

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Hearing Volume IX
WHISTLING RIDGE ENERGY, LLC.) Pages 1204 - 1421
WHISTLING RIDGE ENERGY PROJECT)
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A hearing in the above matter was held on Tuesday, January 11, 2011, at the Skamania Lodge, 1131 S.W. Skamania Lodge Way, in Stevenson, Washington at 8:30 a.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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REPORTED BY:

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19 * * * * *

20 JUDGE WALLIS: Let's be on the record, please.

21 My understanding is that there is an attorney
22 present who will be -- what is the word I am looking for?
23 -- involved with the witness on the stand. Would you
24 introduce yourself please.

25 MR. HALL: Thank you, Your Honor. My name is

1 Stephen Hall. I'm a partner at the Law Firm of Stoel Rives,
2 and I'm here this morning with Cameron Yourkowski. I would
3 like to call Cameron Yourkowski as a witness, Your Honor.

4 CAMERON YOURKOWSKI,
5 having been first duly sworn on oath,
6 testified as follows:

7
8 DIRECT EXAMINATION

9 BY MR. HALL:

10 Q. Cameron, would you spell your name for the record,
11 please.

12 A. My first name is Cameron C-a-m-e-r-o-n. Last name
13 is Yourkowski, Y-o-u-r-k-o-w-s-k-i.

14 Q. Do you have a copy of Exhibit No. 18 with you?

15 A. Is that my testimony?

16 Q. Why don't you tell us.

17 JUDGE WALLIS: Yes.

18 A. Yes, I do.

19 BY MR. HALL.

20 Q. Could you describe what that Exhibit 18 is.

21 A. Yes, it is my prefiled testimony, and it is in
22 response to the filed testimony of Dr. Michaels.

23 Q. Thank you. Do you have any changes to your
24 testimony at this time?

25 A. No, I don't.

1 Q. Have you ever been cross-examined in a hearing like
2 this?

3 A. No, this is my first time.

4 MR. HALL: All right. Thank you very much.

5 Your Honor, I present the witness for
6 cross-examination. Oh, and also move Exhibit No. 18.00 into
7 the record.

8 (Exhibit No. 18.00r offered into evidence.)

9 JUDGE WALLIS: Are you also at this time moving
10 Exhibits 18.02 and 18.03?

11 MR. HALL: Yes, Your Honor, we're also moving the
12 attachments in at this time.

13 (Exhibit Nos. 18.01r through 18.04r offered into
14 evidence.)

15 JUDGE WALLIS: Very well. Is there objection?

16 Mr. Aramburu?

17 MR. ARAMBURU: No.

18 JUDGE WALLIS: Let the record show that there is
19 no objection and the exhibits are received in evidence. The
20 witness is available for cross.

21 (Exhibit Nos. 18.00r through 18.04r are admitted
22 into evidence.)

23 CROSS-EXAMINATION

24 BY MR. ARAMBURU:

25 Q. Mr. Yourkowski, I'm Rick Aramburu, the attorney for

1 Save Our Scenic Area one of the intervenors in this case. We
2 had an opportunity to just meet this morning for the first
3 time. Good morning. How are you?

4 A. Good morning. Thank you.

5 Q. Now, you've got to stay kind of like a rock star.
6 You've got to get right up next to that microphone to put
7 this out into the PA system.

8 So I do have some questions for you regarding your
9 testimony. The first is are you here today representing the
10 Renewable Northwest Project?

11 A. I'm currently employed by the Renewable Northwest
12 Project, yes.

13 Q. I am going to refer to that as RNP so I won't have
14 to keep saying it over and over. Is that fine?

15 A. That's the way to do it.

16 Q. I understand you are employed by RNP, but are you
17 here today representing that organization and stating that
18 organization's views?

19 A. Yes, I think that's accurate. RNP was concerned
20 about some of the misstatements in the Michaels' testimony,
21 and as RNP is an expert in wind integration matters I'm here
22 on their behalf.

23 Q. I understand that RNP has a board of directors?

24 A. Correct.

25 Q. Has that board of directors taken any kind of

1 formal position respecting the Whistling Ridge Project?

2 A. No, they haven't. I want to be very clear that RNP
3 and myself have no position on this project in the broader
4 context of the siting question before the Council. We're
5 strictly here to correct the record as it relates to the
6 Michaels' testimony on wind integration issues in the
7 Northwest and specifically the Bonneville Power
8 Administration.

9 Q. How did you come to get involved in this project?

10 A. The Renewable Northwest Project?

11 Q. No. Okay. When I say project, I'm going to refer
12 to the Whistling Ridge Project as opposed to RNP.

13 A. Okay.

14 Q. How did you become involved in this EFSEC
15 proceeding?

16 A. My boss Rachel Shimshak read the Michaels'
17 testimony. She sent it to me and asked me to review it and I
18 responded. And then the law firm representing the project
19 asked if I had any concerns about the testimony and if I
20 would be willing to submit testimony.

21 Q. You provided let's see how many pages of testimony:
22 13 or 14? Did you actually write those pages of testimony?

23 A. Yes.

24 Q. Was that with the assistance of the Applicant's
25 attorney?

1 A. Not with respect to the substance of the testimony,
2 no.

3 Q. But some of the grammar and text was assisted by
4 the Applicant's attorney?

5 A. Mostly it was formatting.

6 Q. Mr. Yourkowski, how long have you worked for RNP?

7 A. For roughly three and a half years.

8 Q. And how old are you?

9 A. I'm 33.

10 Q. I was looking at your resume here. Do I understand
11 from your resume that you have received a master's degree in
12 economics from Portland State University?

13 A. No, that's incorrect. I have completed all the
14 coursework in the master's program there at Portland State,
15 and I'm still finishing my thesis.

16 Q. You've been working on that since, what, 2006?

17 A. Not the thesis but the program, yes.

18 Q. So we need to correct your resume here to show that
19 you don't actually have a master's in economics. Correct?

20 A. I'm not sure the correction is necessary, but what
21 you say is correct.

22 Q. Is this a full-time job for you working for RNP?

23 A. That's an understatement.

24 Q. So you put in a few extra hours at your job?

25 A. Thank you for putting that on the record.

1 Q. At least at this time here you're compensated by
2 RNP?

3 A. No, this has mostly been -- I mean this time of the
4 day certainly falls within my regular work hours, but in
5 general this is taking away from my other pressing matters
6 that I'll have to return to.

7 Q. Okay. I think that's true for all of us,
8 Mr. Yourkowski. Look at your testimony at the top of page 3.

9 A. Yep.

10 Q. It indicates there that RNP does not as a practice
11 advocate for particular wind energy projects. I understand
12 from your testimony you're not advocating for the Whistling
13 Ridge Project; is that correct?

14 A. That's correct.

15 Q. Has RNP gotten involved with any other proceedings
16 for any wind energy projects?

17 A. Not that I am specifically aware of.

18 Q. What made this project special?

19 A. Well, I'm not aware of this project as special, but
20 the Michaels' testimony is very unique, and although I'm not
21 an expert on what types of testimony has been submitted in
22 these siting proceedings in the past, many of the statements
23 in the Michaels' testimony were either wrong or misconstrued,
24 and we felt it was necessary to set the record straight and
25 provide the Council with more accurate information.

1 Q. And that's what this testimony is designed to do?

2 A. Correct.

3 Q. Do you know what the output of that project is?

4 A. I understand that the design capacity is around 75
5 megawatts.

6 Q. How many kilowatt hours per year will the project
7 deliver to customers if it's built?

8 A. I'm not sure if anyone else can really answer that
9 question presently. I'm sure there's been estimates
10 presented, but I'm not aware of them.

11 Q. You haven't seen any estimates?

12 A. I have not.

13 Q. Your testimony at the bottom of page 3 going over
14 to page 4, actually over onto page 5, talks about the broad
15 public support in the Pacific Northwest and California for
16 new renewable energy sources, looking at in particular the
17 bottom of page 3 of the testimony. Do you have that in mind?
18 Do you have the page?

19 A. Yes, I do. Please continue.

20 Q. I guess I'm interested in knowing are you here
21 saying that this Council ought to approve the Whistling Ridge
22 Project because there's broad public support for renewable
23 energy?

24 A. No.

25 MR. HALL: I think that's been asked and answered.

1 RNP is not here advocating for or against the Whistling
2 Ridge project.

3 MR. ARAMBURU: It's his testimony. I'm interested
4 in hoe he wants the Council to use that testimony.

5 JUDGE WALLIS: That's fair game.

6 BY MR. ARAMBURU:

7 Q. So how is the Council suppose to use this testimony
8 about the broad public support? What are they suppose to do
9 with it in making their decision?

10 A. Well, I'm here purely to provide facts and evidence
11 to the Council. I'm not sure that I should be so bold as to
12 direct them how to use it. I don't think this testimony
13 really presents the statements about the broad support for
14 renewables in that context.

15 Q. But why are you talking about it here?

16 A. In the Michaels' testimony conveniently admitted
17 the RPS's (renewable portfolio standards) and general broad
18 public support for renewables so I thought it was an
19 important piece of evidence.

20 Q. What does broad public support for a proposition
21 have to do with testimony regarding energy economics and
22 need?

23 A. The renewable portfolio standards require a certain
24 percent of energy within a state to be produced by renewable
25 energy.

1 Q. So broad public support what is your basis for
2 saying there's broad public support? What citations can you
3 give us there?

4 A. The passage of Initiative 937 in Washington and
5 across the river Senate Bill 838 I believe --

6 Q. Is that it?

7 A. -- determine levels of renewable portfolio
8 standards.

9 Q. Is that it? Is that your support for these
10 statements?

11 A. I know the entire public process and sentiment and
12 votes of the public that produce the passage of those pieces
13 of legislation, yes.

14 Q. But in the state of Washington as I understand it
15 the support for 937 was for 15 percent of the delivered
16 energy to come from renewable resources; is that correct?

17 A. I believe that's correct.

18 Q. This is not California where they want 33 percent.

19 A. Correct.

20 Q. When you're talking about broad public support for
21 the Northwest and California, do you see this broad public
22 support in the Northwest to use Northwest resources to supply
23 energy to California?

24 A. I'm not sure how I can answer that question. Could
25 you restate it, please.

1 Q. Do you believe there is broad public support in the
2 state of Washington for the use of Washington resources to
3 send energy for use in the state of California?

4 A. I'm not aware that question has been asked to the
5 state of Washington, and I certainly I haven't provided any
6 testimony on that question.

7 Q. Would a fair answer be you don't know?

8 A. Yes. Yes, it would.

9 Q. What was the margin of victory for I-937 in the
10 November 2006 legislation?

11 A. That was before my time of really being involved in
12 the renewable energy industry, but secondhand I believe that
13 the margin was close, certainly was in the 50 percent range I
14 believe.

15 Q. It wasn't exactly a landslide, was it?

16 A. I'm not sure what the definition of a landslide is,
17 but I believe it was close.

18 Q. It was close. Let's leave it at that. And you
19 talk towards the bottom of page 4 about the requirements of
20 I-937 requiring 15 percent of the electrical supply to come
21 from renewable resources by 2020. Do you have any
22 information as to how the Washington utilities which are
23 subject to I-937 are doing in meeting their 15 percent
24 requirement for 2020?

25 A. No, I have not done an analysis.

1 Q. At the bottom of page 4 and on the top of page 5
2 the question is asked whether the Whistling Ridge Project
3 would be a qualifying resource under Washington RPS
4 standards. That would be true only if the power produced by
5 that project would be delivered to Washington utilities. Is
6 that not correct?

7 A. By the power are you referring to the electricity
8 itself or the renewable energy attributes?

9 Q. Is this project delivering renewable energy
10 attributes? Is that one of the things this project does?

11 A. As a wind project it's capable of doing that, yes.

12 Q. But what the project is suppose to do is generate
13 electricity and put in transmission lines and deliver it to
14 customers; isn't that right?

15 A. That is correct.

16 Q. If that process is followed and the project is
17 built, electricity is generated and that electricity is
18 delivered to California as opposed to the state of
19 Washington, such energy will not meet a portion of the RPS
20 standards, will it?

21 A. Well, I think that it's renewable energy credits
22 where they go that would determine the compliance.

23 Q. Do you have an answer to my question?

24 A. Can you restate it.

25 Q. If the energy which is produced by the Whistling

1 Ridge Project is delivered to California for use by
2 California consumers will that energy produced meet
3 Washington RPS standards?

4 A. I believe that Washington utility could purchase
5 the renewable energy credits from the project.

6 Q. That's not my question. My question for the third
7 time is if this project is built and if the energy is
8 delivered to California, California customers instead of
9 Washington customers will the power that's produced go to
10 meet Washington RPS standards? Yes, no, maybe, whatever your
11 answer may be.

12 A. I believe the answer is it depends where the
13 renewable credits go.

14 Q. Suppose it went to California. Would it meet the
15 Washington RPS standards under I-937?

16 A. The renewable credits were sold to California then,
17 no.

18 Q. On page 5 of your testimony at lines 9 to 7, well,
19 I guess lines 5 to 13 you talk about Mr. Michaels' testimony,
20 and in your answer you talk about significant contribution to
21 the local economic development that a renewable resource
22 makes to the state. Are you talking about this project or
23 renewable energy in general?

24 A. No, I believe that's in reference to one of the
25 many reasons that the public has demonstrated their support

1 for renewable energy projects in general. So that economic
2 development and in addition to the decrease in CO2 emissions
3 to address climate change, and also in addition to providing
4 low cost energy to the ratepayers of Washington in this
5 context.

6 Q. What's your basis for saying that's the reason
7 that -- again, that's the reason people voted for 937.

8 A. One of the reasons that we know renewable energy is
9 supported in general certainly.

10 Q. But you don't have any support for your proposition
11 there is broad public support other than the passage of 937;
12 isn't that correct?

13 MR. HALL: Your Honor, I would like to object.
14 We've been going on about broad public support for some
15 time. I think it's been answered.

16 MR. ARAMBURU: I don't think it has. He made
17 particular reference to this, and now he's referencing broad
18 public support in relation to this contribution to economic
19 development.

20 JUDGE WALLIS: He did indicate to you the source
21 of his opinion as expressed in the testimony. I'll allow
22 this question, but beyond that, well, we'll see what the
23 answer brings. Do you have a question in mind?

24 A. Can you repeat the question, please.

25 BY MR. ARAMBURU:

1 Q. The question was that in your testimony at page 5,
2 lines 11 and 12, you indicate that there is broad public
3 support in Washington for renewable energy based upon a
4 significant contribution to the local economic development,
5 and my question to you is what is the basis for that
6 statement?

7 MR. HALL: Your Honor, I'm going to object. He's
8 misquoting the testimony that's here. It says broad public
9 interest. We've been talking about broad support. I think
10 he's trying to conflict the two ideas here.

11 JUDGE WALLIS: You have inquired rather
12 extensively on the issue of broad public support so I
13 suggest we move on.

14 BY MR. ARAMBURU:

15 Q. At the bottom of page 5 in your answer you talk
16 about pilot projects that are designed to improve the ability
17 of the Columbia transmission system to integrate power. Can
18 you describe to us how much those pilot projects will allow
19 BPA to balance energy? Do you have any numbers for that?

20 A. Well, there's several different -- some of them are
21 pilot projects, some of them have been implemented, and for
22 the Council they're talking about within our scheduling,
23 capability of Bonneville's dynamic scheduling, the
24 self-supply program that has been implemented. That's one of
25 the more significant contributions to extending Bonneville's

1 balancing capability for wind. There's also a demand side
2 pilot program with Mason County PUD. This is turning up and
3 down water heaters in response to the calculation.

4 Q. Mr. Yourkowski, I did ask you a question, and the
5 question of these pilot projects you're referencing here, and
6 I'm not asking you about what they are, but the pilot
7 projects you're talking about how many megawatts or any other
8 measurement of energy you want to use will that improve the
9 BPA system to take on wind energy?

10 A. Yeah, I understand the question. I was hoping that
11 we could talk about one of the specific efforts and the
12 attempt to quantify to them. I have not quantified the total
13 effect. They're at different stages in implementation as I
14 indicated, and so if we could focus the question I would be
15 happy to talk about that.

16 Q. You don't have any specific numbers to give us for
17 these pilot projects?

18 A. Some pilot projects I can provide some numbers that
19 will help estimate the impact of extending Bonneville's
20 ability to integrate renewable, yes.

21 Q. In terms of -- let's not ask that.

22 You indicated that self-supply is an important
23 aspect of integrating wind energy into the grid. What is
24 self-supply?

25 A. Up until recently all the wind projects

1 interconnected to the Bonneville system relied solely as did
2 all the load that Bonneville was responsible and all the
3 energy projects, conventional or renewable, all of them
4 connected to the Bonneville balancing area relied solely on
5 Bonneville's hydro system to provide balancing reserves and
6 then relying on those resources have certain costs and
7 benefits associated with them.

8 And there's specific two different times of day,
9 and what self-supply does is allow in this case the wind
10 projects to go out and enter the marketplace to find
11 resources to provide their balancing needs that are not on
12 Bonneville's hydroelectric resources so they can access coal
13 or gas plants and also other hydro resources in the region
14 and decrease that burden that was previously the balancing
15 requirements previously on Bonneville's system.

16 Q. So we are going to go out and use coal power, a
17 fossil fuel source to balance the wind energy. Is that your
18 testimony?

19 A. Yes. Currently the self-supply program is
20 procuring I believe it's 75 megawatts of balancing reserve
21 from the Centralia coal power plant.

22 Q. Are there other self-supply options, including such
23 things as gas turbines?

24 A. That's correct.

25 Q. It sounds to me like we are kind of chasing our

1 tail here. We build more wind energy, and then we put up
2 some more coal plants to put the wind energy in. How is that
3 advancing the cost?

4 A. That is just incorrect. I'd like to correct that,
5 and I should have specified that too. Obviously Centralia is
6 an existing resource and when I said that we were using
7 plants, I should have specified they're existing gas plants.
8 It's Hermiston and Klamath gas plants would be used to
9 provide to that alternative service.

10 Q. But as time goes on and there's more wind power
11 that comes onto the system, the more wind projects are
12 proposed, those wind projects are probably going to have to
13 find their own self-supply. Is that not correct?

14 A. It will be up to each individual project and the
15 economics of Bonneville's wind integration service as opposed
16 to what the market has to offer.

17 Q. Would it be fair to say, Mr. Yourkowski, that as
18 time goes by the need to self supply for balancing will
19 become more dependent on things like gas turbines and other
20 projects?

21 A. I really can't say one way or another. There's a
22 lot of moving parts going on in the region and projecting the
23 need for self supply is a little bit vague and out of
24 context.

25 Q. Well, that's one of these pilot projects you said

1 in your answer to me previously you thought was important.

2 A. Yeah, I guess I need to step back and say there is
3 no need for self-supply and just say there is a need for
4 balancing reserves, and then there is obviously desire to
5 optimize and acquire those balancing reserves in the most
6 efficient way, both from a single-project perspective and
7 regionally from a public need perspective.

8 Q. Let's move over if we can to page 7 of your
9 testimony, please. At lines 5 to 6 -- well, I guess really 3
10 to 6 of your answer on that page you talk about potential
11 customers for the output of the Whistling Ridge Project; is
12 that correct? It certainly looks like it from your
13 testimony.

14 A. I mentioned about potential customers, yes.

15 Q. You said there are quote here, "several other
16 utilities that have a much greater demand for the output of
17 WRE facilities due to their RPS compliance obligation." What
18 utilities are you mentioning here? What are you referring
19 to?

20 A. This would be all the utilities in Washington,
21 Oregon, and California that are subject to RPS compliance
22 obligations.

23 Q. And can you name one or two in the state of
24 Washington?

25 A. Yes, Puget Sound Energy, Avista, Seattle City

1 Light; PacifiCorp of Washington, Tacoma, Snohomish.

2 Q. Snohomish County PUD?

3 A. Correct.

4 Q. Of those is it not the case that Puget Sound Energy
5 is the largest utility in the state of Washington delivering
6 electricity to consumers?

7 A. I am actually not sure if that's correct or not.

8 Q. You don't know whether PSE has a bigger customer
9 base than Seattle City Light, for example?

10 A. I have not looked at that specifically, no.

11 Q. Can you tell me -- let's stop at PSE for a moment.
12 Can you tell me whether PSE is meeting its RPS standards in
13 the short-order market?

14 A. Although I didn't do an analysis of individual
15 utilities -- RPS compliance status for this testimony, my
16 understanding is that Puget is on track to meet its first
17 compliance milestone, but it still has another big step in
18 2015 and will have to procure more renewables for renewable
19 energy credits in order to meet this next target.

20 Q. How much more are they going to need by 2015?

21 A. I'm not sure precisely.

22 Q. Are you aware that PSE has, PSE (Puget Sound
23 Energy) that PSE has constructed and has in operation wind
24 energy facilities?

25 A. Yes, I am.

1 Q. Are you also aware that PSE is now selling the
2 outputs of those wind energy projects in California?

3 A. No, I'm not.

4 Q. At the bottom of page 7 of your testimony,
5 Mr. Yourkowski, you talk about within our diversity, and you
6 say that the effect of the wind variation from one project to
7 another to offset the variation of another project. Let me
8 ask you are you talking about wind projects being in
9 different geographic locations?

10 A. Yes, I am.

11 Q. Can you give me an example of wind projects or
12 locations that would provide this diversity in the Pacific
13 Northwest?

14 A. On the context of this testimony what this is an
15 example of is how we're able to add additional wind energy in
16 this example without increasing at the same rate increasing
17 one for one the level of balancing reserves to accommodate
18 that wind.

19 Q. That's because the wind resources are in different
20 locations?

21 A. Unless they're built on top of each other, yes,
22 they're in different locations, and they would provide some
23 diversity. So all things equal with X amount of balancing
24 reserves you can add additional wind energy projects and
25 balance the variability of additional projects with some of

1 the same balancing reserves that are required. So per unit
2 balancing reserves per megawatt of wind actually declines.

3 Q. Well, I take it, Mr. Yourkowski, you're familiar
4 with the geography of the state of Washington?

5 A. Yes, I am.

6 Q. Tell us where we can put in one of these projects
7 that is going to provide diversity to the current generation
8 of wind energy found in places where that energy is
9 installed?

10 A. Well, it might be helpful for the Council to talk
11 about different time increments of diversity. Over a year,
12 for example, you could have seasonal diversity so wind
13 resources provide most of its energy in the winter versus the
14 summer. You can have diurnal diversity so when projects
15 provide most of its energy in the day or the night, and then
16 there's just diversity in the noise of even within hour. And
17 even a project right next to another project is going to
18 provide probably not the seasonal or the diurnal types of
19 diversity but will add within our diversity.

20 Q. Well, Mr. Yourkowski, that's a fine abstraction.
21 Can you tell us where in the state of Washington we might
22 find that diversity of outputs from wind projects?

23 A. If you want to use the word diversity that broadly
24 then everywhere.

25 Q. So, for example, have you studied any information

1 regarding the diversity of wind projects say in the Kittitas
2 County area with the wind generation that occurs in the
3 Columbia and Garfield counties?

4 A. No, I haven't. The testimony talks about the wind
5 diversity effects that are being exhibited on Bonneville's
6 system in an aggregate basis.

7 Q. So you have no information to tell us that the wind
8 regimes are different in Kittitas County than they are in
9 Garfield and Columbia counties?

10 A. I provide no evidence in my testimony to that
11 question, no.

12 Q. Do you have an answer to my question?

13 A. Could you restate the first part of it, please.

14 Q. Can you tell me whether or not you have any
15 information that indicates that the wind regimes for wind
16 energy is different in, for example, Kittitas County as
17 compared to Columbia and Garfield counties?

18 A. I have no analysis on that, but in the context of
19 your question about diversity in general I can tell you
20 that's just a fact.

21 Q. It's just a fact?

22 A. That there is some diversity between counties,
23 certainly.

24 Q. What's the basis for that?

25 A. Just because the weather patterns don't blow

1 identically on a second-to-second basis and any two spots.

2 Q. Are you aware, Mr. Yourkowski, that for a lengthy
3 period of time in the state of Washington that there is no
4 wind generation at all from wind projects? Are you aware of
5 that?

6 A. Yes, I'm aware of that.

7 Q. That can happen for days or even a couple of weeks
8 at a time; is that not correct?

9 A. That is true, and I think on this timeline now we
10 are starting to talk about days and diurnal spreads, and in
11 that context talking about that timing interval the diversity
12 question is certainly different.

13 Q. Well, but diurnal is different from day to night.
14 That's the context of your answer?

15 A. Correct.

16 Q. But have you looked at the data which shows that
17 for days at a time no matter day or night there's no wind
18 energy coming from the wind projects installed in the state?

19 A. Have I seen data that shows that sometimes there
20 are days where there is no wind energy generated on
21 Bonneville's system? Yes.

22 Q. You've seen that?

23 A. Yes.

24 Q. I asked you a question about Columbia and Garfield
25 counties. Do you know where they are?

1 A. Not specifically, no.

2 Q. Do you know whether they're in southwest Washington
3 or not?

4 A. No, I don't.

5 Q. So in terms of this diversity of wind energy how
6 much wind energy is currently installed and attached to the
7 BPA transmission system?

8 A. Roughly 3,000 megawatts.

9 Q. So there are times where the 3,000 megawatts of
10 wind energy isn't producing a single megawatt because there's
11 no wind; is that correct?

12 A. That's correct.

13 Q. In Mr. Michaels' testimony he provided an exhibit
14 that indicated that there was more than 9,000 megawatts of
15 either operating or under construction or permitted wind
16 projects in the Northwest. Did you have a chance to look at
17 that chart that he provided?

18 JUDGE WALLIS: Can you identify that document for
19 the record, please.

20 MR. ARAMBURU: It's actually Exhibit 30.08.

21 JUDGE WALLIS: Thank you.

22 A. I recall reading that in his testimony.

23 BY MR. ARAMBURU:

24 Q. Based upon your work at RNP do you have any reason
25 to disagree with the data that's provided in that exhibit to

1 Mr. Michaels' testimony?

2 A. I didn't analyze or question the details of his
3 statements there, especially once I read the permitting
4 qualification of his statement.

5 Q. He was counting projects developing that have been
6 permitted and approved by the appropriate local or state
7 authority; is that not correct?

8 A. I am not actually certain what he was counting or
9 not.

10 Q. You were talking about in your testimony the
11 intra-hour scheduling pilots at page 8, lines 12 and 13 of
12 your testimony. Would you refer to that, please. Take a
13 look at that.

14 A. Yes.

15 Q. And what is intra-hour scheduling?

16 A. Intra-hour scheduling is distinct from the
17 longstanding scheduling regime in the Northwest that has been
18 done on an hourly basis, and intra-hour can refer to
19 scheduling on a half-hour basis or a 15-minute basis. And
20 the reason it's relevant and interesting is that the
21 balancing reserves, the balancing needs that they refer that
22 Bonneville provides is to cover the variations in the wind
23 energy from their hourly schedule. So if Bonneville is able
24 to get the wind energy projects to schedule to their
25 oftakers on a more incremental basis adjusting their

1 schedules every half hour or even every 15 minutes which is
2 the focus in new FERC NOPR, then the amount of error that
3 Bonneville has to follow from the schedule from compared to
4 the actual wind generation is much smaller on the order of
5 about 50 percent. So all things equal it would reduce
6 Bonneville's balancing reserve needs for the existing fleet
7 if it was all to start scheduling on a half-hour basis by
8 about 50 percent.

9 JUDGE WALLIS: Mr. Yourkowski, could you tell us
10 what a NOPR is.

11 THE WITNESS: Yes, I apologize. It's a notice of
12 proposed ruling. Thank you.

13 BY MR. ARAMBURU:

14 Q. This is a pilot project as I understand it. It
15 hasn't actually been implemented by BPA.

16 A. That's incorrect. It was implemented I believe
17 over a year ago, and then just recently it was extended
18 indefinitely.

19 Q. And you say that's going to significantly reduce
20 the cost of resources if BPA is required to maintain. Can
21 you provide us with some number for that cost?

22 A. It would significantly reduce the amount of
23 balancing reserves capacity measured in megawatts Bonneville
24 will have to hold for a given amount of wind energy that's
25 connected to its fleet.

1 Q. But you said it's going to reduce the cost too.
2 Should we just strike that from your testimony here?

3 A. No, it reduces the cost as well.

4 Q. By how much? What are we talking about here?

5 A. All things equal roughly around 50 percent.

6 Q. And how much is that?

7 A. How much is 50 percent?

8 Q. How much is this in dollars?

9 A. Well, to ascribe dollars to the amount of balancing
10 capacity depends on the rate-making process that Bonneville
11 owns. There's a process for doing that, and roughly speaking
12 right now it's around \$50 million a year, but there's a lot
13 of variables that go into putting that cost on the amount of
14 capacity so it's hard to say precisely.

15 Q. Would you agree with me that there is a limit as to
16 the ability of BPA to balance using this existing hydro
17 resources?

18 A. No, I wouldn't. Given all of these new efforts
19 that are underway and have been implemented, increasingly
20 we're finding ways to access the embedded flexibility and the
21 broader system of the Northwest, and that's increasing our
22 ability to integrate wind energy projects while reducing the
23 costs.

24 Q. So there is no limit? We could put
25 20,000 megawatts of wind on the BPA system, and they could

1 still use the hydro system to balance it?

2 A. Well, it wouldn't be using just the hydro system.

3 Q. It would be using things line self-supply.

4 A. Correct.

5 Q. So I see there is more discussion of self supply at
6 the bottom of page 8 of your testimony, lines 22 to 25. How
7 much is the self-supply system going to reduce BPA's
8 balancing reserves requirement?

9 A. Well, BPA's balancing reserve requirement is
10 obviously changing. When self supply was first conceived the
11 amount of wind in the Bonneville system was around
12 2,000 megawatts, and the self-supply program is being
13 utilized by roughly a thousand megawatts of the wind
14 currently. So at present self-capacity is roughly about a
15 third. It decreases, it takes roughly about a third of the
16 balancing reserve requirement off the Bonneville system.

17 Q. So these things are coal plants and gas turbines
18 self supplies?

19 A. And also some hydro, nonfederal hydro.

20 Q. Page 9 you talk about DSO 216, and you said it
21 allows BPA to manage the cost of integrating wind limiting
22 the need for balancing reserves that would be rarely used.

23 JUDGE WALLIS: What line is that?

24 MR. ARAMBURU: This is page 9, lines 10 to 12.

25 JUDGE WALLIS: Thank you.

1 BY MR. ARAMBURU:

2 Q. In short what DSO 216 does is that it allows BPA to
3 essentially shut off wind resources during particular times
4 of overgeneration; isn't that correct?

5 A. No, it's not correct. It gives Bonneville the
6 capability in rare circumstances to require the wind turbines
7 to decrease their generation to a scheduled amount for that
8 hour or half hour.

9 Q. Okay. So they're telling the wind producers that
10 they won't accept all the power that those wind producers
11 might be generating; is that right?

12 A. They're asking them to reduce the generation to
13 their schedule which means that's Bonneville is not carrying
14 as much reserve, balancing reserves as otherwise would be
15 necessary to cover these very rare ramp events that decreases
16 the cost and leads to more efficient operations of the
17 system.

18 Q. So even though the wind generator may find at any
19 particular time that they could produce a lot of wind energy,
20 BPA is going to tell them that they won't accept all of that
21 energy on the system; is that right?

22 A. No, scheduling of the wind energy is a key issue
23 here.

24 Q. Well, they might be scheduled. For example, an
25 individual wind generator might be scheduled to put 100

1 megawatts on the system, but at the time that wind generator
2 may actually be able to produce 200 megawatts. Doesn't DSO
3 216 say we are only scheduled to take 100 so you've got to do
4 something else with your next 100? Isn't that right?

5 A. They would have to adjust their schedule to
6 increase the amount of generation above not only what they
7 schedule but what they're paying Bonneville to integrate
8 above that schedule. So basically they have the ability to
9 generate above or below their schedule within certain bounds
10 that's determined in the rate case which determines the
11 amount of balancing reserves that Bonneville holds. It also
12 depends. The system is balanced on an aggregate basis with
13 wind and load so a single project could actually produce a
14 considerable amount of energy above its schedule and not be
15 hit by DSO 216 if other projects or loads weren't drawing on
16 the same reserve requirement.

17 Q. But the general idea of 216, of DSO 216 is to allow
18 BPA the option of telling wind generators they're not going
19 to accept all of -- they will possibly not accept all of the
20 wind generation that wind generators are capable of producing
21 at any given time? Yes or no.

22 A. No, I think that's an inaccurate characterization.
23 It's a management tool to provide efficient balancing
24 service.

25 Q. But there's nothing about 216 that allows BPA to

1 say that they're going to take less wind generation than is
2 otherwise scheduled?

3 A. It just gives BPA another tool for balancing wind
4 energy, and it's a more efficient tool than carrying
5 literally potentially double the amount of reserves
6 necessary.

7 Q. I don't know why we are having trouble with this.
8 But doesn't the DSO 216 give BPA the authority to tell wind
9 generators that they're not going to accept as much wind as
10 that generator might produce?

11 A. It gives them the ability to ask them to decrease
12 the generation that they could have otherwise produced down
13 to the schedule plus their allocated portion of the balancing
14 reserves determined in the rate case.

15 Q. Okay. Good. Good. Moving along. Page 10 of your
16 testimony talks about the wind energy -- on page 10 the first
17 five lines of the page, it says, "Wind energy is most often
18 displacing carbon dioxide and associated emissions from
19 natural gas fired power plants and, increasingly, coal fired
20 plants." As I understand your testimony, that self-supply
21 would require generators of wind energy to actually purchase
22 power from natural gas plants and coal fired plants; is that
23 right?

24 A. No, that's wrong. They don't purchase power. It
25 would be very odd for generators to purchase power from

1 another generator. They purchase capacity with the
2 flexibility to increase or decrease generation. In this part
3 of the testimony it's important to make the distinction. I
4 don't think the Michaels' testimony did it very well, but
5 here's specifically what I am referring to. A megawatt hour,
6 a megawatt half hour, but the scheduled amount of generation
7 entering the system displaces energy that would have
8 otherwise been scheduled in advance to meet load and
9 utilities to adjust dispatch of their resources based on the
10 schedule makes the distinction because a lot of the other
11 sort of displacement or the balancing reserves of wind
12 integration discussion takes place within the time frame of
13 the actual scheduled energy. And I just want to make sure
14 that that's clear that there's sort of two distinct time
15 frames scheduled and unscheduled, and the resources that the
16 wind is displaying in the marketplace is scheduled versus
17 what was being displaced within the hour or half hour on a
18 more instantaneous basis.

19 Q. But if there's unscheduled increases in wind power
20 and the balancing available to BPA is insufficient, then
21 self-supply would call for the wind generators to ramp up a
22 coal plant or start a gas turbine; isn't that correct?

23 A. I'm sorry. I missed the beginning of the question.
24 What was the context of what the wind generator was doing?

25 Q. If there is a situation where the available

1 balancing ability of BPA was reduced or nonexistent wouldn't
2 self-supply require an applicant to turn up the coal plant or
3 start a gas turbine project?

4 A. The amount of self-supply and the reserves
5 Bonneville is providing is set well in advance of the actual
6 operational time frame.

7 Q. That doesn't answer my question.

8 A. Could you repeat it.

9 MR. ARAMBURU: I'm going to ask the court reporter
10 to read back my last question. I want you to listen
11 carefully to my questions. I'm trying to be as precise as I
12 can, and I'm finding it's a taking a lot of time by you
13 asking me to restate my question.

14 (Second to the last question read back.)

15 A. Yes, in the context, the reason I was struggling is
16 the context and the timeline there is just off. Well, in
17 advance of real-time operations the rate case well in advance
18 before the rate period starts parties, the wind customers and
19 Bonneville, are going to decide how much and who is going to
20 provide how much and what types of balancing reserves through
21 the self-supply project and how much is Bonneville going to
22 provide, what type of balancing reserves and to who and how
23 much. Then when you get into real time, they're going to be
24 really operating on separate and unconnected operational
25 procedures. So there is no connection as you described

1 there.

2 BY MR. ARAMBURU:

3 Q. So there's nothing about self-supply that requires
4 someone to turn up the gas turbine project or coal plants to
5 provide that self-supply?

6 A. No, there is something about self-supply that
7 requires gas generators to respond, but the relationship you
8 were describing to Bonneville resources is not accurate.

9 Q. Are you aware of the environmental redispatch?

10 A. I'm aware of a draft proposal by the Bonneville
11 Administration entitled Environmental Redispatch.

12 Q. And environmental redispatch is a proposition by
13 which BPA may ask wind generators to turn down their wind
14 projects in the event there's overgeneration on the BPA
15 system; is that right?

16 A. It's a discussion about what to do about oversupply
17 of generation, including the hydro generation on the system,
18 yes. And turning down wind generators is one of the many
19 solutions that are currently to be considered in the context
20 of that ongoing discussion.

21 Q. Would you agree that right at the moment that in
22 the Northwest there's a surplus of energy overloads that
23 exist in the Northwest?

24 A. No, not in general.

25 Q. You're not aware of that?

1 A. No.

2 Q. Just a couple more questions here. I think we're
3 going to conclude this in maybe five minutes. I'm looking at
4 your resume here, and I don't see any publications on your
5 resume. Have you had any new kind of publications?

6 JUDGE WALLIS: We're talking about the 18.01r?

7 MR. ARAMBURU: 18.01r, yes, thank you.

8 A. That's correct, but I've spent the last three years
9 working on the wind integration issues of Bonneville and
10 other transmission providers in the region.

11 BY MR. ARAMBURU:

12 Q. Have you engaged in teaching at colleges or
13 universities?

14 A. Absolutely not.

15 Q. Absolutely not?

16 A. No.

17 Q. You haven't done it. Looking at Exhibit 18.02r,
18 page 2 of that document --

19 A. Yes.

20 Q. -- does that not indicate that on page 2 under Item
21 No. 4, doesn't that indicate that this self-supply project is
22 just a year-long pilot project?

23 A. Yes, it does, but I know Bonneville is very
24 interested in assuring that it's a success, and I anticipate
25 that it will be an extended just like the intra-hour

1 scheduling pilot was extended.

2 Q. But it says this just started in October of 2010 so
3 I guess the year 2011 and BPA will see what happens?

4 A. In the year 2011 I anticipate that Bonneville will
5 be analyzing any technical issues which I think is really the
6 reason behind the pilot nature of this program more in the
7 time frame of May of this year, and that's because they're
8 going to want to have this pilot really pinned down before
9 final decisions are made in the rate case. And they can know
10 who and how much and to what extent wind customers will be
11 utilizing the self-supply option. So that's tentatively
12 scheduled for around May and then having a final record
13 decision in the rate case in June I believe.

14 Q. Exhibit 18.02r, page 3, indicates under the item
15 more innovation needed is the statement here, a fragment by
16 the BPA that "the wind resource connected to BPA's
17 transmission grid is growing at an astonishing pace, with
18 more than 3,000 megawatts already interconnected." Do you
19 agree with that?

20 A. I agree that is written here, yes.

21 Q. I mean do you agree with the proposition?

22 A. I agree that 3,000 megawatts have been installed
23 already, yes.

24 Q. You think wind energy is growing at an astonishing
25 pace in the Northwest?

1 A. No, I don't think astonishing to the extent that it
2 wasn't planned for would be accurate.

3 Q. Okay. So in the next four or five years how much
4 more wind energy is going to be on the system?

5 A. Well, it's impossible to predict precisely, but
6 certainly enough to meet the renewable portfolio standards.

7 Q. So do you think that the Washington utilities are
8 going to be able to meet their 2020 requirements for
9 renewable energy within the next five years?

10 A. Not necessarily, no. 2020 within the next five
11 years?

12 Q. Well, for 2020 over the next five years. My
13 question to you was whether or not these Northwest utilities
14 are -- Washington utilities subject to I-937 will be able to
15 meet their renewable energy requirements for 2020 in the next
16 five years?

17 A. I really couldn't say.

18 MR. ARAMBURU: Okay. That's all the questions
19 that I have for Mr. Yourkowski. Thank you.

20 JUDGE WALLIS: Mr. Kahn, do you have questions?

21 MR. KAHN: I do have a couple questions.

22 CROSS-EXAMINATION

23 BY MR. KAHN:

24 Q. Mr. Yourkowski, good morning. My name is Gary
25 Kahn. I represent the intervenor Friends of the Columbia

1 Gorge. If you have your testimony in front of you, could
2 turn to pages 4 and 5, please.

3 A. Go ahead.

4 Q. The question at the bottom of 4 which is answered
5 on the top of 5 is whether this facility will be a qualifying
6 resource under Washington's RPS standards, and you indicated
7 that answer is yes. Correct?

8 A. Correct. It should qualify, yes.

9 Q. Are you aware of the policy provisions of the RPS
10 that requires the facilities to be appropriately sited? This
11 is in RCW 19.285.020.

12 A. No, I am not aware of that.

13 Q. So you're not aware that the policy of implementing
14 I-937 requires facilities to be appropriately sited?

15 A. No, I am not aware of that. I'm not surprised by
16 that, but I'm not aware of it.

17 Q. Do you have an opinion as to whether this project
18 is appropriately sited?

19 A. No, I made it very clear that I have done no
20 analysis on this siting and have no opinion of that.

21 Q. Would you agree that if it's not appropriately
22 sited it could not count towards the RPS standard?

23 A. I wouldn't know.

24 Q. Your organization RNP is made up at least in part
25 of other for-profit and nonprofit entities; is that correct?

1 A. Yeah, that's correct. We're made up of for-profit
2 renewable energy companies, both the developers and
3 manufacturers and all sorts of other sort of supply chain
4 type businesses, including the Columbia Gorge Community
5 College and Port of Vancouver. One important distinction is
6 that on the nonprofit side we have members that would be
7 described mostly as environmental groups, and they have to
8 make up 51 percent of our board.

9 Q. Is the Applicant for this project a member of your
10 organization?

11 A. No, they're not.

12 Q. Is SDS Lumber a member?

13 A. No.

14 Q. Finally, in response to some questions by
15 Mr. Aramburu you indicated that the Centralia Coal Plant
16 which is the existing plant is used to provide some of the
17 balancing energy; is that correct?

18 A. Some of the balancing services, yes.

19 Q. If that power plant were to go off line would that
20 require the construction of any other additional power plants
21 for the balancing?

22 A. No, not necessarily.

23 Q. Not necessarily. What factors would you need to
24 determine whether it's necessary or not?

25 A. Well, it provides roughly 75 megawatts of the

1 balancing reserve requirement in the context of about 750
2 megawatts total. So in my opinion I think they would be able
3 to find an additional at 75 megawatts of flexible capacity.

4 Q. With the existing system now?

5 A. Correct.

6 MR. KAHN: Okay. I have nothing further.

7 JUDGE WALLIS: Mr. Marvin?

8 MR. MARVIN: I have nothing.

9 MS. JAFFE: I have nothing.

10 JUDGE WALLIS: Mr. Hall?

11 MR. HALL: I have a couple of questions, Your
12 Honor.

13 REDIRECT-EXAMINATION

14 BY MR. HALL:

15 Q. Cameron, how long would you say that the region has
16 been looking at wind integration issues?

17 A. Well, coincidentally that was right about when I
18 started. Well, before actually. I believe in March of 2007
19 Bonneville Power Administration Northwest Power Council
20 published their Northwest Wind Integration Action Plan. I
21 would say that was the first comprehensive look at wind
22 integration issues, and then things started to heat up in
23 late 2007 shortly after I started at RNP with the first
24 Bonneville wind integration rate case, and that's when we
25 really started to dig down in the issues. Out of that rate

1 case Bonneville formed the wind integration team which is
2 various staff and technical experts designing along the
3 industry and then implementing the various tools within our
4 scheduling, and scheduling all of those new tools that are
5 listed in the exhibit.

6 Q. Thank you. We've had a lot of technical talk and a
7 lot of jargon, and for the benefit of the Council could you
8 go back and just explain in layman's terms what balancing
9 reserves means in the context of BPA and kind of different
10 time frames that Bonneville is planning on balancing those
11 reserves.

12 A. I will take a stab at it. Balancing reserves means
13 capacity, withheld capacity. It's important to distinguish
14 that there's an up and down side there. So it's the capacity
15 to increase generation which does produce energy from
16 whichever resource is providing it. There's also this
17 detrimental capacity which is just in the ability to decrease
18 generation, and that sounds simple, but for some resources
19 it's actually difficult to turn down the amount of energy
20 that they're generating below a certain amount. It's called
21 minimum generation requirements.

22 Q. What about more specifically? Describe the
23 different kinds of balancing reserves that BPA provides short
24 term, medium term, long term.

25 A. Well, it provides contingency reserves is probably

1 the longest term in the sense that those reserves are sitting
2 there all the time in case a generator trips off line or if
3 there's a transmission outage that would prevent generation
4 of the generator from integrating with the broader system in
5 serving load. And then there's most of this conversation all
6 of my testimony is with respect to within our balancing
7 reserves. So like I said, it's just the capacity to move up
8 and down a generator within the hour to follow the
9 moment-to-moment fluctuations of the wind energy plants, and
10 actually they're following the netted fluctuations of wind
11 netted with load variation.

12 The wind energy integration issue is very similar
13 to following variability of the load and so Bonneville
14 balances those two variables simultaneously for efficiency.

15 Q. How does BPA use those balancing reserves for loads
16 and for other resources?

17 A. Well, they use them for loads and other resources
18 in the exact same areas that we use them for the wind
19 resources.

20 Q. What assumptions is BPA making in its current rate
21 case for the rate period fiscal year 2012 to 2013? What
22 assumptions is BPA making about the continuation about the
23 self-supply program?

24 MR. ARAMBURU: Your Honor, I'm going to object. I
25 didn't ask any questions about the rate making of this.

1 MR. HALL: Your Honor --

2 JUDGE WALLIS: Let's let Mr. Aramburu finish,
3 please.

4 MR. ARAMBURU: I said this is beyond the scope of
5 my cross-examination. I did not ask this witness questions
6 about rate-making issues so I think this is beyond the scope
7 of that cross-examination.

8 MR. HALL: Your Honor, I wasn't trying to make any
9 points about the rate making, but counsel referred to an
10 exhibit and he tried to demonstrate that the self-supply
11 program pilot was only going to continue for a year, and I
12 was just asking the witness to describe what assumptions BPA
13 staff is making in the current rate case about how long that
14 program is going to continue through 2012, 2013.

15 JUDGE WALLIS: The witness did testify regarding
16 aspects of rate making as distinguished from other aspects
17 of which were directly in the question so I am going to
18 allow the question.

19 A. Yeah, Bonneville's initial proposal for this fiscal
20 year 2012, 2013 rate period for the rate case that's going on
21 currently, they are assuming certainly that the current
22 amount of at least 1,000 of self-supply will continue, and I
23 think their assumption is 1,300 megawatts of the wind
24 connected to the system will participate in self-supply and
25 get their balancing reserves in that manner.

1 BY MR. HALL:

2 Q. So, Cameron, counsel was asking you some questions
3 on the bottom of page 4, top of page 5 about qualifying
4 resources, and in your testimony you said that the Whistling
5 Ridge facility would be a qualifying resource of the
6 Washington RPS. Could you describe a little bit of the
7 difference. I think there's some confusion about whether it
8 would qualify for the RPS as opposed to whether it would be
9 used for compliance of the RPS by a utility Washington. Can
10 you describe that difference to clarify that point.

11 A. Yeah, it certainly has the ability to qualify under
12 the RPS. Whether or not it's marketed in that way is unknown
13 at this time to me anyways.

14 Q. All right. On page 5 you talked about the pilot
15 programs a little bit. Could you describe in layman's terms
16 how a wind generator would use the self-supply program to
17 self-supply its own balancing reserves, and what would
18 Bonneville do, both Bonneville's remaining responsibilities
19 be, if any, and what would the generator provide.

20 A. Yeah. Basically well in advance of any real-time
21 operations occurring a wind energy customer would elect and
22 inform Bonneville they intend to self-supply a certain
23 component of the balancing reserves. Within balancing
24 reserves there's actually three defined types and differently
25 priced types of service. Again, all these issues are

1 dependent on the time frame in which the variability is
2 occurring. I don't want to get into too much detail here,
3 but there is a difference: the average difference over the
4 hour that's called imbalance component, and then there's the
5 falling component which is the variability over ten minutes
6 and a regulation component which is the instantaneous. I
7 believe it's calculated every four seconds the difference
8 from actual generation to the schedule. And so the
9 self-supply pilot applies to the imbalance of the following
10 component which are by far the largest obviously given ten
11 and the hourly average component. And the wind generator
12 would tell Bonneville they're going to self-supply that
13 amount of reserves and Bonneville can deduct the amount of
14 reserves from their portfolio that they would have otherwise
15 provided, and then they're free to go out and remarket those
16 reserves that they see fit.

17 Q. So how would that expand BPA's ability to provide
18 additional balancing reserves for wind projects?

19 A. They're expanded for a one-for-one basis.

20 Q. On page 9 counsel asked you some questions about
21 DSO 216. In general terms how often is DSO 216 deployed?

22 A. It's used very rarely. Roughly depending on the
23 loads and how energetic the wind resources are roughly around
24 two to four events per month, and it's important to again
25 reiterate that it's only applied to the amount of generation

1 that's not scheduled plus the amount of balancing reserves
2 that Bonneville is providing to the resource, and it's also
3 within our issue so it's not a full megawatt hour. It's more
4 of a megawatt half hour, however, long it takes for the
5 system to rebalance.

6 Q. What is the benefits to the wind generators in
7 terms of cost of having the DSO 216 program?

8 A. It's like I said, these are to cover very rare
9 events. Bonneville makes a projection of looking at historic
10 and then projected data what their reserve requirement is
11 going to be to balance the wind net load again. But focusing
12 just on the wind here, and if over the whole rate period
13 which is two years long it's projected there's to be this
14 one, there's two or three real steep extreme ramps that
15 they've seen in the past things and anticipate that that will
16 continue. And to cover the very tippy top of the amount of
17 energy produced at the top of that ramp, Bonneville would
18 have to hold around X amount of reserves. But if they can
19 shave that off and they will rely on DSO 216, there's a
20 significant reduction in the mount of balancing reserves that
21 they have to provide.

22 Q. Cameron, you were talking about DEC reserves
23 earlier. Could you describe what that means and then also
24 describe what affect deploying DEC reserves would have on
25 thermal resources like gas and coal fired power plants?

1 MR. ARAMBURU: I didn't ask any questions about
2 DEC reserves or anything else. It's been covered in his
3 testimony. I don't see that this is appropriate redirect
4 examination.

5 MR. HALL: Your Honor, I was just trying to
6 clarify the record in that there was plenty of discussion
7 about balancing the services and the DEC reserves that run
8 after.

9 JUDGE WALLIS: The question is allowed.

10 A. Yeah, the DEC service, like I said, is the ability
11 to decrease a generator's production, and it is important
12 especially when you're coming from an advocacy organization
13 focused on environmental climate change issues with respect
14 to providing DEC reserves from conventional resources. It
15 does decrease the generation from a coal or gas plant and
16 decreases the emissions associated with this plant.

17 BY MR. HALL:

18 Q. Can you elaborate on that a little bit. Just what
19 does it mean to deploy the DEC reserves, you know? What is
20 the relationship between wind generation and a coal plant,
21 for example?

22 A. Within our wind integration context it means that
23 when the wind is generating above what is scheduled for that
24 hour that simultaneously a coal or gas plant will reduce
25 their generation.

1 Q. Thank you. And counsel was asking you some
2 questions about environmental redispatch. During the event
3 that occurred in 2010 do you have any sense for what the
4 relative levels of generation on the system were in terms of
5 hydro, thermal and wind?

6 A. I do. This whole discussion arose out of the
7 two-week time period roughly June 1st through the 15th there
8 was a huge flood of unforecasted water that came down
9 Bonneville's system. It was during the time of their regular
10 melt, and then if you recall we had a pretty rainy June last
11 year, and Bonneville was really surprised by the amount of
12 water coming down their system. Within their balancing area
13 hydro energy supply was around 85 percent of the energy
14 produced, and then wind and the thermal generators,
15 conventional generators that was still operating in that time
16 were providing equally about seven and a half percent of the
17 energy in Bonneville's balancing area. The hydro generation
18 just to provide some context represented I think 215 percent
19 of Bonneville's load so they were exporting out of the
20 balancing area of hydro energy as quick as they could.

21 Q. So there's been assertion that somehow that the
22 event was caused by wind energy. How do you react to that?

23 A. Just that those numbers really there was an
24 oversupply of the generation or underdemand I guess.
25 Certainly economy is playing a large role in the imbalance

1 that occurred during the first half of June and the numbers
2 speak for themselves.

3 Q. When you say oversupply of generation, when you say
4 generation what are you referring to?

5 A. Just electricity generation from all generators in
6 the system, in this case especially the hydro generation, but
7 also thermal and wind to a lesser degree.

8 MR. HALL: Thank you. No further questions, Your
9 Honor.

10 JUDGE WALLIS: Are there questions from the bench?

11 MR. ARAMBURU: I just have a couple questions when
12 it's the proper time.

13 JUDGE WALLIS: I have a question for
14 clarification. You and Mr. Aramburu had an exchange early
15 on in the initial examination regarding the sending of power
16 or credits to California, and eventually you agreed that it
17 was credits that were sent to California. And I'm wondering
18 if you could describe what the situation is and what the
19 difference is between sending power and sending credits.

20 THE WITNESS: Your Honor, just to clarify, I agree
21 that the credits would or wouldn't be sent, but just that
22 that distinction was important. And the difference is that
23 renewable energy credits are defined to carry the renewable
24 energy attributes, the benefits that the public sees in
25 renewable energy projects, and that those credits can be

1 used to comply with renewable portfolio standards separate
2 from where the energy is contracted to be sold to.

3 Can I provide anymore clarification?

4 JUDGE WALLIS: You've addressed the situation with
5 credits. What is the situation with the energy?

6 THE WITNESS: The energy could be sold wherever
7 there's transmission capacity to have it delivered, and it
8 would be sold in the marketplace at a market price on a long
9 term or spot.

10 JUDGE WALLIS: So if Whistling Ridge were
11 authorized for construction, began operation and sold energy
12 to California, would the elements of the energy travel all
13 that way? Is that how the system works?

14 THE WITNESS: I would guess probably sometimes yes
15 and sometimes no, but it's certainly possible.

16 JUDGE WALLIS: What else is possible?

17 THE WITNESS: That there wouldn't be transmission
18 capacity available at a given hour, and it might be sold in
19 the Northwest or to British Columbia or Alberta.

20 JUDGE WALLIS: Very well.

21 Mr. Aramburu.

22 MR. TAYER: Mr. Yourkowski, we've had a fair
23 amount of testimony about the wind blowing and not blowing
24 at certain times, and there are periods I think the
25 testimony is that we don't produce any wind energy. I think

1 you -- well, I want to ask you did you testify that wind
2 energy diversity, in other words, having the wind blow in
3 one place when it's not blowing in others is good, it's that
4 a good thing?

5 THE WITNESS: It is a good thing because it
6 decreases the amount of balancing reserves per megawatt of
7 wind that the system will have to hold.

8 MR. TAYER: What about the area around this
9 particular project site, does it have good attributes of
10 diversity or not?

11 THE WITNESS: I'm sorry. I haven't analyzed those
12 questions in detail or at all frankly.

13 MR. TAYER: Okay. Thank you.

14 JUDGE WALLIS: Mr. Aramburu.

15 MR. ARAMBURU: Just a couple of questions.

16 RE CROSS-EXAMINATION

17 BY MR. ARAMBURU:

18 Q. I believe in response to questions from your
19 counsel you indicated that the economy had something to do
20 with the overgeneration situation. Did I hear that word used
21 in your testimony?

22 A. Yeah, it has something to do with the mismatch
23 between supply and demand certainly.

24 Q. But when you said the economy are you talking about
25 the recession or something? Is that what you mean?

1 A. Yeah, the load is lower than it has been in the
2 past.

3 Q. Oh, okay. Okay. Is it also not the case that the
4 conservation of energy and energy efficiency is being used to
5 reduce loads in the Northwest?

6 A. I would certainly hope so.

7 Q. Is that a priority of RNP?

8 A. It's not a priority, no.

9 Q. So conservation of energy and energy efficiency is
10 not a priority of your organization?

11 A. It's certainly a priority of many of our
12 constituent members, but it's not specifically a focus of a
13 mission of RNP.

14 Q. Mr Kahn asked you some questions about whether the
15 Applicant or SDS Lumber was a member of your organization.
16 Is it not the case that Stoel Rives the law firm and
17 Mr. McMahan in particular are members of your organization?

18 A. Stoel Rives, yes. I'm not certain about the
19 individuals.

20 Q. But your website lists persons from each
21 organization that are the contact person; is that correct?

22 A. I believe so, yes.

23 Q. And do you know if Mr. McMahan is listed as the
24 contact person?

25 A. I do not know that for certain, no.

1 Q. I've got your website up on my computer here. Do
2 you want to look?

3 A. Sure.

4 Q. Okay. I'm just showing you the website for RNP,
5 and if you want to look up here, here's the member
6 organizations. Do you see that?

7 A. I do.

8 Q. And if we go down here we're going to get to Stoel
9 Rives, LLP; is that correct?

10 A. That's correct.

11 Q. And who is the contact person?

12 A. Tim McMahan is listed under Stoel Rives.

13 Q. Thank you. You described the overgeneration
14 situation that occurred June 1 to 15 of 2010. Is that
15 correct you talked about that?

16 A. That's correct.

17 Q. Bonneville put out a paper describing those events;
18 is that correct?

19 A. That is correct. It was submitted at least in part
20 and referenced rather heavily in the Michaels' testimony.

21 Q. And Mr. Michaels' testimony has that report from
22 BPA on the June 2010 overgeneration as a part of his
23 testimony, does it not?

24 A. Yes.

25 Q. You said that DSO 216 was designed to address

1 situations where there would be particular ramps up of power
2 on the system?

3 A. Correct, to address both up-ramps and down-ramps.

4 Q. So DS0 216 might apply during an overgeneration
5 event such as the one that occurred in June of 2010?

6 A. Certainly.

7 Q. Mr. Wallis asked you some questions about credits
8 for renewable energy versus the actual delivery of energy
9 over the system. Do you recall those questions?

10 A. Yes, I do.

11 Q. If, for example, if a California utility purchased
12 the credits from a wind generation facility in the state of
13 Washington to meet California's RPS requirements that project
14 would no longer be able to meet Washington RPS requirements;
15 is that correct?

16 A. That's correct.

17 MR. ARAMBURU: No further questions.

18 JUDGE WALLIS: Is there anything further?

19 MR. HALL: Just a couple quick questions, Your
20 Honor.

21 RE-REDIRECT EXAMINATION

22 BY MR. HALL:

23 Q. Cameron, there's been some discussion about
24 interstate commerce and renewable energy. Could you talk
25 just for a moment about the seasonal energy exchanges between

1 California and the Pacific Northwest?

2 MR. ARAMBURU: I didn't ask any questions about
3 that, and I don't think anyone from the Council asked that.

4 MR. HALL: I think it's a fair question. We've
5 had a lot of questions about energy going to California and
6 coming from the Pacific Northwest too.

7 JUDGE WALLIS: It adds to the context of the
8 discussion, and I believe it is related so the question
9 allowed.

10 A. Yeah, I think it's important in this context just
11 to note it's not abnormal for any energy to be sold up and
12 down the west coast let alone other areas, and it does
13 provide important efficiency and economics in terms of the
14 amount of capacity that we have to carry in order to meet our
15 peak load assuming there is seasonal diversity in load, in
16 the peak load among different regions, California and the
17 Northwest especially.

18 BY MR. HALL:

19 Q. Cameron, Judge Wallis asked you a question about
20 delivering energy to California. Let me rephrase this
21 question.

22 If a wind project is generating energy in the
23 state of Washington do the electrons go to California?

24 A. It would just depend on the dispatch for all the
25 generators in the entire WEC system, on the transmission

1 system where the actual energy would flow.

2 Q. Could you please define what a WEC is.

3 A. It's the Western Electricity Coordinator
4 responsible for the reliability of the transmission system.

5 Q. In which part is the geographic scope of that?

6 A. In the western states basically, including the
7 Northwest and California over the Rocky Mountains.

8 Q. Any international?

9 A. It also includes British Columbia and Alberta and a
10 tiny piece of Mexico I believe.

11 MR. HALL: Thank you. I have no further
12 questions, Your Honor.

13 JUDGE WALLIS: Is there anything further?

14 MR. ARAMBURU: Not from me.

15 JUDGE WALLIS: There is no nothing, and
16 Mr. Yourkowski, thank you for your appearance today. You're
17 excused from the stand at this time. Let's take a 15-minute
18 recess and we'll return at 10:30.

19 (Recess taken from 10:15 a.m. to 10:30 a.m.)

20 JUDGE WALLIS: Let's be back on the record,
21 please, following our morning recess.

22 Mr. Usibelli has been stepped forward to the
23 stand.

24 (Tony Usibelli sworn on oath.)

25 JUDGE WALLIS: Ms. Jaffe.

1 MS. JAFFE: Thank you.

2 TONY USIBELLI,

3 having been first duly sworn on oath,

4 testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. JAFFE:

8 Q. Mr. Usibelli, did you file prefiled testimony in
9 this matter?

10 A. Yes, I did.

11 Q. Do you have a copy in front of you?

12 A. I do.

13 Q. Is it marked as Exhibit No. 34 with attachments
14 34.01 through 34.05?

15 A. That is correct.

16 Q. If I asked you the same questions today would your
17 answers still be the same?

18 A. My answers would be the same.

19 Q. Are there any substantial changes to either your
20 prefiled testimony or the attachments?

21 A. There is one change to one of our attachments. I
22 believe you have them in your possession.

23 Q. So there are substantial changes to Exhibit 34.02?

24 A. That is correct. There was some mathematical
25 errors and correction of those mathematical errors.

1 MS. JAFFE: Your Honor, I have a copy for the
2 Council of Exhibit 34.02 as corrected, and there is yellow
3 highlighted sections of it that are corrected numbers. I
4 have already distributed copies to opposing counsel, and I
5 would like to distribute them to yourself.

6 JUDGE WALLIS: Yes, please distribute those.

7 BY MS. JAFFE:

8 Q. Mr. Usibelli, can you describe what the changes
9 were to Exhibit 34.02.

10 A. The numbers contained in Exhibit 34.02 are some
11 preliminary data on the information submitted to our
12 department on utility resource plans for the base year as
13 indicated in the first column, and then in the fourth column
14 the percentages we simply failed to add in a couple of two or
15 three utility numbers in there. So we adjusted the base year
16 for megawatts numbers upward.

17 Q. Did the changing of the base year change the
18 five-year or the 10-year estimates?

19 A. It did not.

20 Q. Did these changes affect any of the information in
21 your actual prefiled testimony?

22 A. I don't believe any of those numbers were directly
23 reflected in my prefiled so the answer would be no.

24 Q. Thank you.

25 MS. JAFFE: At this time, Your Honor, we would

1 like to move for admission of Exhibit 34.00 with the
2 attachments 34.01 through 34.05 with the additional
3 corrected version of 34.02.

4 (Exhibit Nos. 34.00 through 34.05 offered into
5 evidence.)

6 JUDGE WALLIS: Is there objection?

7 MR. ARAMBURU: I don't have objection to the
8 testimony. I'd like to ask you to reserve ruling on
9 Exhibit 34.02 until I've had a chance to ask some questions
10 about it.

11 JUDGE WALLIS: Very well. We will admit exhibits
12 34.00 and 34.01 through 34.05 but reserve ruling on 34.02
13 corrected.

14 (Exhibit Nos. 34.00, 34.01, 34.03 through 34.05
15 admitted into evidence.)

16 MR. ARAMBURU: Thank you.

17 CROSS-EXAMINATION

18 BY MR. ARAMBURU:

19 Q. Mr. Usibelli, we've not had an opportunity to meet.
20 I'm Rick Aramburu. I'm the attorney for SOSA, one of the
21 intervenors in these proceedings. Good morning.

22 A. Good morning.

23 Q. I did have some questions about your prefiled
24 direct testimony. Do I understand that you are here today
25 representing the State Department of Commerce advocating in

1 favor of the Whistling Ridge Project?

2 A. That is correct subject to approval by the Facility
3 Siting Council. That's set forth in my testimony.

4 Q. Okay. Can you tell me what review you've made of
5 this project to reach your conclusion to support it?

6 A. I have reviewed various aspects of the documents.
7 I can't say that I've reviewed absolutely every piece of
8 material. In addition some of my staff have been involved in
9 reviewing, and we have met and discussed the aspects of the
10 project.

11 Q. So in particular have you reviewed the Draft
12 Environmental Impact Statement?

13 A. Only in a very cursory sense, not in any detail.

14 Q. Have you reviewed the application?

15 A. I have. Again I'm familiar with the application.

16 Q. And would you say you reviewed it in detail?

17 A. I would probably not say in detail.

18 Q. Have you had an opportunity to review the
19 testimonies of Mr. Smallwood and Mr. Apostol?

20 A. I have not.

21 Q. Do you know what their testimonies are or concern?

22 A. Not off the top of my head I do not.

23 Q. Are you aware of the concerns that have been
24 expressed regarding the impact of this project on visual
25 resources and on wildlife resources, particularly birds and

1 bats?

2 A. I am aware of those in general, correct.

3 Q. So is it your testimony today that the Siting
4 Council or that those objections should be overruled and this
5 project should be approved?

6 A. My testimony does not speak to those issues
7 specifically, and in my testimony I do indicate that we are
8 fully supportive of the Council review process on that, but I
9 do not have a position on those within my testimony.

10 Q. But you still have a position on the project that
11 it should be approved.

12 A. Subject to the review process set forth by EFSEC as
13 indicated in my testimony.

14 Q. So I am interested in knowing how you got involved
15 in this process. Did you receive some direction from someone
16 at Commerce to get involved?

17 A. The Department has been involved in issues around
18 siting and projects with EFSEC since my term at the office
19 beginning in 1997. So we would have been involved in a
20 number of different renewable and fossil fuel projects with
21 respect to EFSEC. So we routinely review those projects and
22 take positions.

23 Q. Can you tell us what other renewable energy
24 projects Commerce has participated in?

25 A. We have participated in the Kittitas Valley

1 renewable wind project, and I'm trying to recall if we had
2 actually formally intervened or had simply provided comments
3 on any of the other renewable projects. That's one that
4 immediately comes to mind.

5 Q. But you don't know of any other projects that you
6 have become specifically involved, that Commerce has?

7 A. I don't recall whether we have formally intervened
8 in any others off the top of my head.

9 Q. Did Commerce get involved in the Windy Flats/Windy
10 Point project?

11 A. I do not believe so.

12 Q. So what is there about this project that makes
13 Commerce want to get involved in it as opposed to a number of
14 other projects?

15 A. Well, again, for us it is an examination of the
16 various projects that are before the Siting Council, and we
17 take a number of factors into consideration, the nature of
18 the project, whether we are approached by the developers of
19 the project in regard to help support them as we do with many
20 types of projects outside of simply energy arena and resource
21 issues as well.

22 Q. In this case were you approached by the Applicant
23 to advocate for the project?

24 A. We were approached by the Applicant and they asked
25 us for their support, that's correct.

1 Q. Who in particular did you speak with?

2 A. We spoke with Darrel Peeples and other legal
3 counsel as well.

4 Q. So would it be fair to say that you were lobbied by
5 the Applicant?

6 A. I think that could be a fair statement as we are
7 lobbied or asked on any number of other occasions on other
8 projects or activities. I don't take any pejorative in the
9 sense of a lobby, but we were asked, that's correct.

10 Q. Were you aware that there were several intervenors
11 in this project that oppose or intervenors before EFSEC that
12 oppose the project?

13 A. Yes, we were.

14 Q. Did you make any attempt to meet with them
15 concerning the position Commerce might take in this matter?

16 A. I did not personally, no.

17 Q. But you are aware that Friends of the Columbia
18 Gorge was interested and involved with this project?

19 A. Yes.

20 Q. You were aware that Save Our Scenic Area was
21 interested and involved?

22 A. Yes.

23 Q. And you were aware that I'm counsel for Save our
24 Scenic Area and Mr. Kahn is counsel for the Friends of the
25 Columbia Gorge?

1 A. Yes.

2 Q. And you made no attempt to contact us?

3 A. We did not. We, however, intervened initially in
4 the project and were available to any intervenor or other
5 party who wished to speak with us.

6 Q. So, Mr. Usibelli, what's the output of this project
7 going to be?

8 A. Well, the project is rated for approximately
9 75 megawatts.

10 Q. How much energy will it produce?

11 A. It depends on the capacity factor of that project.
12 The typical capacity factor to a project would run between 28
13 and 32 to 34 percent.

14 Q. How do you know this project is going to have that
15 capacity factor?

16 A. Well, I mean if you look at the application and
17 others they indicate I believe around those numbers, and in
18 addition just my general knowledge of a number of wind
19 projects were a project not to have capacity factors on that
20 order it would typically not be an economic project that a
21 developer would move forward with.

22 Q. When the Applicant came in, did you ask the
23 Applicant who presumably would know what kind of electrical
24 generation would come from this project?

25 A. I'm not sure I follow the question. In terms of

1 what kind of electrical generation it will be or electricity
2 from the project? So I'm not quite sure the thrust of your
3 question.

4 Q. Okay. We'll all agree electricity is being
5 produced by this project. The question I have for you is
6 when the Applicant came in and lobbied Commerce to get
7 involved in this project did you ask them specifically what
8 the capacity factors of that project was going to be?

9 A. I honestly don't recall whether I asked them
10 specifically or not. I had seen their application and other
11 documents to see that information in general, but I don't
12 recall whether we or my staff asked that question directly.

13 Q. Isn't that a relevant question before Commerce gets
14 involved; that is, the amount of energy to be produced?

15 A. Certainly.

16 Q. So what information do you have other than sort of
17 the generalities of this to estimate the amount of power to
18 be produced?

19 A. Well, again, I would go back to the application and
20 other information that was provided on that. I don't have
21 those numbers at my fingertips.

22 Q. Do you recall that the application stated the
23 capacity factor of the project?

24 A. I do not off the top of my head know that.

25 Q. You indicated that I think in response to my

1 question that these projects wouldn't get started unless they
2 were economically viable. Is that your testimony?

3 A. Well, in general that's the case. As with any kind
4 of energy project or in fact many other development projects,
5 that certainly it is a business decision that is being made
6 by someone. These plants would be paid for out of their
7 operation, and they make an economic analysis of the
8 viability of that project.

9 Q. Would you say that the economics of the project
10 like the Whistling Ridge Project is heavily influenced by the
11 available investment tax credits?

12 A. I would say this project and many others are
13 heavily influenced by the availability of the investment or
14 the generating tax credits from a variety of different
15 federal credits, yes.

16 Q. You keep up with this stuff. What's the investment
17 tax credits that are available right now?

18 MS. JAFFE: Objection, Your Honor. With respect
19 to the scope of Mr. Aramburu's question Mr. Usibelli is here
20 to testify about the role of wind and renewable energy with
21 respect to the State Energy Policy, and I have yet to
22 determine what Mr. Aramburu's point is with respect to the
23 relevancy of the question.

24 MR. ARAMBURU: I'm asking what the process that
25 Commerce went through to come before this Council to

1 advocate for this project. He is the one that talked and
2 has answered about the economics of the project so I think
3 it's a fair question.

4 JUDGE WALLIS: The question is allowed.

5 A. So the question if I recall correctly was related
6 to the magnitude of the federal tax credits associated with
7 wind projects; is that correct?

8 BY MR. ARAMBURU:

9 Q. So the record is clear, later on all of us are
10 going to be looking at this on paper.

11 A. Sure.

12 Q. And so the record is clear the question is what
13 percent of the project cost would be paid for by the
14 investment tax credits if it is utilized?

15 A. So that is a different question than the one you
16 previously asked, and I don't know the answer to that.

17 Q. You don't know that it's 30 percent of the
18 construction cost of the project?

19 A. I did not know that off the top of my head, no.

20 Q. But the investment tax credit does heavily affect
21 the economics of these projects?

22 A. That's correct, yes.

23 Q. Is Commerce inclined to take positions on projects
24 before the final environmental impact statement is prepared
25 for the project?

1 A. We can. We certainly have done that with respect
2 to the other energy projects. I believe it is also fair to
3 say that Commerce has supported a variety of other
4 development projects that may be completed prior to all of
5 the environmental impact statement and the permitting, yes.

6 Q. So where are we in the preparation of the
7 environmental impact statement on this project? Do you know?

8 A. My understanding is that the Final EIS for this
9 project has not been completed.

10 Q. So is it the case then that Commerce -- strike that
11 question.

12 You talk on page 3 of your testimony at the bottom
13 about the State Loan Policy Support permitting for the
14 Whistling Ridge Project. What's the policy you're talking
15 about here?

16 A. Well, if you look at subsequent testimony, it
17 relates to the energy policy and energy policy related to the
18 development of renewable resources.

19 Q. Okay. You said that barring some unexpected rather
20 remarkable development this project appears to be supported
21 by state law. This is at the bottom of page 3. What would
22 this remarkable development be?

23 A. Again, the remarkable development I can't
24 anticipate what that might necessarily be, but obviously the
25 context of this paragraph and the sentence is that we are

1 supportive of the project subject to the full review that the
2 Facility Siting Council will do on the siting aspects of this
3 project and if they do deem something was remarkable and
4 potentially unanticipated and they decide not to move forward
5 with the project.

6 Q. But this is Commerce. This isn't the agency. This
7 is Commerce's support for the project as I read your
8 testimony; is that right?

9 A. It is, yes. That is correct.

10 Q. Does it make any difference to Commerce how many
11 birds and bats are going to be killed by this project?

12 A. As with any kind of general question in that
13 regard, we certainly and I certainly would have some praedial
14 concerns there. My testimony does not tie specifically to
15 that as we have not spoken to the -- I don't speak
16 specifically to the environmental aspect of this project.

17 Q. Have you reviewed the testimony of Mr. Smallwood
18 that has been provided here?

19 A. I have not.

20 Q. So how is Commerce going to decide how much is too
21 much when it comes to the loss of wildlife resources?

22 MR. PEEPLES: Your Honor, I object. The scope of
23 this person's testimony is to the energy policies of the
24 state of Washington and to whether this project complies
25 with those energy policies. This witness has stated over

1 and over again that those issues he is talking about now he
2 has not covered. They're not in his testimony. That's up
3 to EFSEC to decide. He is now asking biology questions
4 which this witness has stated over and over again is up to
5 EFSEC.

6 MR. ARAMBURU: That's not what his testimony says.
7 His testimony says that they're going to support this
8 project unless there is some unexpected rather remarkable
9 development. That's in his testimony.

10 MR. PEEPLES: Your Honor, that is --

11 MR. ARAMBURU: I am entitled to inquire about the
12 bases for his testimony that he's put in. If Mr. Peeples
13 wants to strike this question and answer, I'm more than
14 happy.

15 MR. PEEPLES: Your Honor, no. The scope of his
16 testimony is the energy policy. He has deferred to EFSEC on
17 the other issues.

18 JUDGE WALLIS: Mr. Aramburu, I did hear the
19 witness say that he does not address anything but energy
20 policy and its relationship to this project, and that he
21 deferred to this agency to make decisions with regard to
22 other matters.

23 MR. ARAMBURU: Yes, but his testimony says that
24 they're going to keep on the track of supporting this
25 project unless there's some unexpected remarkable

1 development. Then I'm entitled to inquire what the nature
2 of that expected remarkable development might be, and I'm
3 asking him questions about this.

4 MR. PEEPLES: And that he said was whatever EFSEC
5 might find.

6 JUDGE WALLIS: Yes, so the objection is sustained.

7 BY MR. ARAMBURU:

8 Q. Let me ask this question. The sentence at the
9 bottom of page 3 of your testimony are you saying in that
10 section that you're leaving it up to EFSEC to decide these
11 issues?

12 A. Ultimately EFSEC by state statute is responsible
13 for making those assessments and making a recommendation to
14 the Governor as to whether the project should or should not
15 be permitted so the answer is yes.

16 Q. So you'll defer EFSEC then on the questions of
17 resource losses; is that correct?

18 A. Ultimately I think this indicates that we defer to
19 EFSEC on all aspects; that they would weigh all the aspects
20 of this project, resource losses being part of that, but only
21 a portion of what EFSEC would be assessing.

22 Q. You talk at the top of page 4 of your testimony
23 about the Desert Claim Project. What project is that?

24 A. The Desert Claim Project is another wind project.

25 Q. Is that the Kittitas Valley Project you're talking

1 about?

2 A. No, it's a separate project from the Kittitas
3 Valley.

4 Q. So that would be two projects then that Commerce
5 has become involved in before EFSEC?

6 A. Two wind projects, that is correct. We have been
7 involved in other fossil fuel projects as well.

8 Q. Do you keep track across the state of the number of
9 wind energy projects that are being proposed?

10 A. We have a pretty good sense of that. We depend to
11 some degree on the work of the Northwest Power and
12 Conservation Council which gives the most comprehensive data
13 set of energy projects in Washington and in the Northwest.

14 Q. Would it be fair to say that most of the wind
15 energy projects that have come up and have been approved in
16 the Northwest have been largely noncontroversial?

17 A. I can't speak to that because I can't -- I am not
18 familiar with the nature of the deliberations or the debate
19 around projects outside of the state of Washington.

20 Q. I'm talking about the state of Washington.

21 A. Okay.

22 Q. Is it your observation that many of these wind
23 energy projects have been approved without substantial
24 controversy?

25 A. There are certainly examples of that. I don't know

1 the percentages, but, yes, there are several significant
2 projects that were approved without major controversy.

3 Q. How about the Lower Snake River Project by PSE?

4 A. I am not familiar with that having any significant
5 controversy, but I'm not familiar with that project in
6 detail. Certainly in my discussions with Puget Sound Energy
7 on their development I don't believe they have indicated any
8 major issues with that project.

9 Q. The Lower Snake River Project is a wind energy
10 project being developed in Columbia and Garfield counties?

11 A. That is my understanding.

12 Q. Can you give me a rough idea of the amount of
13 installed megawatts involved in that project.

14 A. I'm not sure I can tell off the top of my head. I
15 believe that project is scheduled to come in in a number of
16 phases, somewhere between five and seven phases, and in
17 aggregate represents several hundred megawatts, but off the
18 top of my head I don't know the total.

19 Q. That project is several times larger than this; is
20 that not correct?

21 A. It is. In fact, if all phases of that project are
22 developed it would be several times larger, that's correct.

23 Q. Are you familiar with the Marengo project?

24 MS. JAFFE: Objection, Your Honor. What is the
25 purpose of asking these questions of every other wind

1 project that's been in state of Washington when Mr. Usibelli
2 is here to testify about this current project and its
3 relevancy with respect to the state energy policy.

4 MR. ARAMBURU: These questions are designed to
5 ascertain the participation of Commerce, the determination
6 of their involvement in individual projects. So I think
7 these are fair questions for this witness.

8 JUDGE WALLIS: I think it would be appropriate for
9 the witness to respond to this question, but it is I think
10 getting repetitive.

11 MR. ARAMBURU: We will leave with this.

12 JUDGE WALLIS: Very well.

13 A. I'm sorry. I don't recall what project you were
14 referring to you.

15 BY MR. ARAMBURU:

16 Q. I said are you familiar with the Marengo Project
17 that is northeast of Dayton?

18 A. Not off the top of my head. I know there is a
19 project in that area. I wasn't familiar with it anymore than
20 knowing there was a project.

21 Q. Would it generally be the case that most of the
22 projects that have been developed in the Columbia and
23 Garfield counties have not been controversial?

24 A. To the best of my knowledge. Again I don't have an
25 in-depth knowledge on those projects there.

1 Q. That they have not been controversial.

2 A. My understanding is that they have not been
3 controversial, that is correct.

4 Q. At the top of page 5 of your testimony you provide
5 an answer which indicates that State Policy 937 supports
6 permitting of the Whistling Ridge Project providing a strong
7 incentive to the state's largest utility to acquire power
8 from the project. Do you see that?

9 A. Yes, I do.

10 Q. Are you talking about any particular utility?

11 A. There are as indicated in my testimony, there are
12 17 utilities that have obligations under Initiative 937 to
13 meet an increasing fraction of their electricity notably from
14 a qualified list of renewable resources.

15 Q. I believe Puget Sound Energy is the largest utility
16 in the state of Washington subject to I-937?

17 A. That is correct.

18 Q. Do you have any idea of what percentage of the
19 requirements PSE will be meeting?

20 A. Well, ultimately PSE will be required to meet
21 15 percent of its requirements, or are you asking the
22 percentage of the state's total?

23 Q. Yes.

24 A. Yes, off the top of my head I don't have those
25 numbers here in front of me so I don't know what that number

1 would be.

2 Q. And how is PSE doing in meeting its renewable RPS
3 standards under 937?

4 A. Given information that we've received from them and
5 from other utilities in the case of PSE, they will easily
6 meet their -- we believe they will easily meet their three
7 percent requirement set for 2012, and that they are well
8 along or are likely to meet that requirement for the nine
9 percent requirement by 2016 ultimately, of course, subject to
10 approval by either the auditors office or the Utilities and
11 Transportation Commission which makes that ultimate
12 determination of compliance.

13 Q. How are they on their goal for the 15 percent
14 requirement at 2020?

15 A. I don't know those numbers, but I'm recalling off
16 the top of my head that overall I believe they are estimating
17 that they will be given what they have developed and on the
18 way they're on the order of about ten percent at the moment.

19 Q. And they've got to go to 15?

20 A. Yes, that's correct. Subject to the other
21 predictions of the initiative they could, Yeah.

22 Q. Right now PSE is selling a portion of the wind
23 energy to the state of California; is that correct?

24 A. I am aware that they have been selling some of
25 their renewable energy credits. I believe it is also correct

1 they have been selling some of their electricity to
2 California, but I can't attest to that for certain that
3 they've actually been selling their electricity, but I do
4 know that they have been selling some of their renewable
5 energy credits.

6 Q. So it may be as time goes by PSE will simply stop
7 selling to California and use the energy from its wind energy
8 projects to meet Washington requirements?

9 A. In my discussion with PSE and others that's my
10 understanding that they're effectively allowing some of the
11 California utility ratepayers to help pay for the cost of
12 development of these projects until either the renewable
13 energy credits or the energy is needed to meet their
14 obligation. So my understanding is that they have what would
15 be considered relatively short-term contracts to be able to
16 reclaim either the credits or the electricity or both to meet
17 their obligations.

18 Q. They're selling to California because California
19 utilities will pay more for their energy than Washington
20 utilities?

21 A. I heard that's the case.

22 Q. I'm sorry. I didn't hear your answer.

23 A. I believe that is correct.

24 Q. Have you spoken with PSE about their interest in
25 the Whistling Ridge Project?

1 A. I have not.

2 Q. You've indicated here that the project provides a
3 strong incentive. Would you be interested in knowing whether
4 PSE is interested in this project?

5 A. Certainly if they'd like to share that information
6 that would be just fine.

7 Q. In your testimony at page 5, lines 15 through 18 or
8 it would be 15 I guess through 20, you talk here about
9 renewable energy resources to meet aggregate 937
10 requirements. You mentioned solar. Did you anticipate solar
11 to be on line to meet these requirements?

12 A. Well, certainly some utilities have some solar
13 generation. Puget Sound Energy since you mentioned it
14 earlier has an array, 500 kilowatts array that I assume at
15 some point or another may well be considered a qualifying
16 renewable resource. As it stands now my analysis and
17 experience with the industry would indicate that solar will
18 have a role, but exactly how much that will be, particularly
19 for the 2020 requirement, that will depend on the economics
20 of the solar systems. They're currently more expensive than
21 some of the other resources such as wind.

22 Q. Now, looking at page 6 of your testimony, at the
23 first full paragraph you talk about the renewable resources
24 required by I-937, and you mention 933 average megawatts
25 within five years and 1,686 megawatt hours within ten years.

1 Those represent actual delivered energy to the consumers?

2 A. Yes, under Initiative 937 -- again these are
3 estimates because we certainly do not know precisely what the
4 loads will be next year let alone in 2020, but they're based
5 on our estimates from the utilities, the estimates of what
6 their load would look like, but the requirements of I-937,
7 the percentage requirements relate to a percentage of the
8 median percentage of the total load of the utility, that is
9 correct.

10 Q. So your 1,686 average megawatt represents the
11 delivery to the load.

12 A. That is correct. It would be 15 percent of what
13 the 937 utilities would see as load in 2020.

14 Q. Then the next sentence says that if the utilities
15 are to meet 70 percent of their targets with wind that would
16 translate into approximately 650 average megawatts of wind
17 energy. Is that in reference to today or to 2012
18 requirements? What is that?

19 A. That's simply just a mathematical calculation. So
20 it's the 933 times 0.7 and the 1686 times 0.7.

21 Q. Then you also talk about 1,180 average megawatts
22 within five to ten years. So if wind was used to meet
23 70 percent of the requirement by 2020, then it would be
24 1,180 megawatts?

25 A. That is correct. As I just indicated it's 0.7

1 times the 1,686 average megawatts that we estimated as a
2 likely requirement for all of the utilities by 2020.

3 Q. Okay. The next sentence you make assumptions about
4 capacity factors for projects being between 28 and
5 32 percent; is that correct?

6 A. That's correct.

7 Q. So then the next sentence says that conservatively
8 wind capacity of approximately 3,600 megawatts in ten years
9 would be required to meet the RPS standards; is that correct?

10 A. That is correct.

11 Q. Aren't there currently 3,600 megawatts of wind
12 energy installed or under construction in the state of
13 Washington?

14 A. I do not believe that those numbers are correct for
15 the state of Washington. I believe that would be -- I
16 believe that would include the state of Oregon as well. My
17 recollection is we have about 1,900 average megawatts of wind
18 in place in the state of Washington, and then I don't know
19 off the top my head precisely how much is actually physically
20 under construction at the moment.

21 Q. So if we've got 3,600 megawatts of installed wind
22 capacity in the state of Washington then most likely we're
23 going to be good for 937. Correct?

24 A. That could very well be the case, that's correct,
25 presuming that all those resources are designed to serve the

1 loads in the state of Washington.

2 Q. Has the State Energy Office studied or calculated
3 the number of wind energy projects that are either operating,
4 under construction, or permitted in the state of Washington?

5 A. We do have those numbers based upon the work of the
6 Northwest Power Conservation Council. I don't know those
7 numbers again off the top of my head.

8 Q. If we had those numbers do you think they would
9 exceed 3,600 megawatts?

10 A. I don't know off the top of my head.

11 Q. Going down again we're on page 6 of your testimony,
12 Mr. Usibelli. I am going down to lines 16 through 21. You
13 indicate that eligible renewable resources under 937 must be
14 located in the Pacific Northwest; is that correct?

15 A. That's correct.

16 Q. And energy facilities, wind facilities that would
17 have their projects sold to the state of California for use
18 in California would not qualify under 937 to meet renewable
19 energy requirements?

20 A. Well, as a general statement I think that's
21 correct, but I think more specifically it would depend on
22 when those were sold, under what terms they were sold to
23 California. Previously I used the example of Puget Sound
24 Energy where they sold certainly some renewable energy
25 credits and perhaps some energy as well to California in the

1 short term when they did not believe they needed that to meet
2 their immediate needs. They may not reclaim that, and that
3 certainly if they were to reclaim that and claim it as a
4 resource that is physically located within the Pacific
5 Northwest, then it would likely qualify under the requirement
6 of 937.

7 Q. Do you see any trends amongst the utilities in the
8 state of Washington that are subject to I-937 requirements
9 towards acquiring renewable resources to meet firm loads?

10 A. Well, certainly the requirements of the initiative
11 are that they have to meet certain percentages of their load,
12 and to that degree -- 3 percent, 9 percent, or 15 percent --
13 it is that percentage of the total number of megawatt hours
14 or kilowatt hours that the utility would sell in those
15 respective years.

16 Q. Well, let's put it this way. Would a 75-megawatt
17 biomass project that would be producing electricity would
18 that be a better resource than a 75-megawatt wind resource?

19 A. Well, again, the answer to that question depends on
20 the specific situation. Are there different characteristics
21 with respect to a biomass resource than there are for a
22 renewable wind resource? That's certainly the case, but I
23 think it depends on the specific situation both of the nature
24 of the operation of that plant and the nature of the specific
25 situation that a given utility has faced in terms of resource

1 needs.

2 Q. And the biomass project might be more valuable
3 because it produces power on a continuous basis as opposed to
4 a wind project which only produces power when the wind is
5 blowing.

6 A. There are certainly examples of that where you have
7 a biomass site which is likely to have a higher capacity
8 factor than a typical wind project. Again it depends on the
9 specific project. There may be instances where a biomass
10 project has availability that this is no better than a wind
11 project. More likely it would be in a situation where it may
12 have a higher capacity, that's correct. And generally, again
13 generalizing there's a value that that can often have a
14 higher value in the marketplace, that's correct.

15 Q. I'm looking a page 8 of your testimony. I'll let
16 you get your water there.

17 A. Thank you very much. Yes, I am on page 8.

18 Q. Page 8 of lines 3 through 11 talk about economic
19 benefits of renewable energy projects.

20 A. Yes.

21 Q. I guess I would ask you does the construction of --
22 the Whistling Ridge Project will create clean jobs. Do you
23 know the number of jobs that will be created here?

24 A. I would have to look up that number. I don't know
25 off of top of my head what that number would be.

1 Q. Would those jobs be principally in the construction
2 phase of the project?

3 A. Yes, by definition construction jobs would be
4 during the construction phase of the project, and then there
5 would be some operational jobs also associated with that. A
6 typical wind project will have more, a larger number of
7 absolute jobs during the construction phase than during the
8 operational phase, and there's an issue of duration. You can
9 talk about years of employment, those kinds of things.
10 Again, I don't know those numbers off the top of my head.

11 Q. So when you use the word clean jobs at page 10,
12 line 8 of your testimony, a construction worker delivering
13 concrete or a truck driver driving a wind turbine blade up to
14 the site would count as a clean job?

15 A. Yes, that is definitely more a term I guess I would
16 say a term of art than a precise definition here as to
17 whether you would call that people use the terms green jobs,
18 clean jobs, green energy economy jobs, etc. I happened to
19 choose that word, but, yeah, I stick by that that it falls
20 into that. What we have categorized, what the state has
21 typically categorized as a -- they category of the stages is
22 a green energy job more than as an energy job.

23 Q. But I don't mean to quibble with you; you used the
24 words. You used the word a clean job and that would be true
25 of the construction workers driving trucks?

1 A. That aspect of it, that's correct.

2 Q. Do you have any idea how much a typical 75-megawatt
3 wind energy project how many permanent jobs would be created
4 by that?

5 A. I could only speculate. I don't know what the
6 number would be off the top of my head.

7 Q. So you have not undertaken any investigation of
8 that?

9 A. Well, I mean I know for projects in general. A
10 150- to 200-megawatt wind project on average might have a
11 couple dozen operational jobs associated with it so you could
12 potential scale down, scaling back to the 75 what that would
13 represent.

14 Q. When the Applicant came in and lobbied for the
15 support of Commerce in these proceedings did they tell you
16 how many jobs they were going to create?

17 A. I don't know if that was part of the discussion.

18 Q. When did this discussion with the Applicant take
19 place?

20 A. Oh, over the course of last year. Again off the
21 top my head I don't know the specific dates but during 2010.

22 Q. You didn't ask them how many jobs?

23 A. I don't recall if that was part of the discussion.

24 Q. So you've used the word clean jobs on page 8, line
25 8, and then you use green jobs at line 16. Is that the same

1 thing?

2 A. Effectively, yes.

3 Q. Now towards of bottom of page 8 of your testimony
4 and over to page 9 you talked about renewable energy jobs in
5 the state; is that correct?

6 A. That is correct.

7 Q. And I wanted to ask you some questions about
8 Exhibit 34.04 of your testimony.

9 A. Yes.

10 Q. Could you turn to that, please, Exhibit 34.04.

11 A. Yes, one second. Yes, I'm there.

12 Q. This document is 2009 Washington State Green
13 Economy Jobs done by Washington State Employment Security
14 Department. And on the second page there is and you have
15 provided to the Council Appendix 1 to that document; is that
16 correct?

17 A. Yes, page 38 of the document, correct.

18 Q. Page 38. Okay. Now let me ask a couple of
19 questions about that, and that as I understand this appendix
20 that you were referring to on your testimony at the bottom of
21 page 8 and going over to page 9.

22 A. That's correct.

23 Q. Let me ask a couple questions if I may about this.
24 Is this anticipated jobs or is this hope-for jobs?

25 A. No, these are actual jobs. If you look, this study

1 was done by the Employment Security Department and involved
2 what I believe to be characterized as the most comprehensive
3 examination of green jobs, including examination of actual
4 employment records, plus-follow-up phone call interviews with
5 a significant number of companies. And they identify, if you
6 look across the top at the table on page 38, they classify
7 those as the four major types of jobs: efficiency,
8 renewables, pollution prevention, and reduction, and then
9 what I would call environmental cleanup. So this is based
10 upon actual.

11 Q. So the line where we should be looking at here is
12 the south central line under workforce development area?

13 A. Yes, that covers the geography of Skamania County.

14 Q. As well as other counties?

15 A. I believe so. I don't have the map in front of me.

16 Q. Now, is it your testimony that there's currently
17 450 jobs in south central Washington producing renewable
18 energy?

19 A. In some aspect or another that could. Within the
20 context of the report I believe it also included, you know,
21 if someone were actually building, physically building
22 renewable technologies of some sort, etc.

23 Q. So the 450 jobs that are referenced on Appendix 1
24 to Exhibit 34.04 would include construction jobs?

25 A. I would presume they do, but I do not know. It

1 would depend on the specific details within the report.

2 Q. There is also a line for south central under
3 increasing energy efficiency that indicates that they are
4 1,247 total green positions that exist in south central
5 Washington. Do you see that line?

6 A. I do, yes.

7 Q. What do these people do?

8 A. Well, again, I don't know specifically what they
9 are doing, but I do know in general. This can include folks
10 that are installing insulation. It may be folks that are
11 manufacturing certain pieces of efficiency equipment. It can
12 include individuals who are doing energy audits to determine
13 the energy use of a facility in anticipation of installation
14 of efficiency measures, those kinds of things.

15 Q. Would it be fair to say that the 1,247 jobs under
16 increasing energy efficiency would reflect a more permanent
17 type of job?

18 A. I'm not sure. More permanent than?

19 Q. Than the producing renewable energy.

20 A. I don't think I can say one way or another about
21 that.

22 Q. But it is fair to say that currently there's many
23 more jobs in what essentially is energy conservation or
24 energy efficiency than there is constructing or operating
25 renewable energy generation plants?

1 A. That's correct.

2 Q. Do you expect this ratio to remain about the same
3 for the coming 20 years before I-937's 15 percent requirement
4 comes into play?

5 A. I do not know the answer to that question because
6 it will depend on the relative level of future activity in
7 energy efficiency and in renewable energy in terms of jobs,
8 but I don't know that I could speculate on that. I
9 anticipate that many of the other studies of work anticipate
10 there will be growth in both sectors within the state of
11 Washington.

12 Q. But as I understand it, energy efficiency or energy
13 conservation is a very high priority for the state of
14 Washington.

15 A. That is correct, it is.

16 Q. Is it not the case that the Pacific Northwest
17 Conservation and Power Plan indicates that about 85 percent
18 of the new load over the next 20 years in the state of
19 Washington will be met by energy conservation?

20 A. 85 percent of -- the Council plan refers to
21 actually the footprint of the Pacific Northwest. So it's
22 85 percent of the electricity, the incremental electricity
23 need over that period from efficiency improvements, that's
24 correct.

25 Q. So the people that would create this 85 percent or

1 the 85 percent figure would be the same people that are
2 employed in increasing energy efficiency. These are the same
3 guys.

4 A. Right, in part. The council work refers to the
5 electricity energy efficiency. It does not include energy
6 efficiency related to natural gas or petroleum or the other
7 resources. So that's correct in part those jobs would come
8 from that activity.

9 Q. Okay. Now I was frankly a little mystified by your
10 Exhibit 34.02, and, you know, I have another version of that.
11 Let me understand what's depicted on Exhibit 34.02. We're
12 going to refer to your corrected exhibit that shows the
13 yellow markings on it.

14 A. Yes.

15 Q. So let me understand this. This material would
16 indicate loads for those utilities subject to I-937; is that
17 correct?

18 A. It indicates their numbers provided by those
19 utilities, correct.

20 Q. This material is taken from reports from these
21 utilities?

22 A. Yes. Just a little bit a background on that, all
23 utilities within the -- electric utilities within the state
24 of Washington are required to provide either what's called
25 the integrated resource plan or a resource plan that

1 indicates their base of energy use in a given year and then
2 estimates for how they would meet those resource needs, what
3 their mix would look like in 5- and 10-year increments. So
4 it's based on information reported to us.

5 Q. So that looking again at Exhibit 34.02, the new
6 version of that, under the line loads base year indicates
7 average megawatts of 9,405 megawatts in the base year. Is
8 that base year this year or last year or some year we updated
9 for?

10 A. In almost all cases this relates to an update that
11 was provided to utilities with a 2009 estimate and then the
12 -- excuse me, a 2008 number they were required to report then
13 and then they revised that report every two years. So in
14 almost all cases that represents a 2010 base year.

15 Q. Okay. And then the five-year estimated is loads of
16 these utilities out to 2015?

17 A. That's correct.

18 Q. And ten years is 2020?

19 A. Yes, essentially.

20 Q. This is designed to tell us what the loads are
21 going to be in the years consistent with the reporting of
22 requirements under 937?

23 A. No, these are consistent with the reporting
24 requirements set forth in House Bill 1010, and I think I have
25 the RCW reference there. This is somewhat different

1 reporting requirements. Utilities do not have their first
2 requirement to actually report and be subject to the UTC or
3 auditor review until 2012.

4 Q. Under 937.

5 A. That's correct.

6 Q. And the estimates for five years out, ten years out
7 are those estimates provided by the utilities or by the State
8 Energy Office?

9 A. Those are provided directly by the utilities.

10 Q. Do these estimates take account of the possibility
11 of 85 percent of new load growth being met by conservation?

12 A. I believe that they include a significant amount of
13 conservation. I don't believe we've gone back and translated
14 it directly to see whether 85 percent of new load growth
15 would be met by conservation or not.

16 Q. But you hope so.

17 A. Oh, certainly. The Council has made a, the
18 Northwest Power Council made a strong case that it's cost
19 effective for both utilities and consumers to meet some
20 85 percent of their incremental load for conservation.

21 Q. And then you have wind in your second column here
22 across the page.

23 A. Second row, yes.

24 Q. Pardon me?

25 A. Second row, yes.

1 Q. Okay. Second row. Okay. Good. And what are
2 those figures?

3 A. Those are again reported by the utilities. So the
4 utilities report to us and indicate in the base year a five
5 and a ten year how much wind resources they have in their
6 base year and what they estimate those wind resources will be
7 in their resource mix in those respective five and ten year
8 increments.

9 Q. Okay. So, for example, these utilities have
10 indicated that in the base year 2010, they have 357 I guess
11 average megawatt hours of wind coming into the system.

12 A. Average megawatts, yes, that's correct.

13 Q. So, for example, does that count the megawatt hours
14 that are being sold by PSE to California utilities?

15 A. Well, again, I'm not absolutely certain that
16 they're selling megawatt hours, wind megawatt hours to
17 California. Again, I know that they're selling credits, but
18 I don't know what they might be selling to California. To
19 the extent that those are not serving their load, then I
20 would presume they're not included.

21 Q. Okay. So in terms of resources there might be
22 other -- strike that question.

23 Then other renewables in your row across the page
24 would be the geothermal, solar, biomass, the other
25 renewables?

1 A. Yes, this could be any mixture of different
2 renewables that the utility has indicated. In some instances
3 we know precisely what those are. In other instances
4 utilities may simply have reported a number to us and not
5 said precisely what that ten megawatt number was or two
6 megawatt number was.

7 Q. Exhibit 34.02 is that out of another document or is
8 this something you prepared for this hearing?

9 A. We prepared this for hearing. This is preliminary
10 data. We are producing another document that takes this
11 utility information and compiles it as a report to the
12 legislature. That is now under executive branch review and
13 we expect that be issued as a final document this month.

14 Q. Okay. And was it Mark Anderson that prepared it?

15 A. Yes, Mark works for me.

16 Q. I notice you've added three numbers up in rows or
17 in columns. Why are we adding them up? I mean I guess if I
18 was to look at this, I would say we've got a certain amount
19 of load and a certain amount of that load that's being met by
20 the renewable resource, and we ought to subtract. Why are we
21 adding?

22 A. That's an excellent question actually. I don't
23 know the answer to that question.

24 Q. So if we want to know what loads are being met by
25 other resources we ought to subtract, shouldn't we?

1 A. I believe that's correct, yes.

2 Q. Now, then over on the next column you have
3 percentages base year and I'm sorry. I don't understand what
4 that references.

5 A. So if you would take 9,400 as the load, 357 wind
6 represents 38 percent of that load, 57 of renewables
7 represents 6 percent of that meeting that percentage of the
8 load.

9 Q. But what does the top column refer to? It says the
10 percentages base year.

11 A. Right. So base year would be obviously they are
12 meeting 100 percent of the load from a big mix of different
13 kinds of resources. Currently in the base year they're
14 meeting 3.8 percent of that from wind and 6/10 of one percent
15 of that load of other renewables based on the information
16 reported to us.

17 Q. Oh, I see. Okay.

18 A. Then we've done similar calculations to indicate
19 based on the information that they reported to us what those
20 percentages would be, the five and ten year increments.

21 Q. I have a question or two about your Exhibit
22 No. 34.03.

23 A. Refresh my memory which one was that again?

24 Q. It's one that says 2009 Draft Resource Plan at the
25 top from September 2009.

1 A. Yes.

2 Q. Is this a document that was authored by BPA?

3 A. It is a Bonneville Power Administration document,
4 that's correct.

5 Q. This shows the draft resources program. Have they
6 gotten around to doing a final resource program?

7 A. I do not know that they have actually adopted the
8 final version of this document or not.

9 Q. And let me have you turn over to page G-2 of that
10 document, if you would. This Exhibit 34.03, page G-2 which
11 is actually I guess the third page of the document.

12 A. Yes.

13 Q. Let me ask you about the reference to the
14 requirements in the state of Washington which is over on the
15 third column, right-hand column on that page.

16 A. Yes.

17 Q. That sets forth the renewable energy requirements
18 for the various years, and then it says potential amendment.
19 What's that reference?

20 A. Just something that Bonneville included in there
21 about potential amendments that people might be considering
22 to the law.

23 Q. So I-937 was an initiative to the people of the
24 state of Washington?

25 A. That's correct. It passed in 2006.

1 Q. Has the time period passed by which 937 may be
2 amended by the legislature?

3 A. That is correct.

4 Q. And that could happen this year?

5 A. It could. I think it's highly unlikely.

6 Q. So where did BPA get the idea that the RPS would be
7 revised to apply to load growth?

8 A. I know that is a proposal that various utilities
9 have made with respect to the initiative.

10 Q. So a possible amendment to the I-937 statute?

11 A. Yes. This would not be taken -- I think it's
12 important to recognize this would not be taken -- I'm not
13 trying to imply that Bonneville has made any type of
14 recommendation. This is simply reporting of information. It
15 would be inappropriate for Bonneville to advocate for a
16 specific amendment.

17 Q. Understand. Has your office, State Energy Office
18 proposed any amendments to 937?

19 A. We do not have any amendments proposed to 937. We
20 actually examined that in our state energy strategy process
21 in 2010 and our advisory committee recommended that we not
22 proceed with any proposed amendments because they did not
23 believe that there was a prospect of getting anything through
24 the process.

25 Q. Do you know what the potential for wind energy is

1 in the state of Washington?

2 A. Do I know what the estimated total potential
3 resource is? I do not know those numbers off the top of my
4 head, no.

5 Q. Is that something that has been examined by the
6 State Energy Office?

7 A. We have not done any kind of independent
8 examination of that, no.

9 Q. Have you considered data or projects that might be
10 made by the National Renewable Energy Laboratory?

11 A. I am familiar that they have done that work, yes.

12 Q. I'm putting before you, Mr. Usibelli, Exhibit No.
13 35.12c. That was a cross-examination exhibit that we
14 submitted. Did your Counsel provide you with this document?

15 A. Yes, she did.

16 Q. Can you identify that document?

17 A. Yes, it is a summary provided by the information
18 provided by the National Renewable Energy Laboratory
19 examining the wind energy potential on a state-by-state
20 basis.

21 Q. Is this document a document that you would use in
22 the State Energy Office?

23 A. Depending on the nature of that question you might
24 be trying to answer. It certainly could be a document that
25 we might, that we would use.

1 Q. Are there estimates made by the National -- well
2 first of all, what's the National Renewable Energy
3 Laboratory?

4 A. The National Renewable Energy Laboratory is the
5 U.S. Department of Energy owned laboratory that focuses on
6 the energy activities and energy research predominantly in
7 the arena of renewable energy development; hence its name.

8 Q. So it's sort of a governmental or quasi-government
9 agency?

10 MS. JAFFE: Your Honor, I'm going to object to
11 this line of questioning regarding Exhibit 35.12. We went
12 through this with the testimony of Mr. Howard Schwartz, and
13 it was deemed not relevant with respect to his testimony,
14 and also it's not respect to Mr. Usibelli's testimony. So I
15 would object as to the relevancy regarding the scope of
16 Mr. Usibelli's testimony, and it's not relevant to what the
17 National Renewable Energy Laboratory is for the 48
18 contiguous states.

19 MR. ARAMBURU: Mr. Usibelli is providing us
20 predictions with energy facilities, is providing testimony
21 of anticipated amounts of energy in the state of Washington,
22 and this document which was also listed as a
23 cross-examination exhibit for this witness is relevant to
24 that. He's indicated this is material that he uses. I
25 think it's a relevant document and an important document for

1 the Council to review.

2 JUDGE WALLIS: I'm going to sustain the objection.

3 BY MR. ARAMBURU:

4 Q. Mr. Usibelli, do you have any figures in mind for
5 what the total amount of installed or the possibility of wind
6 energy is in the state of Washington?

7 A. No, not off the top of my head. I don't have those
8 numbers.

9 Q. Exhibit No. 34.05, the Green Energy Leadership Plan
10 Report, can you tell us why you've brought this here, what
11 relevance does this have to the Council's review?

12 A. Well, the purpose of the report was to provide some
13 additional background around the economic development
14 opportunities that we believe are available in the clean
15 energy sector, including the development integration for
16 renewable resources into the electricity system.

17 Q. Was this prepared by your office?

18 A. It was not. It was prepared by Navigant Consulting
19 as indicated on the cover sheet at the behest of the Clean
20 Energy Leadership Council which was created by the state
21 legislature in 2009.

22 Q. I had a couple of questions about this, and let me
23 ask you first so this is designed to show that it's a good
24 idea to have new clean energy jobs?

25 A. Certainly that was the charge. One of the major

1 charges of the Clean Energy Leadership Council was to help
2 find opportunities where the state could strategically
3 develop clean energy jobs, and I believe the enabling
4 legislation of the Clean Energy Leadership Council
5 specifically calls for them to find ways that would encourage
6 both economic development and the creation of jobs.

7 Q. So I see a whole lot of generalities in that
8 statement, what specifically is the state going to do to
9 create these jobs?

10 A. Well, we are certainly doing a number of different
11 things in this arena in terms of some direct funding or a of
12 number of renewable and energy efficiency projects. In
13 addition, we have the work of the State Energy Strategy which
14 I referenced in my testimony that is looking in large
15 measure. One of our three specific goals is to create
16 economic development opportunities in the clean energy sector
17 as directed by the legislature, and so we're looking issues
18 around Development of Energy Efficiency for renewable
19 projects and policies that assist in a number of those areas:
20 electricity, transportation, etc.

21 Q. You mentioned integration of wind energy into the
22 grid. Is that one of the goals?

23 A. Yes -- well, no. That is one of the conclusions of
24 the Navigant Study, and so what they did was that they did a
25 pretty thorough analysis of where they from their

1 professional perspective determine to be the areas where
2 Washington state might have a particular competitive
3 advantage with respect to the development of Clean Energy
4 Economic Opportunities, and it depends on how to do the
5 counting. They identify efficiency in green buildings is one
6 area, they identify bioenergy as the second area, and they
7 identify specific integration of renewable resources into the
8 electricity grid, a third area of comparative advantage.

9 Q. So I understand, this report seems to believe that
10 there is jobs in integration of wind energy into the electric
11 system. What is the state of Washington going to do to make
12 sure those jobs occur or are available to Washington
13 residents as opposed to Oregon residents or Idaho residents,
14 or someplace else?

15 A. Well, there are a number of companies specifically
16 in the state of Washington that work in this arena. There
17 are companies that develop the equipment. There are
18 utilities that employ folks, work on integration of these
19 resources. There are forecasting companies that look at
20 renewable resources and provide tools that allow to better
21 assess those resources and determine how to integrate it into
22 the system. And many of these companies we work with
23 directly in a variety of different areas, and in turn we look
24 at promulgation of policies and activities. The Governor in
25 her budget has a line item of about \$5 million that could be

1 used potentially for a demonstration project in one of these
2 areas which could include renewable energy integration.

3 Q. So some subsidies are going to be going into these
4 companies so that they can hire more people; is that right?

5 A. I would not use the term subsidy. The money could
6 be for a project, and it would have to be a capital project.
7 The state actually has some pretty severe limitations
8 constitutionally to provide "subsidies" to private companies.

9 Q. I am looking for a passage in here. Bear with me
10 for a minute. I am going back to page 9 of your testimony,
11 please.

12 A. Yes, I am on page 9.

13 Q. And at lines 18 through 20 you state that, for
14 example, Washington has good indigenous renewable resources.
15 Do you see that line?

16 A. Yes.

17 Q. What are you referring to?

18 A. Well, wind resources certainly are, our biomass
19 resources. To a limited extent things like geothermal, wind,
20 and biomass are particularly significant resources in this
21 state.

22 Q. So are you saying here that Washington is a good
23 place for wind development?

24 A. Well, I think the fact that we, depending on how
25 you do the accounting that we're fourth or fifth, we have the

1 fourth or fifth largest amount of installed capacity in among
2 the states, it indicates that there are some good wind
3 projects in here, that's correct.

4 Q. Would the indigenous of renewable resources include
5 multiple locations for the installation of wind energy
6 projects?

7 A. Well, certainly. We already have wind projects in
8 multiple locations.

9 Q. Looking at the potential for those projects do you
10 have any idea in mind as to how much wind energy can be
11 developed in the state of Washington?

12 A. Again, I don't quantify those numbers off the top
13 of my head.

14 Q. Would you rely on the NREL to help you with this
15 quantification of those numbers?

16 MS. JAFFE: Your Honor, asked and answered
17 multiple times. Exhibit 35.12 was deemed not admissible for
18 purposes Mr. Usibelli's testimony.

19 JUDGE WALLIS: Sustained.

20 MR. ARAMBURU: I would like you to reconsider that
21 ruling, Mr. Wallis. The witness has indicated that
22 Washington has good indigenous renewable resources in his
23 testimony, and Exhibit 35.12c is a document that describes
24 what the indigenous renewable resources are in the state of
25 Washington as to wind. And so I think that it would be and

1 the witness has indicated that he does review and relies on
2 the materials from NREL in his work. So I think it is a
3 fair cross-examination exhibit based upon his testimony that
4 there are indigenous wind resources for the Council to
5 receive information about what those indigenous wind
6 resources are. So again I ask that you reconsider your
7 ruling and admit Exhibit 35.12 into evidence.

8 JUDGE WALLIS: Ms. Jaffe.

9 MS. JAFFE: Mr. Usibelli did say that he does know
10 of the National Renewable Energy Laboratory, but that he
11 does not have any specific information regarding what the
12 actual capacity is for wind in the state of Washington. He
13 stated that on multiple occasions. With respect to this
14 specific document, while it has been provided to us in
15 advance, it does not mean Mr. Usibelli has relied on it for
16 purposes of the numbers he may or may know regarding the
17 indigenous land area for Washington wind capacity.

18 JUDGE WALLIS: The objection is sustained.

19 MR. ARAMBURU: That's all the questions that I
20 have.

21 JUDGE WALLIS: Mr. Kahn, do you have any
22 questions?

23 MR. KAHN: No, I have none.

24 JUDGE WALLIS: Mr. Marvin?

25 MR. MARVIN: No, Your Honor.

1 MR. PEEPLES: Your Honor, I have a couple.

2 JUDGE WALLIS: Mr. Peeples.

3 MR. PEEPLES: I'll really try to be brief. That
4 was the longest 30 minutes I think I've lived through.

5 CROSS-EXAMINATION

6 BY MR. PEEPLES:

7 Q. First of all, you were asked questions with regard
8 to biomass; is that correct?

9 A. Yes, there were some questions like that.

10 Q. That's like the biomass plant they're trying to put
11 in Shelton. Correct?

12 A. I'm familiar with that project, yes.

13 Q. That really depends on wood waste from forest; is
14 that correct?

15 A. Predominantly, yes.

16 Q. Has there been any issues about the supply,
17 long-term of wood waste?

18 A. Yes, there are issues about that. The Department
19 of Natural Resources is involved in a major study of that.

20 Q. Are there any questions about, you know, the
21 emissions coming from that plant too?

22 A. Yes, that plant as an example would require certain
23 air quality and I believe water quality permits.

24 Q. Moving on do you expect the wind to stop blowing
25 for a series of years at any time?

1 A. I would not have any anticipation of that.

2 Q. You were asked some questions about the Lower Snake
3 River Project and Marengo, and I believe one of your answers
4 were you didn't know for sure, and then Mr. Aramburu said,
5 "Well, isn't true that there was no controversy down there."
6 Would it surprise you that there was a controversy and both
7 of those decisions were appealed?

8 MR. ARAMBURU: I'm going possible object as
9 testifying by counsel, facts not evidence.

10 MR. PEEPLES: I'm asking him if it would surprise
11 him that both of those were controversial and were appealed.

12 MR. ARAMBURU: That's speculation, Your Honor.

13 JUDGE WALLIS: The objection is sustained.

14 BY MR. PEEPLES:

15 Q. Was Kittitas Valley Wind Project controversial?
16 Would you say that?

17 A. Yes.

18 Q. Were you also involved, your office was also
19 involved in the Wild Horse Wind Power Project?

20 A. I certainly recall a number of discussions on the
21 development of that project, but so, yes, we were involved to
22 some degree.

23 Q. Looking at 34.02 can you turn to that, please.

24 A. And Mr. Peeples this is as amended?

25 Q. Yes.

1 A. Yes, I have it.

2 Q. Looking at the second row down there for five years
3 and 10 years following across for wind do you have one number
4 528.6 and another 728.64? How does that relate to installed
5 capacity? I'm looking at your testimony at page 6, lines 10
6 to 11.

7 A. I don't know the precise answer to that question.
8 I do not recall if in the information that this is based on
9 the utilities provided any information related to installed
10 capacity.

11 Q. Okay. Now, your testimony here is with regard to
12 and has been with regard to Washington Energy Policy.
13 Correct?

14 A. That is correct.

15 Q. And do you support projects which comply with the
16 Energy Policy?

17 A. In general, yes.

18 Q. Does this project comply with the Washington State
19 Energy policies?

20 A. From an energy policy perspective that is why we
21 support the project.

22 Q. And that's all you're testifying to from the energy
23 policy perspective; is that correct?

24 A. That is correct.

25 Q. If this project didn't comply with the energy

1 policies of the state of Washington would you be supporting
2 it?

3 A. No, we would not.

4 MR. PEEPLES: Nothing.

5 JUDGE WALLIS: Are there any questions from
6 Council Members? It appears not.

7 Mr. Aramburu.

8 MR. ARAMBURU: I have a question or two.

9 RE CROSS-EXAMINATION

10 BY MR. ARAMBURU:

11 Q. You indicated that if there is a project that came
12 along that didn't comply with the State Energy Policy, and
13 let's take, for example, a wind project. What would be the
14 circumstances in which you might oppose a wind project? Are
15 there any?

16 A. There could very well be. I would have to look at
17 the specifics of the project.

18 Q. What would be the basis for applying the state
19 energy policy?

20 A. I think it sounds to me like you stated that. It
21 would be the application of state energy policy would review
22 it in light of the various parameters within the law that
23 relate to the state energy policy.

24 Q. Is it not the case that I-937 states that only
25 appropriately sited energy facilities should be approved?

1 A. I am not sure I recall that language. It could
2 very well be the case. I don't recall that language. It's
3 been a little while since I have read the entire initiative,
4 but that could very well be the case. I don't know.

5 Q. You're not aware that there's a limitation on
6 appropriately sited facilities?

7 A. Again, it's been a while since I've read that part
8 of the initiative, and that could very well be the case, yes.

9 MR. ARAMBURU: No further questions.

10 JUDGE WALLIS: We reserved ruling on
11 Exhibit 34.02, the substitute exhibit. Is there objection
12 to that?

13 MR. ARAMBURU: There is. I believe the witness
14 indicated that the mathematics of that exhibit are
15 incorrect; that instead of subtracting the resources from
16 the load it added the resources to the load, and therefore I
17 think there is a clear mathematical error and would make it
18 unreliable for the Council to review, and therefore we
19 object to the amended Exhibit 34.02.

20 MR. KAHN: In addition, Your Honor, I believe the
21 exhibit itself as well as the testimony indicate it was
22 prepared by somebody else who is not here to be
23 cross-examined so we have a foundational issue as well.

24 JUDGE WALLIS: Ms. Jaffe.

25 MS. JAFFE: Well, first of all, the document was

1 produced by Mark Anderson under the direct supervision and
2 request by Mr. Usibelli so there's not a foundation problem.
3 With respect to the addition versus being subtracted that
4 can easily corrected by Commerce, and we can resubmit it via
5 the list first thing tomorrow morning.

6 JUDGE WALLIS: I think that the mathematics of
7 adjusting the exhibit are clear in the record. Is that not
8 true?

9 MS. JAFFE: Yes, I believe it is.

10 JUDGE WALLIS: With the view of the document in
11 conjunction with the cross-examination, I do believe it's
12 clear and the objection is overruled.

13 MR. ARAMBURU: Well, Mr. Examiner, I'll point out
14 that the bottom columns with the percentages is also wrong
15 if the result is wrong. So I mean all of the figures here
16 or a number of the figures are just incorrect, and I don't
17 think it's a reliable document, but the percentages at the
18 bottom of row numbers on the right side of the exhibit are
19 all going to be wrong if the bottom number on the outside is
20 wrong.

21 JUDGE WALLIS: It would be a function of the
22 application of mathematics to obtain the correct
23 information. A corrected document may be submitted for
24 clarification. I am wondering from the Applicant whether
25 there has been a decision on whether or not to cross-examine

1 Mr. Michaels, and that's all I'm asking right now.

2 MR. McMAHAN: The answer is yes.

3 JUDGE WALLIS: So you are intending to pursue
4 that?

5 MR. McMAHAN: Yes.

6 JUDGE WALLIS: I'm to going ask that you consult
7 with other counsel over the noon hour and also with
8 Mr. Wright to see if we can obtain a schedule for that.

9 MR. McMAHAN: I already did consult with
10 Mr. Wright, not with counsel, and the suggestion was made
11 and it was a very fine suggestion, that we take it up on
12 what would have been the regular upcoming Council EFSEC
13 meeting, the Tuesday following the Martin Luther King
14 Holiday, the 18th. So that was a suggestion that I
15 discussed with Mr. Wright and it makes a lot of sense. I
16 obviously have no idea the availability of this gentleman
17 Mr. Michaels, but if we have that blocked in the afternoon
18 it seems like the Council is or we're all in the routine of
19 being available on that day.

20 JUDGE WALLIS: Very well. And the parties need
21 not respond right now, but I would like to have at least a
22 preliminary response if that's possible by the conclusion of
23 today's session.

24 MR. ARAMBURU: I can tell you right now that,
25 number one, I have an obligation on both the 18th and 19th

1 of January, and I'm not necessarily able to reach Professor
2 Michaels today because he has a class schedule to attend to.
3 So I'm not sure I'm going to be able to give you any answers
4 about that situation today, but I can tell you that I am
5 obligated on a matter for the 18th.

6 JUDGE WALLIS: Very well. I will reiterate then
7 my request that parties consult with each other and witness
8 availability, and, if possible, have a definite date by the
9 conclusion of today's session, and I would urge Council and
10 the parties to make timing a priority so that we can in fact
11 conclude this hearing.

12 MR. ARAMBURU: May I ask the 18th is the Council's
13 monthly meeting?

14 JUDGE WALLIS: The 18th is the day on which the
15 Council's monthly meeting would have been held if it had not
16 been cancelled, but my understanding is that month meeting
17 has been cancelled and that opens the time for the other
18 matters.

19 MR. ARAMBURU: And the current monthly meeting is
20 for February so we might have to plan in advance.

21 JUDGE WALLIS: My preference and my strong
22 preference would be not to wait until that time. So I am
23 asking the parties to find a time at an earlier date if that
24 is at all possible.

25 MR. KAHN: This would be by telephone?

1 JUDGE WALLIS: Mr. Michaels appearance would be by
2 telephone, but my anticipation is that the parties who wish
3 to be involved in that cross-examination and the Council
4 would convene in Olympia to undertake that examination.

5 MR. KAHN: Okay.

6 MR. ARAMBURU: It's likely we may make
7 Mr. Michaels available in person depending on his schedule.
8 We may make him available in person for the Council.

9 JUDGE WALLIS: Very well.

10 MR. ARAMBURU: On whatever date. I guess in
11 talking to other counsel how would we know which is a good
12 day for the Council?

13 JUDGE WALLIS: By consulting with Mr. Wright, and
14 to the extent that he needs to consult with Council Members
15 that will be his function in the discussions. And I am
16 presuming that we will have at least some indication by that
17 kind of consultation over the break and this afternoon and
18 certainly within a very short time frame.

19 Very well. There is one other hanging matter here
20 that I would like to address. Yesterday in conjunction with
21 Mr. Till's examination there was an objection to two of his
22 exhibits that were offered, and in addition there was a
23 motion to strike regarding Mr. Spadaro's testimony with
24 regard to wind speed on sites, and the Council is concerned
25 that it make a consistent ruling on both matters.

1 It appears that both of the witnesses used
2 similar, if not identical, source materials for that
3 information, and the Council therefore would reserve ruling
4 on those exhibits and would ask the parties to present the
5 underlying information to the Council so the Council can
6 review it with its own perspective on the verification of
7 the quality so that thereby the rulings may be consistent.
8 And that need not be done today, but again I would here
9 suggest that the parties consult on what information would
10 be appropriate to submit, and we will ask that that be
11 presented at an early date.

12 MR. ARAMBURU: Sorry, Mr. Wallis. I didn't hear
13 the last part of your statement.

14 JUDGE WALLIS: That we present it at an early
15 date.

16 MR. ARAMBURU: At an early date. During the
17 course of the proceedings yesterday we'd asked Mr. McMahan
18 whether or not the noise data would be forthcoming. I sort
19 of understood that we were going to see something last
20 evening and we haven't received anything about that.

21 JUDGE WALLIS: Noise data.

22 MR. ARAMBURU: And we don't know the length of the
23 50-meter blades for the wind turbines.

24 MR. McMAHAN: It's all right here, Your Honor.

25 JUDGE WALLIS: Very well.

1 MR. McMAHAN: Be happy to circulate it. So what
2 we have now I just want to make one thing known to the
3 parties. What we have here is a considerable amount of
4 noise data from the URS modeling effort. It's backed up by
5 something north of 100 pages of spreadsheet information
6 which is unintelligible to me, and maybe it's intelligible
7 to the Council. I'm not sure. So what we are intending to
8 do is to post that background data on our FTP site as we've
9 done with other information. If anybody wants a hard copy
10 we can provide it. It is the most efficient way to get to
11 all parties.

12 But I want to emphasize that we are responding in
13 full today to the discovery request. We'll circulate the
14 information. We also have that information available to the
15 Siting Council. We also have a short memorandum that
16 distilled the information of blade length that we can
17 provide to all parties as well.

18 So if anybody wants something in addition to this
19 in terms of the many, many, many pages of numbers, I'm happy
20 to give it to you anyway you want it.

21 MR. ARAMBURU: Thank you, Mr. McMahan.

22 JUDGE WALLIS: I am reluctant to ask for many,
23 many pages of potentially incomprehensible information, but
24 what I would ask at this point is that the information be
25 provided in hard copy to the Council and in addition to the

1 FTP access that is provided so that whatever result obtains
2 from this discussion the information will be available to
3 the record.

4 MR. KAHN: Two loose ends, Your Honor. Going back
5 to Mr. Till's, the two exhibits for Mr. Till's exhibits
6 24.01 and 24.09, at the end of your direction to the parties
7 about the supplemental information I thought I heard you
8 indicate that we should confirm with the other parties and
9 determine what information is appropriate to submit. I
10 suspect we may not agree on that. I think what might be
11 better is each side just submit its own assertion of what is
12 appropriate to provide the foundation for that evidence.

13 JUDGE WALLIS: Well, I'm going to ask the parties
14 to engage in at least an inquiry as to whether they do or do
15 not agree. If you do not agree, then each would submit your
16 own.

17 MR. KAHN: And then another loose end. I've lost
18 track of days, but sometime last week we moved for the
19 admission of two exhibits which you reserved ruling on.

20 JUDGE WALLIS: I believe that I announced the
21 ruling on that and why don't you come back with the exhibit
22 numbers.

23 MR. KAHN: It's 1.12c and 1.13c. It was two
24 e-mails dealing from the representative of the Washington
25 Department of Fish and Wildlife that were utilized by I

1 think all the counsel in questioning the wildlife experts.

2 JUDGE WALLIS: Yes, my recollection is that those
3 exhibits were received.

4 MR. KAHN: They were received?

5 JUDGE WALLIS: That's my recollection.

6 MR. KAHN: Okay, thank you. I must have missed
7 it. I had apologize if I did.

8 JUDGE WALLIS: We'll verify that with the
9 transcript, and if that is incorrect then we will be in
10 future contact with the parties and I'm sure have the
11 opportunity to clarify that.

12 MR. McMAHAN: Your Honor, just a little
13 clarification on the data sheets, the hundred plus pages of
14 data sheets. You said you would like us to provide it the
15 Council. Was that council with a "C" or counsel with an "S"
16 or both, and is it the desire that we print it all up and
17 send it out to the service list?

18 JUDGE WALLIS: No, I'm speaking of the Energy
19 Facility Site Evaluation Council so that it be within the
20 records.

21 MR. McMAHAN: Okay. So, yeah, I'm sorry. I don't
22 want to mess this up so I think it probably if it hasn't yet
23 been sent to the service list, including Tammy
24 electronically. So would you like for me to just mail one
25 printed copy to Tammy so that it's formally in the record as

1 a written document?

2 JUDGE WALLIS: It will not formally be in the
3 record, but it will be available in the event that its
4 inclusion in the record is determined to be appropriate.

5 MR. McMAHAN: Okay. Thank you.

6 JUDGE WALLIS: Very well. Anything else?

7 Let's be in recess until 1:30, please.

8 (Discussion off the record.)

9 JUDGE WALLIS: Let's be back on the record for
10 just a moment, and we will formally allow Mr. Usibelli to
11 leave the stand at this time.

12 THE WITNESS: Mr. Usibelli, my apologies as well.

13 JUDGE WALLIS: Thank you. We're off the record.
14 Off the record at 12:17 p.m.

15 (Lunch recess taken from 12:17 p.m. to 1:30 p.m.)

16 JUDGE WALLIS: Let's be back on the record,
17 please, following our noon recess.

18 At this time Paul -- is it Pearce? --

19 THE WITNESS: Yes, sir?

20 JUDGE WALLIS: -- has stepped forward to the
21 witness stand.

22 (Paul Pearce sworn on oath.)

23 JUDGE WALLIS: Ms. Drummond.

24 MS. DRUMMOND: Thank you, Your Honor, Susan
25 Drummond for Skamania COUNTY.

1 PAUL PEARCE,
2 having been first duly sworn on oath,
3 testified as follows:
4

5 DIRECT EXAMINATION

6 BY MS. DRUMMOND:

7 Q. Could you state your name and address for the
8 record.

9 A. Paul Pearce. I'm a commissioner with Skamania
10 County. The address is 240 Vancouver Avenue, Stevenson,
11 Washington.

12 Q. I believe we should make one quick clarification on
13 your testimony. The county is now officially recognized by
14 EFSEC as a party. Correct?

15 A. That's correct.

16 Q. At the time you submitted your testimony that had
17 not occurred. Correct?

18 A. That's correct.

19 Q. Do you swear that the testimony that you have
20 submitted is true and correct to the best of your knowledge?

21 A. Absolutely.

22 Q. Are there any further changes you would like to
23 make with them?

24 A. No, there is none.

25 Q. With that, Your Honor, I would like to move to

1 admit Commissioner Pearce's rebuttal testimony and the
2 attached exhibits which are 51.00 and 51.01.

3 (Exhibit Nos. 51.00r and 51.01r offered into
4 evidence.)

5 JUDGE WALLIS: Is there objection?

6 MR. ARAMBURU: We may objections to certain parts
7 so we'd ask you to reserve ruling.

8 JUDGE WALLIS: Very well. There's no objection to
9 the attachment?

10 MR. ARAMBURU: Not from SOSA.

11 MR. KAHN: No, none.

12 MS. DRUMMOND: I would note there was an earlier
13 motion to strike portions of Commission Pearce's testimony
14 and the Commissioner did deny that so I wouldn't want to
15 rehash that again today.

16 JUDGE WALLIS: Very well. Exhibit 51.01r is
17 received in evidence. We will reserve ruling on Exhibit
18 51.00r.

19 (Exhibit No. 50.01r admitted into evidence.)

20 MR. HAYES: Your Honor, I have two versions in my
21 book. Exhibit 50.00 --

22 JUDGE WALLIS: Let's be off the record, please.

23 (Discussion off the record.)

24 JUDGE WALLIS: Let's be back on the record,
25 please. During a brief recess we noted that the document

1 was submitted under other numbers and with another sponsor,
2 but the correct version in terms of the title is 51.00
3 sponsored by Skamania County, and the other documents have
4 identical text and pagination but the correct caption is as
5 noted.

6 MS. DRUMMOND: I believe we have admitted the
7 testimony then and I have no further questions at this time.

8 JUDGE WALLIS: Yes.

9 Mr. Aramburu.

10 CROSS-EXAMINATION

11 BY MR. ARAMBURU:

12 Q. Mr. Pearce, I'm Rick Aramburu. I'm the attorney
13 for Save our Scenic Area, and I'm going to be asking you some
14 questions today. Good afternoon.

15 A. Good afternoon.

16 JUDGE WALLIS: May I just interject just for a
17 moment here. Mr. Pearce, it may be helpful if you pick up
18 the microphone out of the stand and hold it relatively close
19 to your mouth because this sound system operates best when
20 we are very close to the microphone.

21 THE WITNESS: All right.

22 JUDGE WALLIS: Thank you.

23 BY MR. ARAMBURU:

24 Q. Mr. Pearce, I've read your prefiled testimony and
25 have several questions about your testimony. First of all,

1 on the first page you indicate your present occupation is
2 Skamania County Commissioner, and you've had that post since
3 2004. Could you trace your employment history prior to
4 becoming a Skamania County Commissioner.

5 A. Prior to being a Commissioner, I was a police
6 officer with the City of Camas for 28 plus years. Prior to
7 that I was in the Marine Corps for four years, and prior to
8 that I worked for DNR for three summers.

9 Q. Okay. 28 years as a police officer in Camas?

10 A. About 28-1/2.

11 Q. When did you start at Camas?

12 A. 1977.

13 Q. During this period of time did you live in Camas or
14 where did you live when you were a police officer?

15 A. I started living in Camas. I moved to Fern Prairie
16 and then I moved to West Skamania County on Sky Road in 1990.

17 Q. So your first residence in Skamania County was in
18 1990; is that correct?

19 A. My first residence. I worked in Skamania County
20 for DNR back in the '70s.

21 Q. Were you a County Commissioner at the time the
22 Columbia Ridge Scenic Area Act was adopted by Congress?

23 A. No, sir, I was not.

24 Q. At that time you were a police officer in Camas?

25 A. That is correct.

1 Q. You were not living in Skamania County during that
2 period of time?

3 A. I was not living here in 1986, no.

4 MR. ARAMBURU: Mr. Wallis, there are multiple
5 sections of this witness's testimony in which he refers to
6 events that occurred in 1986. For example, at the top of
7 page 5 the witness says, "opponents' position eliminates the
8 bargain we struck in 1986", and provided additional
9 testimony about that. At the bottom of page 5 he describes
10 the 1986 compromise. That is page 5, line 24, and at other
11 locations in the testimony, for example. Well, various
12 other places in the testimony he purports to describe events
13 that occurred in 1986 using the word "we" at the top of page
14 3, the County foresaw when the Columbia Gorge Scenic Act was
15 adopted or was in process that would have an impact on the
16 citizens, page 3, lines 8 and 9 responding to our concerns.

17 We would move to strike those portions of the
18 witness's testimony that have to do with references to
19 events that occurred in 1986 on the grounds that this
20 witness was not living in Skamania County nor was he in a
21 position of authority or otherwise connected with the
22 Skamania County government during that period of time. The
23 Council has previously struck the testimony of Mr. Mentor.
24 Mr. Mentor purported to provide sort of the legislative
25 history regarding the adoption of the act. I think

1 Mr. Pearce without attempting even to demean his credibility
2 that he was not even a party to the proceedings back in
3 1986. So I would ask that the Council strike and not
4 consider in its review testimony about events that he's
5 testified about that took place in 1986.

6 MS. DRUMMOND: This testimony is very important to
7 Skamania County. Commissioner Pearce and the county live
8 and breathe the scenic area every single day. They oversee
9 the planning department. It plays a key role in how
10 economic development occurs within the county. Commissioner
11 Pearce is very familiar with how the scenic area came about.
12 He travels to Washington, D.C., to address the Scenic Area
13 Act and from the beginning of his testimony he talks about
14 funds and so forth that he has lobbied for on the County's
15 behalf. Commissioner Pearce is very familiar with the
16 Scenic Area Act and its ramifications on the county and the
17 history behind that.

18 Counsel, Mr. Aramburu, has not pointed to anything
19 to suggest that Commissioner Pearce is not familiar with the
20 history of the act. In fact, he is probably one of the most
21 qualified persons in this proceeding having been elected to
22 serve as Commissioner as he has to speak about the history
23 of this Scenic Area Act and how it came about with respect
24 to at least what he has presented here. There is no basis
25 to strike the testimony.

1 JUDGE WALLIS: I believe that this testimony is
2 distinguishable in a number of respects from the testimony
3 Mr. Mentor, and Ms. Drummond has identified several of the
4 factors. The testimony of this witness is based upon
5 necessarily his experience and his working with the issues
6 on an ongoing basis and appears to be a recitation in many
7 regards of the facts that are of public record. So the
8 objection is denied.

9 BY MR. ARAMBURU:

10 Q. So in 1986, Mr. Pearce, were you interested or
11 involved at all in the scenic area issues in Skamania County?

12 MS. DRUMMOND: I want to be careful on this line
13 of questioning. I believe that Mr. Pearce has already
14 answered that question. I don't want to drag this
15 proceeding out anymore unnecessarily today.

16 MR. ARAMBURU: That's the first time I put this
17 question to him.

18 MS. DRUMMOND: We can allow this one question, but
19 I don't want to go too far down this track.

20 JUDGE WALLIS: Let's proceed, please.

21 BY MR. ARAMBURU:

22 Q. Do you have in mind the question?

23 A. Yes, sir. In 1986, I was familiar with the
24 enactment of the act, but I did not have interest or
25 involvement in it, no, sir.

1 Q. Thank you. On page 5 of your testimony you
2 reference at the very bottom the 1986 compromise. Did you
3 participate in any manner in the compromise that you
4 described at that portion of your testimony at the bottom of
5 page 5?

6 MS. DRUMMOND: Again, I believe this question has
7 already been addressed, but he can answer if we don't
8 proceed too far along with this line of questioning.

9 JUDGE WALLIS: Let's not attempt to pursue again
10 the matters that were addressed earlier.

11 MR. ARAMBURU: May I have an answer to my
12 question?

13 JUDGE WALLIS: The witness may respond.

14 A. No, sir.

15 JUDGE WALLIS: That is consistent with his earlier
16 testimony that he was not here at that time.

17 BY MR. ARAMBURU:

18 Q. Let me direct your attention, Mr. Pearce, to page 8
19 of your prefiled testimony at 4 through 10. There you
20 describe the unemployment rate for Skamania County; is that
21 correct?

22 A. On line 2, yes, sir.

23 Q. You indicate that the project would contribute to
24 temporary construction jobs. Do you know how many temporary
25 construction jobs might be created by the Whistling Ridge

1 Project?

2 A. No, sir, I do not.

3 MS. DRUMMOND: Susan Drummond. I would just note
4 that all of those figures are in the Hovee report and are
5 part of the record.

6 JUDGE WALLIS: Thank you.

7 MR. ARAMBURU: Mr. Examiner, adding testimony from
8 counsel seems to me is inappropriate if this witness cannot
9 answer this question.

10 JUDGE WALLIS: I did not hear counsel offering
11 testimony but only referring to an exhibit in the record to
12 which there has been no objection.

13 BY MR. ARAMBURU:

14 Q. You indicate that the project would contribute
15 significantly to jobs in indirect spending. Do you have a
16 number for us as to how much this indirect spending would be?

17 A. No, sir. That's why it's not in there.

18 Q. Can you provide us with any information as to how
19 much of the indirect spending would actually occur in
20 Skamania County as opposed to other counties?

21 A. No, sir, I can't give you a specific number.

22 Q. Your testimony also indicates now as to --
23 Mr. Pearce, we are at the top the page 8, lines 5 through 7.
24 It said that the project would guarantee a fixed number of
25 permanent well-paying jobs. Can you tell us what that fixed

1 number would be?

2 A. No, sir, that's why I didn't say how many.

3 Q. Can you tell us how much these jobs would be
4 paying?

5 MS. DRUMMOND: All that data again is in the Hovee
6 report.

7 MR. ARAMBURU: Mr. Wallis, we have the witness
8 providing testimony, and I understand that counsel may argue
9 that there is other information in the record. What we are
10 trying to get at is this witness's testimony and what he
11 understands and believes out of his testimony. So I'd ask
12 counsel not to be essentially trying to supplement the
13 testimony by providing another citation. I think that's
14 inappropriate.

15 JUDGE WALLIS: The witness may respond.

16 A. I'm not sure what the last question was.

17 BY MR. ARAMBURU:

18 Q. The question was you referenced on page 8, line 7
19 of your testimony that the Whistling Ridge project would
20 "guarantee a fixed number of permanent well-paying jobs." Do
21 you see that testimony?

22 A. Yes, it's right here.

23 Q. You describe these jobs as well-paying jobs, and my
24 question to you is how much would these jobs pay?

25 A. I don't know the exact figure. I know that they're

1 from the information I've been given both as a member of the
2 Economic Development Council and through Mr. Hovee's report,
3 as well as the wind energy projects throughout the
4 five-county region that these are good family-wage jobs. I
5 can't give you a direct hard number. That's why I don't have
6 a number in there.

7 Q. The fixed jobs for the Whistling Ridge Project
8 those individuals who are employed in permanent jobs could
9 work in Skamania County or Hood River County or Klickitat
10 County or Clark County, could they not?

11 A. Certainly.

12 Q. Any reason to expect a lot of these people are
13 going to live in Skamania County as opposed to those other
14 counties?

15 A. I certainly hope they're going to live in Skamania
16 County. I don't have any reason to expect they won't.

17 Q. You also indicate in the next line, again page 8,
18 line 8 of your testimony the project would "contribute
19 heavily to the county's assessed value." Can you tell us how
20 much the assessed value would increase?

21 A. The assessed value for the county is approximately
22 \$1.2 billion. That brings in about 1.4 million in property
23 tax. I've been told by my assessor that this could bring in
24 an additional million dollars.

25 Q. So that is from the assessor's office?

1 A. That's correct.

2 Q. Is that based upon an increase in property value?

3 A. It's based on assessment.

4 Q. Now, going on to page 8, lines 13 through 16, it's
5 indicated that the comprehensive plan had not been revised
6 since 1977; is that correct?

7 A. Yes, sir, that is correct.

8 Q. When you came to the office the 1977 Comprehensive
9 Plan was the adopted comprehensive plan for the county?

10 A. At the time I took over office it was, yes, sir.

11 Q. We've provided to the parties some
12 cross-examination exhibits respecting your testimony and
13 other testimonies. Have you been provided with those
14 exhibits?

15 A. Yes, I have.

16 Q. I don't know what you have in front of you,
17 Mr. Pearce, but I would like you to look at if you have
18 appropriately tabbed as Exhibit 2.02c.

19 A. Just a moment, please.

20 Q. Take your time.

21 MS. DRUMMOND: Could you identify the name of the
22 document.

23 MR. ARAMBURU: It is Comprehensive Plan A Skamania
24 County.

25 MS. DRUMMOND: It's 29.02 on that. Oh, you

1 submitted those as part of the cross.

2 MR. ARAMBURU: Yes, I think the exhibit numbers
3 should be 2.04c. It was formally 29.03.

4 A. Okay. I have them in here as 29.03. That's the
5 same one.

6 BY MR. ARAMBURU:

7 Q. And you're looking at the Comprehensive Plan A
8 Skamania County?

9 A. Yes, sir, this is Comprehensive Plan A Skamania
10 County, Resolution 77A.

11 MS. DRUMMOND: Just a point of clarification.
12 This is not an official copy of the comp. plan. You'll note
13 there's notes throughout from we're not sure on whether this
14 was a government official, Mr. Aramburu, but I know you had
15 put it into the record so it's not an official copy of the
16 plan.

17 BY MR. ARAMBURU:

18 Q. Have you had a chance to go through Exhibit 2.04c?

19 A. I've looked at 2.04, yes.

20 Q. Does this appear to be the comprehensive plan
21 adopted by Skamania County in 1977?

22 A. I cannot honestly say that it's the entire plan or
23 that it's a portion of the plan. I'm not sure. I did not
24 check it against our planning department.

25 Q. When you were redoing the comprehensive plan in the

1 past couple of years did you consult the 1977 plan to
2 determine how it ought to be changed?

3 A. When we changed the plan and adopted it in 2007,
4 yes, sir, we did.

5 Q. You don't remember whether the plan you looked at
6 was this one or not?

7 A. I recognize the resolution number. I just don't
8 know this is the entire plan.

9 MR. ARAMBURU: Mr. Wallis, in the exhibits we have
10 made public information requests through Skamania County for
11 their 1977 Comprehensive plan, and this is what we have been
12 provided. We do think it's appropriate for this to be in
13 evidence for the Council review of land use consistency, and
14 we would move its submission.

15 (Exhibit No. 2.04c offered into evidence.)

16 MS. DRUMMOND: We have no objection to the Council
17 accepting. Just note that there are notes and scribbles,
18 and in the official version of the 1977 plan there would not
19 be kind the notes and scribbles in here, and it's not
20 entirely clear that this is the full and entire plan, but
21 the County is not objecting to its conclusion in the record.

22 MR. ARAMBURU: So the record is clear, when we
23 asked the County for a copy of the 1977 Comprehensive Plan
24 what we were given is Exhibit 2.04. It was not marked up,
25 scribbled on, or anything else by me or anyone else from

1 SOSA.

2 MS. DRUMMOND: We don't know the circumstances.

3 JUDGE WALLIS: So noted.

4 MR. ARAMBURU: So do we understand 2.04 is
5 admitted into evidence?

6 Thank you.

7 I'm assuming there's no objection from
8 Ms. Drummond concerning Exhibit 2.04 with the admission?

9 JUDGE WALLIS: No, with the qualifications that
10 have been noted.

11 (Exhibit No. 2.04c admitted into evidence.)

12 BY MR. ARAMBURU:

13 Q. Toward the bottom of page 8 of your testimony.

14 MR. ARAMBURU: And for the Council Members, I'm
15 not going to make further reference to this 1977
16 Comprehensive Plan so if you're busy turning to it you don't
17 have to.

18 BY MR. ARAMBURU:

19 Q. Now, I'm looking at the bottom of page 8 of your
20 testimony, and it says and you describe the process of
21 amendment to the zoning code of Skamania County over the past
22 several years in the beginning of 2008. Do you see that
23 testimony?

24 A. Yes, sir, I do.

25 Q. Can you tell us there is a reference there to the

1 Hearing Examiner remanding the matter for further review. Do
2 you see that?

3 A. Yes.

4 Q. Have you reviewed the actions taken by the Hearing
5 Examiner?

6 A. Yes, sir, I have. I've read it. I haven't read it
7 of late, but I have read it.

8 Q. In your packet of materials before you would you
9 take a look at that again, and one of the other
10 cross-examination exhibits was 1.17c.

11 MS. DRUMMOND: Again, you're referring to the
12 findings and conclusions and decision of the County Hearing
13 Examiner?

14 MR. ARAMBURU: That's correct. That used to be
15 29 --

16 MS. DRUMMOND: 29.02.

17 A. Thank you.

18 BY MR. ARAMBURU:

19 Q. Would you take a look at that document, Mr. Pearce.

20 A. No, I don't have a 29.02, I apologize.

21 Q. Let me see if we can expedite things.

22 A. Sure.

23 Q. I'm putting before you, Mr. Pearce, a copy of
24 Exhibit 117c and asking you to take a look at that, please,
25 and tell me whether or not that is the Hearing Examiner

1 decision referenced at the bottom of page 8 of your
2 testimony.

3 A. Yes, it is.

4 MS. DRUMMOND: Could you repeat what page you were
5 referring to? I missed that.

6 MR. ARAMBURU: Page 8, bottom of page 8.

7 BY MR. ARAMBURU:

8 Q. Exhibit 117c that I've handed you is that the
9 Hearing Examiner decision referenced at the bottom of page 8
10 of your testimony?

11 A. Yes, sir, it is.

12 MR. ARAMBURU: I move the admission of
13 Exhibit 117c.

14 (Exhibit No. 1.17c offered into evidence.)

15 MS. DRUMMOND: We are not going to object to the
16 Hearing Examiner's decision.

17 JUDGE WALLIS: The exhibit is received.

18 (Exhibit No. 1.17c received into evidence.)

19 BY MR. ARAMBURU:

20 Q. Now, at the top of page 9 of your testimony,
21 Mr. Pearce, you have referenced actions taken by the county
22 following the decision of the Hearing Examiner; is that
23 correct?

24 A. Yes, sir, I do.

25 Q. And you said, "the County had three choices." Is

1 that a reference -- at the very, very top of page 9, you
2 said, "the County had three choices". Is that the
3 commissioners or the county in general or the planning
4 department or who were you talking to?

5 A. I meant the County Commissioners.

6 Q. You listed three possible decisions, one of which
7 was to appeal, one of which was to prepare the additional
8 environmental review, or to defer to the EFSEC process. I
9 understand the decision was not an appeal. Exhibit 1.17c,
10 the decision of the Hearing Examiner, was not appealed?

11 A. No, sir, we did not appeal the decision of the
12 Hearing Examiner.

13 Q. The second option was to prepare an additional
14 environmental review which you characterize as likely the
15 environmental impact statement at the top of page 9 of your
16 testimony. Did you undertake that action?

17 A. No, sir, we considered it at length and due to the
18 breadth of the Hearing Examiner decision decided that it was
19 nearly impossible for a county of our size with our budget to
20 undertake that review.

21 Q. So were you saying you didn't have enough money to
22 comply with the Hearing Examiner's decision?

23 A. We did not believe because of the breadth of the
24 decision that we could comply.

25 Q. And so then what is the status of the proposed

1 zoning code that was originally proposed in 2008?

2 A. Following this decision the zoning code has been
3 shelved and we're under interim zoning.

4 Q. You mean the zoning code for the proposed amendment
5 is still applicable in Skamania County?

6 A. Yes, sir, and then there's interim zoning on
7 unzoned lands within Skamania County.

8 Q. Does the county intend to prepare documents that
9 would be compliant with the Hearing Examiner's decision so
10 that the zoning code can be amended?

11 A. At this point we're still considering that and/or
12 an appeal. We just simply haven't made that decision at the
13 county commission levels.

14 Q. You also list as your third choice "defer to the
15 EFSEC process." Do you see that?

16 A. Yes, sir.

17 Q. What actions did the Commissioners take to defer to
18 the EFSEC process?

19 A. We in a conversation with the Applicant said that
20 the Applicant should most probably go to EFSEC which I
21 believe they had already planned on doing, and the County
22 fully supported that.

23 Q. So you had a private conversation with the
24 Applicant concerning that matter?

25 A. Yes.

1 Q. And that was Mr. Spadaro or other people involved?

2 A. Mr. Spadaro.

3 Q. Any other commissioners in attendance at that
4 meeting?

5 A. No.

6 Q. Would it have been possible for the Applicant to
7 prepare the application for a conditional use permit for this
8 project under the current zoning?

9 A. As I understand it, on the unzoned land because it
10 would be under current code if it's not considered a
11 nuisance, it would be allowed; then, yes, I suspect that they
12 could have moved forward with a permit based on that. That
13 certainly did not in my mind seem like a very likely course
14 based on the appeal of the zoning ordinance to the Hearing
15 Examiner. EFSEC seemed like a better process.

16 Q. Why wouldn't be it a likely course?

17 MS. DRUMMOND: I have an objection. I don't want
18 to go down this path too far. Commissioner Pearce is not a
19 land use lawyer. He's not the planning department. Some of
20 these questions in terms of the exact legal strategy are
21 really for a lawyer or for the planning director.

22 JUDGE WALLIS: I think that because of his
23 position in the county and his familiarity with the issues
24 he may respond.

25 BY MR. ARAMBURU:

1 Q. Go ahead.

2 A. I'm sorry. I don't remember the question.

3 MR. ARAMBURU: Could you read the question back.

4 (Last question read back.)

5 A. As I said, because of the decision of the Hearing
6 Examiner the Commission felt that the EFSEC process made more
7 sense. They are familiar with the process, they have the
8 authority, and it just made more sense than to attempt
9 something under the old codes.

10 BY MR. ARAMBURU:

11 Q. Did you advise the Applicant that there might be
12 problems with proceeding under the old code with a
13 conditional use application for its wind project?

14 A. No.

15 Q. You didn't tell them that?

16 A. No, absolutely not.

17 Q. But you did indicate that they would be better off
18 going to EFSEC?

19 A. We had a conversation about EFSEC and we were
20 supportive of going to EFSEC, yes.

21 Q. You were supportive because of the financial impact
22 of the county of having to process the application?

23 A. No, sir. I'm having to process what applications?

24 Q. I understand that an option for the Applicant would
25 have been to file a conditional use permit with Skamania

1 County to approve the wind turbine project.

2 A. We didn't have that conversation.

3 Q. Okay. So that wasn't discussed?

4 A. No.

5 Q. Would you look in your packet of exhibits, please,
6 for Exhibit 51.01c.

7 MS. DRUMMOND: Can you give us the former exhibit
8 number and identify the exhibit, please.

9 MR. ARAMBURU: I don't think we had another number
10 for this, Ms. Drummond.

11 MS. DRUMMOND: Oh, you red-lined letter from the
12 Department of Interior?

13 MR. BAKER: 51.01c is the letter with the Winston
14 & Strawn letter. It's a cross-examination exhibit that
15 Friends and SOSA filed on Monday. It should be in the blue
16 binders for the Council. It's letter to FERC, but I did
17 want to point out we have a duplicate number here. There is
18 a 51.01r and 51.01c. So if it's okay with everyone we would
19 two like to renumber this FERC letter to 51.02c.

20 (Exhibit No. 51.02c marked for identification.)

21 MR. ARAMBURU: Mr. Pearce, do you have that letter
22 in mind?

23 A. Yes, I have it right here.

24 BY MR. ARAMBURU:

25 Q. Do you have it before you?

1 A. Yes, I do.

2 Q. Did you receive a copy of this letter?

3 A. This I believe is the first time I saw this. I got
4 it in this proceeding.

5 Q. And Winston & Strawn are who?

6 MS. DRUMMOND: I don't know if this -- this has
7 not been formally admitted yet. We don't have an objection.
8 I'm not clear on its relevance, but we are not going to
9 object to it. This is a one-page -- two-page letter
10 actually.

11 MR. ARAMBURU: We move the admission of 51.02.

12 (Exhibit No. 51.02c offered into evidence.)

13 JUDGE WALLIS: Is there any objection?

14 Let the record show there is no objection and the
15 document is received in evidence as 51.02c.

16 (Exhibit No. 51.02c admitted into evidence.)

17 BY MR. ARAMBURU:

18 Q. Now, in your packet of materials, Mr. Pearce, would
19 you please turn to these are the packet of exhibits that I
20 hope are in your notebook there and look if you would at
21 Exhibit 42.03c.

22 A. Yes, sir.

23 MS. DRUMMOND: Could you identify the name of the
24 document and the former number?

25 MR. ARAMBURU: Exhibit 42.03c is the Skamania

1 County Quick Facts from the Census Bureau Skamania County,
2 Washington.

3 MS. DRUMMOND: We are going to object to this
4 census data. Commissioner Pearce is not familiar with the
5 data or certainly the County does not rely on these census
6 figures. I know this data was also rejected when Ms. Bryan
7 had taken the stand for both. All of the sheets of
8 Klickitat, Hood River, and Skamania County were rejected.

9 MR. ARAMBURU: I appreciate Ms. Drummond
10 testifying, but I haven't asked any qualifying questions to
11 the witness about that so I think we should be permitted to
12 do that before you rule on the objection.

13 JUDGE WALLIS: You may inquire of the witness.

14 BY MR. ARAMBURU:

15 Q. Have you looked at Exhibit 42.03c? Do you see
16 that?

17 A. Yes, sir, I have since I received it.

18 Q. Does Skamania County receive and review information
19 concerning the population and employment in Skamania County
20 from the Census Bureau?

21 A. I don't know if Skamania County does. I certainly
22 have never seen these before as Commissioner. We receive our
23 information about employment data through the state economist
24 through the EDC.

25 Q. Do you have information, can you tell us how much

1 the County has increased in population over the past ten
2 years or so?

3 MS. DRUMMOND: If these questions are based on
4 this exhibit I want to object.

5 MR. ARAMBURU: The question is a question to the
6 witness. It's not based on the exhibit.

7 MS. DRUMMOND: I believe it's outside the scope of
8 his testimony as to population increases because his
9 testimony did not address populations within Skamania
10 County.

11 MR. ARAMBURU: The witness has testified about
12 supposed economic issues and problems in Skamania County.
13 One of the aspects of that would be employment, and I think
14 it's a fair question to ask the witness.

15 JUDGE WALLIS: I will allow the question.

16 BY MR. ARAMBURU:

17 Q. Do you know whether or not there's been an increase
18 in population in Skamania County since the year 2000?

19 A. Since 2000, yes, sir. The estimates are that the
20 population has increased from below 10,000 to above 10,000,
21 but that's really all I know.

22 Q. Do you know what percentage it increased?

23 A. No, sir, I do not, not off the top of my head.

24 MR. ARAMBURU: Mr. Examiner, we would again move
25 the admission of Exhibit 4203c.

1 (Exhibit No. 42.03c offered into evidence.)

2 JUDGE WALLIS: Based on the conversations that
3 counsel have had I will deny that motion.

4 (Exhibit No. 42.03c is rejected.)

5 MR. ARAMBURU: Mr. Examiner, I want my objection
6 to your ruling to show as a matter of record the document
7 that is 42.03c is census information compiled by the United
8 States Department of Census for Skamania County. The
9 information talks about the employment, talks about median
10 income, talks about all those things that this witness has
11 testified to in his direct written testimony that was
12 allowed, and we think it is appropriate rebuttal testimony
13 because the Census Bureau keeps regular records. It is
14 unbiased information. It is an exception to the hearsay
15 rule if that is the nature of the objection. So I do want
16 all of our objection to your ruling to show as a matter of
17 record.

18 JUDGE WALLIS: Your objection is noted, and the
19 uncertainties regarding the document have also been explored
20 in the record during its earlier proposal for admission.

21 MR. ARAMBURU: Mr. Pearce, that's all the
22 questions I have for you for the moment. Thank you.

23 THE WITNESS: Thank you, sir.

24 JUDGE WALLIS: Mr. Kahn?

25 MR. KAHN: Yes, thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. KAHN:

3 Q. Mr. Pearce, good afternoon. Gary Kahn representing
4 intervenor Friends of the Columbia Gorge. Do you have your
5 testimony in front of you?

6 A. Yes, sir, I do.

7 Q. If you could go to page 6.

8 A. I could do that, yes, sir.

9 Q. Lines roughly 7 through 15 you go through the
10 analysis of how many acres Skamania has to develop. Fair
11 summary of what you've got there?

12 A. Yes, sir, it is.

13 Q. Let's go through that. You say that there's a
14 million acres, 85 percent of which is National Forest.
15 Right?

16 A. Yes, sir.

17 Q. So that is about 850,000 acres more or less?

18 A. Yes, sir.

19 Q. Then you say there are coupled with that are 80,000
20 acres of the scenic area plus 60,000 in state forest trust,
21 and 40,000 private commercial forestland. Correct?

22 A. Yes.

23 Q. You then go down and that leaves you with what you
24 say is 30,000 acres or three percent left to development.

25 A. Yes, sir.

1 Q. In reaching a conclusion of 30,000 did you subtract
2 the entire 80,000 acres that are in the scenic area of
3 Skamania County?

4 A. No, sir. The 80,000 I believe is not included in
5 the urban areas.

6 Q. But what I'm asking though is you come up with a
7 conclusion of 30,000 acres that is developable.

8 A. Yes, sir.

9 Q. To reach that conclusion would you agree that
10 there's about 80,000 acres in Skamania County within the
11 scenic area?

12 A. Yes, sir, I would.

13 Q. Are you subtracting all that 80,000 acres from what
14 you claim is capable of being developed?

15 A. Yes, sir.

16 Q. So it's your contention all 80,000 -- that lands
17 within the National Scenic Area in Skamania County cannot be
18 developed?

19 A. Outside of the urban areas where planning is, yes,
20 sir.

21 Q. Okay. Outside the urban areas. Let's talk about
22 the general management area. If I'm understanding you
23 correctly are you saying that outside of the urban areas
24 there is no National Scenic Area land that can be developed
25 within Skamania County?

1 A. Developed for other than residential or
2 agriculture? I don't believe so, sir.

3 Q. Does it say that it could -- well, would you agree
4 that the general management area lands in Skamania County
5 outside of urban areas is capable of being residentially
6 developed?

7 A. Yes, sir, I would.

8 Q. What about commercial development is that allowed
9 in GMA land, general management area land?

10 A. I don't recall that it is, sir.

11 Q. So your recollection is that commercial development
12 is not permitted on general management area lands within the
13 scenic area?

14 A. That's correct.

15 MS. DRUMMOND: Commissioner Pearce testified it is
16 highly restricted in the scenic area.

17 MR. KAHN: Can we have counsel not testify,
18 please? I'm asking questions of this witness, not Ms.
19 Drummond. If she would like to be a witness, we can deal
20 with that separately.

21 MS. DRUMMOND: Just a point of clarification is
22 all, Your Honor.

23 JUDGE WALLIS: I will sustain that.

24 BY MR. KAHN:

25 Q. So you indicated you don't think there's any

1 commercial development. Is recreation, commercial recreation
2 development allowed in the general management areas?

3 A. There are commercial recreation or public
4 recreation zones, and to the best of my knowledge only one of
5 them has been developed, and I'm not aware of any others.

6 Q. Isn't it true that the Gorge Commission recently
7 adopted a management amendment that authorized designation
8 resorts within a certain general management land specifically
9 within Skamania County?

10 A. The Broughton Mill Resort was a plan amendment that
11 was approved.

12 Q. Would you agree that the standard guidelines in the
13 management plan do not apply to the urban areas?

14 A. I certainly would agree that they do not.

15 Q. How many urban areas are there, designated urban
16 areas under the Gorge Act within Skamania County?

17 A. Skamania County I believe that there are five.

18 Q. Counting the towns of Skamania County?

19 A. Skamania County Landing.

20 Q. Actually, that's a different designation. It's not
21 a town center I believe.

22 A. Yes, something different. Yes, sir, I believe
23 that.

24 Q. So the other --

25 JUDGE WALLIS: I am going to interject here and

1 ask Mr. Kahn to slow down a little bit, and that will help
2 you and the witness keep you from talking at the same time.
3 So at the very least as you are slowing down your speed also
4 give the witness just a moment of silence and then the
5 witness can speak.

6 BY MR. KAHN:

7 Q. Okay. Would those four urban areas be Stevenson,
8 Carson, North Bonneville, and Home Valley?

9 A. Yes, sir.

10 Q. Do you know how many acres those four urban areas
11 total?

12 A. I apologize. I do not know.

13 Q. I've got a number, and tell me whether you think
14 it's close or not. That's 7,500. Does that sound about
15 right?

16 A. I couldn't guess. I apologize. I don't have any
17 idea.

18 Q. And for the most part the Scenic Act doesn't pose
19 any restrictions on the development within the urban areas,
20 is that correct, standards and guidelines?

21 A. Yes, sir, scenic areas are exempt.

22 Q. Isn't it true that Skamania Lodge, the very place
23 we're at, was funded at least in part through the National
24 Scenic Area?

25 A. And the county, yes, sir.

1 MR. KAHN: Thank you. That's all I have.

2 JUDGE WALLIS: Mr. Marvin, do you have questions?

3 MR. MARVIN: No, Your Honor.

4 JUDGE WALLIS: Does the Applicant have questions?

5 MR. McMAHAN: Not at this time. I would reserve
6 follow up after Ms. Drummond so we don't end up asking the
7 same things.

8 JUDGE WALLIS: Ms. Drummond.

9 MS. DRUMMOND: Thank you, Your Honor. I you have
10 a few questions.

11 REDIRECT EXAMINATION

12 BY MS. DRUMMOND:

13 Q. SOSA asked a bit about tax revenues to the county.
14 Could you elaborate a bit on how important this project would
15 be to the county tax base?

16 A. Currently the county is receiving what's called
17 secure rural schools and community accountability dollars
18 from the federal government to the tune of about \$4 million
19 dollars a year, and that is federal money that was approved
20 for a second time in 2008. That runs out in 2011. The
21 schools also receive that money. On top of the money that
22 the county gets there's also a million dollars that goes to
23 what's called the Resource Advisory Committee which was used
24 for resource work on the forest and for jobs.

25 The fact is when that money runs out three of the

1 four school districts in Skamania County will within one
2 year close, and we will layoff somewhere in the neighborhood
3 of half of the county workforce. The center of the county
4 has a higher unemployment than either of the two ends, west
5 or east, mainly because of the distance obviously and lack
6 of jobs. The county is the largest family-wage employer in
7 the center of the county, and we have 225 employees. If
8 this project and other projects help to diversify the tax
9 base, then that makes our argument to the federal government
10 about assistance much stronger than if we simply wait until
11 that money runs out.

12 Secondarily, we are taxing our folks in terms of
13 property tax at the maximum levy amount, and it still only
14 brings in approximately \$1.4 million in general tax revenue
15 and \$1.4 million in road revenue.

16 The unemployment and underemployment in the center
17 of the county has a lot of impacts on the county in terms of
18 service levels. We even have a domestic violence shelter in
19 our county, and in November alone we had 77 bed nights in
20 that shelter. So we have a very severe economic problem,
21 especially in the center of our county. That's why a
22 project like this is very important economically.

23 Q. With regard to the center of the county, and I'm
24 assuming you're referring to the Carson area, can you
25 elaborate a bit on kind of the economic situation within that

1 part of the county such as the number of children on reduced
2 or subsidized school lunches?

3 A. Those four school districts are wholly within the
4 county which is Mount Pleasant, Skamania County, Stevenson,
5 Carson, and Mill A average between in the elementary schools
6 between 55 and 65 percent free and reduced lunch which is the
7 number that the U.S. Department of Education uses to
8 determine poverty level.

9 Q. You were asked a few questions about the
10 comprehensive plan and zoning code, and in one of your
11 answers you noted that under the existing zoning the project
12 in these unclassified lands would be except for a small area
13 would be actually permitted outright; meaning it does not
14 need to have a permit. Did I understand you correctly when
15 you stated that?

16 A. That's my understanding within those unzoned lands.

17 Q. Would this type of project be authorized outright?

18 A. If this project is not a nuisance according to the
19 code that is my understanding.

20 MS. DRUMMOND: Those are all the questions that I
21 have at this time.

22 JUDGE WALLIS: Mr. McMahan?

23 MR. McMAHAN: Yes, thank you, Your Honor.

24 ///

25 ///

1 RE CROSS-EXAMINATION

2 BY MR. McMAHAN:

3 Q. Commissioner Pearce, Tim McMahan here for the
4 record. Let me ask you the County's position concerning land
5 use consistency for the Siting Council. What would the
6 County's position be if the Siting Council determined that
7 this project is somehow inconsistent with county land use and
8 planning?

9 A. Then the Commissioners would ask the Council to
10 preempt us.

11 MR. McMAHAN: I have nothing further.

12 MR. KAHN: I had one.

13 RE CROSS-EXAMINATION

14 BY MR. KAHN:

15 Q. Mr. Pearce, in response to Ms. Drummond's question
16 I believe you indicated that in your opinion the project area
17 except for two small portions would permit this use outright.
18 Did I capture your testimony correctly?

19 A. As I understand it the unzoned land under our
20 current zoning codes if it's not a nuisance, then it's
21 permitted. Now whether it would be a conditional permit or
22 outright I don't know.

23 Q. Over the last several years I believe you
24 testified -- I believe you did, and I'm not trying to put
25 words in your mouth. Things have gotten boggled over a week

1 and a half here -- that you were involved in the discussions
2 with the Applicant or the Applicant's representative
3 concerning this project?

4 A. Mr. Spadaro and I had conversations about this and
5 many other economic development projects.

6 Q. And did you have any conversations --

7 MS. DRUMMOND: I object. This is not directly
8 responsive to the questions that I asked Mr. Pearce or that
9 Mr. McMahan asked Mr. Pearce.

10 MR. KAHN: If you let me go one or two more
11 questions you'll see exactly how relevant they are to the
12 questions that were asked on redirect.

13 JUDGE WALLIS: We'll allow the questions.

14 BY MR. KAHN:

15 Q. In any of those discussions did any of those
16 discussions with Mr. Spadaro occur after the Hearing
17 Examiner's decision that invalidated your comprehensive plan
18 amendments?

19 A. Any discussions about the project?

20 Q. Yes.

21 A. Yes.

22 Q. Any discussions as to why if you believed the use
23 was permitted in some way that the Applicant didn't go
24 through the Skamania County permitting process instead of
25 filing an application with EFSEC?

1 A. No, sir. We did not have that conversation, not
2 that I recall at all.

3 Q. Did you ever discuss with Mr. Spadaro your opinion
4 that this was a permitted project in this zone, in the
5 unzoned area?

6 A. No, sir, I don't recall having a conversation like
7 that with Mr. Spadaro.

8 Q. How about anybody else on behalf of the Applicant
9 for this project?

10 A. Not that I recall. We went directly to a
11 conversation about EFSEC.

12 MR. KAHN: Okay. Thank you. That's all I have.

13 RECROSS-EXAMINATION

14 BY MR. ARAMBURU:

15 Q. Mr. Pearce, you testified about the consistency of
16 planning and zoning within consistency of the Whistling Ridge
17 Project planning and zoning in Skamania County; is that
18 correct?

19 A. Our consistency determination, sir?

20 Q. You provided some testimony with respect to your
21 opinion as to the consistency of the Whistling Ridge project
22 with applicable zoning in Skamania County; is that correct?

23 A. Are we still talking about the unzoned land? I'm
24 not sure what the question is.

25 Q. Okay. We're talking about unzoned land.

1 A. Yes, sir, I did say that my understanding is that
2 if it's not a nuisance it could be permitted, but how I don't
3 know. The process I don't know.

4 Q. And the 1977 Skamania County Comprehensive Plan as
5 I understand was amended by the county in 2007; is that
6 correct?

7 A. Yes, sir. We adopted a new comprehensive plan in
8 2007, yes.

9 Q. When did you first discuss with Mr. Spadaro the
10 possibility of a wind turbine project on lands owned by SDS
11 in Skamania County?

12 A. I couldn't give you a date, sir. I don't know.

13 Q. It was before 2007, wasn't it?

14 A. I'm trying to remember when the plan amendment
15 occurred on Broughton because I don't recall talking about
16 wind power or any of that prior to us working through the
17 plan amendment process on Broughton.

18 Q. Do you recall that there were a number of
19 preapplication conferences that Mr. Spadaro had with your
20 planning staff, including Ms. Karen Witherspoon?

21 A. I remember discussing those while we were doing the
22 zoning codes, yes.

23 Q. Do you recall that those communications between
24 Mr. Spadaro and planning staff occurred going back to 2002,
25 2003?

1 MS. DRUMMOND: I'd object to this line of
2 questioning. Mr. Pearce wouldn't -- I mean if the planning
3 director were here she could verify when those conferences
4 happened, but it would likely be difficult for Commissioner
5 Pearce to testify about this.

6 JUDGE WALLIS: I believe the witness was asked
7 whether he was aware of this, and that's a fair question.

8 A. Not until we started the zoning code updates.

9 BY MR. ARAMBURU:

10 Q. Would you turn to Exhibit 1.17c, please, which is
11 the decision of the Hearing Examiner on the SEPA appeal
12 regarding the proposed zoning ordinance.

13 A. I'm sorry. I don't believe I have it.

14 Q. Okay.

15 A. We did this before.

16 Q. We did this before. I am going to 1.17c.

17 A. Thank you.

18 Q. Mr. Pearce, would you please turn in that decision
19 to page 8. Do you have that page?

20 A. Yes sir, I have page 8.

21 Q. Would you look at the first sentence, please, of
22 paragraph 18 found on that page, and if you wouldn't mind
23 please read it allowed to the Council.

24 A. No. 18, sir?

25 Q. Yes, please. Just the first sentence.

1 A. "The 2007 Comprehensive Plan does not contemplate
2 the type of energy facilities described in the planning
3 commission recommended draft."

4 Q. Do you agree with that conclusion reached by your
5 appointed Skamania County Hearing Examiner?

6 A. Yes, I would agree.

7 MR. ARAMBURU: No further questions.

8 JUDGE WALLIS: Is there anything further of the
9 witness?

10 MS. DRUMMOND: Just one quick question.

11 RE-REDIRECT EXAMINATION

12 BY MS. DRUMMOND:

13 Q. The existing 2007 comprehensive plan does not
14 prohibit wind facilities, does it?

15 A. No, ma'am.

16 Q. Actual two. One last question. Is it your
17 understanding that with any project there are essentially two
18 tracks at the local level: one is the environmental review
19 and one is the zoning and an applicant has to go through both
20 processes?

21 A. Absolutely.

22 Q. Right. So even if the project would be permitted,
23 they would still have to go through the SEPA, and, of course,
24 there would certainly be litigation within the county on
25 that. Correct?

1 A. Yes.

2 MS. DRUMMOND: Thank you. Those are all the
3 questions that I have.

4 MR. ARAMBURU: Just one more follow-up question.

5 RE-RECROSS-EXAMINATION

6 BY MR. ARAMBURU:

7 Q. For applicants for land use approval in Skamania
8 County and their processing of their land use application in
9 the county does the county require that those applicants pay
10 the cost of processing applications to the county?

11 A. We have costs for recovery. It is not full cost
12 recovered for applications at this point.

13 MR. ARAMBURU: That's sufficient. That's all the
14 questions that I have.

15 JUDGE WALLIS: Very well. Thank you for your
16 testimony, Mr. Pearce. You're excused from the stand at
17 this time. Let's be off the record for a moment while
18 Mr. Lang steps forward.

19 (Off the record awaiting next witness to take the
20 stand.)

21 JUDGE WALLIS: Let's be back on the record, please
22 Mr. Lang has stepped forward.

23 MICHAEL LANG,

24 having been first duly sworn on oath,

25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. KAHN:

3 Q. Mr. Lang, you were asked to provide rebuttal
4 testimony in this proceeding?

5 A. Yes.

6 Q. And that's what's been marked as Exhibit 25.00?

7 A. Yes.

8 Q. If you were asked the same set of questions that
9 are on the written sheet today under oath would your answers
10 be the same?

11 A. Yes, they would.

12 MR. KAHN: Your Honor, I would ask Exhibit 25.00
13 be admitted as the testimony of Michael Lang.

14 (Exhibit No. 25.00 offered into evidence.)

15 JUDGE WALLIS: Is there objection?

16 MR. McMAHAN: No, Your Honor.

17 JUDGE WALLIS: The Exhibit 25.00 is received in
18 evidence.

19 (Exhibit No. 25.00 admitted into evidence.)

20 JUDGE WALLIS: Witness is available on cross?

21 BY MR. KAHN:

22 Q. Are you available to answer questions on
23 cross-examination?

24 A. Yes, I am.

25 MR. KAHN: Thank you. I have nothing further.

1 MR. McMAHAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. McMAHAN:

4 Q. Good afternoon, Mr. Lang. My name is Tim McMahan
5 from the Stoel Rives Law Firm, a proud member of Renewable
6 Northwest Projects, and this morning I had an extensive
7 period of time to review my cross-examination questions and
8 have cut them down to the bare minimum. So I will just take
9 a few minutes with you, sir, to try to get some answers to
10 some questions.

11 Sir, I had a look at your website actually last
12 night and it states the following concerning your role with
13 your organization. First, Michael oversees all aspects of
14 our monitoring and litigation program. Is that correct, in
15 terms of your role?

16 A. I do.

17 Q. So all aspects of the Friends of the Columbia
18 Gorge's litigation program?

19 A. Yes.

20 Q. And further provide that you have "intimate
21 knowledge of the management plan that governs the Gorge." Is
22 that also a correct statement also from your website?

23 A. I know the management plan very well.

24 Q. I want to just make sure that we're all clear about
25 what your position is concerning the applicability of the

1 scenic area to this and other projects. You state in your
2 testimony on page 2, line 17 to 20 or so, that you have not
3 suggested that the Management Plan's land use guidelines
4 apply to the project. You go on to say that, "To answer the
5 question, in order to regulate land uses within the Urban
6 Areas or outside the Scenic Area directly under the
7 Management Plan's land use guidelines, the Scenic Area Act
8 would need to be amended." Is that correct? Is that a
9 correct summary of what you stated?

10 MR. KAHN: I'm going to object to the line of
11 questioning, Your Honor. Mr. McMahan is asking Michael Lang
12 to make a legal conclusion as to what the Scenic Act does or
13 doesn't do vis-à-vis other lands. His testimony is largely
14 irrelevant to the legal position that Friends of the
15 Columbia Gorge has taken and will continue to take in this
16 proceeding. So I fail to see the relevance of the
17 conservation director's position as to what the legal issues
18 are.

19 MR. McMAHAN: Your Honor, I find that a very
20 curious objection. I'm simply reading his own opinion
21 statement in his own testimony.

22 JUDGE WALLIS: The objection is overruled.

23 BY MR. McMAHAN:

24 Q. So, sir, it is your -- do I have an understanding
25 clearly that what you're testifying is that the Management

1 Plan's land use guidelines, land use guidelines would not be
2 applicable; is that correct?

3 A. Would not be applicable to?

4 Q. To the Whistling Ridge Project, to urban exempt
5 areas. Is that your testimony?

6 A. That is correct.

7 Q. So the Land Use Guidelines.

8 A. That's correct.

9 Q. So is that the root of what you're saying: that the
10 Scenic Act would not be directly applied to the project? Is
11 that what you mean by that?

12 A. Well, what I mean by that is that the land use
13 guidelines adopted pursuant to Section 6 of the Act would not
14 be directly applied to this project as long as this project
15 is outside of the boundary of the National Scenic Area.

16 Q. So, in other words, the special management area,
17 the general management area of the Land Use Guidelines I
18 guess one could draw a parallel zoning. You're saying that
19 those wouldn't be applied to the project; is that correct?

20 A. Yes, if the project is not within the boundary of
21 the National Scenic Area.

22 Q. All right. Again on page 8 you make a similar
23 statement that I am not aware of any efforts to regulate --
24 excuse me, I'm sorry. Page 8, lines 13 to 15 on that.

25 A. Okay.

1 Q. Are you there?

2 A. Yes.

3 Q. I didn't mean to rush you or the court reporter.
4 So second line in that paragraph, "I am not aware of any
5 efforts to regulate land uses in the urban areas or outside
6 the scenic area under the special management area or general
7 management area of land use and development permit
8 provisions." That's your testimony?

9 A. Yes.

10 Q. Do you have in front of you the cross-examination
11 exhibits that we provided?

12 A. I do.

13 Q. So I'm turning first to Exhibit 25.01c. This is a
14 letter signed by Richard Till identified as Land Use Law
15 Clerk.

16 A. Bear with me, Mr. McMahan, I know I have it.

17 Q. You bet. January 22, letter.

18 A. Right. Okay.

19 Q. All right. If I could take you to I think
20 Mr. Till --

21 A. There are no pages numbers I know.

22 Q. Yeah, there are no pages numbers so let's just say
23 1, 2, 3, 4, 5.

24 JUDGE WALLIS: Mr. McMahan and the witness, I'm
25 going to ask you to slow down a little bit and make sure

1 that you do not start speaking until the other has stopped.

2 MR. McMAHAN: I apologize for that. I've been
3 spending too much time listening to Mr. Kahn.

4 BY MR. McMAHAN:

5 Q. So anyhow on page 5, and I'm going to count the
6 first, second, third, fourth, fifth paragraph down. Okay.
7 See that one?

8 A. Yes.

9 Q. This is to be clear a letter from the Friends of
10 the Columbia Gorge submitted on January 22, 2010 to Curt
11 Dreyer, Director of the Klickitat County Planning Department;
12 is that correct?

13 A. Yes.

14 Q. So third full sentence, and I will quote it, your
15 asking the county to adopt a formal standard for the
16 application of a setback. "This should include the
17 establishment of the setback from the Columbia River Gorge
18 National Scenic Area or a standard requiring the project not
19 adversely affect the visual resources from the National
20 Scenic Area."

21 MR. TAYER: Your Honor, my pages don't seem to be
22 numbered here.

23 MR. McMAHAN: They're not. I'm sorry.

24 JUDGE WALLIS: Let's be off the record for just a
25 moment.

1 (Discussion off the record.)

2 JUDGE WALLIS: Very well. Let's be back on the
3 record.

4 MR. KAHN: Is there a question?

5 MR. McMAHAN: Yes, there is.

6 BY MR. McMAHAN:

7 Q. Now, sir, what you state here is that "This should
8 include the establishment of a setback from the Columbia
9 River Gorge National Scenic Area or a standard requiring that
10 projects not adversely affect the visual resources of the
11 National Scenic Area," and I emphasize here, "Notably,
12 similar standards can be found in both Washington and Oregon
13 energy facility siting regulations." And then you cite this
14 Siting Council's administrative code provisions. Is it your
15 testimony that this Council has adopted a standing setback
16 from the scenic area?

17 A. No, it is not.

18 Q. Even though that's what you told the planning
19 director for Klickitat County was the truth. That's not true
20 then, is it?

21 MR. KAHN: I'm going to object to the
22 characterization of the letter. It's nothing Mr. Lang told
23 anyone, number one; it was written by someone else, number
24 two; and even if it were written by him the language to
25 which Mr. McMahan is referring does not constitute anybody

1 telling Klickitat County what the Energy Facility Site
2 Evaluation Council has done. So I would object to the form
3 of the question.

4 MR. McMAHAN: Your Honor, I think it states very
5 plainly that a setback should be imposed and they cite the
6 EFSEC rules and state that EFSEC should impose a setback
7 from the scenic area. That's all I want him to acknowledge.

8 MR. KAHN: The word is similar standard. Similar
9 does not mean identical or exact or anything close to that.

10 MR. McMAHAN: I think it stands for what it says,
11 Your Honor.

12 JUDGE WALLIS: In the discussion among counsel I
13 think it's clear what the language in the proposed exhibit
14 is and what the context is so I will not disturb the record
15 as it now stands.

16 MR. McMAHAN: All right. And I will then move on.

17 BY MR. McMAHAN:

18 Q. Taking you to 25.02c, and that is the appellants'
19 brief filed in Friends of the Columbia Gorge versus Skamania
20 County and Whistling Ridge Energy. Do you have that in front
21 of you?

22 A. The appellants' brief?

23 Q. Correct.

24 A. I do.

25 Q. Again, just to emphasize, it is your job to oversee

1 all aspects of Friends of the Gorge litigation program.

2 Correct?

3 A. It is.

4 Q. So on page 13 of that document approximately half
5 way down the sentence beginning with the problem, do you see
6 that?

7 A. I do.

8 Q. So there's a statement here stating that the
9 problem with the County's analysis and I believe you are
10 referring to the County's land use certification; is that
11 correct?

12 A. The analysis in that, yes.

13 Q. So you state, "The problem with the County's
14 analysis is that the County failed to review the proposed
15 purpose and use", emphasize and use, "of the haul route. In
16 the National Scenic Area and in Skamania County generally,
17 roads must be reviewed for both their construction and their
18 intended uses. Does that correctly reflect Friends of the
19 Gorge's position on that matter?

20 MR. KAHN: I will object, Your Honor. The brief
21 to which Mr. McMahan is referring has to do with issues that
22 was not the subject of Mr. Lang's rebuttal testimony. It's
23 a completely different legal issue that has not been brought
24 before this Council, and it certainly isn't contained
25 anywhere within Mr. Lang's testimony.

1 JUDGE WALLIS: Mr. McMahan, is the inquiry
2 addressed at the legal question which is set out in the
3 document?

4 MR. McMAHAN: It is Friend's position concerning
5 the direct or indirect applicability of the scenic area to
6 this proceeding, to this project.

7 MR. BAKER: Your Honor, to be more specific, we
8 have assigned a witness to different categories. One of the
9 categories was the land use. No one has asked that Mr. Lang
10 be assigned to the category of land use. This exhibit is
11 entirely within the confines of the category of land use.

12 MR. McMAHAN: Your Honor, Mr. Lang testified to
13 land use. He states that he's an expert in the management
14 plan that governs the Gorge. He's perfectly qualified to
15 answer these questions and it's entirely relevant and it's
16 responsive to his testimony.

17 MR. KAHN: He may be perfectly qualified to answer
18 the questions, but it wasn't within the scope of his direct
19 testimony. There's lots of questions we could have asked
20 people if the test was whether they were qualified to answer
21 it as opposed to the question being whether it was within
22 the scope of their testimony.

23 JUDGE WALLIS: Thank you for the discussion that
24 counsel have engaged in. I believe that the questions and
25 the answers that called for fall within the topics which

1 this witness in light of his supervisory responsibilities
2 and the nature of his direct examination is able to respond
3 to.

4 MR. KAHN: Your Honor, I just want to get
5 clarification. Are you saying that Mr. Lang's prefiled
6 rebuttal testimony includes this issue? I'm just trying to
7 get clarification in the record.

8 JUDGE WALLIS: The prefiled direct is broad enough
9 that the purpose of this question falls within the document.

10 MR. McMAHAN: Your Honor, inherently these guys
11 have cross-examined witnesses for a week and a half to the
12 great forbearance of all parties. I have the right to
13 impeach this witness. I have the right to inquire about
14 what is within his testimony. This is fully within the
15 scope of his testimony.

16 MR. KAHN: And may I have a continuing objection
17 to the entire line of questioning based on this exhibit as
18 well as the next exhibit which I anticipate Mr. McMahan will
19 ask questions about to the exact same issue?

20 JUDGE WALLIS: Yes.

21 BY MR. McMAHAN:

22 Q. So, Mr. Lang, again you indicate on page 13 and I
23 didn't mean to mischaracterize that, but Friends of the Gorge
24 represents on page 13, the problem with county's analysis is
25 it failed to review the proposed use in addition to the use

1 of the haul route; is that correct?

2 A. Proposed purpose and use.

3 Q. Right. By the way, just -- so then taking you to
4 the next exhibit which is 25.03c. Are you there?

5 A. No. I have 25 a blank C so will you tell me the
6 title of the document.

7 MR. KAHN: It's our brief on the comprehensive
8 plan.

9 A. The mootness brief.

10 BY MR. McMAHAN:

11 Q. Correct, the mootness brief.

12 A. Yes.

13 Q. Now on page 2 of that brief starts with the word
14 arguments.

15 A. Arguments.

16 Q. If you will go to the footnote at the bottom?

17 A. Yes.

18 Q. In that Footnote No. 2, it states, "Appellants'
19 object to the construction and use of an industrial haul
20 route within the National Scenic Area on both private and
21 public roads," and then it references the Friend's own brief;
22 is that correct?

23 A. It is.

24 Q. So it was your position in those proceedings that
25 if a public road was used for a facility that would not have

1 been permitted within the scenic area; that public roads use
2 was prohibited were?

3 MR. KAHN: Again, Your Honor, I'm going to object
4 on the grounds (a) as I've already said it's beyond the
5 scope of his testimony, number one, and (b) it's wholly
6 irrelevant to the proceeding before EFSEC as to the position
7 the Friends of the Columbia Gorge took in a separate
8 proceeding not in front of this body.

9 JUDGE WALLIS: The objection so noted.

10 MR. KAHN: And overruled I assume?

11 JUDGE WALLIS: Yes.

12 BY MR. McMAHAN:

13 Q. Mr. Lang, then taking you to 25.04c, the next
14 exhibit on cross-examination.

15 MR. KAHN: Are you finished with that one?

16 A. I didn't provide an answer but go ahead.

17 BY MR. McMAHAN:

18 Q. Excuse me. Let me go back then again. Thank you
19 very much for that.

20 A. Now that is your job.

21 Q. Yes. That is what's stated in that footnote.

22 A. That's what's stated construction and use.

23 Q. Right.

24 A. Construction and use.

25 Q. That's right. Thank you for the correction. All

1 right. Again, I'm attempting to proceed quickly to get us
2 out of here before the snow hits. 24.04c which is the next
3 exhibit.

4 MR. KAHN: Do you mean 25.04c?

5 MR. McMAHAN: Thank you. Yes, 25.04c, thank you.

6 MR. KAHN: Again this is the final opinion and
7 order?

8 JUDGE WALLIS: Just one person at a time.

9 A. Well, you have the number and I have the title.

10 BY MR. McMAHAN:

11 Q. Okay. We'll work with both. Fair enough? Final
12 Opinion and Order from the Gorge Commission.

13 A. Yes.

14 Q. So in that final opinion and order the Gorge
15 Commission in fact dismissed the appeal of County Resolution
16 No. 2009-54; is that correct?

17 A. It did.

18 Q. There was no appeal taken by the Friends of the
19 Gorge to that dismissal; is that correct?

20 A. Well, Mr. McMahan, it starts all running together,
21 but I believe that is correct.

22 Q. You're right. It does run together. Taking you to
23 the next exhibit which is 25.05, and that is a copy of the
24 mission or vision from the Friends of the Gorge's website?

25 A. Yes.

1 Q. You I assume are familiar with that?

2 A. I am.

3 Q. At the bottom, one paragraph from the bottom there
4 is a sentence that begins "designated urban areas". Do you
5 see that?

6 A. Yes.

7 Q. It states in the second sentence, "We will support
8 sustainable, livable communities and small businesses and
9 other enterprises in the urban areas that provide living-wage
10 jobs, are non-polluting, and do not deplete Gorge resources;"
11 is that correct?

12 A. That is what it says.

13 Q. So I take it from that the Friends of the Gorge is
14 articulating to the world that you make a subjective decision
15 within urban areas as to whether or not a particular project
16 depletes the Gorge resources?

17 A. Well, in some cases that is true.

18 Q. For example, I understand that you are opposing the
19 Warm Springs Casino proposed just across the river here and
20 in fact approved by the federal government; is that correct?

21 MR. KAHN: Again, I'll just object on relevance
22 grounds, Your Honor. Now we're in another state involving a
23 completely different project, and that's relevant?

24 MR. McMAHAN: Your Honor, this is all about the
25 applicability, direct or indirect, of the scenic area's

1 provisions.

2 MR. KAHN: And what does it matter the position
3 that anybody takes on a project that is not before you?
4 What is the relevance of the position that Friends of the
5 Columbia Gorge takes on anything other than the Whistling
6 Ridge Energy Project for the submission of the Council.

7 MR. McMAHAN: There was a very global statement, a
8 number of very global statements made in Mr. Lang's
9 testimony that he's testified to that very globally talks
10 about the position the Friends take in urban exempt areas
11 and outside of urban exempt areas that somehow prove to this
12 Siting Council they're not arguing that the Scenic Act
13 directly controls, and I need to get to the bottom of that
14 issue. I think the Siting Council needs to get to the
15 bottom of that issue.

16 JUDGE WALLIS: I believe that this line of
17 questioning is within that scope and is permissible so the
18 objection is overruled.

19 BY MR. McMAHAN:

20 Q. So true or not, Friends of the Columbia Gorge is
21 opposing Warm Springs Tribe's Casino within the urban exempt
22 area?

23 A. Yes.

24 Q. Then taking you to the final cross-examination
25 exhibit which is 25 -- you know, I'm not sure what the final

1 number of that was, but it is a reply brief of Appellant to
2 the Friends of the Gorge, Inc., and Save our Scenic Area,
3 Gifford Pinchot Task Force, and Columbia Riverkeeper reply
4 brief in the appeal in the County SEPA determination. Do you
5 see that?

6 A. I do. I have it.

7 Q. Your Honor, I, of course, didn't handwrite in the
8 exhibit number on that one. Do you have the exhibit number?

9 JUDGE WALLIS: 25.06c.

10 MR. McMAHAN: All right.

11 BY MR. McMAHAN:

12 Q. Taking to you page 14 which is, I only provided
13 that page, Footnote No. 14. Do you see that footnote?

14 A. I do.

15 Q. So it states toward the bottom, "Also for the
16 purposes of this brief, 'Scenic Area lands' refers to lands
17 regulated directly under the Scenic Area rules. Skamania
18 County contains approximately 993,570 acres of non-Scenic
19 Areas lands and approximately 79,800 acres of Scenic Area
20 lands." Do you see that, sir?

21 A. Yes, I do.

22 Q. So I understand what you're arguing here is that
23 the Scenic Act regulates directly the 79,800 acres of scenic
24 area lands; is that right?

25 A. Well, it's prefaced by for the purposes of this

1 brief.

2 Q. Right. I understand that.

3 A. But for the purposes of this brief that is what it
4 says.

5 Q. So then the 993,570 acres is regulated indirectly
6 by the Scenic Act?

7 A. Those aren't my words.

8 Q. Well, can we infer that from that footnote?

9 A. I'm not in a position to tell you what to infer,
10 sir.

11 Q. Okay. So is it fair to say that the Scenic Area
12 Act is implemented through county scenic area land use
13 ordinances?

14 A. Yes.

15 Q. And I'm not in one of these documents anywhere.
16 I'm just asking you some questions. Specifically the Act
17 requires that the scenic area land use ordinances must be
18 consistent with the management plan; is that correct?

19 A. That's correct.

20 Q. And pursuant to the Act the Gorge Commission
21 reviews these ordinances for consistency; is that correct?

22 A. That's correct.

23 Q. Are you aware that Skamania County has adopted a
24 scenic area land use ordinance that the Commission, the Gorge
25 Commission has found consistent with the management plan?

1 A. Yes.

2 Q. So then I gather that you're conversant with the
3 ordinance's provision that states that in SCC Title 22,
4 including "visually" supported standard that the Scenic Act
5 applies to land within the scenic area and "to no other lands
6 within the county," and that the Gorge Commission found that
7 in compliance with the management plan; is that correct?

8 A. Can you cite that, please.

9 Q. Yes, 22.02.050 applicability. And if you're not
10 familiar with that, I understand. I'm just asking if you are
11 aware of that provision in the county code.

12 A. I don't have it in front of me so it's hard to say.
13 If you have a copy of the ordinance, I'd be happy to look at
14 it.

15 Q. Okay.

16 A. Okay I have it in front of me. Question again,
17 please.

18 Q. Isn't it true that that provision in the county
19 code states quite clearly that the Scenic Act applies to
20 areas within the scenic area and "to no other lands within
21 the county"?

22 A. Well, it says this title applies to those lands
23 within the scenic area, that is correct.

24 Q. Right. Okay. Just a couple more questions, sir.
25 I actually was mistaken. I had one more question about the

1 attachment rebuttal documents or cross-examination documents.
2 So I am going back to 25.01c, and it's the January 22 letter
3 to Curt Dreyer.

4 A. Okay.

5 Q. This is the one that's not numbered so this is 1,
6 2, 3, page 4. Okay. So at top you've got the provision
7 stating the County should require compliance with WDFW Wind
8 Power Guidelines. Do you see that?

9 A. Yes.

10 MR. KAHN: What page are on? I'm sorry.

11 MR. McMAHAN: The fourth unnumbered page.

12 BY MR. McMAHAN:

13 Q. So the paragraph below that title block states in
14 the second sentence, "The County should require that projects
15 comply with all WDFW Wind Power Guidelines, not just the
16 pre-construction requirements." That is your position.
17 Right? Friends of the Gorge's position?

18 A. At the time of writing this.

19 MR. KAHN: I'm going to object, Your Honor.
20 There's nothing in his testimony that has anything to with
21 the WDFW Wind Power Guidelines. If we're going to be
22 expanding the allowable categories of what's within the
23 scope of somebody's testimony, I would like to recall a
24 number of the Applicant's witnesses if we're allowed the
25 same latitude.

1 MR. McMAHAN: You Know, Your Honor, I'll withdraw
2 the question. That's fine. I have nothing further. Thank
3 you.

4 JUDGE WALLIS: Are there other questions on cross?

5 MR. MARVIN: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. MARVIN:

8 Q. Mr. Lang, my name is Bruce Marvin. I'm Counsel for
9 the Environment in this matter, and I just have a couple
10 questions regarding the -- well, not regarding the applicable
11 standards. I guess, you know, based on your understanding of
12 the law does the State Environmental Policy Act require that
13 the visual aesthetic issue be addressed as part of the
14 environmental impact statement?

15 A. I should clarify that I'm not an attorney and if
16 you want a legal opinion or interpretation that you should
17 ask our legal counsel, but, yes, that is true.

18 Q. Is it fair to say that are you familiar with --
19 again I'm not asking as an attorney, but in your position as
20 the conservation director is it your understanding that EFSEC
21 has authority to review visual aesthetic matters in its
22 proceedings?

23 A. Yes, it is.

24 Q. Why don't we turn to page 6 of your written
25 testimony and I'll just take you there right now. I guess I

1 have general questions I'd like to ask you first. In your
2 role as the conservation director have you had occasion to
3 enter into negotiations with proposed various projects within
4 the Gorge regarding the impacts they may have on scenic
5 views?

6 A. Yes, through our legal counsel we have.

7 Q. Are you familiar with those?

8 A. I am.

9 Q. On page 6 it indicates that and I'll just read the
10 paragraph.

11 "Given the height of modern wind turbines, it is
12 likely that a small number of turbines sited north of the
13 Scenic Area boundary (behind the Columbia Hills as viewed in
14 these photos) would break the skyline and be visible from
15 key viewing areas. However, Friends has reached settlements
16 with an energy developer that prevent development at the
17 most visible of these sites, and thereby protect these view
18 sheds."

19 Are you familiar with those settlement
20 negotiations that are referenced in this?

21 A. Yes, I am.

22 Q. And during those settlement negotiations were there
23 discussions regarding possible mitigation of scenic impacts?

24 A. Yes, our first focus is avoidance, of course.

25 Q. Can you describe to me the types of -- not

1 necessarily the types of mitigation that you were advocating
2 for, but the type of mitigation that would be possible for
3 visual impacts arising from a wind power project?

4 A. Yes, not to go into too much detail because of a
5 general confidentiality agreement.

6 Q. I understand, but in a general fashion. I don't
7 want the specifics of any relationship with any party, but
8 this is in a general fashion can you describe those.

9 A. There are circumstances where applicants have,
10 first of all, even though their project was outside of the
11 scenic area boundary did a thorough assessment of visibility
12 from key viewing areas within the National Scenic Area,
13 including the key viewing areas in the state of Oregon. And
14 then partially based on that visibility analysis they agreed
15 to relocate or eliminate turbines that were visible from
16 points within the National Scenic Area not specifically
17 because of any regulatory arm reaching from the National
18 Scenic Area, but because of the significance of the
19 viewpoints and the impacts that it would have to a visitor's
20 visual experience.

21 So relocating the turbines or removing the
22 turbines from the project completely were two of the primary
23 ways that those impacts were addressed.

24 Q. In your experience has there ever been discussion
25 of off-site mitigation for visual impacts?

1 A. There has.

2 Q. How does that manifest it itself?

3 A. Generally speaking how it manifests itself would be
4 to, for example, set up a fund to purchase nearby lands that
5 could be subject to future development and energy
6 development; the purchase of those lands or significant
7 interest in those lands to make sure that they weren't
8 developed to preserve habitat or scenic views.

9 Q. How were those funds typically managed under these
10 circumstances? I apologize. I'm saying just typically. You
11 can talk specifically, but maybe a general fashion would be
12 one of them.

13 A. Those funds can be managed by a land trust with
14 this specific agreement in the settlement on how the funds
15 are to be managed and the types of lands or resources that
16 the funds would be used for to acquire to protect from the
17 original developer.

18 Q. Are there land trusts within the Columbia Gorge
19 Skamania County area that would be capable of administrating
20 an off-site mitigation program?

21 A. Yes, there are.

22 Q. Can you name those for me.

23 A. Well, what I can do is name some land trusts in a
24 general nature.

25 Q. Okay. Point us to some names of land trusts and

1 just see what we've got on the table.

2 A. The primary land trusts that have been active in
3 the Columbia River Gorge area are, first of all, the Trust
4 For Public Land, the Columbia Land Trust, and there's the
5 Friends of the Columbia Gorge Land Trust as well that's been
6 existence for a little over four years.

7 Q. When it comes to mitigation issues and settlement
8 negotiations were the FAA required lighting on turbines of
9 concern to you to your organization?

10 A. Yes, it was a concern.

11 Q. Were you able to successfully address those in your
12 settlement negotiations?

13 A. Generally. Successfully I would rather not address
14 that point.

15 Q. What kinds of mitigation would you consider
16 reasonable with regard to FAA lighting and its impact on
17 night sky from the turbine projects?

18 A. Well, again, I will just preface my response by we
19 always target avoidance first before we get to mitigation,
20 but my understanding is that there is a radar triggered
21 program in effect that actually applied I think in the
22 northeast on a project whereby the lights will shut off. As
23 far as -- maybe you should be more specific with your
24 question. I want to make sure I answer it correctly.

25 Q. Yes, I am just if you were -- let me make it more

1 hypothetical. If you were in a situation where you were
2 reaching mitigation of FAA lighting on wind turbines or for
3 any other structure for that matter, what would you deem to
4 be a reasonable alternative to having a constant flashing
5 light out there?

6 A. Well, again having to preface it with avoidance is
7 the first step, but beyond that as far as mitigation my
8 understanding is that there is a radar triggered program that
9 actually will illuminate the lights and be consistent with
10 FAA regs that's in application in I believe one site in the
11 northeast United States.

12 Q. Are there any other -- again with the understanding
13 that your first preface is avoidance, are there any other
14 visual or aesthetic mitigation measures that you deem to be
15 reasonable under these circumstances?

16 A. You know, that's such a tough one because as our
17 experts have certainly advised us and I think the Council, it
18 is such a transformative type of development that really
19 avoidance it's hard to hide something that size and
20 particularly with the movement involved too. So always the
21 best thing is to be able to site these and screen them behind
22 land forms so they're not directly visible from important
23 viewing areas, and that's really what our focus is.

24 MR. MARVIN: Thank you.

25 JUDGE WALLIS: Ms. Drummond, do you have

1 questions?

2 MS. DRUMMOND: I'm sorry. I apologize, Your
3 Honor. Just a few quick questions.

4 CROSS-EXAMINATION

5 BY MS. DRUMMOND:

6 Q. Are you aware of any project located in Klickitat
7 or Skamania County in which either county imposed setbacks on
8 that project based on the Scenic Area Act?

9 A. No.

10 Q. Is it correct that the Klickitat County and Energy
11 Overlay Zone permits wind development outright throughout
12 much of the county and borders the scenic areas does not
13 include setbacks from the scenic area?

14 A. To my knowledge that's correct.

15 MS. DRUMMOND: Thank you.

16 JUDGE WALLIS: Are there any questions from
17 Council Members?

18 MR. FRYHLING: We're sitting in the middle of a
19 geologic zone that happened over the last millions and
20 millions of years, and so when you look at the Gorge you
21 look at the river at the bottom and you look at the
22 hillsides at the top, and that's someplace at top of the
23 Gorge here we look at the scenic area. How much of this
24 land is being protected by the scenic area? And I'm meaning
25 from the river to the top of the mountains or hills created

1 this, and I just I don't know if you have an answer to that.
2 It's just a question I've had in my mind ever since we've
3 been here on this project. The scenic area is one thing
4 created by government, and I don't know if it took into
5 consideration what the actual scenic area is here in that
6 respect because I look at these maps and see a straight line
7 that doesn't happen in nature. Can you answer that or is
8 that just something --

9 THE WITNESS: Thank you. I will attempt to answer
10 that. If you need a follow-up or clarification, that's fine
11 too.

12 Regarding the boundary of the scenic area, I wish
13 we had a map of it here because it varies quite a bit. I
14 believe at least as one of the primary groups that's
15 supported scenic area legislation our goal was to protect
16 the view shed as seen from important viewing areas within
17 the Columbia River Gorge. However, as the Act made its way
18 through Congress, you know, certainly there's push and pull
19 and back and fourth, and the boundary isn't perfect. It
20 doesn't protect everything that you would see, and it also
21 just in Friends of the Columbia Gorge's estimation that that
22 was in the early 1980s to 1986, and in our view no one
23 really contemplated the type of development that is being
24 proposed now to be in the locations that they are being
25 proposed.

1 Certainly our goal was to protect seeing areas
2 from important viewing areas within the Columbia River
3 Gorge.

4 MR. FRYHLING: Thank you.

5 JUDGE WALLIS: Redirect?

6 MR. KAHN: Thank you.

7 REDIRECT EXAMINATION

8 BY MR. KAHN:

9 Q. Mr. Lang, could you get the letter from Mr. Dreyer
10 out again. This would be page 5, the area that Mr. McMahan
11 was asking you a question about.

12 JUDGE WALLIS: What is the number again, please?

13 MR. KAHN: Exhibit 25.01c, and this is the
14 unnumbered document.

15 BY MR. KAHN:

16 Q. I'm referring to the fifth page at the top of the
17 page. The first words are "given the level of development".

18 A. Yes.

19 Q. I am going down to the second paragraph under the
20 bold heading that starts off "the County should adopt". In
21 this letter it is urged that the county adopt a setback from
22 the National Scenic Area. Correct?

23 A. Yes.

24 Q. Do you know the origin of that? Is that something
25 Friends of the Columbia Gorge made up or was that in the

1 original draft of the EOZ ordinance to which this letter
2 comments on?

3 A. Well, it was in the original drafts, but I believe
4 it was also in the EIS. But from my recollection I think we
5 were also drawing from Oregon law and Wasco County ordinances
6 that either a setback or a no-adverse effect standard in law,
7 and that is outside and separate from the National Scenic
8 Area Act.

9 Q. So you were asking just Klickitat to adopt what
10 jurisdictions in the National Scenic Area had done?

11 A. Yes.

12 Q. You were asked questions about or several questions
13 about imposing developments within an urban area. Has
14 Friends of the Columbia Gorge ever publicly supported any
15 economic development projects within the National Scenic
16 Area?

17 A. Yes.

18 Q. Can you just give a few as an example if you can
19 think of any.

20 A. Well, we routinely supported economic development
21 grants and loans for a variety of different businesses and
22 also infrastructure development within the Gorge urban areas.
23 Those funds were authorized through the National Scenic Area
24 Act and then disbursed from the Oregon Investment Board or
25 its counterpart in Washington state or by Skamania County.

1 Q. Does Friends of the Columbia Gorge review every
2 development for land use of any type within the boundaries of
3 the National Scenic Area?

4 A. Well, if I may, I will make a distinction. We've
5 reviewed every land use application within the National
6 Scenic Area outside of urban areas.

7 Q. Thank you. Does Friends of the Columbia Gorge
8 oppose every such application?

9 A. Certainly not. We rarely oppose land use
10 applications. I would hazard a guess that it would certainly
11 be less than two percent of the scenic area land use
12 applications that we review and comment on that we would
13 oppose, and by oppose I would say by filing an appeal
14 challenging the decision of approving that development.

15 Q. So taking the flip side of that, approximately
16 98 percent of the applications for development within the
17 National Scenic Area outside of urban areas the Friends of
18 the Columbia Gorge does not take a position opposing it.

19 A. Does not oppose, that's correct.

20 Q. Thank you. Again, Mr. Lang, calling your attention
21 to the letter to Curt Dreyer that we spoke about a moment
22 ago, the unpagged numbered letter. Mr. McMahan questioned you
23 about your statement in the middle of the paragraph citing to
24 WAC 463-47-110(1)(b) as similar standards to a setback. Do
25 you see that in that letter?

1 A. I do.

2 Q. Were you referring to any particular language in
3 the Washington Administrative Code Provisions that apply to
4 EFSEC's analysis?

5 A. Well, again just to clarify, this letter was
6 submitted by Rick Till of our staff, but I did review this
7 letter, of course, before it was submitted. So, yes, that is
8 referring to specific provisions in the SEPA rules.

9 Q. And those are the ones that you cited in the
10 letter?

11 A. That's right.

12 MR. KAHN: Thank you. That's all I have.

13 MR. McMAHAN: Yes, I have a couple, Your Honor.
14 Thank you.

15 RE-CROSS-EXAMINATION

16 BY MR. McMAHAN:

17 Q. Mr. Lang, you talked about settlements with wind
18 energy developers. I don't know if you're talking about one
19 or more wind energy developers. Maybe you can tell me. What
20 wind developers have you reached settlements with concerning
21 what you view to be impacts on the scenic area, which
22 developers?

23 A. Well, I prefer not to pull out specifically
24 developers, but I can tell you in Klickitat County we've
25 reached two settlements with wind energy developers.

1 Q. And you're not going to tell us who?

2 MR. KAHN: I'm not sure what relevance that would
3 be to the proceedings before this Council as well.

4 MR. McMAHAN: He makes quite a big deal about the
5 fact that he's settled their lawsuits against wind
6 developers. I'm interested in knowing more about those.

7 MR. KAHN: He was asked questions about it. He
8 didn't volunteer the information nor did he testify about
9 it, and I believe it's irrelevant.

10 MR. McMAHAN: Oh, it's in his direct testimony.
11 Mr. Marvin explored it on cross.

12 JUDGE WALLIS: He also indicated a desire not to
13 disclose confidences that resulted from those discussions.

14 MR. McMAHAN: Then maybe we could have some
15 clarification then, and if I could ask because I'm not sure
16 the record is clear about that.

17 JUDGE WALLIS: You may explore but not to the
18 extent that any confidences would be revealed.

19 MR. McMAHAN: Well, then I greatly respect that
20 ruling.

21 BY MR. McMAHAN:

22 Q. So are the settlement agreements you've reached
23 with wind developers, the two that you talked about,
24 confidential agreements; in other words, bounded by
25 confidentiality to be more specific?

1 MR. KAHN: The question is asked to you, Mr. Lang,
2 if you know the answer.

3 A. We have an agreement that we will not disperse the
4 information, but we're not specifically bound by a
5 confidential agreement. You know, it's a recognition that to
6 a certain degree I mean nobody is ashamed of what we did at
7 all. Then also we wanted to have just a gentleman's
8 understanding that we wouldn't go out to the media and tout
9 that one thing or another had been done; rather we reached
10 agreement that was to both parties satisfaction and allowed
11 the project to go forward by actually avoiding adverse
12 impacts.

13 Q. But these agreements were not specifically subject
14 to confidentiality agreements?

15 A. That's right.

16 MR. McMAHAN: Well, I guess I'm not so sure these
17 are confidential agreements then.

18 MR. KAHN: And I would again object on relevance
19 grounds to the issues that are before this proceeding,
20 before this Council.

21 MR. McMAHAN: There was a lot of testimony about
22 efforts to mitigate impacts and the agreements to negotiate
23 with windmill owners, Your Honor.

24 JUDGE WALLIS: Yes, the ruling on that matter
25 remains the same.

1 MR. McMAHAN: Meaning? Sorry.

2 JUDGE WALLIS: Meaning the objection is overruled.

3 BY MR. McMAHAN:

4 Q. So which developer did you have these agreements
5 with?

6 A. With Cannon Wind Energy.

7 Q. That one developer?

8 A. Yes, there are two agreements with that developer,
9 yes.

10 Q. So you have settled projects with one single
11 developer?

12 A. Yes.

13 Q. Where is that? Is that developer a Washington
14 developer?

15 A. The land, of course, are in Washington, but they're
16 based I believe in southern California.

17 Q. Okay. How large -- so you're talking about two
18 different development sizes; is that right?

19 A. Yes, overlapping sites though. It's in the same
20 general area in Klickitat County.

21 Q. How many megawatts?

22 A. Gosh, I don't recall off hand.

23 Q. Well, 200, 300? Do you know how many megawatts
24 you're talking about here? How many wind turbines maybe?

25 A. I believe it was considerably less than that. How

1 many wind turbines?

2 Q. Yes.

3 A. Approximately 30.

4 Q. Was there some financial exchange with the Friends
5 of the Columbia Gorge?

6 A. Not with Friends of the Columbia Gorge.

7 Q. With the conservancy organization?

8 A. There was with Friends of the Columbia Gorge Land
9 Trust which is I'm not explaining here. It's actually a
10 separate entity.

11 Q. So how much did Cannon pay you to sell these
12 lawsuits?

13 A. They didn't.

14 MR. KAHN: I'm going to object on relevance
15 grounds. I'm not sure that's necessary information.

16 JUDGE WALLIS: I'll sustain that.

17 MR. McMAHAN: All right. Very well.

18 BY MR. McMAHAN:

19 Q. One clarification question. I think that Mr. Kahn
20 actually misspoke in his redirect. He stated that inside of
21 the Wasco County ordinance that apparently has adopted some
22 setback from the scenic area; is that right? On redirect.

23 MR. KAHN: I don't I believe I cited any
24 particular ordinance. I believe Mr. Lang referred to a
25 Wasco County ordinance, not me.

1 BY MR. McMAHAN:

2 Q. Do you recall that testimony regarding an ordinance
3 from a county that has imposed, your testimony, a setback
4 from the scenic area?

5 A. Wasco County does have provisions in its comp. plan
6 that addressed visibility from the National Scenic Area.

7 Q. And then Mr. Kahn asked for your confirmation in
8 his words that other jurisdictions, plural, have done this.
9 Something other than Wasco County?

10 A. Oregon's EFSEC has regulations as well.

11 Q. Really? Where in Oregon's EFSEC rules do they
12 impose a setback from the scenic area?

13 A. Well, I believe it's a no-adverse effect standard.
14 They were in the law.

15 Q. Which I'm a pretty active Oregon EFSEC
16 practitioners. That's not the same as a setback, is it?

17 A. Well, I think maybe in your mind it got blurred
18 where Wasco County has a setback and EFSEC has a no-adverse
19 effect standard, and I can see how it happened. It was kind
20 of bunched together in one question.

21 Q. Okay. But as to county jurisdictions, just to make
22 it clear what Mr. Kahn asked you and what was answered, one
23 single county apparently has adopted a setback from the
24 scenic area; is that correct?

25 A. To my knowledge that is correct.

1 Q. We'll just leave Oregon EFSEC alone and take that
2 up on another day. Thank you.

3 A. Or not.

4 Q. My preference.

5 MR. McMAHAN: Nothing further.

6 JUDGE WALLIS: Is there anything further for the
7 witness?

8 MS. DRUMMOND: Susan Drummond, Skamania County,
9 very briefly.

10 RECROSS-EXAMINATION

11 BY MS. DRUMMOND:

12 Q. I believe you addressed questions about the
13 settlement agreement with Klickitat County on the Energy
14 Overlay Zone earlier. There was one settlement agreement in
15 2005 with Friends of the Gorge. Correct?

16 A. That's correct.

17 Q. And as part of the settlement agreement the county
18 pulled the EOZ out of the scenic area or stated that it would
19 not be in the scenic area because there would be no buffers.
20 Correct?

21 A. To my recollection. It's been five years but, yes.

22 Q. It's been five years since it's been pulled, but as
23 part of the settlement agreement the Energy Overlay Zone did
24 not extend into the scenic area but also that there would not
25 be buffer from the scenic area as part of that; is that

1 correct?

2 A. I recall the first part of your statement, but I'm
3 sorry. I don't recall any settlement that there would not be
4 a buffer.

5 Q. I guess to rephrase my question, there are no
6 buffers in the current EOZ which was adopted following
7 settlement?

8 A. Yes.

9 Q. Correct. Then if I understood the testimony
10 correctly, did you state that the Scenic area boundary line
11 is fairly straight or did I mishear that?

12 A. I didn't state that.

13 Q. Okay. All right. So I misheard that I know it
14 isn't. We have some demonstrative exhibits here and one is
15 the county and I have a smaller one, and it's certainly not
16 straight. Okay. So just wanted to clarify that. Thank you.

17 MR. BAKER: Can I have one follow up question?

18 RE-REDIRECT EXAMINATION

19 BY MR. BAKER:

20 Q. Ms. Drummond asked you about the Klickitat County
21 settlement on the EOZ.

22 A. Yes.

23 Q. She asked whether there was a buffer in those and
24 your answer was no. The letter with the unnumbered pages at
25 page 5 refers to the EOZ's EIS which in the letter states

1 contemplated the establishment of buffers. So under the EOZ
2 EIS could there be would buffers imposed to protect sensitive
3 areas?

4 A. Well, yes, there could be.

5 MR. BAKER: Thank you.

6 MR. TAYER: Your Honor.

7 JUDGE WALLIS: Mr. Tayer.

8 MR. TAYER: Your Honor, just one clarification.
9 There was quite a bit of testimony about settlement
10 agreements on wind farms in Klickitat County, and I just
11 want to make sure I got this clear. In your testimony on
12 page 6, it looks like line 19, I think it says that
13 settlement agreements at least one of them was with the
14 Windy Flats project. So I just want to make sure because I
15 thought I heard you testify that you didn't want to release
16 the name of the project, but that is the one you're
17 referring to, isn't it?

18 THE WITNESS: Excuse me while I find my testimony.
19 Page and line number?

20 MR. TAYER: Page 6, line 19. I am just trying to
21 triangulate whatever the project was that everybody was
22 talking about here.

23 THE WITNESS: Yes.

24 MR. TAYER: Thank you.

25 JUDGE WALLIS: Anything further?

1 Let the record show that there is nothing further.
2 Mr. Lang, thank you for your testimony. You're excused from
3 the stand at this time.

4 MR. McMAHAN: Your Honor, one cleanup that I
5 forgot to undertake. I'm sorry to interrupt you. Can we
6 make sure that cross-examination exhibits they we've
7 identified which are 25.01c through 25.06c are admitted and
8 moved for admission of those exhibits?

9 (Exhibit Nos. 25.01c through 25.06c offered into
10 evidence.)

11 MR. KAHN: Which exhibits were those, Mr. McMahan?

12 MR. McMAHAN: He testified to every one of my six
13 cross-examination exhibits. I just want to make clear that
14 they're in the record. I move to admit them.

15 MR. KAHN: I would just reiterate the same
16 objections I did during the testimony about the specific
17 objections that are both relevance and way beyond the scope
18 of Mr. Lang's rebuttal testimony.

19 JUDGE WALLIS: The ruling is the same. The
20 objection is overruled and the exhibits are received in
21 evidence.

22 (Exhibit Nos. 25.01c through 25.06c admitted into
23 evidence.)

24 JUDGE WALLIS: We are going to take a 15-minute
25 recess at this point. When we come back there are some

1 administrative matters that we want to attend to. These
2 include the following: One is the schedule for the
3 Mr. Michaels' examination, and second is review of the
4 exhibits in this record, and third is the beginning to
5 discuss the post-hearing process, including the briefing.

6 Now, it may be that we wish to defer the
7 discussion on the exhibits and much of the post-hearing
8 process discussion at least until we hear Mr. Michaels, but
9 we do need to address the schedule for his appearance and to
10 start touching on the briefing process.

11 So with that let's be in recess for 15 minutes.

12 (Recess taken.)

13 JUDGE WALLIS: The three matters we indicated we
14 would look at at least briefly are Mr. Michaels' appearance
15 and an accurate updated exhibit list with an accurate record
16 of disposition and starting to look at the briefing process,
17 if not specific schedule. Let me go back to the top of that
18 list and ask what the parties have worked out in terms of
19 Mr. Michaels' appearance.

20 MR. ARAMBURU: Mr. Wallis, during the lunch break
21 I was luckily able to get a hold of Professor Michaels in
22 California. We went over scheduling issues with him, and I
23 indicated that the Council is anxious to move forward with
24 his testimony. We went over possible dates. I am
25 unavailable because of prior commitments on Tuesday the 18th

1 and Wednesday the 19th, but January 20, the Thursday, appear
2 to be good for Professor Michaels and good for me. I talked
3 to Mr. McMahan about that, I talked to Mr. Marvin about
4 that, I have talked to Friends of the Columbia Gorge, and
5 that seems to be a good date. We will arrange for
6 Mr. Michaels to appear in person at a location of the
7 Council's choice. I'm checking with Mr. Wright because he
8 would be flying in the evening before. We would like to
9 schedule that in the afternoon if we could on the 20th.

10 Then Mr. McMahan -- I don't want to misstate
11 anything Mr. McMahan says. Mr. McMahan says there is still
12 some possibility that he may stipulate to that testimony,
13 and he indicated that he, of course, is telling me by the
14 end of this week. So we will make tentative arrangements
15 for Mr. Michaels. If it's unnecessary, we will tell him to
16 stay in sunny southern California and not attend. And so
17 that's status of that.

18 JUDGE WALLIS: Mr. McMahan?

19 MR. McMAHAN: That's all correct.

20 JUDGE WALLIS: Any other comments?

21 I have no adverse reaction to any of that. I did
22 also talk with Mr. Wright who indicated that we would find a
23 room at the Commission to hold this process on Thursday
24 afternoon the 20th, and that we would have a telephone link
25 so that any of the Council Members who could not attend in

1 person could call into that. So unless there's any adverse
2 suggestion and subject to the possibility that Mr. McMahan
3 may decline cross-examination, let's set on this record by
4 this statement that we will begin at 1:30 in the afternoon
5 at the offices of the Utilities and Transportation
6 Commission. We don't have a firm commitment on a room yet,
7 but we will find one and then there undertake
8 cross-examination of Mr. Michaels. We will also inquire of
9 Council Members whether the members may have questions of
10 Mr. Michaels as well.

11 I am going to suggest that after conferring with
12 our court reporter that we defer the list of our review of
13 the list of exhibits until the session on the 20th that we
14 have just set, and with that and also with the topic of
15 briefing I'm going to suggest that even if Mr. Michaels does
16 not appear that we have a conference of the attorneys and
17 resolve any issues relating to the exhibits and to the
18 approach of briefing. Again, I'm not quite sure how far we
19 will get in our planning, but next week may be an optimal
20 time to undertake that. Is that acceptable to folks?

21 MR. ARAMBURU: That is acceptable. If
22 Mr. Michaels does not appear we may request our
23 participation be by telephone for that conference if that's
24 possible.

25 JUDGE WALLIS: Yes, indeed.

1 MR. MARVIN: Judge Wallis, having not participated
2 in one of these proceedings before and not to have it be
3 committed at this time in terms of what we're doing, with
4 regard to briefing what has been the past practice? Is
5 there some specific time frame that EFSEC has considered or
6 is that really something that's up to the parties to decide?

7 JUDGE WALLIS: Well, the briefing schedule in past
8 proceedings with which I'm familiar were under different
9 circumstances from the process in this proceeding.

10 Fundamentally what we are looking at is having
11 some either simultaneous or seriatim briefing on the
12 adjudicative portion to be followed with other elements of
13 our process and concluding with the opportunity to comment
14 on the entire record at the point that it is proper to
15 consider the SEPA Final Environmental Impact Statement.

16 So there are some reservations in terms of a
17 process yet because we do not know the ultimate schedule on
18 some of those elements. I think that's enough. In the
19 meantime you can be thinking about whether you would prefer
20 simultaneous or seriatim briefs.

21 While we are on the topic of briefing, I do want
22 to make something very clear to the parties. There will be
23 a page limit, and the font size margins spacing will all be
24 standardized among the parties. Some of the documents came
25 in with different spacing and different sizes, and we will

1 ensure that there are standards in this particular endeavor.

2 It is also appropriate I believe that the parties
3 brief and the Council consider the land use consistency and
4 process along with other elements. As a matter of fact, it
5 is possible that those may be briefed initially or
6 separately, but I would suggest that we have a separate
7 either segment or separate portions of each brief set aside
8 for that process. So in that event there will be no
9 question about whether documents that were received during
10 the land use proceeding may be addressed. In fact they may.
11 There have been comments about it during this aspect of the
12 proceeding, and anything relating to the land use process
13 then will be appropriate to address in that segment.

14 In the meantime you can be thinking about the
15 desired brief length, whether it should be single digit or
16 double digit double in terms of number of pages, and we will
17 take that up next time. We also are continually looking at
18 a process timing. As of yet we have been unable to secure a
19 firm estimate on when the Final Environmental Impact
20 Statement will be issued, and to some extent we're shooting
21 in the dark on that, but we have a number of options in
22 terms of process and can engage in some of that process
23 prior to the release of the document. We want to ensure
24 that following that document folks have the opportunity to
25 review and digest it and to comment knowledgeability on that

1 and how it relates to the adjudicative process.

2 Are there any questions that the parties have
3 regarding process?

4 MS. DRUMMOND: Susan Drummond, Your Honor.

5 JUDGE WALLIS: Ms. Drummond.

6 MS. DRUMMOND: Thank you. No questions. Just
7 from the County's perspective to the extent we can expedite
8 this process that would be much appreciated.

9 JUDGE WALLIS: I'm sorry. I didn't quite hear
10 what you said.

11 MS. DRUMMOND: Not a question, Your Honor. It's
12 just a comment. To the extent that we can expedite the
13 remainder of this process from the County's perspective that
14 would be much appreciated.

15 JUDGE WALLIS: We understand. Thank you.

16 MR. ARAMBURU: Will we be able to get a firmer
17 indication about timing of the filing of the environmental
18 impact statement at our prehearing conference or hearing set
19 for January 20?

20 JUDGE WALLIS: I think it is unlikely that things
21 will move fast enough that we can have a firm estimate by
22 then. Just I would love to be able to say yes, but my
23 understanding based on discussions within the past couple of
24 days with the people working that process that as of yet it
25 is not possible to do that. If that changes in the

1 meantime, then certainly we will use that information in
2 discussing a schedule.

3 MR. ARAMBURU: The second item perhaps for the
4 conference for the 20th is that I don't know that we have
5 set a time for the view of the site by the Council.

6 JUDGE WALLIS: That is another of the elements.
7 We want again to do that following issuance of the Final EIS
8 again so that the Council Members and the parties all have
9 the adjudicative and the EIS documents in mind when they
10 take the view and are able to identify the matters of
11 concern in those processes.

12 MR. ARAMBURU: I don't believe we can resolve it
13 today, but it certainly would be our feeling that before we
14 do briefing or the Council considers any briefing they need
15 to have the view trip to see what's -- to have the view in
16 advance of reading the briefing, even if it means that
17 that's done before the Final EIS comes out. So that would
18 be a request I think that from our side of things we'd also
19 like to have the Council to arrange for some opportunity for
20 oral argument on the either land use issues or the
21 adjudicative process or both and sometime that's appropriate
22 for the Council.

23 JUDGE WALLIS: Yes. And the list of steps that I
24 have put together just informally to see how things appear
25 to be working out includes the opportunity for oral

1 argument.

2 MR. ARAMBURU: Thank you.

3 MR. KAHN: I have a couple issues, Your Honor.

4 Right before the noon break Mr. McMahan gave us two
5 documents on the letterhead of URS: one, supplemental
6 information on turbine blades length, and one supplemental
7 information on turbine noise monitoring. My first question
8 is are these automatically part of the record at this point?

9 JUDGE WALLIS: No.

10 MR. KAHN: Okay. That's fine. My second question
11 then. The supplemental information on turbine noise
12 monitoring includes the request we made for additional
13 discovery document during the pendency of the hearing, and I
14 appreciate getting them. When that issue came up last
15 Wednesday I believe it was I also asked for the opportunity
16 if we deemed it necessary to have the chance to question
17 Mr. Storm further based on this information.

18 We just got it. I have no idea what it says or
19 whether that will be something we want to do, but if so, I
20 would like the opportunity to do that, and if so we could
21 probably be ready to do that on the 20th in conjunction with
22 everything else we're doing, whether it's telephonically or
23 in person.

24 MR. McMAHAN: Your Honor, frankly I was
25 anticipating that. I don't have a problem with that. It

1 may well be appropriate to all parties, including the
2 Council, to have that opportunity. Mr. Storm did make a
3 mistake in his testimony that it is explained by the data
4 and once he himself has reviewed the data that has been
5 submitted it will be far more clear what actually occurred.

6 So we're in support of that. I'll check the
7 schedule, but I think doing it telephonically at this point
8 would be a good idea. I'd rather not have him fly up again
9 at the Applicant's expense if we can avoid it.

10 MR. KAHN: Telephonic is fine. I can't imagine
11 it's going to be lengthy testimony. We have covered most of
12 it already.

13 JUDGE WALLIS: Very good. All right. Is there
14 anything further?

15 MR. KAHN: Just clarification. My presence
16 whether I show up in person or not on the 20th is largely
17 going to be dependent on whether Professor Michaels is being
18 examined. So, Mr. McMahan, you'll circulate something by
19 the end of the week is my understanding as to that?

20 MR. McMAHAN: I can assure the parties and the
21 Siting Council we will send something out to the entire
22 service list by the end of the week, yes.

23 MR. KAHN: Thank you.

24 JUDGE WALLIS: Very good. Is there anything
25 further to come before the Council?

1 Mr. Baker.

2 MR. BAKER: I just recalled one thing. There were
3 some new exhibits on Wildlife that were entered on Thursday
4 that the parties agreed to circulate. That should at least
5 be circulated electronically. Those included the Fish and
6 Wildlife Service Guidelines for wind Power, the original
7 version of the WDFW Wind Power Guidelines. There were three
8 letters, WDFW letters that were submitted by the Applicant.
9 We would request that all of those exhibits that fall into
10 the category be circulated electronically within the next
11 week or so.

12 MR. McMAHAN: I guess a question. I don't
13 remember the original guidelines being circulated or entered
14 into evidence in the proceedings. Not that I'm shying away
15 from doing that, but I don't recall that.

16 MR. BAKER: That falls on us. Friends did move to
17 admit the original 2003 WDFW Guidelines. Those were
18 admitted. So Friends will circulate those. The Applicant
19 circulated paper copies of the 2009 guidelines. So that
20 would be for the Applicant to circulate electronically.

21 MR. McMAHAN: I guess I'm wondering why we need
22 the current guidelines. We're happy to do this, but there's
23 a record in the proceedings, and all parties interested have
24 had an opportunity to cross-examine and comment on them. We
25 argued this all ad nauseam. I guess I'm just not sure

1 administratively we need to do that as well.

2 MR. BAKER: For the benefit of any party who
3 wasn't in the room, for the benefit of EFSEC staff who will
4 be posting on their website. Mr. Marvin I believe moved to
5 admit the U.S. Fish and Wildlife Service Guidelines which
6 not even a paper copy of that has been circulated. So just
7 for purposes of having a complete record that everybody is
8 on the same page.

9 JUDGE WALLIS: Very well.

10 Mr. Marvin, can you circulate that as well?

11 MR. MARVIN: Yes, I was planning to take care of
12 that as soon as I got back to the office.

13 JUDGE WALLIS: And provide a hard copy for the
14 session on the 20th?

15 MR. MARVIN: Yes, and if possible I will have that
16 circulated before the 20th.

17 JUDGE WALLIS: Very well. All right. Thank you
18 very much for your attendance. It has certainly been an
19 interesting process. I can say from my brief and limited
20 experience that every one of these hearings is much
21 different from every other, and we will adjourn this session
22 and see everyone on the 20th at 1:30 p.m. Thank you all.

23 * * * * *

24 (Whereupon, the hearing was adjourned at 4:08
25 p.m.)

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13 E X H I B I T S

14	NO.	DESCRIPTION	ID	OF	AD	REJ
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19	18.02r	Summary of BPA Wind Integration		1207	1207	
20	18.03r	Intermittency Analysis Project		1207	1207	
21	18.04r	PJM report excerpts		1207	1207	
22	25.00	Testimony of Michael Lang		1366	1366	
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25	25.03c	Lang 12/16/09 FOCG/Brief		1406	1406	

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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 January 11, 2011, in Stevenson, Washington.

Shaun Linse, CCR 2029