

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Prehearing Conference
WHISTLING RIDGE ENERGY, LLC.) Pages 1 - 49
WHISTLING RIDGE ENERGY PROJECT)
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A prehearing conference in the above matter was held on Friday, December 28, 2010, at the Washington State Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Room 133, in Olympia, Washington at 10:00 a.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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13 JUDGE WALLIS: This is a prehearing conference in
14 the matter of Energy Facility Site Evaluation Council
15 Application 2009-01 for Whistling Ridge Energy Project.

16 Let's go down through the parties and see who we
17 have on the line.

18 For the Applicant?

19 MR. McMAHAN: Tim McMahan calling with my
20 colleague Eric Martin in the room and Erin Anderson is also
21 on the phone.

22 Erin, are you there?

23 Well, Erin is not on just yet.

24 MR. SPADARO: Jason Spadaro with the Applicant.

25 MS. DRUMMOND: Susan Drummond from Skamania

1 County.

2 JUDGE WALLIS: Thank you, Ms. Drummond.

3 I suggest that we wait a couple more minutes as
4 people drift in.

5 (Off the record to await for participants on the
6 phone.)

7 JUDGE WALLIS: Let's be back on the record. Let's
8 continue with calling the role. We've had the appearances
9 from the Applicant.

10 How about Save Our Scenic Area?

11 MR. ARAMBURU: Judge Wallis, Rick Aramburu on the
12 line for SOSA. One of my clients is also with me on the
13 line.

14 JUDGE WALLIS: Mr. Aramburu, it's very difficult
15 for us to hear you. If you could pull the microphone close
16 to your mouth and if you have a volume adjustment put it on
17 high.

18 MR. ARAMBURU: How is this? Is this better?

19 JUDGE WALLIS: Much better.

20 MR. ARAMBURU: Thank you.

21 JUDGE WALLIS: Friends of the Columbia Gorge?

22 MR. KAHN: Gary Kahn and Nathan Baker here.

23 JUDGE WALLIS: Skamania County Economic
24 Development Council?

25 MR. ANDERSEN: Brad Andersen and I think Peg

1 Bryan-Miller may be on the phone as will.

2 MS. BRYAN-MILLER: Yes, I'm on the line. Thank
3 you.

4 JUDGE WALLIS: The Yakama Nation?

5 MR. COLBY: George Colby. Also with me is Jessica
6 Lally, Councilman Warren Spencer, and Councilman Rick
7 Watlamet.

8 JUDGE WALLIS: Counsel for the Environment?

9 MR. MARVIN: Bruce Marvin, Assistant Attorney
10 General, here.

11 JUDGE WALLIS: Department of Commerce?

12 MR. ANDERSON: Mark Anderson is here.

13 JUDGE WALLIS: The Port at Skamania County?

14 MR. ANDERSEN: Brad Andersen also going to be
15 representing the Port of Skamania, and I don't know if John
16 McSherry is on the line or not.

17 JUDGE WALLIS: Thank you, Mr. Andersen.

18 Are there any other parties in attendance?

19 MR. WOODRICH: Yes, Your Honor. Ken Woodrich on
20 behalf of Skamania PUD.

21 MS. DRUMMOND: And Susan Drummond for Skamania
22 County. I believe you already have me though.

23 JUDGE WALLIS: Yes, that's correct.

24 MR. CANTRELL: Shawn Cantrell on behalf of Seattle
25 Audubon.

1 JUDGE WALLIS: Thank you.

2 Anyone further?

3 All right. Let's begin. We've circulated a draft
4 agenda and had an addition to it. I have sent out a copy of
5 that and also a copy of the exhibits on cross that are
6 proposed which we have in the Council offices.

7 The first item on our agenda Mr. McMahan indicated
8 that he and Mr. Colby would like some time to discuss
9 possible change in the witnesses for the Yakama Nation on
10 the scheduling.

11 Mr. McMahan.

12 MR. McMAHAN: Why don't I let Mr. Colby commence
13 and then I'll pile on after him.

14 JUDGE WALLIS: Fine.

15 Mr. Colby.

16 MR. COLBY: Thank you, Judge. This is George
17 Colby, and I'm here with two of our Council Members from the
18 land committee, and you've already got a copy of their
19 resolution so you know I speak with some authority.

20 On behalf of the Yakama Indian Nation we are
21 withdrawing as live witnesses Jessica Lally, Jo Anna
22 Meninick, and Warren Spencer as live witnesses in this
23 hearing. We plan to stay at the table but offer no live
24 testimony.

25 MR. McMAHAN: Tim McMahan here. What I'm further

1 to understand is that means the written direct testimony is,
2 of course, it's not in evidence until sponsored by a live
3 witness so therefore in effect the written direct testimony
4 is withdrawn from the proceeding. The Applicant would
5 similarly withdraw the testimony for Chief Wilbur Slockish
6 and Chief Johnny Jackson as well as the rebuttal testimony
7 from Jason Spadaro that relates to cultural resources and
8 archaeology and all of the attached documents in
9 cross-examination exhibits relating to any of those issues.

10 Again, it's my understanding that the overall
11 approach here is that none of these witnesses will come in
12 in any way during the proceedings, but that the Yakama
13 Nation will maintain its intervenor status just to
14 participate in the proceedings.

15 MR. COLBY: That is correct, Judge. Colby here.

16 MR. McMAHAN: I have one further question of the
17 parties as a follow up. We have Sarah McDaniel as the
18 Applicant's witness sponsoring the elements of the
19 application relating to cultural resources and archaeology.
20 It's at least my understanding from the Tribe's perspective
21 that they would stipulate to her testimony by way of sworn
22 acknowledgment similar to that which we're doing with a
23 couple of other witnesses, but obviously all parties have a
24 right to weigh in on whether or not that's an acceptable
25 approach.

1 JUDGE WALLIS: Very well. Do other parties wish
2 to comment?

3 MR. KAHN: Your Honor, this is Gary Kahn from
4 Friends of the Columbia Gorge. This is brand new
5 information. I would like a little bit of opportunity to
6 think about whether we are willing to agree to address Ms.
7 McDaniel's testimony by stipulation as opposed to having the
8 opportunity to cross-examine her. We can let everybody know
9 in a couple of days, but I don't think we're prepared to
10 address that right now.

11 JUDGE WALLIS: Yes, that's fine.

12 MR. COLBY: The Yakama Indian Nation is prepared
13 to address that, and it's fine the way Mr. McMahan has
14 stated it.

15 JUDGE WALLIS: Very well. That appears to be an
16 item that we can take up at the opening of the hearing or
17 even at a later date in light of the proposed schedules that
18 we have.

19 Mr. McMahan, have you thought about possible
20 effects of this on the proposed hearing and witness
21 schedule?

22 MR. McMAHAN: Well, not with any real precision
23 other than the fact it probably saves us an entire day which
24 is at least good news to me. And I think the bigger sort of
25 elephant in the room problem with this schedule and I'm

1 really using Mr. Baker's schedule, and I do want to express
2 my appreciation for him laboring through this over the
3 holidays.

4 I think the big problem here is what the Council
5 wants to do with this site visit because from my view it
6 creates a fair amount of pandemonium to have a standby
7 potential site visit and KVA visits at the beginning of the
8 hearing. We are really trying to get witnesses available
9 for two alternative dates separated by a day or more, and it
10 is a tremendous problem for us scheduling a number of
11 witnesses, including one coming from Cheyenne, Wyoming. So
12 it would be very helpful for me one way or the other if we
13 simply decide that the Council is going to take January 4
14 with no hearing and do the site visit or put it to the end,
15 one way or the other, because this is really hard for us to
16 schedule around that unknown eventuality.

17 JUDGE WALLIS: Very well. My limited read on
18 Council preference would be that the site visit be at the
19 end. To my experience having gone through several of these,
20 it is helpful to have any relevant testimony and perhaps
21 exhibits in mind and in hand when taking a site visit or a
22 view, and scheduling it at the end would offer some
23 additional flexibility and would allow Council Members to
24 have the benefit of the testimony as they do view the KVAs.

25 Are there any thoughts or comments on that?

1 MR. ARAMBURU: This is Rick Aramburu speaking.

2 When you say at the end does that mean January 7?

3 JUDGE WALLIS: If it proves to be January 7, yes.

4 MR. McMAHAN: Your Honor, Tim McMahan here. I
5 gather you're saying at the conclusion of all the testimony
6 which could be the 11th or the 12th. Right?

7 JUDGE WALLIS: Yes, that's correct.

8 CHAIR LUCE: Judge Wallis, this is Jim Luce.

9 JUDGE WALLIS: Mr. Luce, we're having trouble
10 hearing you as well.

11 CHAIR LUCE: All right. Can I speak up? Do you
12 hear me now?

13 JUDGE WALLIS: Yes, much better.

14 CHAIR LUCE: My thoughts on this would be, first
15 of all, that the site visit has always been somewhat weather
16 dependent, and my understanding is there's a storm moving
17 in. Although storms move in all the time this time of year,
18 I would be okay, fine with scheduling the site visit at the
19 end of the presentation of the case. I can't speak for
20 other Council Members, but I think that that certainly would
21 be acceptable to me given all the vagaries we have with
22 witness scheduling and weather.

23 JUDGE WALLIS: Any other thoughts?

24 CHAIR LUCE: I'll just add my one other thought is
25 depending upon the weather you may or may not be able to see

1 what the Council would like to see. If we're really fogged
2 in or socked in, there's not much of a view scape at
3 500 feet.

4 JUDGE WALLIS: Yes. So that also is a decision
5 that the Council could make at the appropriate time based on
6 weather conditions. It may be possible that there is a day
7 or two just before the end of the hearing that that would
8 work in with witness schedules and we can plan that
9 accordingly. Would that be acceptable to the parties?

10 MR. BAKER: Your Honor, this is Nathan Baker.
11 Just in response to all the changes, I think we would be
12 fine with holding the site visit at the end, the site and
13 KVA visit at the end. Realistically that's likely to be
14 January 12. And with the opening up of the morning of the
15 5th, and now either the 4th or the 7th, what I would propose
16 happen is that on January 4 we hear from all the scenic
17 visual aesthetic witnesses so we can schedule that for
18 January 4. On January 5 and 7, we could fill in some of the
19 other witnesses who have been placed in other places. I
20 think it's still likely that we will need through
21 January 11. We may be able to do the site visit on
22 January 11, but I think it's going to be either the 11th or
23 the 12th.

24 MR. McMAHAN: Tim McMahan here. From the
25 Applicant's perspective, I think it's logical to have the

1 visual aesthetics occur on January 4 as I think was just
2 proposed and then immediately followed by the avian or
3 wildlife witnesses on the 5th.

4 MR. BAKER: This is Nathan Baker responding to
5 that. My only concern with that is that January 5 is the
6 day that is cut short because of the public comment session
7 in Underwood so that's only a half day. Well, it's slightly
8 more than a half day on January 5, and that day involves a
9 witness from California who would be relatively later on the
10 agenda for that day. So we really would prefer keeping with
11 having the wildlife on January 6. So it gives us more
12 flexibility for a witness from out of town.

13 MR. McMAHAN: Well, I guess I'm not sure what
14 happens on January 5 unless it's going to take two full days
15 on visual aesthetics on the 4th and the 5th. I mean the
16 other proposal would be to have Mr. Smallwood be the first
17 witness on the 5th -- or excuse me, the 6th. I'm sorry, the
18 6th.

19 MR. BAKER: This is Nathan Baker. I think what we
20 could do because January 5 is only slightly over a half day,
21 what we could do January 5 is finish up any testimony on the
22 scenic resources that carries over from the prior day and
23 then we could schedule the witnesses that are currently
24 scheduled on January 10 on transportation and then possibly
25 the witnesses that are currently scheduled on January 12,

1 noise and geology. I think because we're only talking about
2 five hours of testimony for that day. It's not a full day.

3 MR. ANDERSON: This is Mark Anderson from
4 Commerce. Leonard Bauer is visual aesthetics/socioeconomic
5 now scheduled for the 10th. He could make the 5th.

6 MR. McMAHAN: Katy Chaney is on the phone and she
7 has better command of the URS folks, but I mean my sense is
8 that I think it's probably a pretty good idea to have that
9 group of Larson, Homann, Storm, and Meier all available
10 earlier in the schedule as in the first week if their
11 schedules permit. Katy, does that make sense to you?

12 MS. CHANEY: Yes, I just know Dan Meier is not
13 available on Friday the 7th.

14 MR. McMAHAN: So if they all move up to say the
15 5th or the 6th does that work for your folks?

16 MS. CHANEY: Yes.

17 MR. McMAHAN: So, Judge Wallis, did you track
18 that? So we're talking about Storm, Meier, Larson and
19 Homann moving up into the first week, you know, probably the
20 5th I think.

21 MR. BAKER: This is Nathan Baker. I think from
22 Commerce I believe is Mr. Bauer could also be moved to the
23 5th if that works, if that makes sense.

24 MR. ANDERSON: Yes, Mark Anderson. That's what I
25 just said. He can't make the 4th or the 6th, but the 5th he

1 can make.

2 JUDGE WALLIS: Very well. Mr. Baker, we may ask
3 you to do a final iteration of the schedule proposal.

4 MR. BAKER: No problem at all, Your Honor.

5 MS. BRYAN-MILLER: This is Peggy Miller, and there
6 have been so many schedules floating around and there were
7 two that were updated on 12/27, and I guess just for my own
8 travel arrangements I just need to understand where I am.
9 It looks like I am going to be on January 10 in the morning,
10 and I just want to double check and make sure that I'm right
11 about that.

12 MR. ANDERSEN: Peggy is in the block of
13 socioeconomic which I thought was going to be on Friday the
14 7th.

15 MS. BRYAN-MILLER: Well, it does say Friday,
16 January 7 to Monday, January 10, and another one that says
17 that it will be in the morning on the 10th. I'm okay with
18 that. I just want to make sure that I'm there.

19 JUDGE WALLIS: Can we ask who is speaking, please?

20 MS. BRYAN-MILLER: This is Peggy Miller with the
21 Economic Development Council for Skamania County.

22 MR. BAKER: This is Nathan Baker. Maybe I should
23 respond since I've sent out both versions. I think what the
24 latest version was that Ms. Bryan-Miller would be on either
25 January 4 or 7, and that it would be connected with the

1 visual and aesthetic. It's also socioeconomic, but
2 Ms. Miller in terms of her schedule we realized it would
3 have to be that first week. So if January 4 works, then we
4 could just schedule that at the end of January 4.

5 MS. BRYAN-MILLER: Well, actually because of the
6 schedules I must be looking at a different schedule because
7 the one that says updated 12/27 of 2010 says that I will be
8 in the morning of January 10, and there's another version
9 that says that I will either be Friday the 7th or the 10th.
10 So I would prefer to be, you know, because I think my
11 attorney is also representing the Port I would prefer to be
12 on the morning of the 10th since that's when the Port is
13 going to be on.

14 MR. BAKER: Okay. Yeah, we could easily do that
15 on the 10th. I guess I misunderstood. I thought it had to
16 be on the first week. Yeah, we could definitely fit you in
17 on the morning of the 10th.

18 JUDGE WALLIS: We understand that there is a
19 version of this schedule that was circulated on the 28th.

20 MS. BRYAN-MILLER: Okay. I have not received a
21 schedule circulated on the 28th.

22 MR. BAKER: Just to clarify that, I think if
23 people are printing it out that it shows today's date in the
24 top right-hand corner, but the last version circulated was
25 on December 23, but it's just when you print it out it shows

1 the date.

2 JUDGE WALLIS: Okay.

3 MR. ARAMBURU: This is Rick Aramburu. It says in
4 the lower left-hand corner Schedule 5 which I believe is the
5 final schedule.

6 MR. BAKER: And that's correct, Your Honor.
7 Schedule 5 is the name and date it was filed. That's the
8 last one.

9 JUDGE WALLIS: Very good. Thank you.

10 MR. WOODRICH: Your Honor, can I interject? This
11 is Ken Woodrich for Skamania County PUD.

12 JUDGE WALLIS: Mr. Woodrich.

13 MR. WOODRICH: Thank you, Your Honor. I need to
14 make note that I have a prescheduled trip that I'm going to
15 be gone the 10th and the 11th, that's Monday and Tuesday. I
16 have spoken to Mr. Andersen. If Mr. Wittenberg's testimony
17 is to take place on either the 10th or the 11th,
18 Mr. Andersen can do the questioning for the PUD if
19 necessary. But I guess I probably need to get as much
20 clarification as possible whether or not we're talking about
21 Friday the 7th or Monday the 10th because it makes a
22 difference for me.

23 MR. BAKER: This is Nathan Baker. We are
24 definitely talking about the 10th for Mr. Wittenberg, the
25 afternoon of the 10th.

1 MR. WOODRICH: Yeah, that's different than what's
2 showing up on our schedule, but I can talk to Mr. Andersen
3 then about standing in for the PUD, if necessary.

4 JUDGE WALLIS: Very well. Were there any other
5 proposed changes to the draft schedule?

6 MR. ANDERSEN: Brad Andersen. I guess I wish I
7 had the draft schedule. I'm looking at what I thought was
8 most the recent one that had all of the socioeconomic folks
9 on Friday, January 7, which would have been good for me
10 because it's Eric Hovee, Peggy Miller, John McSherry, and
11 Robert Wittenberg, but it sounds like there was a more
12 recent one that I don't have a copy of.

13 MS. BRYAN-MILLER: This is Peggy Miller again, and
14 if that is the case I prefer to be scheduled when they are
15 scheduled. And if that works best for the EDC's attorney,
16 Mr. Andersen, then the 7th works well for me if we could all
17 be grouped together on the 7th.

18 MR. ARAMBURU: This is Rick Aramburu speaking. We
19 have settled upon the 10th because my witness Mr. Michaels
20 is in Denver, Colorado for a conference on Friday as I have
21 announced over the past several weeks. He will be arriving
22 for testimony on Monday so we would prefer to keep Schedule
23 5 that includes the socioeconomic and energy witnesses on
24 Monday and Tuesday.

25 MR. McMAHAN: Brad, if you're at your computer, I

1 just sent you Version 5.

2 MR. ANDERSEN: Okay. Thanks.

3 JUDGE WALLIS: Let's put the schedule aside for
4 just a moment then until people get their copies of that
5 version, and why don't we come back to it later in the
6 conference. What I would suggest is that we begin that
7 discussion with Mr. Baker giving a recap of his notes of the
8 changes that have been agreed. Would that work for folks?

9 MR. ARAMBURU: This is Rick Aramburu speaking.
10 Mr. Baker's No. 5 schedule was sent to the parties, and you,
11 Mr. Wallis, on December 23 at 4:43 p.m., if that would help
12 the parties.

13 JUDGE WALLIS: Thank you.

14 (Brief recess to direct an unknown, confused
15 caller to the proper location for him to call to get his
16 questions addressed.)

17 JUDGE WALLIS: Let's be back on the record,
18 please. Apologies for the interruption.

19 Mr. Baker, I think when we left the record we had
20 asked if you could return with a recap later in the
21 conference. Would that work for everyone? Mr. Baker, are
22 you there?

23 MR. BAKER: Yes, I will do my best here. What
24 we've talked about doing is scheduling January 4 for the
25 scenic or visual and aesthetic witnesses. That would be the

1 two Watson witnesses, Pearson, Dean Apostol.

2 The morning of January 5 that's the day that's cut
3 off at 1:00 p.m. so it's only slightly over a half day. On
4 that day we would have as many of the URS witnesses who can
5 make it such as Larson, Homann, and Storm and Meier.
6 Possibly Witness Bauer from Commerce. It may even make
7 sense to start off with him, if that works for him on the
8 morning of the 5th.

9 The 6th would be avian and wildlife which is five
10 witnesses. Then the afternoon of the 6th we would continue
11 on with avian and wildlife, finish that up. We have one
12 witness on energy and need from Commerce Schwartz. He's
13 listed on the afternoon of the 6th because that's the only
14 date that would work for him.

15 We haven't talked about what we are going to move
16 to the 7th. The 7th is relatively open right now. What we
17 may be able to do is move -- well, I guess there is still
18 one thing on the agenda for the 7th and that would be land
19 use. We have witnesses Chaney and Pearce listed on the 7th.
20 I believe we are concluding relatively early on Friday as
21 well so it would not be a full day. So we may want to move
22 one or two of the witnesses from the 10th or 11th onto the
23 7th. And that would probably be Peggy Bryan-Miller and any
24 of the witnesses that are more in the socioeconomic and
25 visual category as opposed to the energy and need category.

1 So I will try to identify another witness that we could do
2 that for.

3 Then moving into the next week --

4 MR. ANDERSEN: Could I interrupt just quickly.
5 Brad Andersen representing the Port of Skamania and Skamania
6 County EDC. It would be great if you could combine or put
7 John McSherry who is No. 44 and Eric Hovee and perhaps since
8 Ken Woodrich will be leaving on Monday perhaps put Bob
9 Wittenberg on that Friday since you said it's pretty wide
10 open. That would limit the amount of time that we would
11 need to participate in getting in your way.

12 MR. BAKER: I'd like to respond briefly on behalf
13 of both Friends and Save Our Scenic Area, Rick Aramburu. We
14 would have no problem with moving John McSherry's testimony
15 to that Friday. I think we would be more concerned about
16 especially Bob Wittenberg, probably Eric Hovee's as well.
17 The reason is our witness on these issues, energy and
18 socioeconomic, could not be there on Friday, and I've
19 attempted to schedule all the witnesses on that cluster of
20 topics together on the 10th and 11th. That's the witnesses
21 traveling from California. We have two witnesses from
22 California and that's Bob Michaels.

23 MS. BRYAN-MILLER: Actually this is Peggy Miller
24 and I am traveling from Nevada, and Mr. Andersen is my
25 attorney and then also Mr. Hovee is the EDC's witness, and

1 so if Mr. Hovee and myself and John McSherry could be on
2 Friday and that works better for our attorney, and it
3 certainly works for my travel plans since I'm also coming
4 from out of state.

5 MR. ANDERSON: This is Mark Anderson from
6 Commerce. It's actually not accurate that Howard Schwartz
7 can only make the 6th. He cannot make the second week, the
8 10th, 11th, and 12th so we put him on the 6th, but he could
9 make I believe any other day on the first week as well where
10 he would fit. In addition, Mr. Usibelli cannot make the
11 10th. He's scheduled for the 11th, but if you move into
12 individuals from the 10th back to the 7th on a Friday, he
13 actually could make that day.

14 JUDGE WALLIS: Let's be off the record while we
15 engage in some discussion, and we'll come back to the record
16 for a conclusion of the recap.

17 (Discussion off the record.)

18 JUDGE WALLIS: Let's be back on the record for
19 your summary.

20 MR. BAKER: Okay. So on the 10th which again is
21 not a full day, I believe we're breaking early on Friday for
22 travel. I could be wrong. Okay. But we have five
23 witnesses that we can all agree would be on the 5th and
24 those are Katy Chaney first, Schwartz, Peggy Bryan-Miller,
25 and McSherry.

1 MR. MOSS: He's talking about the 7th.

2 MR. McMAHAN: What date, Nathan?

3 MR. BAKER: That would be Friday, January 10th --
4 Friday, January 7.

5 MS. DRUMMOND: This is Susan Drummond for Skamania
6 County. I believe you just mentioned you have Mr. Pearce on
7 the 7th. I had hoped to combine both Skamania County and
8 Klickitat County Public Economic Development Authority to
9 conserve the resources of the two counties, and previously
10 we had it set on the 10th and 11th. Certainly if we could
11 get it on one day that would be great, but at least the 10th
12 and 11th would be kind of closer together than moving
13 Mr. Pearce to the 7th.

14 MR. BAKER: This is Nathan Baker. That may be
15 impossible just because of the volume of testimony on
16 socioeconomic, and there is not very much testimony on land
17 use. And, you know, we want to try to keep land use on the
18 7th and socioeconomic on the 10th and 11th.

19 JUDGE WALLIS: We are getting back into back and
20 forth on this so let's be off the record while we do that.

21 (Discussion off the record.)

22 JUDGE WALLIS: We have determined to take a recess
23 in a little bit and allow Mr. Baker and any of the other
24 parties to continue discussions to do that and then get a
25 recap that reflects the agreement of parties based on the

1 information that we now have.

2 The next item on my agenda was to acknowledge and
3 offer numbering on the testimony that has been presented for
4 or the exhibits that have been presented for
5 cross-examination. I have four exhibits for Mr. Jason
6 Spadaro, Exhibit 29.04, BPA system impact study would
7 according to my notes be Exhibit 1.07rx. The Washington
8 State Wind Speed at 50 meters would be Exhibit 1.08rx. The
9 Washington State Wind Power at 50 meters would be
10 Exhibit 1.09rx, and the Washington State Wind Power at
11 50 meters zoomed would be 1.10rx.

12 Proceeding in the order of the numbering of
13 witnesses, the next proposed document I have from the
14 Applicant is for Mr. Apostol, and that would be Witness No.
15 21, and the exhibit number would be 21.07cx. Then from the
16 Applicant three exhibits on cross for Mr. Smallwood, and
17 they would be 22.04cx, 22.05, and 22.06. There's also a
18 letter dated April 11, '07 which would be 22.07. We have
19 several proposed exhibits for Ms. Lally, Ms. Meninick, and
20 Mr. Spencer, but according to the proposal to withdraw those
21 witnesses we need not mark the proposed exhibits. Then we
22 have exhibits on cross-rebuttal for Mr. Wittenberg, and they
23 would be numbered 42.02, 03, 04, 05, 06, and 07. Finally
24 there's one exhibit for Mr. Pearce that would be
25 Exhibit 51.02.

1 MR. McMAHAN: Your Honor, Tim McMahan here, and
2 I'm sure Ms. Drummond will be speaking up, but I don't think
3 that exhibit is correctly located. I think that was an
4 exhibit for cross-examination of Mr. Apostol who is actually
5 offered by the county.

6 MS. DRUMMOND: Susan Drummond. That is correct.
7 That is actually a cross for Mr. Apostol, although it is
8 Skamania County that is producing it.

9 JUDGE WALLIS: Very well. So that would be 21.08;
10 is that correct?

11 MS. DRUMMOND: Well, the number isn't in front of
12 me. I would assume that's correct though.

13 JUDGE WALLIS: That's the letter from Mr. Kahn?

14 MS. DRUMMOND: Yes, it's an appeal on the Windy
15 Flats project, correct.

16 JUDGE WALLIS: Very well. I will see that the
17 parties get a copy of an updated exhibit list no later than
18 close of business on Friday.

19 Are there any objections to the proposed exhibits
20 on cross-examination?

21 MR. McMAHAN: Tim McMahan here. First, on the
22 Spadaro exhibit we will be objecting to them. I don't know
23 if you want objections on their relevance now or if you want
24 to take them up when they're offered into cross-examination?
25 I had anticipated objecting when they were offered in

1 cross-examination, but we would object to them on the
2 relevancy anything having to do with Mr. Spadaro's
3 testimony.

4 MR. ARAMBURU: My understanding is from the
5 previous prehearing orders is that objections to rebuttal
6 exhibits would be considered and due at the opening of the
7 hearing on January 3.

8 MR. McMAHAN: And that was my recollection too.

9 JUDGE WALLIS: That is what the prior order did
10 provide. So at the time that Mr. Spadaro is sworn, then
11 we'll take that exhibit up. We need to consider the order
12 of cross-examination. Is that something that we will need
13 to spend any time with this morning? For the Applicant
14 witnesses do we have volunteers to go first?

15 Mr. Kahn, Mr. Aramburu?

16 MR. KAHN: This is Mr. Kahn. In terms of if you
17 were referring to cross-examination of like the Applicant's
18 or the other intervenors' witnesses, since SOSA and Friends
19 are what I'm going to call the more involved intervenors we
20 would request that we be permitted to cross-examine those
21 witnesses last.

22 JUDGE WALLIS: Are there any other thoughts on
23 that?

24 MR. CANTRELL: Your Honor, Shawn Cantrell for
25 Seattle Audubon. My only thought is that we will likely

1 have limited questions that may in fact get asked and
2 answered by other counsel more skilled than I, and so we
3 would prefer to wait until after others have questioned to
4 see whether or not I even need to do any questioning.

5 JUDGE WALLIS: Are there any other thoughts?

6 MR. McMAHAN: Your Honor, Tim McMahan here. I
7 think it might be helpful to all the parties to have some
8 sense of the amount of time cross-examination is anticipated
9 to occur for these witnesses. You know, we could either do
10 that here or the parties could circulate the amount of time.
11 But I think that would be helpful in just planning what this
12 looks like. I really don't quite understand why the most
13 so-called involved parties would wait to go last in
14 cross-examination of witnesses either. That doesn't make
15 much sense to me.

16 JUDGE WALLIS: Very well. My preference would be
17 not to spend time this morning on the estimates of time on
18 cross but to proceed to a schedule that considers to the
19 extent that the parties have already considered that
20 information. It's been my experience that if we have the
21 more involved parties go first that as Mr. Cantrell
22 indicated that does tend to lead to a better organization
23 and faster progress on cross-examination. So my preference
24 would be that the more involved parties in the witnesses'
25 presentations be first to cross-examine.

1 Is there any other party than the Audubon Society
2 and SOSA and Friends that would intend to cross-examine the
3 Applicant's witnesses?

4 MR. BAKER: Your Honor, this is Nathan Baker. I
5 just noted that an e-mail did come in from the Skamania
6 County Agri-Tourism Association, Mr. Crumpacker, and he
7 indicated that he might have questions of witnesses on the
8 socioeconomic and energy and need categories.

9 MR. McMAHAN: Your Honor, Tim McMahan here. Maybe
10 this is something we take up during the hearing, but I
11 recall many admonishments from yourself, Judge Wallis, that
12 parties need to participate in these prehearing conferences
13 if they will be eligible to participate in these
14 proceedings, including cross-examination. I note that
15 Mr. Crumpacker is not on this call, and I think it's
16 problematic to say the least for somebody to dive bomb in
17 and out not having participated here. Mr. Crumpacker is a
18 lawyer. He should know better. So I think that's an issue
19 that may impair the progress of these proceedings.

20 JUDGE WALLIS: Very well. We will take up that
21 question at a time that Mr. Crumpacker is able to respond.

22 MR. ARAMBURU: Mr. Wallis, Rick Aramburu speaking
23 again.

24 JUDGE WALLIS: Mr. Aramburu.

25 MR. ARAMBURU: It would be useful for us to know,

1 particularly for myself being principally in charge of
2 Professor Michaels whether there are parties other than the
3 Applicant that wish to ask Mr. Michaels questions?

4 MR. MARVIN: Before we move onto that, this is
5 Bruce Marvin, Counsel for the Environment, and we do intend
6 to have cross-examination questions for the Applicant's
7 witnesses. But I think as a somewhat less involved party
8 many of the questions I suspect will be covered by other
9 intervenors.

10 JUDGE WALLIS: Very well.

11 And for Friends and SOSA witnesses?

12 Mr. McMahan, I'm assuming the Applicant would be a
13 principally interested party in examining those witnesses.

14 MR. McMAHAN: Correct, although I would note that
15 we anticipate very limited and focused cross-examination for
16 each of these witnesses, and I would say that from at least
17 what I'm anticipating none of them would be more than an
18 hour on cross-examination.

19 MR. ANDERSEN: Brad Andersen on behalf of the Port
20 and EDC. We would probably follow suit. I would anticipate
21 that it would be covered, but just in case it's not I'd like
22 to reserve the right to cross since he seems to be offering
23 rebuttal testimony to our witnesses.

24 JUDGE WALLIS: Any other parties?

25 MR. MARVIN: Counsel for the Environment would

1 also like to reserve the right to question SOSA and Friends
2 of the Gorge witnesses.

3 MS. DRUMMOND: Susan Drummond for Skamania County.
4 Similar as well, although I expect we will have very limited
5 questions.

6 JUDGE WALLIS: Very well.

7 MR. ANDERSON: This is Mark Anderson for Commerce.
8 I would say the same. Our Assistant Attorney General
9 arrives back from annual leave tomorrow, and I just need to
10 sit down and talk with her.

11 MR. CANTRELL: Shawn Cantrell for Seattle Audubon.
12 We would likely have questions if they weren't addressed by
13 other cross-examination of the avian witness that is
14 currently scheduled for Friends and SOSA, but not their
15 other witnesses.

16 JUDGE WALLIS: Very well.

17 For Counsel For the Environment witness?

18 MR. McMAHAN: The Applicant would anticipate very
19 limited, short, and focused questions, probably not more
20 than a half hour for Mr. McIvor.

21 MR. KAHN: Friends of the Gorge will also have
22 questions for Mr. McIvor. I don't anticipate it being too
23 many.

24 JUDGE WALLIS: Any others?

25 MR. CANTRELL: Seattle Audubon as well.

1 JUDGE WALLIS: Any others?

2 For the Department of Commerce witnesses? Is
3 there any cross anticipated for Department of Commerce
4 witnesses?

5 MR. KAHN: This is Gary Kahn, Friends of the
6 Columbia Gorge. We will also have a few questions. I don't
7 anticipate it being very long.

8 MR. MARVIN: Counsel for the Environment would
9 reserve the right.

10 MR. ARAMBURU: This is Rick Aramburu speaking.
11 SOSA will coordinate with Friends, but we will have
12 questions for Commerce witnesses.

13 JUDGE WALLIS: The Skamania County EDC witnesses
14 Hovee, Miller, and Wittenberg?

15 MR. ARAMBURU: This is Rick Aramburu speaking. We
16 will have questions for them.

17 MR. KAHN: This is Gary Kahn. We will have
18 questions, but we will coordinate with SOSA.

19 MR. MARVIN: This is Bruce Marvin, Counsel for the
20 Environment again. We would reserve the right to ask some
21 follow up, if necessary.

22 JUDGE WALLIS: Skamania County PUD witnesses?

23 MR. KAHN: Again, Gary Kahn, same response. We
24 would likely have some questions, not very many.

25 MR. ARAMBURU: Same for SOSA.

1 MR. MARVIN: And Counsel for the Environment will
2 again reserve its right but doesn't at this point have any
3 questions.

4 JUDGE WALLIS: Very well. Port of Skamania
5 County?

6 MR. KAHN: Gary Kahn for the Friends same
7 response.

8 MR. ARAMBURU: Same for SOSA.

9 MR. MARVIN: Same for Counsel.

10 JUDGE WALLIS: And Skamania County?

11 MR. KAHN: Friends same response.

12 MR. ARAMBURU: Same for SOSA.

13 MR. MARVIN: Ditto.

14 JUDGE WALLIS: Okay. We have scheduled the
15 starting time on Monday for -- it had been scheduled for a
16 prehearing conference, and it strikes me that we have
17 accomplished I think today much, if not all, of what we
18 intended to accomplish on Monday, and subject to the
19 availability of Council Members to be present for the
20 opening statements we would plan to begin with those on
21 Monday morning. Is that consistent with people's
22 understandings?

23 MR. BAKER: Your Honor, this is Nathan Baker.

24 JUDGE WALLIS: Mr. Baker.

25 MR. BAKER: We agree that opening statements

1 should be part of Monday generally, but we also think they
2 should be first. We believe there should probably still be
3 a brief prehearing conference in order for us to circulate
4 our exhibits on cross-examination of rebuttal, if there is
5 any lingering issues in terms of scheduling, and then moving
6 into the opening statements and all that would take place
7 the morning of January 3.

8 JUDGE WALLIS: Very well.

9 MR. McMAHAN: Tim McMahan here. I concur with
10 that. We will have some additional cross-examination
11 witnesses for rebuttal witnesses offered by Friends and
12 SOSA.

13 MR. KAHN: Gary Kahn. Tim, did you say
14 cross-examine witnesses or exhibits?

15 MR. McMAHAN: I misspoke. Sorry.

16 MR. KAHN: Just wanted to make sure.

17 MR. McMAHAN: I don't think any of us intend to
18 surprise anyone like that.

19 MR. KAHN: Okay.

20 JUDGE WALLIS: I have been advised that Council
21 Members are not anticipating the need to be present until
22 1:30, and what I propose is that what we do is poll the
23 Council Members as to their availability at 10:00 a.m. That
24 may involve travel arrangements which have already been
25 made, and I will also before the close of the day on Friday

1 pass along the results of the inquiries. Given the
2 unpredictability of the length of discussions I suggest we
3 keep the 10:00 a.m. starting time, and it is possible I
4 believe that Council Members may be able to attend, and we
5 may be able to begin with the opening statements earlier
6 than 1:30. Again, we will advise the parties prior to the
7 close of business on Friday.

8 We have had a proposal for audiovisual equipment
9 from the Skamania County Lodge, and the representative was
10 indeed not at all kidding when she let us know that the
11 contractor for that equipment did charge in terms not of
12 dollars but arms and legs. So given the state budget
13 constraints which apply to this proceeding, it is likely
14 that we will be able to provide six microphones: three for
15 the bench, one for the sponsoring attorney, another for the
16 cross-examining attorney, and another for passing around in
17 case there are interjections.

18 It is also likely that we will be able to provide
19 one or more monitors that can be hooked up to computers, and
20 I'm going to have to inquire as to the availability and
21 capacities of the computers we will have available. But
22 what I suggest is that parties put any documents that you
23 need to display or that you would prefer to display or you
24 believe the Council would like to see in living color or
25 black and white onto a USB drive, and that can be used for

1 the display of documents. If there's any change in this
2 status, again we'll let you know before the close of the day
3 on Friday.

4 MR. ARAMBURU: This is Rick Aramburu speaking.
5 Will there be something like a screen available if we wanted
6 to put pictures on a screen?

7 JUDGE WALLIS: We may have access to a screen.
8 That if I recall the price list might well be on the order
9 of a forearm rather than the entire arm.

10 MR. BAKER: Your Honor, this is Nathan Baker. We
11 would certainly appreciate the opportunity to place maps and
12 figures from the record up on a screen so that the witness
13 and everybody in the room is following what's going on. I
14 think that would be very helpful.

15 JUDGE WALLIS: If those could be put on a -- well,
16 actually I believe they are in PDF format, are they not?

17 MR. BAKER: Yes.

18 JUDGE WALLIS: Yes. So you could do that from the
19 computer.

20 MR. BAKER: I misunderstood. Yes, I was referring
21 to a computer screen like a power point thing.

22 JUDGE WALLIS: Yes.

23 MR. BAKER: Thank you.

24 MR. PEEPLES: Your Honor, I have a question.

25 MR. BAKER: Your Honor, I have been going through

1 it. When you're ready I do have a list of the witnesses we
2 could recap.

3 JUDGE WALLIS: Very well. We had one other matter
4 from the room here.

5 Mr. Peeples.

6 MR. PEEPLES: The question I had is did you put a
7 time limit on the length for the opening statements? I
8 thought we discussed that.

9 JUDGE WALLIS: We had a page length on the opening
10 statements.

11 MR. PEEPLES: No, this is on the oral opening
12 statements. Do you remember what that was?

13 MR. KAHN: Ten pages I believe, Your Honor.

14 JUDGE WALLIS: Yes, that's correct for the written
15 statements, but for the oral statements right now I don't
16 recall.

17 MR. PEEPLES: Okay.

18 JUDGE WALLIS: Is there a time preference?

19 MR. BAKER: Your Honor, this is Nathan Baker. I
20 recall we talked about ten minutes. I'm sorry. For the
21 written portion it was ten pages per party. Friends and
22 SOSA will combine ours. We talked about 20 pages for
23 combined statements. For the oral statements we talked
24 about very brief. It could be up to ten minutes.

25 JUDGE WALLIS: Yes, that's confirmed by staff.

1 Very well. Mr. Baker, are you ready to proceed
2 now or would you like a brief recess so you can touch base
3 with others?

4 MR. BAKER: I'm ready.

5 MR. CANTRELL: This is Shawn Cantrell for Seattle
6 Audubon. Before we leave the topic of opening statements,
7 it's a minor matter, but how and when will we determine the
8 order of those?

9 JUDGE WALLIS: Would there be any objections to
10 proceeding in the order in which we have discussed
11 cross-examination here? So the Applicant would lead and
12 then SOSA and Friends. Well, the Tribe has withdrawn, but
13 then Counsel for the Environment and then other parties who
14 desire to present opening statements?

15 MR. KAHN: Gary Kahn for the Friends. That's fine
16 with us.

17 MR. ANDERSEN: Brad Andersen for the Port and EDC.
18 I don't anticipate giving an opening and I doubt the PUD
19 would either.

20 MR. WOODRICH: That is correct, Your Honor.

21 JUDGE WALLIS: I think that's likely for some of
22 the less involved parties. So if that's acceptable, then
23 we'll proceed in that manner, and if there is someone who
24 desires, another party that desires to present an opening
25 statement on Monday we will consider that and most likely

1 how that is to be presented.

2 MR. ANDERSON: Mark Anderson. Commerce is
3 planning on an opening statement.

4 JUDGE WALLIS: Very well. Thank you,
5 Mr. Anderson.

6 All right. I think the ball is back on your side
7 of the table, Mr. Baker.

8 MR. BAKER: Thank you, Your Honor. So I propose I
9 can go through the specific days and list the witnesses in
10 order that I have them on my list. So if folks could just
11 follow along and jot this list down, and if there's any
12 concerns, then we can take that up at the end.

13 So first, January 5, which is the day that's now
14 open by taking out the cultural resources witnesses. Okay.
15 Well, let me back up.

16 So January 3 we've discussed that it's a little
17 bit in flux whether we will have a prehearing conference and
18 at what time, but we would stick with the schedule. So
19 tentatively stick with the idea of having a prehearing
20 conference, openings statements, Jason Spadaro and Katy
21 Chaney on January 3. That would be first Spadaro and Chaney
22 that would be the general application content and
23 background. If there is time, then we might get into the
24 land use category for those two witnesses, but that could be
25 delayed later if we don't have time that day.

1 January 4 would be all of the scenic witnesses,
2 which would be four people Watson, Watson, Pearson, and
3 Apostol.

4 January 5 I have five witnesses listed. First is
5 Bauer, second is Larson, third is Homann, H-o-m-a-n-n,
6 fourth is Storm, S-t-o-r-m, and five is Meier, M-e-i-e-r.

7 January 6 that would be the avian and wildlife
8 day. There are five witnesses listed for that day. First
9 is Reams, second is Johnson, third is McIvor, fourth is
10 Smallwood, and fifth is Spadaro.

11 MR. McMAHAN: Can I interrupt right there? If we
12 could reverse Reams and Johnson. Johnson first, Reams
13 second.

14 MR. BAKER: No problem. We'll do that.

15 Moving on to January 7, Friday, I have five
16 witnesses. Two of them would resume from the first day,
17 Spadaro and Chaney. We would cover land use and any topics
18 that we were not able to cover on the morning of the 3rd
19 depending on schedule. So, first, Spadaro; second, Chaney.
20 Third would be Schwartz, fourth would be Bryan-Miller, and
21 fifth would be McSherry. That would conclude the first
22 week.

23 Moving onto Monday, January 10, I have six
24 witnesses for that day. First, would be Spadaro. This is
25 on the energy and need category, but, you know, if we're

1 able to finish that on the prior Friday then that would be
2 fine as well. So, first, Spadaro; second, Till, T-i-l-l-i;
3 third, Nierenberg, N-e-i-r-e-n-b-e-r-g; fourth Hovee,
4 H-o-v-e-e; fifth, Wittenberg W-i-t-t-e-n-b-e-r-g; sixth,
5 Usibelli U-s-i-b-e-l-l-i.

6 MR. ANDERSON: I hate to interrupt. Mr. Usibelli
7 is not available on the 10th, medical.

8 MR. BAKER: Okay. So then we just have five
9 witnesses on the 10th.

10 On the 11th, the first witness would be Usibelli.
11 The second witness would be Pearce. The third would be
12 Michaels, Bob Michaels. Fourth would be Pytel, P-y-t-e-l.
13 Fifth would be Canon, C-a-n-o-n; sixth, Lang, L-a-n-g;
14 seventh, Hardy; eighth, Raschio R-a-s-c-h-i-o, and ninth
15 would be Yourkowski, Y-o-u-r-k-o-w-s-k-i.

16 So that's where we ended up. That would be the
17 11th. The 12th would be concluding any of the witnesses we
18 are not able to finish on the 11th which is likely given
19 that we have eight or nine witnesses on that day, and then
20 the site visit and the KVA visit.

21 MR. McMAHAN: One other suggestion, Nathan. It
22 makes more sense to put Raschio up above Hardy and
23 Yourkowski.

24 MR. BAKER: Okay. So we would move Hardy to the
25 end of the list. I think it's likely that Raschio,

1 Yourkowski, and Hardy would all actually occur on the 12th
2 given the time constraints.

3 JUDGE WALLIS: Very well. At an earlier point we
4 did discuss the possibility of a site visit on the 7th if
5 the sun shines, snow melts, and I am wondering if that is
6 still feasible or if we are pretty well locked into the 7th
7 as a day of testimony?

8 MR. BAKER: Your Honor, this is Nathan Baker. We
9 would be fine with that. That makes sense to have that
10 flexibility, but those five witnesses I think there's
11 probably somewhat flexibility, but Ms. Bryan-Miller is on
12 the line, and she could speak to that. And I know there is
13 concern about Mr. McSherry. So both of them are currently
14 scheduled for that Friday.

15 MR. ANDERSEN: Brad Andersen. We prefer to just
16 keep the schedule and not have it interrupted by a site
17 visit. It will take you guys at least half a day to get up
18 there and back.

19 MR. ARAMBURU: This is Rick Aramburu. I prefer
20 that we make able if the sun shines; and if it's a nice day,
21 let's get out and see what's going on on the 7th.

22 MS. BRYAN-MILLER: This is Peggy Miller. You
23 know, I think that it's difficult to move people's schedules
24 around based on what we think the weather might be doing.
25 It could be a terrible day. It could be a nice day. But

1 people are traveling to be there to testify, and so I think
2 it's a hit and miss no matter which day. So we could change
3 another day to a site visit if it's a nice day. So I think
4 in fairness to the witnesses we need to have a little more
5 stability in when we would be testifying.

6 MR. BAKER: Your Honor, this is Nathan Baker.
7 Upon further thought I would concur, and I remember that
8 Mr. Schwartz specifically wanted to be scheduled for the 7th
9 early. That was one of his best days. But at least three
10 of the witnesses are hoping to be locked in on the 7th. One
11 other thing is I think it does -- I know one of the Council
12 Members stated last week that they would prefer to not have
13 a big gap that opens up if we don't do a site visit in the
14 middle. So for that reason I think it would make sense to
15 have the site visit and KVA visit on the 12th at the end of
16 everything. And if it does, if the weather interferes on
17 the 12th, there's always the possibility of coming back in a
18 couple of months and scheduling the site visit and KVA visit
19 then when the weather is more likely to be cooperating.

20 JUDGE WALLIS: Yes, we had discussed that
21 previously, and my understanding is the Council is very
22 comfortable with that notion.

23 Very well. Is there anything further to come
24 before the Council at this time?

25 MR. COLBY: Colby here, Judge.

1 JUDGE WALLIS: Yes.

2 MR. COLBY: On January the 5th you have a public
3 comment session at Underwood, Washington at 3:30 p.m. Is
4 there any anticipation how long that would last?

5 JUDGE WALLIS: It would depend almost totally on
6 the number of witnesses who come to offer their testimony.
7 We I don't think are in a position to be able to predict at
8 this point how many that would be. Given the season and the
9 possibility of weather, it's I think somewhat likely that it
10 will be a shorter session than the session the Council held
11 previously in Underwood which if I recall ran about three
12 hours, two to three hours.

13 MR. BAKER: Your Honor, this is Nathan Baker.
14 This issue has been raised. I'm remembering a couple of
15 questions and comments I had on this topic. As I recall, I
16 think that tentatively both those sessions are scheduled for
17 two hours with the understanding that it could be longer
18 than two hours. But on the issue of who shows up to speak
19 could you clarify? My understanding is that the public
20 comment sessions are for nonparties, people who are not
21 representatives of the parties to speak.

22 JUDGE WALLIS: Yes, that's correct.

23 MR. BAKER: Okay. That's helpful. And then there
24 is also I notice that written comments are allowed for
25 public comments through the postmark date of January 15, and

1 I wanted to just confirm that those could be sent by e-mail
2 as opposed to regular mail, and, if so, what the e-mail
3 address would be.

4 JUDGE WALLIS: Is there objection from any of the
5 parties to receiving comments by electronic mail? I hear
6 none.

7 MS. TALBURT: Your Honor, it would be the EFSEC
8 e-mail.

9 JUDGE WALLIS: And it would be the standard EFSEC
10 address.

11 MR. BAKER: Thank you.

12 MS. TALBURT: At UTC.

13 JUDGE WALLIS: Efsec@utc.wa.gov.

14 MR. BAKER: Thank you, Your Honor.

15 MR. McMAHAN: Your Honor, Tim McMahan here. One
16 minor item here. In Mr. Baker's list he did leave out Sarah
17 McDaniel, the cultural resources and archaeology, and I
18 understand that the Friends wants to ponder this for two
19 days, but, you know, if she's going to be in we need a
20 placeholder for her.

21 MR. BAKER: Yes, thank you, Tim. I overlooked
22 that, but my intention was to keep Ms. McDaniel on January 5
23 probably at the end of the list.

24 MR. McMAHAN: That's fine.

25 MR. BAKER: That would be stipulated on January 5.

1 MR. McMAHAN: I guess from my perspective, Your
2 Honor, if the parties are willing to stipulate her coming in
3 by sworn affirmation instead of a live witness that would be
4 helpful to know before the 3rd. If we can't before the 3rd,
5 I guess that's just the way it is. So if we could know,
6 that would be great.

7 MR. BAKER: I have another unrelated question,
8 Your Honor, about the opening statements due tomorrow.

9 JUDGE WALLIS: Mr. Baker, yes.

10 MR. BAKER: So I understand that's due at noon
11 tomorrow, and just to be absolutely clear do we have to mail
12 any paper copies to EFSEC or is it sufficient to simply file
13 that by e-mail?

14 JUDGE WALLIS: There is no paper copy required.

15 MR. BAKER: Thank you.

16 MR. ANDERSON: Mark Anderson from Commerce. Just
17 a logistics question, with the withdrawal of some witnesses
18 has there been any change to the service list?

19 JUDGE WALLIS: I don't believe there has been any
20 change to the service list.

21 MR. ANDERSON: At least one of those individuals
22 did not have an e-mail address.

23 MR. BAKER: Judge Wallis, Brad Andersen probably
24 wants to add himself to the e-mail.

25 MR. ANDERSEN: I thought when we intervened a year

1 or so ago, I thought it was under my name, but maybe it
2 wasn't. But I'll go ahead and file a notice of appearance
3 tomorrow, and if I could be added to the service list. You
4 need my e-mail address?

5 JUDGE WALLIS: Yes.

6 MR. ANDERSEN: Bandersen@schwabe.com. If I could
7 ask, everything seems to be flowing well. The only thing I
8 would ask is whether we could move Bob Wittenberg from that
9 Monday to Friday because it looks like you have room on
10 Friday to add one more and that would save me having to come
11 back on Monday. Is that a problem?

12 You have Schwartz testifying on Friday, and I
13 think that's consistent with what Bob Wittenberg from the
14 PUD would be offering.

15 MR. BAKER: This is Nathan Baker. That's one area
16 that we were not able to agree on. Mr. Aramburu could
17 probably speak to it more than I, but our intent is to try
18 to keep the energy and need witnesses together and
19 Mr. Michaels is not able to attend on Friday.

20 MR. ARAMBURU: Your Honor, Rick Aramburu speaking.
21 Mr. Michaels has provided rebuttal to the Wittenberg
22 testimony so he would like to be there during the
23 cross-examination.

24 JUDGE WALLIS: Very well. Is there anything else
25 to come before the Council at this time?

1 MS. BRYAN-MILLER: This is Peggy Miller, and I
2 believe there's been a little bit of confusion, and I am
3 receiving e-mails still through the EDC site, but sometimes
4 I get missed. And so I could just clarify that my e-mail is
5 itspeggy@hotmail.com so that I am not missing the schedule
6 that comes out.

7 MR. McMAHAN: Your Honor, Tim McMahan here. If I
8 might ask that Tammy through her goods services could just
9 recirculate the service list with all corrected addresses
10 that have been referred to today?

11 JUDGE WALLIS: Yes.

12 MS. DRUMMOND: Just to make sure that Susan
13 Drummond with Skamania County is on that updated service
14 list as well if we're not on the 12/8 one. Thank you.

15 JUDGE WALLIS: Very well. And, Ms. Bryan-Miller,
16 could you repeat that e-mail address.

17 MS. BRYAN-MILLER: Yes. It's
18 itspeggy@hotmail.com.

19 JUDGE WALLIS: I'm sorry. I still didn't get that
20 clearly. It is i-t-s?

21 MS. BRYAN-MILLER: Peggy. So
22 itspeggy@hotmail.com.

23 JUDGE WALLIS: Very well. Okay. Now that I see
24 it, it makes sense.

25 All right.

1 MR. COLBY: This is Colby.

2 JUDGE WALLIS: Mr. Colby.

3 MR. COLBY: A few moments ago somebody said
4 something about intervenors withdrawing. I want everybody
5 to understand that by withdrawing our witnesses we are not,
6 the Yakama Indian Nation is not withdrawing as a party.

7 JUDGE WALLIS: Yes, understand that, and if I
8 misspoke, I apologize.

9 MR. COLBY: Because other people may think that
10 maybe we are not having witnesses we are not a party
11 anymore, and that is not the intent and I think Mr. McMahan
12 will agree to that.

13 JUDGE WALLIS: Yes. Just also to be very clear,
14 do you anticipate engaging in any cross-examination of
15 witnesses?

16 MR. COLBY: No.

17 JUDGE WALLIS: Very well. All right. Now is
18 there anything further?

19 We have a couple of line items that I promised to
20 get with parties on before close of business on Friday.
21 Staff has reminded me that if I do it on Friday I will have
22 no staff support because it is a state holiday. But if
23 we're not ready to have that out by close of business
24 tomorrow, then we will send it out on Friday.

25 Is there anything further?

1 All right. I want to commend the parties for
2 working, if not miracles, at least through difficulties in
3 producing a schedule.

4 Mr. Baker, you have indicated that you will update
5 the most recent schedule and circulate that; is that
6 correct?

7 MR. BAKER: Yes, Your Honor. I'll do that later
8 today.

9 JUDGE WALLIS: Very good. All right. Thank you
10 all very much and this conference is concluded.

11 * * * * *

12 (Whereupon, the prehearing conference was
13 adjourned at 12:34 p.m.)

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In re: Whistling Ridge Energy Project
Application No. 2009-01

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 December 28, 2010, in Olympia, Washington.

Shaun Linse, CCR 2029