MS. ADELSMAN: I am on page 14.

8 CHAIR LUCE: Bottom paragraph.

9 JUDGE WALLIS: The second full paragraph, the
10 third paragraph including that carryover with Comment F7.

11 MS. ADELSMAN: I'm still in the first part of that
12 paragraph in the second paragraph on the page. I haven't
13 gone down there.

14 JUDGE WALLIS: Okay.

15 MS. ADELSMAN: All that I'm saying is "may obtain
16 additional water from another valid water right holder." I
17 just want to let you know that there is a process for making
18 that determination, and, you know, there may be anyway. And
19 then the second one it talks about following the
20 construction the certificate holder may withdraw up to 16
21 period, and I'm saying all of that has to be subject to all
22 the conditions in Attachment 3. Because you recall some of
23 it is conditioned and some of it is not. I just want to
24 make sure it's not just period. That's why Attachment No. 3
25 is really important to look at.

1 CHAIR LUCE: We'll have Attachment 3 before we
2 take final action, Hedia.

3 MR. WRIGHT: Yes, you will.

4 JUDGE WALLIS: If you have specific suggestions --

5 MS. ADELSMAN: One more is it says, "This Site
6 Certification authorizes only those water withdrawals that
7 are the subject to valid water withdrawal rights." And I'm
8 saying as determined by who?

9 JUDGE WALLIS: And we are proposing that that
10 paragraph be removed.

11 MR. WRIGHT: It doesn't do anything.

12 MS. ADELSMAN: But at the same time we want to
13 make sure that the company doesn't just go get a water right
14 and we find out later it's not valid, it was relinquished.
15 You know, I would like to even if for the company's
16 protection to have a little bit more of say that hopefully
17 they would have gone to Ecology and say, "Somebody is
18 selling us water. Could you do a preliminary determination
19 whether this water is valid or not before we buy it." And
20 honestly there is a Supreme Court decision that may come out
21 anytime that may affect also some water rights. It may not
22 affect some water rights. All that I'm saying is that I
23 think we don't want to take the -- just put words like it's
24 a valid without at least saying what the process is to get
25 to that.

1 JUDGE WALLIS: If you have some suggested language
2 why don't you submit that.

3 MS. ADELSMAN: Well, my suggestion is when you say
4 subject to a valid water right withdrawal on the second one
5 is to say as determined by the Department of Ecology. You
6 know, we do a preliminary determination with validity and
7 extent for water rights even for people that want to buy
8 water rights. Or they could hire somebody. But still at
9 the end of the day we will have to transfer that right
10 unless they fully purchase it. At least be able to
11 hopefully tell the company, yes, this is a good one or you
12 bought a bag of dry water. So anyway.

13 MR. WRIGHT: Judge Wallis, can I say if we put the
14 term as determined by the Washington Department of Ecology
15 after valid water right wherever it shows up that would be
16 okay?

17 MS. ADELSMAN: That's what I'd like to see. I
18 don't know whether the Applicant would have a problem with
19 that or not.

20 MS. WILLIS: Mr. Chairman?

21 CHAIR LUCE: Yes, Terry.

22 MS. WILLIS: When we went through this the first
23 time it sounded like that when they got to the point where
24 they would need water from the PDA of which the PDA has
25 identified as having a valid water right, it was like a

1 transaction, like a contract that would be between the two
2 of them because PDA actually had to verify whether or not
3 they had a large enough amount of water to serve this
4 purpose.

5 Now you're talking about a process that is much
6 more, sounds like it's much more complicated and much more
7 where they're going to have to go through a specific
8 validation of a water right through the Department of
9 Ecology.

10 MS. ADELSMAN: Again, I understand that I am going
11 back up and it says such as. So in the beginning it says
12 they obtain additional water from another valid water right
13 holder such as. So it opens the door that if they don't get
14 it from the PDA, they may be able to go and see if they
15 could purchase it somewhere else.

16 CHAIR LUCE: Yes.

17 MS. ADELSMAN: And we have a lot of water rights
18 in this state that have been relinquished and they're not
19 really valid.

20 CHAIR LUCE: Isn't the risk on the site
21 certificate holder to get it right? Okay. I mean the risk
22 is on them. If they purchase an empty bag, they've got an
23 empty bag.

24 Now I guess I share your concern, Terry. I don't
25 want to set up a big process here, a separate process by

1 which the Department of Ecology has to prove this. Okay?

2 MS. ADELSMAN: Okay.

3 CHAIR LUCE: So I'm not going to go there.

4 MS. ADELSMAN: We are authorizing the construction
5 of a multimillion dollar plant.

6 CHAIR LUCE: Right.

7 MS. ADELSMAN: And I know the water right
8 situation in the state, and it's our obligation to make sure
9 that when we do the site certification agreement that they
10 could operate later on without us coming, we, us meaning the
11 Department of Ecology, and saying I am sorry but you can't
12 operate this plant. Then it becomes a huge big problem on
13 us. So I'm saying, you know, the Applicant, and you could
14 put it in here saying that we recommend that the Applicant
15 consult with the Department of Ecology, you know. I want to
16 make sure that there is a valid water right on this plant,
17 and I'm thinking if they don't use the PDA, you know, and
18 they go purchase.

19 CHAIR LUCE: If there isn't a valid water right,
20 then the Department of Ecology is going to come forward and
21 say there isn't a valid water right.

22 MS. ADELSMAN: Okay. Hold on a second. So are we
23 allowing the company to move ahead with a multimillion
24 dollar construction and then after they constructed the
25 plant the big gorilla or the ugly Ecology comes and says

1 you're withdrawing this water from the right that it
2 relinquished and used it?

3 JUDGE WALLIS: I think the developer made a
4 terrible mistake at that point in time because the project
5 is going to sit there until it gets a valid water right.

6 MR. MOSS: Indeed doesn't our record show that the
7 water rights that the Applicant intends to rely on exist,
8 are valid and so on and so forth? So do we need more in
9 order to allow a hundred million dollar plant to be built?
10 I don't think so.

11 MS. ADELSMAN: Well, there is a couple things I
12 think. Number one, I think Karen the attorney understands
13 this. There is a Supreme Court decision right now that
14 hasn't gone out that could impact some of the PDA water
15 rights and it may not. We don't know. They haven't acted
16 on that, and I'm also reacting to the such as. It doesn't
17 say it gets directly from the PDA so it opens the door to
18 the company maybe getting it elsewhere.

19 JUDGE WALLIS: I guess let's have a vote on this
20 if we need to, but I'm going to draw this to a conclusion.
21 The developer, the site certificate holder is going to have
22 to make a determination as to whether it is a valid water
23 right. If the site certificate holder is building a hundred
24 million dollar plant, which I'll assume that that's the
25 cost, a prudent developer is going to ask the Department of

1 Ecology if it has any issues. If it goes ahead and does not
2 ask the Department of Ecology and builds something that has
3 no water right, then the Department of Ecology is going to
4 get involved and then they've got a hundred million dollar
5 plant sitting there that they can't use. So I don't want to
6 impose an additional process on the developer that I don't
7 think is necessary.

8 MS. WILLIS: Can I suggest language changes that
9 you might take out the sentence, the part of the sentence
10 that says such as the Grays Harbor PDA? Is there really a
11 relevance for that being in there if you're simply
12 instructing them that they have to do business with somebody
13 that has a valid water right?

14 JUDGE WALLIS: We could also add a sentence
15 indicating that the site certificate holder must demonstrate
16 the validity of the water rights prior to commencing
17 construction.

18 MS. ADELSMAN: I think I like that better.

19 CHAIR LUCE: It's better than the alternative of
20 having to go to Ecology for a process.

21 MS. ADELSMAN: Well, I think if they are smart,
22 which they are, they will go to Ecology to confirm that. I
23 mean they may hire a consultant to do the work, but Ecology
24 at the end of the day.

25 CHAIR LUCE: See. Right. You just made the

1 point. Right. Thank you.

2 MS. ADELSMAN: What?

3 CHAIR LUCE: You just made my point. They're
4 smart. They will go to Ecology. Okay.

5 So, Terry, what's your fix?

6 MS. WILLIS: Well, I was just going to remove the
7 last part of the first sentence at the top of the page that
8 says such as the Grays Harbor PDA because I see no reason to
9 suggest where they might go for their water in a permit.
10 They have the authority to go wherever they want.

11 CHAIR LUCE: I agree with that.

12 MR. MOSS: I hesitate because I think this
13 language is in here for a reason, and it's in here for
14 recognizing what's in our record which is that under certain
15 circumstances the certificate holder will go to the Grays
16 Harbor Public Development Authority for water. I mean
17 that's part of our record.

18 CHAIR LUCE: Yes.

19 MR. MOSS: And so there's no reason not to
20 recognize it in this order.

21 CHAIR LUCE: That is true.

22 MR. MOSS: I think it's appropriate to do so.
23 Moreover I think it would in part, in significant part
24 address Hedia's concern because as I said before the record
25 demonstrates that this facility as proposed has adequate

1 access to water under the existing law concerning water
2 rights. And if that changes, it changes. But that's
3 something that has to be dealt with down the line. We can't
4 provide in this order or SCA for every possible contingency
5 that may occur at the Supreme Court or some order or what
6 have you.

7 MS. ADELSMAN: I think just what Dennis is saying,
8 the record shows and the Applicant said that they are going
9 to the PDA so let's keep it clean instead of having it open
10 ended that they could go to some other people out there
11 because I think the record and we asked the PDA to come and
12 testify to their water rights and they did.

13 CHAIR LUCE: I make a motion that we leave it just
14 as it is.

15 MR. MOSS: I second that.

16 CHAIR LUCE: Discussion?

17 Someone call for the question.

18 MR. FRYHLING: Question.

19 CHAIR LUCE: Question has been called for leaving
20 the language just as it is. All in favor say aye?

21 Aye.

22 MR. MOSS: Aye.

23 MS. McDONALD: Aye.

24 MS. WILLIS: Aye.

25 MR. FRYHLING: Aye.

1 CHAIR LUCE: Opposed?

2 MS. ADELSMAN: No.

3 CHAIR LUCE: Thank you very much.

4 Next page.

5 MS. ADELSMAN: Just a second. You were going to
6 talk about the last paragraph on that page. Al, you started
7 saying something about it.

8 MR. WRIGHT: All we were going to say -- well, I
9 don't know. You voted.

10 MS. ADELSMAN: But we voted on the top. We didn't
11 vote on 3.

12 MR. WRIGHT: In the draft you have the third
13 paragraph was proposed to be removed; the one that reads,
14 "This site certificate agreement authorizes only." So I
15 don't know now if your vote included that or not.

16 CHAIR LUCE: Yes, we will leave it as it is.

17 JUDGE WALLIS: Very well. Anything further on
18 that page?

19 CHAIR LUCE: No.

20 MS. ADELSMAN: Give us a second.

21 JUDGE WALLIS: The document review committee voted
22 on numbered paragraph 3 to delete the term existing that is
23 highlighted inasmuch as a senior water right would by
24 definition exist. Are we ready for 15?

25 CHAIR LUCE: Yes.

1 JUDGE WALLIS: The numbered paragraph 5 is
2 proposed for deletion inasmuch as there appear to be no
3 current plans, and if there are plans in the future then
4 those would be dealt with at that future time.

5 CHAIR LUCE: It is a holdover I believe from 1 and
6 2. So now that 3 and 4 are being developed this is surplus.

7 JUDGE WALLIS: Page 16?

8 MS. ADELSMAN: So we ultimately will see all these
9 attachments because I think --

10 MR. WRIGHT: Yes. We'll get to that on the
11 agenda, but we're going to talk about attachments too.

12 CHAIR LUCE: Mr. Wright, do you want to discuss --
13 we've started hearing noise currents. Do you want to make
14 the comment?

15 MR. WRIGHT: This is a provision where you just
16 take everything below Item F noise during operation, strike
17 the entire section, and insert what came out of the order
18 except on page 17, Item 6.

19 CHAIR LUCE: Item 6 stays as it is.

20 MR. WRIGHT: Item 6 stays as it is.

21 MS. ADELSMAN: Item 6?

22 MR. WRIGHT: Other than that it all reads as the
23 language in the order reads.

24 JUDGE WALLIS: Page 18?

25 Page 19?

1 MR. WRIGHT: On page 19 the greenhouse gases and
2 carbon dioxide provision in here is the one I referenced
3 before that it reads differently than the order, and there's
4 reasons for that. I might also point out that just for your
5 reference, and Jim has gone back and he knows this, just for
6 information, this is the first time in an SCA or an order
7 you will have used your greenhouse gas provisions that came
8 into law. The languages that are in the previous SCAs are
9 by mutual agreement. They were negotiated settlements.
10 This is the first time you're actually implementing this
11 provision out of your act. So we're setting a little
12 precedent by this language, whatever little precedent means.

13 MS. WILLIS: There's a typo in spelling for Grays
14 Harbor in the highlighted area you have here. Grays is
15 spelled with an "A".

16 JUDGE WALLIS: Okay. Is there anything further
17 with regard to the draft SCA?

18 MR. FRYHLING: Judge Wallis, I hate to do this,
19 but can we go back to page 13?

20 JUDGE WALLIS: Page 13.

21 MR. FRYHLING: Under construction traffic.

22 JUDGE WALLIS: Yes.

23 MR. FRYHLING: The part on that I don't
24 necessarily like is, "The certificate holder shall retain
25 the services of a traffic monitor at peak traffic periods to

1 ensure compliance with the intent of this provision." I
2 would like to see some language that says to the fact that
3 the Applicant or the certificate holder will mitigate that
4 problem. I don't like the idea of a traffic monitor. That
5 to me is I can envision a little boy out there with his belt
6 on and his flag out there. And we're dealing with adult
7 people, and we can put a sign out there. We can find ways
8 to do that, but it doesn't have to be that we hire a sheriff
9 so they come up there for an hour in the morning and an hour
10 in the evening or something when people are going home. I
11 think there's a better way to provide that without having a
12 traffic monitor.

13 JUDGE WALLIS: Would it be satisfactory to remove
14 that sentence and as noted earlier rely on the Grays Harbor
15 County Department of Public Works and the Applicant to work
16 out a solution to that is --

17 MR. FRYHLING: I would like to see something like
18 that. I don't necessarily like to see we have to have a
19 traffic monitor. That doesn't seem to be in keeping with --

20 CHAIR LUCE: I would be willing to defer to --
21 this is a local issue. I would be willing to defer to
22 whatever the County wants. I simply will say this issue did
23 come up last time on 1 and 2, and we did require the
24 Applicant to retain I don't know he had a belt or not, but a
25 traffic monitor because it was necessary. So that's why I

1 put it in, Dick. The issue came up before and that's how it
2 was resolved, but, hey, whatever Grays Harbor County wants
3 Grays Harbor County can have.

4 MR. FRYHLING: I can't see why they can't with the
5 signage or what have you, but I don't like the --

6 CHAIR LUCE: It's a local issue.

7 MS. WILLIS: And it worries me. You can't do it
8 with signage and stuff as you have to enforce this. Okay?
9 So we have traffic that leaves the site, and you're
10 encouraging it to go the other direction but it doesn't go
11 the other direction. There's nothing that you can do to
12 enforce it. I can't send a sheriff out there to arrest them
13 because they took a right-hand turn instead of a left-hand
14 turn when they're both legal roads, they're both legal
15 entries onto the freeway.

16 So see what you're wrestling with here? I really
17 don't have a solution and I'm going to suggest that whatever
18 the solution was last time it didn't work as well as one
19 wanted it to because we still had a lot of traffic coming
20 off of Keys Road. And I apologize to the Applicant if the
21 traffic that I was observing didn't have anything to do with
22 their project because we've had other projects up there.

23 So you see the problem with putting some language
24 in here that is nonenforceable? And I'll be more than happy
25 to work on this. I just don't know what the solution is.

1 CHAIR LUCE: Why don't we let you work on language
2 that would be satisfactory to Grays Harbor County, and I
3 will recommend since this is a local issue that we defer to
4 Grays Harbor County. And if the last sentence does not do
5 it and the first sentence does, that's fine.

6 MS. WILLIS: Thank you.

7 MS. ADELSMAN: I want to go back to page 20 on No.
8 4. It says the certificate holder shall provide to EFSEC
9 the calculations, and we don't say by when. And we talk
10 about it becoming incorporated into this document as an
11 attachment. So I am assuming we are talking about before
12 this document is signed or what's the timeline for this
13 calculation? Also, you know, in No. 3 we talk about 120
14 days before. So I'm just kind of looking at mostly so do we
15 have a time frame and if it's going to be an attachment to
16 this document before it's signed? Is it after it's signed?
17 There's some ambiguity in there.

18 MR. WRIGHT: I'm not sure what was meant by this
19 particular sentence. We have requirements in here for all
20 of the calculations, but once the independent qualified
21 third party is chosen this is basically a directive to the
22 independent third party.

23 MS. ADELSMAN: No. I mean they're not going to
24 calculate. I mean the process is the company calculates, we
25 agree that this is what the calculation is.

1 MR. WRIGHT: I'm sorry. Maybe I'm reading a
2 different -- which provision are you referring to?

3 MS. ADELSMAN: I'm looking at page 20, the last
4 provision there.

5 MR. WRIGHT: Okay. Yes. That I have an answer
6 for. There will be an appendix that isn't designated, but
7 it will probably be Appendix 7 in here that the calculations
8 are included as the appendix. The statute actually requires
9 that the calculations be included in the site certificate.

10 MS. ADELSMAN: Yeah, and we don't say by when so
11 I'm assuming --

12 CHAIR LUCE: Prior to, prior to signing the site
13 certificate.

14 MR. WRIGHT: They're incorporated into this
15 document as an attachment.

16 MS. ADELSMAN: So hopefully we're going to get
17 them way before the 12th.

18 MR. WRIGHT: You're going to get them in front of
19 you.

20 MS. ADELSMAN: Before the 12th?

21 CHAIR LUCE: Yes, you will have them.

22 MR. WRIGHT: They're actually done. We just don't
23 have them in appendix form yet.

24 CHAIR LUCE: Okay. We've gone through the order;
25 we've gone through the site certificate. According to the

1 agenda that was laid out before us --

2 MS. ADELSMAN: I'm sorry. I'm really slow. Then
3 I think the language should read that the certificate holder
4 because we are doing this almost like a final document has
5 provided EFSEC with the calculations which then they
6 incorporated appendix whatever.

7 MR. WRIGHT: Sure.

8 MS. ADELSMAN: I think we write in this all like
9 it's all going to be signed.

10 MR. WRIGHT: That's better language, yes.

11 CHAIR LUCE: That's fine.

12 All right. So we've gone through the order, we've
13 gone through the site certificate agreement, and now we're
14 going to have a little recess for 15 minutes. The
15 Applicant's counsel has indicated that there's some issues
16 that she would like to discuss, and staff and Judge Wallis
17 are going to discuss with the Applicant what she wishes to
18 present and then we will be back together. So we stand in
19 recess for 15 minutes. Thank you.

20 MS. ADELSMAN: I'm so sorry, but I do have one
21 last -- I am slow today with my cold. We have never
22 attached the NPDES to the site certification agreement.
23 Usually it's a standalone document.

24 JUDGE WALLIS: How about if we have staff look
25 into that and respond?

1 MS. ADELSMAN: Okay.

2 CHAIR LUCE: All right. Recess for 15 minutes.

3 (Recess taken from 10:55 a.m. to 11:15 a.m.)

4 CHAIR LUCE: We will be on the record now. It is
5 11:15 and this is a continuation of the deliberative session
6 on the Grays Harbor Energy Project. Today is Wednesday,
7 September 29, 2010.

8 In the break period Judge Wallis and Manager
9 Wright have had an opportunity to discuss some issues with
10 Counsel for the Applicant Grays Harbor and, Judge Wallis,
11 the floor is yours.

12 JUDGE WALLIS: Thank you. In those discussions we
13 acknowledged that there are a number of technical matters
14 that the Applicant is raising and the Applicant will discuss
15 those with staff. Staff will provide a recommendation for
16 any changes that staff supports and provide that to the
17 Council.

18 In addition there are some substantive issues -- I
19 think they're relatively few in number -- that the Applicant
20 would like to address before the Council and we recommend
21 that the Council hear those comments.

22 CHAIR LUCE: Does staff have a recommendation on
23 those substantive matters?

24 JUDGE WALLIS: If the Council wants a
25 recommendation then at the time we submit the recommendation

1 on the technical matters we can include those
2 recommendations.

3 CHAIR LUCE: How do you suggest we proceed from
4 here?

5 JUDGE WALLIS: I suggest that we allow
6 Ms. McGaffey to make a presentation.

7 CHAIR LUCE: Ms. McGaffey, the floor is yours.

8 MS. MCGAFFEY: Thank you.

9 JUDGE WALLIS: On the microphone if you pull that
10 over and push the button, you should see a little red light
11 there. That means you're on.

12 MS. MCGAFFEY: I think I'm on. Thank you for this
13 opportunity. I'll try to be very brief. There are three
14 substantive issues that I want to touch on. The first two
15 very quickly.

16 The first one is the discussion today that
17 concerns traffic. The certificate holder has some concern
18 about the SCA or the order being written in too prescriptive
19 or unflexible way to address the kind of circumstances that
20 come up during the course of construction. Our proposal
21 would be that the SCA be written fairly simple to require a
22 plan be submitted to the Council for approval. I think we
23 all understand the issues of concern both to pedestrian
24 traffic and otherwise, and that can be addressed through the
25 plan. And we would be happy to sit down -- I understand

1 that the Council is kind of delegating this to the Council
2 Member from the County. We would be happy to sit down to
3 try and work out particular language to address that.

4 CHAIR LUCE: Thank you.

5 MR. MOSS: I didn't hear the Public Works
6 Department mentioned in there anywhere. Is there some
7 objection from the Applicant's part for working with the
8 Public Works Department?

9 MS. MCGAFFEY: No objection.

10 MR. MOSS: I think that was the idea was to do
11 that, and the Council Member can have some participation in
12 that process too as appropriate. But that would seem to be
13 the entity of interest, and it has the capability to work
14 intelligently with you on this issue.

15 MS. MCGAFFEY: I believe my suggestion was that we
16 work with the Council Member on the specific wording that
17 should be in the SCA, but I agree with you we'd work with
18 the Public Works Department on the plan.

19 MR. MOSS: Thank you.

20 MR. MCGAFFEY: The second issue also to deal with
21 briefly concerns the community action committee advisory --
22 or excuse me, the community communication plan, and the way
23 it's discussed in the order. There is discussion in the
24 order about involving the County on approving the plan, and
25 again my suggestion is that we sit down with the

1 representative from the County to work through some of that
2 language. Our concern is that we not create an additional
3 undefined process unclear do we have to go to the County
4 Commissioners, you know, what's involved in getting
5 approval. So that's an issue that I don't think requires
6 further discussion today, but my suggestion is that we talk
7 with the representative from the County about trying to come
8 to a wording for the SCA that make sense.

9 CHAIR LUCE: Okay.

10 MR. MCGAFFEY: The last issue I'd like to talk
11 about is noise, and I think it would probably be useful to
12 turn to page 11 of the Council order since that's I believe
13 where the provisions are to going to go to the SCA.

14 Our first concern about the way this provision has
15 been drafted is if you see at the top of page 2(a) through
16 (c) are provisions that are found in the original SCA with
17 respect to Units 1 and 2, and then what's now drafted as
18 point 2(d) would essentially apply those provisions to Units
19 3 and 4. I think in talking to staff that was not
20 necessarily the intent. The intent was to ensure that
21 additional silencers and acoustical wall that the
22 certificate holder has volunteered to put on Units 1 and 2
23 would also be put on Units 3 and 4 which we're comfortable
24 with. But I think this falls under the category of an issue
25 that we want to work through with staff on how that's

1 drafted so that the ambiguous provisions that apply in Units
2 1 and 2 would not apply to 3 and 4. So I just raise that in
3 case that's of concern to you. I think that's more of a
4 technical issue.

5 The second concern we have about the way this is
6 drafted concerns what's section 4 on page 11, which is
7 described as a least-cost verification noise study on the
8 improvements that will be made to Units 1 and 2. I don't
9 want to overly belabor this point, but the certificate
10 holder still objects to the idea of having to do some kind
11 of study to determine the fact of the additional measures
12 that are being installed on Units 1 and 2.

13 As we discussed in the last meeting there's no
14 question about compliance with the decibel limits. Doing
15 some kind of study that is going to measure the decibel
16 level after these improvements may be made is just going to
17 show the project is even more in compliance. What we heard
18 from the experts during the meeting on noise is that the
19 decibel levels may or may not be related to actual level of
20 annoyance. So since these improvements were really designed
21 to address the tonal issues that some of the neighbors have
22 complained about it is quite possible that going out and
23 measuring decibel levels isn't going to show any change, but
24 the people might be happier with the change in the character
25 of the noise.

1 So our concern here is that although we like the
2 idea that this is suppose to be a least-cost study, we are
3 concerned that it might nonetheless be an expense that does
4 not really gather any information that is worthwhile.

5 The third issue, and we have it here as the last
6 issue related to noise that I wanted to point out, actually
7 concerns the one section of the SCA that Mr. Wright said
8 would remain. So if you could turn to page 17 of the SCA
9 there's Section 6, and this section says that the regulatory
10 limits would apply to the project, and then there's
11 highlighted that says if the project isn't constructed
12 within five years and new standards are adopted through the
13 rule making that would apply.

14 As I understand the intention of that provision is
15 to say that if Units 3 and 4 aren't built in the first five
16 years and they are later constructed subsequent rule making
17 would apply to Units 3 and 4. However, if Units 3 and 4 are
18 never constructed and the Council changes its noise rules,
19 those new noise rules would not apply to Units 1 and 2. I
20 think that's just something that needs to be clarified in
21 the drafting, but I raise it just to make sure that there's
22 not any misunderstanding about what the Council's intent is.
23 Thank you.

24 CHAIR LUCE: I can't speak for the rest of the
25 Council, but as to your latter point I would agree that

1 Units 1 and 2 are operating under the existing rules and
2 that future changes in rules would not be retroactive.

3 Correct? Are you surprised?

4 MR. WRIGHT: Are you asking me?

5 CHAIR LUCE: Yes.

6 MR. WRIGHT: Yes, I'm surprised.

7 CHAIR LUCE: Well, 1 and 2 operate under
8 existing -- well, hold it. I may withdraw that. Let me
9 withdraw that. Let me think about that a little bit because
10 we opened up 1 and 2 and 3 and 4 this time, right. Okay.
11 So I withdraw my comment because the Applicant did open the
12 door by filing for an amendment to the existing 1 and 2. So
13 I will withdraw my earlier comment.

14 MS. MCGAFFEY: Chair, if I may, as I understand
15 the provision as its written, if they build 3 and 4 in the
16 first five years, then there's a subsequent change in the
17 regulations that regulation doesn't apply to any of the
18 facility. So why would it apply to 1 and 2 if 3 and 4 is
19 never built?

20 CHAIR LUCE: We will consider that and take it
21 under advisement. Thank you.

22 MR. MOSS: I just wanted as a general manner
23 caution to the extent we make provisions concerning changes
24 in law, whether that be rule or statute that occur in the
25 future. If the legislature decides it's going to change

1 something, they can. We're going to have to follow the
2 dictates of the legislature, and we don't want to have
3 something in here that's creates a problem in that regard.
4 So we have to be careful in drafting this and make sure we
5 don't foreclose or get ourselves in a conflict potentially.

6 CHAIR LUCE: Agreed.

7 MR. MOSS: I have a separate point on your second
8 point, and that is backing to No. 4 in the order on page 11
9 of the order. I take it your point concerning doing a
10 decibel study which is not what this says but clearly could
11 be within what it contemplates. Picking up on what you said
12 though, Ms. McGaffey, the point that we expect this to
13 reduce the decibel levels just sort of as night follows the
14 day type of proposition and hopefully will be the case.
15 Certainly it won't increase it. But the annoyance factor is
16 the one that's perhaps the most significant interest here
17 with respect to the company's willingness to do these things
18 actually.

19 Isn't there some sort of study that might be
20 feasible? Perhaps as simple a matter as going out and
21 talking to the affected community and seeing if this has
22 indeed had the desired effect. Because that's my interest
23 in this is to say, okay, you're going to do these things,
24 and you're going to spend money doing them, let's find out
25 if they actually did some good. Because, you know, we're

1 considering this application, but this isn't the only work
2 that we'll ever do. So it's useful information to have from
3 that perspective at the very least, but I think also it
4 would useful for the Applicant to know too so that you don't
5 then commit further down the line and say, okay, we'll do
6 this, we'll do that, and really it's not accomplishing the
7 designed end. So I don't know how we might craft this to
8 capture my point, but that can be considered. And just for
9 the record, you're nodding in affirmance with the point I
10 think so enough said.

11 CHAIR LUCE: The only other issue I'd mention on
12 noise, and it's not in the order, it's not in the SCA, but I
13 still think it's something that in time the Applicant might
14 want to consider is the purchase of noise easements. I mean
15 quite frankly it's not unique or it's not unheard of in this
16 industry for someone to resolve a noise problem by paying
17 someone else an easement over their property, not just for
18 the landowner currently but for all time. So that's up to
19 the company. That's a business decision, but it would seem
20 to me that if I was a company I might take a look at it.

21 Anything else to come before the Council?

22 Next steps?

23 JUDGE WALLIS: Yes, Mr. Wright, completion of
24 schedule.

25 MR. WRIGHT: The completion of schedule and the

1 attachments on page 20 of the -- I've got too many of them
2 out here -- of the SCA you have a list of attachments which
3 obviously you do not have in front of you. We are in the
4 process and just to give you a kind of heads up on where we
5 are, most of the attachments are fairly complete, the legal
6 description. The NPDES permit is an EFSEC permit, but we
7 draft it jointly in cooperation with the Department of
8 Ecology. That is complete. There is one final review it's
9 going through right now at the Department of Ecology as just
10 kind of a last check, but as far as I know and barring
11 anything that we don't know about that's done. So we're in
12 good shape there.

13 Appendix 3 has been redrafted and you'll have it
14 in front of you, and it is simply the water withdrawal that
15 you've already discussed, and it has the details in it. I
16 don't know of any problems at all.

17 Item 4 is simply we attached, and this is at your
18 choice if you want it or not. We attached the letters that
19 the Applicant submitted making the commitments for what they
20 intend to do on the noise. We just thought as part of the
21 record it would be -- since they are the foundation for
22 quite a bit of the noise provisions that they really should
23 be part of the record so we attached them, and you can
24 choose whether you want to do that or not.

25 Item 5, I am not even sure where we are with

1 Appendix 5. Appendix 5, the notice of construction, and so
2 those two I think are done.

3 Jim, is that right for five?

4 MR. LA SPINA: Five is ready to go to public
5 notice. It's the PSD permit for Units 3 and 4 that are
6 undergoing EPA review.

7 MR. WRIGHT: What we have here is why we have a
8 delay or we've had a delay in the past the intent was to
9 have for you an entire permit and SCA and order ready to go
10 for approval on the 12th that could go to the Governor, and
11 we had a schedule for the air quality permits that would
12 comply with that schedule. Remembering that the air quality
13 permits are unlike the water quality permit you don't get to
14 approve them by yourself. They have to be cosigned by the
15 Environmental Protection Agency, and we've been going
16 through that procedure with them. There's actually three
17 different air quality permits involved.

18 But as it turns out at the last minute they
19 recalled those draft permits. They're going through another
20 review. I won't go into a lot of detail why unless you want
21 to discuss that. Just suffice it to say that we are now
22 looking at probably a month before we can put out, at least
23 two or three weeks, possibly a month before we can put out a
24 notice for public review of those comments which takes
25 30 days. That's two months. We have to hold a hearing in

1 that process somewhere which we had originally scheduled to
2 be done by the 12th of October.

3 So what the bottom line of all that means is on
4 the 12th of October you will be able to approve for
5 submission to the Governor everything pending the air
6 quality permit. Tradition had -- I don't think the statute
7 requires -- but the tradition at EFSEC you don't send a
8 package to the Governor until it's complete and has all the
9 accompanying permits, etc.

10 So at this point what we're recommending is you go
11 through the procedure on the 12th, you look at all the
12 documents, you approve them. We set them on the shelf
13 pending this signature of the Chairman and the EPA on the
14 air quality permits. When that occurs sometime hopefully
15 before the end of the year, then you would go to the area in
16 question, Elma or Satsop or whatever, and you would actually
17 vote. You traditionally have gone to the area affected to
18 have that vote. You would vote then to send the entire
19 package to the Governor for approval.

20 So that's the process where we are. There's
21 nothing that I can do anyway about the schedule. I'd like
22 to see you -- my recommendation is you sew it up to the
23 extent, the maximum intent the Council has influence to do
24 by October 12. And the reason for that is then you're
25 within a year or one can argue you're within a year of the

1 amended application, and that would be a nice thing to do
2 relative to your statute.

3 CHAIR LUCE: What happened to the air quality
4 permit?

5 MR. WRIGHT: The air quality permit went through a
6 rigorous and extensive review process both between EPA staff
7 and the Ecology staff with a heavy involvement of the
8 Applicant's air quality people. Lot of drafts, lots of
9 review, lots of comments. We got down to the end, I even
10 had a memo from EPA saying this is ready to go, and I don't
11 know -- I don't want to assign or imply any kind of blame,
12 but somewhere somebody said, "Well, what happens if you
13 started all four of the turbines at the same time?" And the
14 answer was, "Well, if you did that, it would create
15 pollutant levels above and beyond anything that's in the
16 existing permits." And so at the point everybody said, "Oh,
17 well, then we've got to go back in and write provisions for
18 a four turbine startup", and then there you are. And so now
19 we're talking about whatever is required to do that and that
20 will take time.

21 CHAIR LUCE: Okay. Thank you.

22 MS. ADELSMAN: Now the one year applies only to
23 the SCA not to the NPDES.

24 MR. WRIGHT: Actually the one-year provision at
25 this point doesn't apply at all because you've talked about

1 extensions and etc. I'm not implying that you're in
2 violation. It would just be nice. Since we were going to
3 get close to it, it would have been nice to do it. Nice but
4 not necessary.

5 CHAIR LUCE: It would have been, yes. Council
6 comments with respect to Manager Wright's recommendations in
7 terms of how to proceed?

8 Hedia.

9 MS. ADELSMAN: Just a comment, and maybe Kyle can
10 help with this one. The attachments they don't always carry
11 the same legal weight. Some of them are really part of the
12 SCA. I mean like Attachment No. 1 and No. 3. The other
13 ones are really separate documents, but they're referenced
14 in the SCA. Is there a way to break that here to kind of
15 make the distinction?

16 MR. CREWS: Well, the idea is that in the past
17 there was a complete package to the Governor and they're
18 referenced so I don't know how to do that without --

19 MS. ADELSMAN: No, I understand, and I think I saw
20 the language it said that the NPDES or any amended document
21 after that is included by reference. So the water
22 withdrawal authorization these changes it would require the
23 whole SCA to be looked at again, but the PSD, the NPDES are
24 really more referenced in the site certification. They
25 stand alone as documents and they're signed. They're not

1 even signed by the Governor.

2 MR. CREWS: Well, we could look at that. It's
3 just kind of one of those traditional things that we do.

4 MS. ADELSMAN: No, I understand about the whole
5 package, but I'm kind of more thinking the SCA attachment,
6 real attachment that decides it's the withdraw, but some of
7 the -- even in the letter of commitment is really because we
8 already included some of the commitments in the SCA. So
9 we're just including it for a record, but it doesn't carry
10 any weight.

11 MR. CREWS: We can look at that.

12 MS. ADELSMAN: Okay.

13 CHAIR LUCE: Well, I don't know if we need a vote
14 or not, but I'm going to recommend to the Council that we
15 proceed according to Manager Wright's recommendations that
16 the representatives of the Applicant and the staff work
17 together and clarify the technical issues that are
18 outstanding. That Grays Harbor County representative has
19 some significant input to clarifying this traffic issue, and
20 with that that's what I'll recommend. I'll accept heads
21 going vertically. Do we have vertical heads?

22 MR. FRYHLING: I have some questions. If we went
23 through and put in our SCA that they are directed to only
24 start two turbines at a time would EPA or Ecology or
25 somebody have a problem with that? I'm assuming a

1 simplistic way of dealing with that.

2 MR. WRIGHT: I have no way of knowing that.

3 CHAIR LUCE: Mr. La Spina?

4 MR. LA SPINA: Yes, Chair Luce. The issue is that
5 there's some concern that if you start four turbines
6 simultaneously that it creates some visibility issues in the
7 nearby national parks and wilderness areas. That's the
8 issue in a nutshell.

9 MS. ADELSMAN: The haze.

10 CHAIR LUCE: From an operational point of view
11 they may want to start all four too which I think that's
12 probably the essence of it.

13 MS. ADELSMAN: Could I ask a general question?
14 Jim, do you know if they're looking at the haze what's
15 happening right now? Are they going to propose haze rules?

16 MR. LA SPINA: What I know is that the permit is
17 under review by the federal land managers, and they are
18 aware of all the applicable rules and that's about all I
19 know.

20 MS. ADELSMAN: And the rules to come?

21 CHAIR LUCE: Okay. Anything else, Manager Wright,
22 Judge Wallis?

23 The next Council session is on October 12.

24 MR. WRIGHT: It's on October 12 and it's our
25 normal 1:30 in the afternoon. Planning on it running

1 probably longer than you're normally accustomed to because
2 we're going to go through all of this to the extent you
3 desire to.

4 And nothing to do with these proceedings, but I
5 would like since you're here, well, almost all of you are
6 here, I would like you to set aside to the extent you can
7 the 28th of October. You will recall or you may not recall
8 a while back just before I came you had been discussing with
9 the Oregon EFSEC a joint meeting, and right now we have a
10 tentative schedule to do that on the 28th of October. It
11 will most likely be in Portland and most likely at the
12 Portland airport right now is one of the proposals or at
13 least it's being kicked around. And all I'm asking you to
14 do at this point is set aside the time for us. It would be
15 a whole day. You're not restricted by out-of-state travel
16 as long you go down and come back in one day, don't stay
17 overnight.

18 MS. ADELSMAN: We still have to have
19 authorization, and I'm wondering if you --

20 MR. WRIGHT: No, it's my understanding you don't.
21 Well, maybe your agency does. I don't know. I know at
22 Utilities and Transportation Commission you can drive to
23 Portland and go to a meeting and come back. You don't have
24 to have travel authorization.

25 MS. ADELSMAN: We had to get authorization for

1 even our director and others to go to Umatilla last time.

2 CHAIR LUCE: Well, you should try and get that
3 authorization.

4 MS. ADELSMAN: I thought it applied to all state
5 agencies.

6 CHAIR LUCE: If you're interested attending. This
7 is not a required meeting.

8 MS. ADELSMAN: No, I understand that.

9 MR. WRIGHT: We'll put out a lot more information,
10 but since we have you here I was just trying to get you to
11 reserve the date.

12 CHAIR LUCE: Do you think October 12 is going to
13 be our meeting as well as -- I'm wondering whether we should
14 start a little bit early? No, we don't want to start early.
15 All right. Is there a reason?

16 MR. WRIGHT: Well, yes. The UTC has their forum
17 and a bunch of things going on in the morning and we're not
18 going to get the room.

19 CHAIR LUCE: Okay. All right. Can we get the
20 reconciled SCA, the order and the permits, the attachments
21 well in advance so we can review those?

22 MR. WRIGHT: Judge Wallis and I talked about that
23 this morning, and if October 6 is acceptable to you we think
24 we can make a mail out on October 6. Is that adequate?

25 CHAIR LUCE: It's acceptable to me as long as

1 Council Members can commit today to have a chance to review
2 these documents and come to whatever comments they've got,
3 get them back to Judge Wallis and Manager Wright prior to
4 the 12th so that we can move this expeditiously. Can
5 everybody commit to that, please? That's a yesable
6 proposition? Terry, yes?

7 MS. WILLIS: Yes.

8 MS. McDONALD: Yes.

9 MR. FRYHLING: Yes.

10 MR. MOSS: In all likelihood, yes.

11 MS. ADELSMAN: I just want a clarification because
12 some of the permits, the NPDES, I think we're going very
13 close, but the PSD we are not going to get that.

14 MR. WRIGHT: Well, you can have a placeholder.
15 You can have the draft as it stands today, but it will still
16 be -- I'm guessing on the 12th it will still be under review
17 at EPA.

18 MS. ADELSMAN: I wanted to qualify that we would
19 be holding the document and really our final and we don't
20 spend our energy on something that's still hanging out
21 there.

22 CHAIR LUCE: My only intent is to make sure
23 everybody has had a chance to read them, comment on them,
24 and get comments back to staff by the time we have this
25 meeting because otherwise it could go a lot more slowly.

1 Yes, Judge Wallis.

2 JUDGE WALLIS: I would suggest a deadline of close
3 of business on Monday the 10th. Before that if you can.

4 MS. ADELSMAN: We have our temporary layoff day
5 that day.

6 MR. WRIGHT: Can't do it on Monday. Got to do it
7 on the close of business on Friday.

8 CHAIR LUCE: You can't do it on Sunday either, can
9 you?

10 MR. WRIGHT: Can't do it on Sunday either.

11 MR. MOSS: In that case we're down to a two-day
12 turnaround for us. That's pretty tight I can tell you from
13 having -- it took me almost a full day to review these two
14 documents. So if we have additional documents as well, then
15 I will have to withdraw my in all likelihood qualification
16 and say it is unlikely that I will be able to review all of
17 these documents in two business days considering we all have
18 other jobs to do.

19 MS. ADELSMAN: Can we get them sooner?

20 MR. MOSS: Or push this meeting from the 12th by a
21 few days?

22 CHAIR LUCE: I would prefer the latter actually
23 because I think we do have this temporary 30 layoff rules
24 and they're just a little Byzantine, and we can't do
25 anything on I think it starts that Friday.

1 MS. ADELSMAN: It starts on Sunday through
2 Saturday.

3 CHAIR LUCE: Starts on Sunday. Let's push this
4 one back a couple of days. Meaning if we're not going to be
5 able to have the air quality permit final ready to go,
6 another couple of days isn't going to hurt anything.

7 MS. WILLIS: Mr. Chairman, are you proposing to
8 move the meeting date of the 12th to another date? Is that
9 what you are saying?

10 CHAIR LUCE: Yes.

11 MS. WILLIS: Could you pick which days you might
12 be doing that? I have you booked for the 12th, but this is
13 our county's budget month, and I have booked virtually a lot
14 of meetings that I don't normally have.

15 CHAIR LUCE: Okay. What works for you?

16 MS. WILLIS: The 12th.

17 CHAIR LUCE: All right. Why don't we leave this
18 up to staff to work out. I mean I'll be available whenever,
19 but I do think that one day or so to review all of these
20 documents and final is probably not going to be doable.

21 MR. MOSS: At the risk of attacking the Holy
22 Grail, is it absolutely essential we do this because we've
23 done it before at the location or the near the location of
24 the facility? Why can't we do it here?

25 CHAIR LUCE: We are doing it here.

1 MR. WRIGHT: We are doing it here. The location
2 for your final vote to send it to the Governor will be at or
3 near the site. That doesn't come until we get the air
4 quality permit.

5 MR. MOSS: And that's much later.

6 MR. WRIGHT: That's much later. That's tradition.
7 That's just tradition. I couldn't find anything in the
8 statute that requires that, but you have apparently done it
9 as tradition.

10 MR. MOSS: I recall flying to Sumas with ten
11 inches of snow and the Governor's airplane being deiced. It
12 was a harrowing experience I might add. One I don't care to
13 repeat.

14 MS. ADELSMAN: I've done the same to Ellensburg
15 believe me, and they're lucky I attended it.

16 CHAIR LUCE: We're getting a little head of
17 ourselves. Why don't we have staff see what they can do in
18 terms of getting these documents ready. If it doesn't look
19 like they're going to be ready and we're at least two days
20 of review time, then we'll consider having another date for
21 review of the documents so that Council Members can review
22 them.

23 MR. WRIGHT: I have to get a notice on Tuesday the
24 5th if we're going to have a meeting on the 12th is the
25 latest I can get it out. So if we're going to reschedule

1 it, I think you almost have to tell me now because we have
2 to notice this. This is a regular Council meeting. It has
3 to be noticed, and so if we're not going to do the 12th we
4 almost have to decide now.

5 MR. FRYHLING: Do we have other business on the
6 12th?

7 MR. WRIGHT: Yes, you have your regular Council
8 meeting, but you don't have any decision making issues on
9 there, just reports. This is the decision making issue.

10 CHAIR LUCE: How about change the Council meeting
11 for that particular day move that forward one day?

12 MS. ADELSMAN: You can't. We're off on the 11th.
13 You're moving it to one day?

14 CHAIR LUCE: Well, the 12th is when we've got it
15 scheduled.

16 MR. WRIGHT: You can reschedule the Council
17 meeting. All I'm saying is if you're going to reschedule
18 it, the meeting notice gets rescheduled with it.

19 CHAIR LUCE: What I'm saying is have the Council
20 meeting instead of having it the 12th, which is the typical
21 day, move to either the 13th or 14th thereby providing
22 everybody with plenty of time to review all of the
23 attachments and get it done, Assuming that will work for
24 Terry.

25 MS. WILLIS: Well, could you move it to the next

1 week on the 19th?

2 MR. WRIGHT: What we will have to do once you
3 reach this point is we will have to pull --

4 MS. WILLIS: No, I have Council meetings all that
5 week.

6 MR. FRYHLING: As a Council Member I would just as
7 soon we have our regular meeting on the 12th.

8 MS. ADELSMAN: Then on the 14th we have Whistling
9 Ridge?

10 CHAIR LUCE: No, the 19th. I believe Terry said
11 she has commitments on the 14th.

12 MR. FRYHLING: Terry can answer but she's in
13 budgets, then she's got meetings. One meeting that she
14 wants to stay in.

15 MR. MOSS: I personally would support moving to
16 the 19th everything. I don't see any particular compelling
17 reason to have the monthly meeting on the 12th. Unless I
18 hear one, I would support the 19th for both.

19 CHAIR LUCE: I would too.

20 MS. WILLIS: At what time would you need to start
21 it on the 19th? Would you start it at the same 1:30 time
22 like you do on your regular meetings?

23 MR. WRIGHT: If it's a regular meeting that's
24 traditional. I don't know that it's mandatory at all.

25 MS. WILLIS: That actually works for me if you

1 start at 1:30 on the 19th, a week later than you normally
2 do.

3 CHAIR LUCE: All right.

4 MS. WILLIS: Sorry for the inconvenience.

5 CHAIR LUCE: All right. 19th, 1:30. Then we'll
6 move the regular meeting and add this to the regular
7 meeting.

8 Is there anything else to come before the Council
9 today?

10 Hearing that there is nothing, then the
11 deliberative session for Grays Harbor Energy Project will be
12 adjourned to be continued on the 19th.

13 * * * * *

14 (Deliberative session adjourned at 11:52 a.m.)

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1 In re: Satsop Combustion Turbine Project
2 Amendment No. 5

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A F F I D A V I T

I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on September 29, 2010, in Olympia, Washington.

Shaun Linse, CCR 2029