

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Hearing Volume X
WHISTLING RIDGE ENERGY, LLC.) Pages 1422 - 1521
WHISTLING RIDGE ENERGY PROJECT)
_____)

A hearing in the above matter was held on Thursday, January 20, 2011, at the Washington Utilities and Transportation Commission, at 1300 South Evergreen Park Drive S.W., in Olympia, Washington at 1:30 p.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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7 * * * * *

8 JUDGE WALLIS: This is a hearing session before
9 the Washington State Energy Facility Site Evaluation Council
10 involving the Whistling Ridge application. It is being held
11 on January 20 of the year 2011 in the offices of the
12 Washington State Utilities and Transportation Commission in
13 Olympia. My name is Robert Wallis, and I am the assigned
14 Administrative Law Judge for this proceeding. I would like
15 to have the parties who are present identify themselves by
16 stating your name and the client you are representing and
17 the name of any other attorney or representative who is with
18 you in this proceeding. And I will begin with the bridge
19 line this time with Counsel For the Environment?

20 MR. MARVIN: H. Bruce Marvin, Assistant Attorney
21 General appearing on behalf of Counsel for the Environment.

22 JUDGE WALLIS: The Seattle Audubon Society?

23 MR. CANTRELL: Shaun Cantrell representing Seattle
24 Audubon.

25 JUDGE WALLIS: Thank you, Mr. Cantrell.

1 In the room we have representatives of the
2 Applicant, Mr. McMahan.

3 MR. McMAHAN: Tim McMahan, Stoel Rives Law Firm.
4 On my left is Erin Anderson with Stoel Rives, and to my
5 right Darrel Peeples.

6 JUDGE WALLIS: Thank you.

7 Save our Scenic Area?

8 MR. ARAMBURU: Rick Aramburu representing SOSA.

9 JUDGE WALLIS: And the Friends of the Columbia
10 Gorge?

11 MR. KAHN: Gary Kahn representing Friends of the
12 Columbia Gorge. On my right is Nathan Baker and we have
13 several more people in the background as well.

14 JUDGE WALLIS: Thank you very much.

15 Is there any party whose representative is present
16 that has not been identified?

17 Let the record show that there is no response.

18 MR. SUTHERLAND: Judge Wallis, this is Doug
19 Sutherland representing Skamania County.

20 JUDGE WALLIS: Mr. Sutherland, thank you. I will
21 acknowledge the presence on the bridge line of Mr. Fryhling
22 and Ms. Adelsman and presence in the hearing room of
23 Mr. Tayer, all of whom are Council Members.

24 Is there any other Council Member on the line?

25 Let the record show that there is no response.

1 The purpose for today's session is to continue the
2 examination of Mr. Mark Storm and take up with further
3 cross-examination. I am going to ask any party that intends
4 to engage in cross-examination to identify yourself at this
5 time.

6 MR. KAHN: Gary Kahn on behalf of Friends of the
7 Columbia Gorge. I do intend to question Mr. Storm.

8 MR. ARAMBURU: Rick Aramburu representing SOSA.

9 JUDGE WALLIS: Any others?

10 Let the record show that there is no response.

11 We do have a limited time for this discussion, no
12 more than one and a half hours, and I am going to ask the
13 parties who are starting the examination to hold your
14 examination to 45 minutes, and then we'll have time for our
15 redirect follow up and if necessary a recross.

16 Mr. Storm, you have indicated that you are on the
17 line; is that correct?

18 MR. STORM: Yes, sir.

19 JUDGE WALLIS: I'm going to remind you that you
20 have previously been sworn on oath in this matter and you
21 are continuing under that oath as you give this testimony.

22 MR. STORM: I understand.

23 JUDGE WALLIS: Mr. Storm, I'm also going to remind
24 you, thinking back to the testimony that you earlier gave,
25 that if you do not know the answer of a question, it is

1 perfectly all right to say that you don't know. If you have
2 previously given an explanation that applies to your answer
3 in this session, it's all right to cite back to that
4 explanation rather than to repeat it.

5 Mr. Storm, are you ready for cross-examination?

6 MR. STORM: Yes, I appreciate those reminders.
7 Thank you.

8 JUDGE WALLIS: Very well. Mr. Kahn.

9 MR. KAHN: Thank you, Your Honor. Just a little
10 logistical matter. I'm going to be referring to several
11 exhibits, all of which were documents contained in the
12 e-mail that Mr. McMahan sent in response to our request. I
13 have copies of the documents for the Council Members that
14 are here and a few extra for other parties. Do you want me
15 to pass them all out now or wait until I use them?

16 JUDGE WALLIS: I'd like to have them distributed
17 now, and I wonder if staff is available to help with that
18 distribution.

19 MR. KAHN: That is one exhibit.

20 JUDGE WALLIS: Before we go any further how would
21 you and Mr. Aramburu like to divide up your time?

22 MR. KAHN: I'm going to be carrying the brunt of
23 it. Mr. Aramburu, may pipe in with a few questions. We
24 will be done within the 45 minutes.

25 JUDGE WALLIS: Very well.

1 MS. MICHELLE: We need to pause for a minute and
2 make sure everybody has got everything.

3 JUDGE WALLIS: Let's be off the record for
4 administrative purposes.

5 (Discussion off the record.)

6 JUDGE WALLIS: Let's be on the record.

7 7.02 for identification is a multi-page document,
8 the first of which bears a designation C:L ARDAV\SMUTIL\S.
9 That's 7.02 for identification. 7.03 is a single-page
10 document showing a table with the project name, start time.

11 (Exhibit Nos. 7.02 and 7.03 marked for
12 identification.)

13 MR. KAHN: It has a page number on the bottom
14 which might help.

15 JUDGE WALLIS: It has page number TotaleBB-1.
16 7.04 for identification is a multi-page document with a
17 table of information, the first page of which is numbered at
18 the bottom LoggedBB-20. Now we have some photos; is that
19 correct?

20 (Exhibit No. 7.04 marked for identification.)

21 MR. KAHN: Yes, and the photos are all labeled on
22 the back consistent with the numbering system in the zip
23 file that we received from Mr. McMahan's office.

24 JUDGE WALLIS: Is there any particular order in
25 which you wish to pursue these?

1 MR. KAHN: There probably is, but I don't have
2 that in front of me.

3 JUDGE WALLIS: Very well. As you introduce them
4 to the witness would you pause for a moment after the
5 designation so we can give it a number, please?

6 MR. KAHN: Absolutely.

7 JUDGE WALLIS: Thank you.

8 Mr. Kahn.

9 (Mark Storm appearing by telephone.)

10 MARK STORM,
11 having previously been first duly sworn on oath,
12 testified as follows:

13

14 CONTINUED CROSS-EXAMINATION

15 BY MR. KAHN:

16 Q. Mr. Storm, in your previous cross-examination you
17 indicated that you thought that measurements for the LT2
18 receiver were not usable and may have been discarded; is that
19 correct?

20 A. I made that statement in my previous testimony,
21 yes.

22 Q. Near the end of the hearing we received a letter
23 from URS dated January 10 which states that no such data was
24 collected, and that URS has now provided all the spreadsheets
25 representing the background data and photos utilized for the

1 Whistling Ridge application; is that correct?

2 A. That is correct.

3 Q. In that letter, this is on page 1, the third
4 paragraph I'm quoting from it, "On occasion noise field
5 studies performed by the URS noise group for other projects
6 have resulted in occurrences when more than one long-term
7 noise monitor was installed, but for one or more reasons the
8 measurement data collected by the monitor was considered not
9 usable either during check from the monitor in the field or
10 subsequent to the survey during data analysis." Is that an
11 accurate statement?

12 A. That's accurate.

13 Q. So sometimes data collected is not usable or
14 invalid as a measure of ambient noise; is that correct?

15 A. Yes, that is correct.

16 Q. If you could look at Exhibit 7.04, the two-page
17 document with LoggedBB-20 at the bottom. Tell me when you
18 have that. Actually you don't know that it's a two-page
19 document. This is LoggedBB page 20 and page 22.

20 A. I'm looking at LoggedBB, yes.

21 Q. On LoggedBB-20 what does this spreadsheet
22 represent?

23 A. The spreadsheet contains data from the instrument,
24 short-term instrument.

25 Q. For short-term Collector No. 2; is that correct?

1 A. I'm looking what for I have contains both ST2 and
2 ST1.

3 Q. Okay. Thank you. The second column, the third
4 column with numbers from the left is LAFmin. Can you tell me
5 what the numbers in that column represent?

6 A. LAFmin means A-weighted sound level, fast response,
7 minimum.

8 Q. Okay. Putting it into lay people's language what
9 does that mean?

10 A. Sound levels are A-weighted level scaling, F
11 response is a setting on the instrument, and minimum means
12 that for that measurement period what was the minimum sound
13 level.

14 Q. If you could turn to page LoggedBB-22. For the
15 time period of 2350, which would be 11:50 p.m., can you tell
16 me what the noise level was noted at?

17 A. Mr. Kahn, just to confirm. This is for dated
18 January 21?

19 Q. Yes.

20 A. 2350 p.m. I'm reading the row for LAFmin the value
21 I see is 22.36.

22 Q. So that shows that at that time slot, at that
23 minute the average decibel level, the lowest was 22.36 for
24 11:50 p.m. for Short-Term Monitor 1.

25 A. No, that's not correct. It is not the average. It

1 would be the minimum level for that one minute -- I'm sorry.
2 For that one minute of measurement, yes.

3 Q. And that's what I meant. I meant the minimum not
4 the average. Thank you for clarifying. Now, if you have the
5 application in front of you, can you turn to page 4.1-6.
6 Tell me when you're there.

7 A. I have it in front of me. Thank you.

8 Q. In the first paragraph it explains that the
9 short-term data was collected using -- and I'm going to
10 mispronounce it.

11 MR. KAHN: And I'll spell it for you, Shaun.

12 BY MR. KAHN:

13 Q. -- a Bruel+Kjaer 2250 Type-1 real-time sound
14 analyzer; is that correct?

15 A. That is the instrument, yes.

16 Q. And these types of instruments have a noise floor;
17 is that correct?

18 A. Yes, they do.

19 Q. Can you explain again in layman's terms what a
20 noise floor is?

21 A. A noise floor would be the load threshold for that
22 instrument to measure a sound level.

23 Q. So any sound lower than that would that be recorded
24 at the decibel level that is the noise floor?

25 A. If the sound level being measured was less than the

1 noise floor that would be true, yes.

2 Q. It would be depicted as the noise floor level.

3 Correct?

4 Let me ask it a different way. If you have a
5 machine -- I'm just going to make up a number -- with a
6 noise level of 30 decibels, and there was a noise that was
7 at 25 decibels, what would the record of that 25-decibel
8 noise show on this machine with a 30-decibel noise floor?

9 A. I really don't know.

10 Q. All right. Let me ask this: If there was a noise
11 at 25 decibels but the machine had a noise floor of
12 30 decibels is it fair to say it wouldn't register at
13 25 decibels?

14 A. If I could restate that. If the floor was 30,
15 the --

16 Q. I'm sorry. You cut out a little bit.

17 A. Can you restate the question?

18 Q. Oh, I'm sorry. You were about to restate it. What
19 I'm asking is if there's a machine with a noise floor of
20 30 decibels, and there is a noise that it is picking up, but
21 noise is at 25 decibels what will the record of that noise
22 show when you see a printout?

23 A. Thirty for this example you're discussing.

24 Q. Thank you. Do you know what the noise floor is for
25 the machine that was used for the ST1 measurements?

1 A. I do not know.

2 Q. Would something around 21 or 22 coming from the
3 manufacturer specifications sound about right?

4 A. I don't know, but I would defer to the
5 manufacturer, yes.

6 Q. Okay. If you could look at Exhibit 7.02. Do you
7 have that?

8 A. Yes, sir.

9 Q. That is the long-term data that was included in the
10 information you provided us. Correct?

11 A. Yes.

12 Q. Tell us what this represents.

13 A. A sheet containing measurement data for the
14 instrument long-term monitoring position.

15 Q. Similar to Exhibit 7.04 this has an L Minimum
16 column, Lmin column; is that correct?

17 A. It does have an Lmin column, yes.

18 Q. Then I'm assuming that would be the minimum decibel
19 level recorded for each five-minute time interval for LT-1.
20 Correct?

21 JUDGE WALLIS: Mr. Storm, do you understand the
22 question?

23 MR. KAHN: Was that a no?

24 BY MR. KAHN:

25 Q. Was that correct that the Lmin column evidences the

1 lowest minimum decibel recorded within each five-minute
2 period?

3 A. Yes, that would be correct.

4 JUDGE WALLIS: Excuse me. I want to interrupt for
5 just a moment to tell everyone on the bridge line that there
6 is some shuffling of papers which because of amplification
7 you don't recognize, and it comes over here as the crashing
8 of waves on the shore and a heavy surf with occasional
9 gunshots, and I don't mean to make light of it. I'm calling
10 it to your attention and asking you to be very careful about
11 how you handle the material on your desk or near the
12 receiver.

13 With that, Mr. Kahn.

14 MR. KAHN: Okay. Thank you.

15 BY MR. KAHN:

16 Q. Thank you. If you could turn to page 4 of not the
17 fourth page, but it would be the second page -- well, you
18 don't have that. It's noted on the bottom as page 4 of
19 Exhibit 7.02. For those in the room it's the second page of
20 the document. Do you have that, Mr. Storm?

21 A. I have it in what I have in front of me.

22 Q. Can you tell me what the minimum recording was for
23 the 2350 time period?

24 A. I had to flip my page so I hope I didn't create too
25 much noise. Hold on a moment. 2350, January 21, I show 38.

1 Q. Now if you could go to the application for 4.1-6
2 again. That indicates for the long-term measurements a
3 Larson Davis 720 Type 2 Integrating sound level meter was
4 used; is that correct?

5 A. That is correct.

6 Q. Do you know what the noise floor is for that sound
7 meter?

8 A. I don't know.

9 Q. About 30 sound about right?

10 A. Thirty would be consistent with the Larson Davis
11 user manual which indicates that measurement can be made
12 between 30 and 140 decibels.

13 Q. What was the distance between LT1 and ST1, the
14 monitors that you used? The physical distance between the
15 two monitors do you know?

16 A. I don't know.

17 Q. To your recollection was it located in pretty much
18 the same place?

19 A. I would say they were in proximity to each other,
20 reasonably close.

21 Q. Then can you explain how the LT1 measurement for
22 the minimum noise level at 2350 is more than 15 decibels
23 higher than the short-term measurement for the same time in
24 the same location?

25 A. They are different instruments.

1 Q. Is the difference because the noise levels below
2 the 37.9 decibels for LT, that there isn't any noise levels
3 that were recorded below 37.9 decibels?

4 A. For which instrument are you talking about?

5 Q. LT1, Exhibit 7.02.

6 A. It looks like 38 is the lowest level reported for
7 LT1.

8 Q. If you look at the end of that document there's a
9 graph that shows the long-term decibel level over the 24-hour
10 period of time. Do you have that?

11 A. Yes, sir, I do.

12 MR. KAHN: For those present it's the last page of
13 Exhibit 7.04.

14 BY MR. KAHN:

15 Q. Does that indicate that the noise for this machine
16 is about 38 decibels?

17 A. I don't know.

18 Q. But you'd agree that this machine was in close
19 proximity to the short-term one measuring device and there's
20 a 15-decibel difference between the minimum level from the
21 short term to the long term for the same time period at
22 almost the identical location? Is that a fair statement?

23 A. By comparing the values of the same time, yes, that
24 would be a fair statement.

25 Q. So is it fair to conclude then than the LT1

1 monitoring device could not measure or quantify anything less
2 than 38 decibels?

3 A. They did. It would indicate that the levels below
4 38 were not being reported.

5 Q. If they were recorded, that would have lowered the
6 total ambient noise at that site, the calculations for the
7 average, the Leq? If the monitor had picked up sound levels
8 and recorded them lower than 38 as the short term monitor did
9 is it fair to say that the ambient noise level for that
10 location would have been lower than as actually recorded
11 because of the LT1 monitor?

12 A. As a hypothetical, yes, it's possible.

13 Q. Now if you turn to our Exhibit 7.03, which is page
14 TotalBB-1. Tell me when you have that.

15 A. I have it, yes.

16 Q. The very bottom, the chart that's measurement
17 location, measured sound data, do you see what I'm looking
18 at?

19 I'm assuming that you do. There's a number of
20 columns there. There's the Leq dBA. What does that
21 signify?

22 A. Leq stands for equalized sound level.

23 Q. And what does that mean in layman's terms?

24 A. Let me use a scenario. If I take a measurement
25 that's five minutes long and measuring something that it

1 creates varying sound levels, it could range from 20 to 40 or
2 50, whatever that range is. The Leq is the energy average
3 equal level, representing the equal level for something that
4 varies over that measurement of time.

5 Q. Now, I'm looking at the very first measurement in
6 the chart that I'm referring to. The 11:52 to 12:12 which
7 shows an Leq of 46. Are you with me? Do you see those?

8 MS. ANDERSON: Can you restate again which exhibit
9 you're looking at?

10 MR. KAHN: This is Exhibit 7.03. It's the one
11 page exhibit with the page number TotalBB at the bottom.

12 MS. ANDERSON: On the chart diagram?

13 MR. KAHN: I'm looking on the very bottom chart of
14 measured sound data, the very first reference.

15 MS. ANDERSON: All right. Thank you.

16 BY MR. KAHN:

17 Q. Are you with me? Do you know what I'm talking
18 about, Mr. Storm?

19 A. The sub table that has columns has ID, description,
20 time?

21 Q. Yes.

22 A. Okay.

23 Q. So the first column for that location for 11:52 to
24 12:12 has a Leq of 46. Right?

25 A. Yes.

1 Q. So you've explained what that is. So as I
2 understand the next three columns, L10, L50, and L90 what
3 that means is, and please tell me if I'm wrong, that for L10
4 that the sound level that they have listed there is 39 is
5 exceeded 10 percent of the time; is that correct?

6 A. That is correct.

7 Q. And then L50 would mean that decibel level was
8 exceeded 50 percent of the time. Correct?

9 A. Correct.

10 Q. And L90 that level was exceeded 90 percent of the
11 time. Right?

12 A. Yes.

13 Q. If you could explain to me because I'm certainly
14 not an acoustical if you have the L10 at 39, meaning it's
15 only exceeded that decibel level 10 percent of the time, how
16 do we have the average of 46?

17 A. In this case for ST1 there were a number of car
18 passbys that were very noisy and would cause if you will
19 spikes, and the Leq pulled those in because it's a
20 logarithmic summation.

21 Q. Okay. But those numbers don't show up in the L10,
22 L50, L90? Let me try again because that was poorly worded.

23 As I look through this chart then five of the six
24 Leq's exceed all of the other measurements; is that correct?

25 A. Could you restate that, please.

1 Q. Yes. For five of the six lines on that column, the
2 Leq is greater than the L10, L50, or L90 for that site; is
3 that correct? The only one that's different is the last one.

4 A. Yes, that's what I'm saying, yes.

5 Q. And your explanation is that the average decibel
6 level is higher because of the spikes from cars that aren't
7 included in L10, L50, or L90 numbers?

8 A. I was giving one example, but, yes, that's how the
9 acoustics that's how that value difference can occur.

10 Q. All right. Okay. Now I am going to turn your
11 attention, Mr. Storm, to the photographs that were included
12 in your e-mail. Do you have those?

13 A. I pulled them up on my screen, yes.

14 Q. The first one is Photograph No. 8. I don't know if
15 that's -- it's No. 8 that was on your zip file and for those
16 in the room the back is labeled.

17 MS. ANDERSON: I'm using my own copy. Could you
18 just hold it up so I can verify it visually?

19 JUDGE WALLIS: The label that I have with the
20 document beginning with eight is ST1-SW and we'll call that
21 7.05 for identification.

22 (Exhibit No. 7.05 marked for identification.)

23 MR. KAHN: Thank you.

24 BY MR. KAHN:

25 Q. Do you know which one we're talking about,

1 Mr. Storm?

2 A. Yes, that suffix help me identify which of the
3 photos.

4 Q. It's got a microphone it looks like on a curve in
5 the road. Is that the same one you're looking at?

6 A. Yes.

7 Q. This shows that the ST1 microphone was placed right
8 next to Kollock Knapp Road. Correct?

9 A. It was near the intersection of the Kollock Knapp
10 Road and Ausplund Road, yes.

11 Q. Isn't Kollock Knapp kind of a semi-major arterial
12 road in that area?

13 A. It sounds reasonable.

14 Q. Do hard surfaces such asphalt roads tend to reflect
15 higher sound levels than soft surfaces?

16 A. Yes, they can.

17 Q. So if this microphone was placed in the middle of a
18 meadow with grass or other vegetation, the ground would
19 absorb more of the sound instead of it being picked up by the
20 microphone; is that correct?

21 A. That's possible, yes.

22 Q. If you could look at photo 11 which is ST1-NE.

23 JUDGE WALLIS: We'll call that 7.06 for
24 identification.

25 (Exhibit No. 7.06 marked for identification.)

1 BY MR. KAHN:

2 Q. And that is a microphone with a telephone pole in
3 the background and some other structure on the right-hand
4 side.

5 MR. KAHN: This one, Erin. Got it?

6 MS. ANDERSON: I do. Thank you.

7 BY MR. KAHN:

8 Q. Do you know which one I'm talking about, Mr. Storm?

9 A. Yes, I believe I'm looking at it, yes.

10 Q. There's a structure on the right hand side of the
11 picture?

12 A. Yes, sir.

13 Q. Do you know what that structure is?

14 A. No, I do not.

15 Q. Do you have any idea whether anything in the
16 structure was emitting noise during the time period this
17 microphone was picking up measurements?

18 A. I do not know.

19 Q. Next is photo 10. It's ST1-N. Just for the
20 record, I'm assuming ST1 refers to the Short-Term Monitoring
21 1. Correct?

22 A. Yes.

23 Q. The N is looking north from that location?

24 A. Agreed.

25 JUDGE WALLIS: We will call that 7.07 for

1 identification.

2 (Exhibit NO. 7.07 marked for identification.)

3 MR. KAHN: Thank you.

4 BY MR. KAHN:

5 Q. Do you know what the two structures are on the
6 left-hand side of the picture?

7 A. No, I do not.

8 Q. Do you know whether they were emitting any noise
9 during the time these measurements were taken? Mr. Storm, do
10 you know?

11 A. I do not know.

12 Q. If any of the structures in the last two pictures
13 were emitting noise would that have an impact on the ambient
14 noise level recorded by the microphones?

15 A. Hypothetically and depending on the noise level
16 from those.

17 Q. But we don't know what that is. Right?

18 A. We do not.

19 Q. Next I turn your attention to photo 12 of the
20 ST2-W.

21 JUDGE WALLIS: We'll call that 7.08 for
22 identification.

23 (Exhibit No. 7.08 marked for identification.)

24 BY MR. KAHN:

25 Q. That shows a microphone approximately 15 feet from

1 the road in the background; is that correct?

2 A. Mr. Kahn, a moment, please.

3 Q. Sure.

4 A. We have identified 7.08 as ST1-SW?

5 Q. No, 7.08 is ST2-W.

6 A. Oh, excuse me. Thank you for the correction. Let
7 me open that open. I am now looking at the picture.

8 Q. That shows that that microphone was located about
9 15 feet or so from the road.

10 A. That sounds about right in the picture.

11 Q. Now if you turn to photo 15, ST2-S.

12 JUDGE WALLIS: That would be 7.09.

13 (Exhibit No. 7.09 marked for identification.)

14 MR. KAHN: Thank you.

15 BY MR. KAHN:

16 Q. Do you have that one?

17 A. Yes, I'm looking at it.

18 Q. In the application this is identified as the John
19 Schwab Memorial Tennis Courts; is that correct?

20 A. It is.

21 Q. It has a basketball court there?

22 A. That's what it looks like in the figure, yes.

23 Q. Do you know what the yellow building is to the left
24 of the tennis courts?

25 A. I believe it's associated with Mill A Elementary

1 School.

2 Q. Okay. I think that's correct. Then last I would
3 like you to look, or maybe not last, I would like you to look
4 at Exhibit 13 which is ST2-E?

5 JUDGE WALLIS: It would be 7.10 for
6 identification.

7 (Exhibit No. 7.10 marked for identification.)

8 BY MR. KAHN:

9 Q. Can you tell me when you have that.

10 A. Would you repeat the suffix on that?

11 Q. Yes, it's ST2-E?

12 MS. ANDERSON: Mr. Kahn, could you hold that so I
13 can verify.

14 MR. KAHN: Yes.

15 MS. ANDERSON: And that is 70 --

16 MR. KAHN: 7.10.

17 MS. ANDERSON: 7.10. Could you refresh me as to
18 which is 7.09?

19 MR. KAHN: ST2-S, No. 15, which is the microphone
20 with the tennis courts in the background.

21 MS. ANDERSON: Got it.

22 BY MR. KAHN:

23 Q. Okay. Do you have 7.10 in front you?

24 A. Yes, I do.

25 Q. This is the same microphone, the same location as

1 the previous picture. Correct?

2 A. That is correct.

3 Q. And that's the school in the background?

4 A. It appears to be from the photo, yes.

5 Q. The measurements for this site were taken on
6 January 21, 2009. Do you happen to know what day of the week
7 that was?

8 A. I don't know. I can check the internet.

9 Q. Well, if you want to take my word for it, I'll tell
10 you it was a Wednesday. Does the noise section of the
11 application indicate that one of these measurements were
12 taken adjacent to a school that was in session at the time?

13 A. The section does not mention that, no.

14 Q. Would a noise from a school with however many
15 children might be there would that have an impact on the
16 ambient noise that was recorded by the monitor?

17 A. Yes, it would.

18 Q. Was that factored into the analysis anywhere?

19 A. By factoring an analysis what do you mean?

20 Q. Well, I know that there -- I am far from
21 knowledgeable in acoustics, but from what I seen here you can
22 remove some noise generating devices or noises from your
23 analysis. For example, you removed the sounds of cars to
24 come up with the average decibels without cars. Was any
25 consideration given to figuring out what amount of ambient

1 noise was coming from the school and removing that from the
2 calculations?

3 A. I don't know.

4 Q. Okay. If I recall correctly, Mr. Storm, you've
5 never been on the site; is that correct?

6 A. Correct.

7 Q. All right. I'm going to sort of change topics a
8 little bit.

9 MR. KAHN: I'm almost through, Judge Wallis.
10 Another five minutes should take care of it.

11 BY MR. KAHN:

12 Q. In the application page 4.1-2, I will wait until
13 everybody gets there.

14 A. I have it in front of me, yes.

15 Q. The application states that most environmental
16 noise includes a mixture of noise from distant sources that
17 creates a relatively steady background noise in which no
18 particular source is identifiable. Correct?

19 A. That's what it says in this section, yes.

20 Q. Then it also states that levels associated with L90
21 often describe background noise conditions and/or continuous
22 steady-state sound sources; is that correct?

23 A. It says so in the fourth paragraph, yes.

24 Q. To refresh, L90 means whatever decibel level you're
25 looking at that decibel level is exceeded 90 percent of the

1 time. Correct?

2 A. Ninety percent of the time of that given
3 measurement period, whatever that may be.

4 Q. Yes, that's what I mean. Thank you. Is L90 then
5 roughly equivalent with ambient noise levels?

6 A. I don't know.

7 Q. Okay. Given that the language we just discussed in
8 the application refers to L90 as an often used measurement of
9 background noise, why wasn't that level used to determine the
10 background ambient noise level here as opposed to the
11 additional calculations you used which extracted passing
12 cars? Why wasn't the L90 used?

13 A. Could you repeat that question, Mr. Kahn?

14 Q. Yes. In the application the passages we just
15 discussed indicate that L90 is often used as a measurement of
16 background noise. Given that, why was that not used here?

17 A. The Washington State limits refer to Leq and
18 actually other statistical metrics. Leq is the one that we
19 are most concerned about.

20 Q. Even though the application refers to the L90 as an
21 "often used measurement of background noise"?

22 A. Yes.

23 Q. Okay. If L90 had been used would the ambient noise
24 level measured at these locations have been less than what is
25 reported in the application?

1 A. I don't know.

2 Q. Well, okay. Then let's look at page BB-1,
3 Exhibit 7.03. Tell me when you have that.

4 A. I think I have it in front of me.

5 Q. Again, we're going to the bottom chart Measured
6 Sound Data, and I'd call your attention to the time period of
7 11:52 to 12:12. Do you see that?

8 A. Yes.

9 Q. The L90 for that time period is 34. Correct?

10 A. The 11:52 to 12:12, 34 is the value, yes.

11 Q. Then the next column is the Leq without cars of 38.
12 Correct?

13 A. Yes.

14 Q. And the 38 is the number that you utilized in the
15 application. Correct?

16 A. I believe that's correct.

17 Q. Specifically I am referring to page 4.1-13, Table
18 14.1-9. So if the L90 were used instead of the Leq without
19 cars, the ambient noise level would have been depicted as
20 four decibels less. Correct?

21 A. As you describe, yes.

22 Q. Back to the same page BB-1. Look at the time
23 interval of 1800 to 1820. We have the same four-decibel
24 difference between the L90 and the Leq without cars.
25 Correct?

1 A. A four decibel difference, yes.

2 Q. Then the same four decibel difference for the next
3 time period 2332 to 2352. Correct?

4 A. Yes, I see that.

5 Q. Now if we look to page 4.1-13 of the application,
6 specifically Table 4.1-9, and I'll give everybody a moment to
7 get there. I see Ms. Anderson scrambling. You with me?

8 A. Yes, sir.

9 Q. If you look at Table 4.1-9 for Receiver No. 3, the
10 existing dBA is listed at 35. Correct?

11 A. Yes.

12 Q. And the increase going further on the chart, the
13 increase from the project would be eight. Right?

14 A. That is displayed on the table, yes.

15 Q. But if an L90 value instead of the Leq without cars
16 was used wouldn't that increase, wouldn't that change the
17 increase in the decibel levels from 8 to 16?

18 A. If one substituted L90 as you suggest, yes.

19 Q. In that case the increase in decibels would be over
20 ten; is that correct?

21 A. Again, if we're talking about this hypothetical.

22 Q. Yes.

23 A. For Receiver No. 3 on Table 4.1-9, if one were to
24 take the 35 existing and replace it with 30; is that correct?

25 Q. Yes.

1 A. Okay. And then if you were to combine it with --
2 in order to get a recalculated overall --

3 Q. Actually, no, it wouldn't replace it. The L90
4 number for that time period at that location according to
5 page BB-1 is 26. So if you replace the 35 as the existing
6 dBA with 26, that would mean the increase in decibel levels
7 is going to be about 16 or 17 as a result of the project; is
8 that correct?

9 A. It would be greater than a 10 dB increase, yes.

10 Q. Is it true that according to EPA Region 10 decibel
11 increases over 10 is considered a significant impact
12 requiring mitigation?

13 A. I don't know.

14 JUDGE WALLIS: Mr. Kahn, we're very close on time.

15 MR. KAHN: That was my last question.

16 JUDGE WALLIS: Very good. Mr. Aramburu.

17 MR. KAHN: I would like to move to admit all the
18 exhibits that we just discussed.

19 (Exhibit Nos. 7.01 through 7.10 offered into
20 evidence.)

21 JUDGE WALLIS: Is there objection to 7.02 through
22 7.10?

23 MS. ANDERSON: Your Honor, I don't have an
24 objection to the admission of these documents, but I am
25 going to ask Mr. Kahn to submit the entire package of data

1 Exhibit 7.02 is comprised of over a hundred pages of data
2 not 3 or 4 that Mr. Kahn has cherry picked for the Council,
3 and I understand why he's got a few to make a point. But if
4 we're going to be talking about the quantum of data, let's
5 put it all in the record so that you're reviewing the full
6 package.

7 MR. KAHN: We're happy to do so. For whatever
8 it's worth it's already been admitted to the Council. When
9 Ms. Turner from Mr. McMahan's office when she sent it to
10 everybody sent it to the Council as well. If need be, we
11 can resubmit hard copies of it, but everybody's got
12 electronic copies.

13 JUDGE WALLIS: Very well.

14 MS. ANDERSON: I want the record to reflect that
15 however.

16 JUDGE WALLIS: I'm going to ask that you submit a
17 hard copy for the official document and Council Members who
18 wish to have a hard copy can talk with staff.

19 MR. KAHN: One hard copy we send to the Council?

20 JUDGE WALLIS: Yes.

21 MR. KAHN: Ms. Anderson, is that true for the
22 other?

23 MS. ANDERSON: Yes, it is.

24 MR. KAHN: Okay. We'll print them out.

25 JUDGE WALLIS: Mr. Aramburu.

1 CONTINUED CROSS-EXAMINATION

2 BY MR. ARAMBURU:

3 Q. Mr. Storm, it's Rick Aramburu. I was one of the
4 attorneys that asked you questions when you were at Skamania
5 Lodge. Good afternoon.

6 A. Good afternoon, sir.

7 Q. I understand in taking your noise level
8 measurements did you follow the standards established by
9 Washington Administrative Code 173-58?

10 A. I don't know, sir.

11 Q. Are you familiar that the Washington Administrative
12 Code has standards for measurement of noise for compliance
13 with the Washington Noise Control Act?

14 A. I'm checking the application. If this answers your
15 question, sir, as I indicate on page 4.1-6 for conducting
16 measurements in accordance with ISO 1996 A, B, and C as they
17 apply to sound measurement.

18 Q. Well, that wasn't my question. The question is did
19 you observe the standards found in Washington Administrative
20 Code 173-58 in your noise measurements?

21 A. I don't know, sir.

22 Q. Are you familiar at all with the provisions of the
23 Washington Administration Code Chapter 173-58?

24 A. I am not familiar with that.

25 Q. Now, with respect to the calibration of the two

1 instruments, the Bk meter and the Larson meter that were
2 used, can you tell me what the calibration standards were?

3 A. Can you be more specific, sir?

4 Q. Well, let me ask you this question: The materials
5 that you supplied to the parties contained a series of
6 documents, a couple of which Items 2 and 3 were field noise
7 measurement data taken by URS individuals; is that correct?

8 A. Yes, that is correct.

9 Q. Would those field sheets indicate when calibrations
10 of the instruments were taken?

11 A. As I understand it, the field sheets do not do not
12 indicate that information.

13 Q. Well, I'm looking at them and they talk about
14 calibrator and they talk about pretest and posttest.

15 A. That information is there, yes.

16 Q. And that would have been recorded by the
17 individuals that were tending the instruments?

18 A. Yes.

19 Q. Did any of your long-term noise measurements
20 exceeds two hours?

21 A. The long-term monitor was operating for a period of
22 over two hours, yes.

23 Q. Did URS personnel tending the instruments do a
24 calculation every two hours of those instruments?

25 A. I don't know.

1 Q. If there was such calculations would they show on
2 the field data sheets?

3 A. I don't know.

4 Q. You weren't there I take it.

5 A. I was not there, sir, no.

6 MR. ARAMBURU: Okay. That's all of the questions
7 that I have. I would like to have included within the
8 record the two field data sheets that are Items 2 and 3 to
9 the submissions that were made to us and include those as
10 exhibits here. They are the two sets of field data sheets.

11 MR. KAHN: We can submit the hard copies along
12 with the other documents.

13 JUDGE WALLIS: Can you describe those
14 specifically. What is the title on each document and what
15 is the approximate length of the document?

16 MR. ARAMBURU: These would be Documents 2 and 3 to
17 the materials that were submitted to us. Each of them
18 consists I think of approximately six pages, and at the top
19 they're described as Field Noise Data Measurements. And it
20 provides information with respect to whether the sound level
21 meter used the calibration and other information.

22 JUDGE WALLIS: Are they labeled two and three on
23 the document itself?

24 MR. ARAMBURU: They are not.

25 JUDGE WALLIS: Then how can they be distinguished?

1 MR. ARAMBURU: Okay. There are three pages.

2 MR. KAHN: Mr. Wallis, I can hand you my copies if
3 that would make it easy.

4 JUDGE WALLIS: Very well.

5 MR. KAHN: And, Ms. Anderson, that's four
6 documents from that hard copy package you gave us.

7 MS. ANDERSON: I'm just trying to figure out. One
8 of them has a caption at the top that says URS.

9 JUDGE WALLIS: Let me start off here and find what
10 appears to be a distinguishing document or distinguishing
11 feature. On the third line within the top box it says
12 monitoring locations/label. One of them says taking in
13 alphabetically LT1. Which document is that?

14 MR. KAHN: It would be the one regarding the one
15 long-term monitor.

16 JUDGE WALLIS: Is that -- let's be off the record.
17 (Discussion off the record.)

18 JUDGE WALLIS: I am marking as a single three-page
19 document a collection of three pages, the first page of
20 which is entitled LT1 corner of Ausplund and Kollock Knapp,
21 and the subsequent pages are ST1 and ST2, the first of which
22 is at the same location and the second of which is John
23 Schwab Memorial Courts, and that will be Exhibit 7.11. I
24 believe is next.

25 (Exhibit No. 7.11 marked for identification.)

1 MR. BAKER: Yes.

2 JUDGE WALLIS: Very well. And there was another
3 set of documents, Mr. Aramburu; is that correct?

4 MR. ARAMBURU: The second was the set of documents
5 that was No. 2 on the website. This consists again of three
6 pages, the top of which says Field Noise Measurement Data.
7 That is three again pages. This does not --

8 JUDGE WALLIS: Can you give us something that
9 would distinguish this from other documents with the same
10 heading or perhaps the Applicant can help?

11 MS. ANDERSON: On the lower left-hand corner of
12 the document, Mr. Aramburu, it says LT1 in the white space
13 at the bottom of the page. I believe that is the first page
14 of three.

15 MR. ARAMBURU: LT1 or ST1?

16 MS. ANDERSON: I have three documents. One says
17 ST1, ST2, and LT1.

18 JUDGE WALLIS: Let's be off the record, please.

19 (Discussion off the record.)

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

22 I'm going to rely on the parties to provide hard
23 copies of the documents that they wish to number as
24 Document 7.12 and in addition to provide hard copies of 7.11
25 for the record and for Council Members and other parties.

1 (Exhibit No 7.12 marked for identification.)

2 MR. McMAHAN: Your Honor, Tim McMahan here for the
3 record.

4 If I might just make a suggestion. The last
5 week -- I've entirely lost track of time, but last week we
6 submitted some so-called discovery response documents to all
7 the parties, and I handed out copies to all counsel. And
8 that is something that looks like what I'm showing which
9 obviously doesn't come through the record. But it's a memo
10 dated January 10, 2011 with some documents attached thereto.
11 In addition to that we did e-mail out via an FTP connect
12 something like 200 pages of data sheets. I would just
13 suggest just to make sure that everything is in the record
14 here that we label that entire set of everything that we
15 submitted in response to the discovery request as an exhibit
16 perhaps at the end of these.

17 I understand we need to distinguish for the record
18 those which have been used as cross-examination exhibits. I
19 think it would be very helpful just to make absolutely sure
20 all this is in the record with one exhibit number associated
21 with it, and perhaps the last exhibit number you would
22 assign to Mr. Storm's testimony.

23 JUDGE WALLIS: I am also very concerned that we
24 limit the white noise in this file which is already probably
25 at greater than 110 decibels, and that we have something

1 that will allow us if it is necessary to refer to the
2 document to be able to find it easily and quickly. So I am
3 going to ask for only the documents that we have discussed
4 here today. 7.11 is described and 7.12 as provided by
5 counsel.

6 Is that acceptable, Mr. McMahan?

7 MR. McMAHAN: My only concern is that a few, a
8 very few numbers within columns on specific pages have been
9 called out in many data sheets which I am concerned doesn't
10 accurately reflect all of the data that's actually in the
11 record, that's actually been submitted. So it would be
12 certainly my preference to ensure that the entire
13 information is available somehow in this record for a
14 complete picture for decision making.

15 JUDGE WALLIS: Mr. Kahn?

16 MR. KAHN: We will leave that up to you, Your
17 Honor. We don't think it's all that relevant to the issues.
18 Certainly it's a part of the data behind it, and if you want
19 it in, we will provide the full 193 pages or whatever it
20 was.

21 MR. ARAMBURU: Once again unless there's some
22 indication of error in the materials that have been
23 supplied, it would seem to me we're adding another 200 pages
24 to the record for very little value.

25 JUDGE WALLIS: Yes, based on the comments of

1 counsel so far, I don't see the value of the additional
2 weight of those pages to the record. There is data
3 reflected in the information that we have. Counsel are not
4 pointing to specific aberrations, and my preference would be
5 to have that two-page document provided as 7.12.

6 MR. McMAHAN: Could I just ask one other question.
7 Mr. Kahn started out with a quotation from the January 10,
8 2011 cover memorandum here. I don't remember whether or not
9 that was assigned an exhibit number, but it was read from
10 and used use in cross-examination, and I think that at least
11 ought to be in the record as well.

12 MR. KAHN: I don't have any objection to that.

13 MR. McMAHAN: It's a two-page document versus 180
14 something.

15 MR. KAHN: It was not labeled before.

16 JUDGE WALLIS: Very well. We'll call that 7.13,
17 and, Mr. McMahan, you will provide originals of that for the
18 record to Council Members and parties.

19 (Exhibit No. 7.13 marked for identification.)

20 MR. KAHN: Along those lines, Your Honor, since
21 you just truncated the other exhibits to what we've used is
22 what we've handed you today sufficient or do we need to
23 submit additional hard copies of 7.02 through 10?

24 JUDGE WALLIS: I'm going to ask you to submit the
25 customary required number for the Council, and we will use

1 one of those as the official file document.

2 MR. KAHN: Okay.

3 MR. ARAMBURU: And I will supply the requisite
4 number of copies for Exhibit 7.11 and 7.12.

5 MS. ANDERSON: I had on our list 7.11, 7.12, and
6 7.13 as we will get those in.

7 MR. ARAMBURU: Okay. That's great.

8 MS. ANDERSON: Rather than three of us sending in
9 pieces of one package.

10 JUDGE WALLIS: Thank you. Can counsel compare
11 notes afterwards and see how many trees we can save?

12 MS. ANDERSON: Certainly.

13 JUDGE WALLIS: Going back to the earlier documents
14 7.02 through 7.10, Mr. Kahn, will you see that the Council
15 has copies of those?

16 MR. KAHN: Yes, we will.

17 JUDGE WALLIS: Is there any redirect for
18 Mr. Storm?

19 MS. ANDERSON: Yes, there is.

20 JUDGE WALLIS: Ms. Anderson.

21 REDIRECT EXAMINATION

22 BY MS. ANDERSON:

23 Q. Mr. Storm, this is Erin Anderson. Can you hear me
24 all right?

25 A. Yes, good afternoon.

1 Q. Mr. Storm, redirecting your attention to the
2 application for site certification looking at page 4.1-13,
3 you were previously asked to address Table 4.1-9, Receiver ID
4 No. 3; is that correct? Do you recall that?

5 A. Yes.

6 Q. Do you anywhere in this application describe what
7 Receiver No. 3 is?

8 A. In a moment I'll check the application. I see it
9 on page 4.1-4, second paragraph of Section 4.1.1.3 a
10 potential future residence and that is Receiver 3.

11 Q. Are you suggesting that R3 really doesn't exist?

12 A. Yes.

13 Q. Yet R3 would be the closest of the three receivers
14 near to the project; is that right?

15 A. That is my understanding, yes.

16 Q. Mr. Storm, very briefly you indicated that Leq is
17 the standard that is applied in the State of Washington, not
18 L90. Can you explain to me why you use Leq rather than L90,
19 50, or 10?

20 A. Leq as I explained earlier in my testimony is the
21 equivalent sound level that it includes -- how would I put
22 it? -- it includes everything, the sound energy, the
23 equivalent level for that sound energy. The L90 on the other
24 hand is a statistical value. It's not a measurement of
25 value, per se.

1 Q. So for the layperson or persons in this room the
2 Leq is really the noise that is being heard at the site
3 rather than a statistical data point?

4 A. Yes, I would characterize it as such.

5 MS. ANDERSON: I have nothing further.

6 JUDGE WALLIS: Anything further of the witness?

7 MR. KAHN: No.

8 JUDGE WALLIS: Let the record show there is
9 nothing further for Mr. Storm. I want to thank you for
10 appearing with the Council again today, and you are excused
11 from the stand at this time, and we will take a 20-minute
12 recess at this point and reconvene in 20 minutes.

13 So we're off the record.

14 (Recess taken from 2:45 p.m. to 3:00 p.m.)

15 JUDGE WALLIS: Let's be back on the record,
16 please, following a recess.

17 In the earlier session we did deal with the
18 examination, extended continued examination of Witness
19 Storm. That concluded with the offer of several exhibits.
20 I am going to ask that counsel help us complete that before
21 we go into the next aspect which is the administrative
22 review, and at that point we will ask for appearances of
23 those who have just joined the bridge line.

24 Can we have counsel specifically identify for the
25 record the documents that have been numbered?

1 MS. ANDERSON: Certainly.

2 JUDGE WALLIS: Ms. Anderson, did you wish to do
3 that?

4 MS. ANDERSON: Certainly. I believe in our
5 earlier session today we had an Exhibit 7.02.

6 JUDGE WALLIS: Could we move the microphone over
7 in front of Ms. Anderson to make sure she's heard by
8 everyone.

9 MS. ANDERSON: Thank you. Exhibit 7.02 which
10 appears as a four-page document. It contains long-term
11 monitoring data. Exhibit 7.03 is a document where we're
12 referring to at the bottom of the pages as TotalBB-1.
13 Exhibit 7.04 is a set of data. We will refer to at the
14 bottom of the page as LoggedBB-20, and Exhibit 7.05 is
15 ST1-SW photograph. 7.06 is ST1-NE. That is 706.
16 Exhibit 7.07 is photograph identified as ST1-N. That is
17 7.07 Exhibit 7.08 is photograph as ST2-W, and Exhibit 7.09
18 is photograph identified a ST2-S. Exhibit 7.10 is a
19 photograph identified as ST2-E. Exhibit 7.11 is a
20 three-page document. At the top of the first page the first
21 line says URS Acoustics and Noise Control Practice. The
22 third line within the form indicates it is monitoring
23 locations/label: LT1. The subsequent pages are the same
24 from for ST1 and ST2 in the third line. Exhibit 7.12 is a
25 document that reads Field Noise Measurement Data. It's a

1 three-page document comprised of handwritten notes in the
2 bottom left-hand side handwritten on page LT1. On the
3 bottom left-hand side handwritten in the white box is ST1
4 and ST2. The last document 7.13 is a two-page statement on
5 the letterhead of URS addressing additional information
6 provided in response to the discovery requests, and the
7 Applicants have no objection to the admission of all those
8 documents.

9 JUDGE WALLIS: Those document are received in
10 evidence.

11 (Exhibit Nos. 7.02 through 7.13 admitted into
12 evidence.)

13 JUDGE WALLIS: Is there anything further to follow
14 up on the prior session?

15 Let the record show that there is no response.

16 I would like to verify that Mr. Marvin and
17 Mr. Cantrell are still on the bridge line; is that correct?

18 Is Mr. Marvin on the bridge line?

19 Is Mr. Cantrell on the bridge line?

20 MR. CANTRELL: Mr. Cantrell is here, yes.

21 JUDGE WALLIS: Very well. With that, I would like
22 others on the bridge line now to identify themselves.

23 MR. HAYES: This is Andy Hayes, Department of
24 Natural Resources.

25 JUDGE WALLIS: Council Member Hayes, thank you.

1 MR. SUTHERLAND: This is Doug Sutherland, Skamania
2 County designee.

3 JUDGE WALLIS: Thank you. And if you did
4 introduce yourself it is not necessary to do so again.
5 Others?

6 MS. DRUMMOND: Susan Drummond for Skamania County
7 and Klickitat County Public Economic Development Authority.

8 JUDGE WALLIS: Others?

9 MR. COLBY: George Colby, Yakama Indian Nation;
10 Jessica Lally, Yakama Indian Nation; Sandra Adams, my legal
11 assistant, Yakama Indian Nation.

12 JUDGE WALLIS: Thank you, Mr. Colby.
13 Mr. Andersen?

14 MR. ANDERSEN: Brad Andersen, Skamania County PUD,
15 Skamania County Economic Development Council, and Port of
16 Skamania County, and Peggy Bryan is with me as well or Peggy
17 Bryan-Miller.

18 JUDGE WALLIS: Thank you.

19 MS. JAFFE: Dorothy Jaffe for the Department of
20 Commerce.

21 JUDGE WALLIS: Thank you, are there others?

22 MR. MARVIN: Bruce Marvin, Counsel for the
23 Environment.

24 JUDGE WALLIS: Thank you. Mr. Marvin.
25 Others?

1 Very well. Let's get into our discussions on
2 administrative matters. First of all, I would like to note
3 that during the past couple of weeks because of the short
4 length of time and the great volume of material we had to
5 deal with both in terms of exhibits and in terms of
6 scheduling that we slipped in using correspondence by e-mail
7 to resolve issues that came up. That is not a very good
8 practice for us. I'm going to ask that we not slip into
9 that again. We will consider noncontroversial scheduling,
10 routine matters nonsubstantive by electronic mail, but if
11 parties wish to argue to the Council or about a ruling, we
12 will set a time and place on adequate notice for that
13 argument.

14 The Council after considerable deliberation made a
15 request of the parties to supplement proposed and received
16 exhibits regarding wind speed. Actually I think the
17 request, if I remember correctly, was that back up
18 information be provided, and that the parties consult to
19 determine an agreement on what in fact should be provided.
20 And I'm going to ask the parties after the transcript of
21 that day's hearing is received the parties will have five
22 days in which to make good-faith compliance with the
23 directive that was made on the record and to submit the
24 requested information. No objection was raised to that
25 process at the time it was directed. This is a matter that

1 Council considered at some length and is very concerned that
2 the parties actually comply with the request that was made.
3 If the parties cannot agree, they each may identify the
4 information that provides with an explanation why it is
5 responsive. Is there anything further on that matter?

6 Let the record show that is no response.

7 With that, I'm going to ask Mr. Posner because we
8 have a limited number of microphones if you could come over
9 and, Mr. Aramburu, if you wouldn't mind I think the cord is
10 pulled out about as far as it will go.

11 Thank you very much. Mr. Posner when you're
12 ready.

13 MR. POSNER: Good afternoon, Judge Wallis. This
14 will be very short. To give you a quick update, we are
15 continuing our work on finalizing the EIS. We are still
16 developing some of the responses to the comments, although I
17 will say that we're virtually done or we're very close to
18 being done. As you know there were quite a few comments we
19 received, and if you are interested in a date on when the
20 EIS may be done I could provide an estimate of that. Is
21 that something you would be interested in?

22 JUDGE WALLIS: Is it a firm date, a possible date,
23 or a really squishy date?

24 MR. POSNER: I would say possible to really
25 squishy. Probably more towards possible. I feel pretty

1 good about this. I've talked with BPA and, you know, I'll
2 give you a time range between April and May.

3 JUDGE WALLIS: Very well.

4 MR. POSNER: We're certainly hoping to get it done
5 as soon as possible, you know, as early in April, but I
6 don't see it being done before early April. That would be
7 the most positive outcomes.

8 JUDGE WALLIS: Very well. We appreciate your
9 effort in pursuing it. I know that you and other staff have
10 been pursuing this very diligently with BPA in endeavoring
11 to impress upon participants in this process with the need
12 both for accuracy and for completing it on a reasonable time
13 frame.

14 So with that let's proceed to the agenda. As
15 indicated I would like to pick up with the next item rather
16 than at this time going through the exhibits, and that's
17 discussion of post-hearing process. I would like to in that
18 discussion like to ask whether the parties would like to
19 brief the land use consistency issue separately from the
20 substantive issues in the adjudication? Do the parties have
21 a view on that?

22 Mr. McMahan.

23 MR. McMAHAN: Your Honor, Tim McMahan for the
24 record. I think that that is a good idea; however, I would
25 be reluctant to suggest that if I thought 75 pages for that

1 plus the substantive briefing would be a reasonable page
2 length. So if we could have some understanding of what land
3 use, some cap on land use that that would be a good idea.

4 MR. KAHN: We agree with Mr. McMahan. Land use
5 should be separate and we think it should be first.

6 JUDGE WALLIS: Mr. Kahn, thank you.

7 Do others wish to comment on this?

8 Very well. Does anyone on the bridge line wish to
9 weigh in on this?

10 Let the record show that there is no response.

11 The Council also I believe is supportive of that
12 concept. When I identified 75 pages as a goal in a point
13 for discussion, my concept was that that would include both
14 the land use and the substantive issues. So with that
15 understanding how would the parties see the issues breaking
16 out, 60/15, 65?

17 MR. KAHN: I'll go first.

18 JUDGE WALLIS: Why don't we go off the record for
19 this discussion and we can come back on the record with a
20 decision or a statement of concerns.

21 (Discussion off the record.)

22 JUDGE WALLIS: Let's be back on the record,
23 please.

24 During the recess we have engaged in some
25 enthusiastic discussion about process and sequence and page

1 numbers. I believe there is consensus that simultaneous
2 briefs are appropriate, and as to all of the briefing we
3 will follow a simultaneous schedule with opening and
4 responding briefs, and we will not have reply briefs in
5 order to accommodate not only the need for a complete
6 exposition of issues which we will get in that two-part
7 sequence, but also the concern of economy which is a
8 practical matter for the parties to consider.

9 The land use briefing will proceed first, and we
10 will talk about a schedule for that. The maximum number of
11 pages for the land use briefing will be 20 pages and again
12 simultaneous opening and responding briefs.

13 Let me ask if the Friends of the Columbia Gorge
14 and Save Our Scenic Area have different positions on land
15 use issues?

16 MR. KAHN: This is Gary Kahn. This is to be
17 honest, Your Honor, that's an issue we haven't really talked
18 about very much. We have been focusing on the adjudication
19 so I don't have an answer for you today.

20 MR. ARAMBURU: We have been focusing. We've
21 already submitted some comments during the land use
22 consistency that was held in August of time flies here 2009.
23 So that there may be some differing views and some differing
24 emphasis. We intend, for example, to talk a good deal about
25 the 1977 Comprehensive Plan which was brought into evidence

1 as a fundamental element.

2 MR. KAHN: Again, Your Honor, to the extent we
3 have similar issues we can pledge that Friends and SOSA will
4 cooperate to raise the same argument at the same time. We
5 will just incorporate the other's so to speak if we agree
6 rather than duplicating it.

7 JUDGE WALLIS: Because you are cooperating and
8 coordinating if you had a greater page limit would that not
9 prejudice the Applicant?

10 MR. KAHN: The Applicant has a number of
11 intervenors on its side. They all have the same page
12 limits. They could all submit 25-page briefs, and it
13 wouldn't seem fair that they can do that and we can't.

14 MR. ANDERSEN: This is Brad Andersen. Hello?

15 JUDGE WALLIS: Yes, it was pointed out during the
16 earlier discussion that the parties who have indicated a
17 disposition to support the application have relatively
18 narrower issues and would be very unlikely to brief at
19 greater length.

20 MR. KAHN: Mr. Andersen just --

21 MR. ANDERSEN: Your Honor, this is Brad Andersen
22 on behalf of the three agencies that I'm representing. I
23 don't see us even submitting a brief on the land use issues
24 so we wouldn't be offering any additional pages in support
25 of the application on that category.

1 JUDGE WALLIS: Very well. Let's say that the
2 Friends and SOSA may have 20 pages.

3 MR. KAHN: Is that total, Your Honor?

4 JUDGE WALLIS: Each.

5 MR. KAHN: Each, thank you.

6 JUDGE WALLIS: And that the Applicant in response
7 may have 30 pages.

8 MR. KAHN: When you say in response, you mean
9 their second brief is 30?

10 JUDGE WALLIS: This will be an opening and a
11 responding brief.

12 MR. KAHN: And both have 20-page limits for us but
13 30 for the Applicant?

14 JUDGE WALLIS: Yes.

15 MR. KAHN: We'll certainly abide by the ruling,
16 but I do think that's unfair. We are separate parties.

17 JUDGE WALLIS: It may in fact be unnecessary for
18 the Applicant to use the entirety of those.

19 MR. ARAMBURU: This is Rick Aramburu speaking.
20 Skamania County is represented and has submitted at least
21 one witness Mr. Pearce. Are they going to weigh in on this
22 issue significantly? Ms. Drummond is on the line I believe.

23 MS. DRUMMOND: Yeah, I can address that briefly.
24 This is Susan Drummond. We will submit both briefs so there
25 will be a brief in the land use consistency, but as I

1 indicated earlier our briefing will be certainly very
2 focused. It will not -- it will be less than 20 pages. I
3 think the land use consistency issue is fairly
4 straightforward as expressed in the hearing earlier. So our
5 briefing will be very focused and less than 20 pages.

6 MR. KAHN: Your Honor, we also have other
7 intervenors that have not spoken up on this that again if
8 you add their page limits together the Applicant's side of
9 things gets a heck of a lot more than we do. We have the
10 Department of Commerce that is here. Help me out? What
11 other parties? Counsel for the Environment.

12 JUDGE WALLIS: One of the very difficult
13 propositions in issues such as this is that the number of
14 parties and the number of issues and the number of pages
15 often are totally irrelevant to how effectively a party uses
16 its resources to present its positions. For example, having
17 an additional number of pages may in fact reduce the party's
18 effectiveness as we noted in at least one of the submissions
19 earlier in this proceeding.

20 After considering the arguments of the parties,
21 the ruling we make is that each party will have the same
22 number of pages allowed in briefing.

23 What about a schedule on the land use briefing?

24 Let's be off the record for a brief discussion of
25 schedule.

1 (Discussion off the record.)

2 JUDGE WALLIS: Let's be back on the record,
3 please. It has been determined and agreed by the parties
4 that opening briefs on the land use issues will be due on
5 Friday, February 11, and the response briefs on Friday,
6 February 25. The parties will be allowed 20 pages of text
7 on the opening brief and 15 pages of text in the responding
8 brief. The official copies may be postmarked on the 11th
9 and received on the business day which would be the
10 following Monday in each case. The document will be served
11 and provided to the Council and the parties in electronic
12 format on the 11th and the 25th. Are there any details
13 remaining regarding the land use briefing?

14 MR. KAHN: Just the technical stuff, margin type
15 things I expect we'll get to.

16 JUDGE WALLIS: Yes. All right. Let's be off the
17 record for a discussion as to the substantive briefing.

18 (Discussion off the record.)

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

21 We have begun to discuss briefing of the
22 adjudicative proceeding. We have determined by agreement
23 that opening briefs may be 60 pages in length and responding
24 briefs 30 pages in length, and we're beginning to discuss
25 the schedule for briefing. The parties have been advised

1 that my understanding of the Council's proposal thinking and
2 more accurately in this proceeding is to allow the parties
3 after the adjudicative briefing and briefing after the
4 issuance of the Final Environmental Impact Statement to have
5 the opportunity to present a brief to the Council on the
6 effect of the SEPA consideration on the Council's ultimate
7 determination in terms of a recommendation to the Governor.

8 MR. ARAMBURU: I want at least SOSA's objection to
9 that process to show as a matter of record. We think that
10 under the law and under the practicalities of these
11 proceedings that we should be briefing based upon the
12 adjudicative record and on the environmental impact
13 statement, and I'll give you just an example of where
14 conflicts can arise.

15 We've had some testimony about noise. We've had
16 some things in the adjudicative record about testimony that
17 has been submitted references to the application. There is
18 some indication from some of the materials we are picking up
19 off of the EIS website that Mr. Posner has indicated that
20 there may be some additional review or additional studies
21 regarding noise.

22 So if we have briefing about the noise issues and
23 then the EIS comes out with something different, then we
24 have a very fragmented set of records to review is. And so
25 we would support, and I'm not going to beat this horse to

1 death, Mr. Wallis, but we do believe that it's appropriate
2 for the briefing period to take account of the adjudicative
3 record, take account of the materials in the EIS so that all
4 of this can be presented in a package to the Council. They
5 can have all of this together because I'm concerned that it
6 gets really fragmented if we have some comments on what the
7 EIS says and then try to focus that back. So that would be
8 our request, and I guess our motion if it's phased that way.

9 MR. McMAHAN: Your Honor, I guess I have a very
10 different view of this. First of all, the Siting Council
11 need not even allow subsequent briefing on the FEIS. It
12 hasn't been done in any of the proceedings I've been
13 involved with before. I am very concerned about that
14 process. So how it dovetails to the prior or not to me,
15 it's something that would be done at the Council's
16 discretion apparently well beyond what the law requires and
17 what's been allowed in prior proceedings.

18 So I guess I have trouble with the complaint about
19 how it dovetails with the briefing proceedings which is the
20 typical way the Council decides these matters. If the
21 Council does decide that it's important for them to hear the
22 parties discuss the SEPA, the FEIS I would request two
23 things.

24 First, I think we need a written order that tells
25 the parties exactly what they are or not to discuss in that

1 brief first. Second, I would very much hope that that final
2 brief be very tightly calendared into the FEIS so this
3 doesn't spin out into the late summer which I'm very
4 concerned about here; and, third, I would suggest a very
5 short page limit be allowed for that brief.

6 JUDGE WALLIS: Very well. We need not consider
7 matters in that degree of detail. What I will say for the
8 moment is that I believe it is appropriate to require the
9 parties, to allow the parties to brief on the adjudicative
10 record as it exists at this point. And we are discussing
11 dates for the submission of opening briefs, which my
12 suggestion and I don't recall the response to it, was
13 March 11 which would give parties four weeks after their
14 opening briefs in land use, two weeks after the responding
15 briefs which would presumably be less burdensome to prepare.

16 MR. KAHN: For what it's worth, we think given the
17 issues at stake and what's at stake with this being the
18 first project in a mountainous forested habitat is that's a
19 little bit too short. We would ask for an additional two
20 weeks on top of that to March 25.

21 MR. McMAHAN: We are fine with the 11th.
22 Accounting for those response briefs, I think that time is
23 relatively close to what I heard Mr. Posner about the
24 issuance of the FEIS, and these things seem to march well in
25 sequence with what Judge Wallis proposed.

1 MS. DRUMMOND: Susan Drummond from Skamania
2 County. March 11 would be fine. We would in fact prefer an
3 earlier date just in efficiency sake, but March 11 is fine.

4 MR. ANDERSEN: Ditto.

5 MR. CANTRELL: Shawn Cantrell at Seattle Audubon.
6 I would actually appreciate the extra two weeks.

7 MR. ARAMBURU: SOSA, Rick Aramburu would support
8 the March 25 date. There are other things going on at least
9 in this counsel's life in term of argument before the
10 Supreme Court on the 15th of March, a trial on March 30 and
11 depositions are ongoing. And I do think it's appropriate
12 given the length of this proceeding, the length of this
13 record that we're looking at for the first time to be
14 generous with us in that regard. So certainly nothing
15 earlier than March 25 as far as we're concerned.

16 JUDGE WALLIS: Would two weeks be adequate for
17 responding briefs.

18 MR. McMAHAN: For the Applicant, yes.

19 MR. ARAMBURU: It would not for me because I have
20 a 45-day trial pending in Snohomish Superior Court on March
21 30.

22 MR. McMAHAN: Your Honor, we all have a lot of
23 stuff. We're busy lawyers. I could walk you through all
24 the things I have in front of me for the next three months
25 and it's not real pretty. I don't think that's necessary

1 for me to do though, and I think we need to move this along.

2 MS. DRUMMOND: Susan Drummond. I would echo those
3 comments as well. I also have a very busy schedule, but I
4 think that's more than adequate time.

5 MR. KAHN: Depending on who files we're going to
6 be responding to potentially half a dozen briefs. Some of
7 them may be short; some may not be short. Once a lawyer
8 get's pen in hand things tend to go on. I think two weeks
9 is a little bit unreasonable if we're responding to half a
10 dozen different briefs that could be as much as 60 pages
11 each.

12 MR. ARAMBURU: I'd point out that the proceedings
13 have been going on for a year and a half now.

14 MS. ANDERSON: That's a very good point if I may
15 interject.

16 JUDGE WALLIS: That's both ways.

17 MR. ARAMBURU: No, I understand, but I also
18 understand that when we start talking about a week or two to
19 allow people to summarize for the Council their positions
20 and the amount of evidence here, I would support the idea of
21 a minimum of three weeks after March 25.

22 MR. PEEPLES: I just want to rebut that this is,
23 you know, an overwhelming amount of record, etc. I've been
24 involved in a lot of cases that were far more complicated
25 than this that didn't require, you know, spread out

1 schedules and huge briefs. This is not a complicated case.

2 JUDGE WALLIS: I'm going to go back and make the
3 observation that I did make earlier, and that is that the
4 bulk of counsel's efforts on the land use briefing should be
5 completed by the 11th and the responding to other's briefs
6 should impose a much lighter burden. So if we schedule the
7 opening briefs for March 18, that does provide really five
8 weeks of not exclusive but overall available time, and we'll
9 say the 18th for the opening substantive brief, and I would
10 like to set April 1 as the deadline for the responding
11 brief.

12 Looking again at the opportunities in April, the
13 possibility that the Final EIS will have been issued and the
14 necessity for a view of the KVAs and the site will be much
15 more likely to occur in either later March or April than at
16 some earlier time. So is there any response from parties on
17 this apart from what you said earlier?

18 MR. McMAHAN: It's acceptable to the Applicant.

19 MR. KAHN: Not apart from what we said earlier.
20 We think it's too short.

21 JUDGE WALLIS: I realize it's a tight schedule,
22 but as I say I'm familiar with complex proceedings that have
23 proceeded on schedules this close or closer, and in light of
24 the exemplary abilities of counsel that they have
25 demonstrated so far I have no doubt but they will be able to

1 perform admirably under these circumstances. We will
2 reserve any further discussion of the process post
3 submission of briefs until a later date.

4 MR. KAHN: I have a question, Your Honor, about
5 the page limits. Not revisiting the issue but I'm assuming
6 that the numbers you've given us of 20, 60, whatever they
7 are, is exclusive of the cover, table of contents, table of
8 authorities?

9 JUDGE WALLIS: Yes.

10 MR. McMAHAN: Your Honor, I think you were very
11 clear from your agenda on your expectation.

12 MR. KAHN: Yes, it's in there. It's Item A.

13 JUDGE WALLIS: Yes, I thought it best to be quite
14 specific, and the type face, font size, margin requirements
15 should be as noted there which for the record are 12 Point
16 Times New Roman which would be expressed without a reduction
17 or expansion on the page, one-inch margins on all sides of
18 the paper, and a one-line 10 point header or footer within
19 the top or bottom margins that identify the submitting party
20 or parties and the page number, a one-line bold face subject
21 or issue heading separated by lines at one line above or
22 below. Footnotes in 10 Point Times New Roman and single
23 spacing for footnotes and up to four additional pages for
24 the title page which would have 10 Point Roman Numeral page
25 numbers. Four pages also including the table of contents

1 and the list of authorities cited.

2 MR. KAHN: One question. The body of the brief
3 itself single spaced, double spaced?

4 JUDGE WALLIS: Double spaced.

5 MR. KAHN: I don't think that was in there.

6 JUDGE WALLIS: My omission. Thank you for
7 providing that.

8 MS. TALBURT: Your Honor, could I ask to have them
9 hole punched also?

10 JUDGE WALLIS: Yes, three-hole punched. I think
11 we have so far ruined the bits on at least one of the
12 Utilities Commission's three-hole mechanical drills.

13 MR. KAHN: On the top or on the side?

14 MS. TALBURT: Side, please.

15 MR. KAHN: Side. Okay.

16 JUDGE WALLIS: And printing on both sides.

17 MR. KAHN: Printing on both sides too. Okay.

18 Great.

19 MR. ARAMBURU: My only comment if it's up to four
20 pages for the title table, table of contents, and list of
21 authorities, I'm trying to get an idea of what that's going
22 to look like. There will be a bunch of cases cited and a
23 bunch of other things. I don't know that we need a page
24 limit for a table of contents. If we have the parties are
25 citing 30 cases or numerous provisions, you will want all of

1 the WAC provisions; you will want all the RCWs listed there
2 as we look for the references to Supreme Court. Sometimes
3 that gets to be long so I wouldn't want to have ourselves
4 ourself subscribing in that regard.

5 JUDGE WALLIS: Very well. That would not add to
6 the substantive reading but would assist in the analysis.
7 So thank you for that comment request and we'll remove that
8 four-page limitation.

9 All right. Is there anything further of an
10 administrative nature?

11 MR. KAHN: Yes. We had an issue that we're not
12 talking about the briefs anymore. We have an issue that I
13 think we brought to your attention that apparently as Tammy
14 confirmed your server had some problems over the weekend
15 when people were attempting to submit written comments by
16 the deadline.

17 JUDGE WALLIS: Yes, that resulted from the
18 Commission surprising us with maintenance on the system, and
19 it was off line for I believe about four or five hours on
20 the morning of Saturday.

21 MR. KAHN: Actually it was longer than that,
22 wasn't it, Tammy?

23 MR. BAKER: It started on Friday.

24 MR. KAHN: We know a number of people who tried to
25 submit comments and it was down. What we would request is

1 perhaps extending the opportunity for people and some
2 notification to them. We know some people that we've
3 communicated with and asked them to resubmit that, and Tammy
4 indicated they would be accepted I think at least through
5 last Tuesday, but there may be a whole host of other people
6 that nobody knows about that sent something in and it
7 bounced and now they don't know what to do.

8 JUDGE WALLIS: We apologize for the unexpected
9 outage. I am advised that a number of people resubmitted
10 material and indicated to us that they had tried to submit
11 it earlier and it was rejected. It is not uncommon -- it is
12 relatively rare but not that uncommon for short-term outages
13 to occur. Obviously enough people did recognize that and as
14 a possibility to resubmit their comments. We did receive in
15 excess of 300 pages of comments from how many people?

16 MS. TALBURT: There's 360 commenters.

17 JUDGE WALLIS: More than 350 commenters. So I
18 believe that we have offered and provided an opportunity
19 that's adequate for the purposes.

20 MR. KAHN: Can I ask this? If we become aware of
21 somebody who submitted it originally, bounced, and then
22 didn't know what to do about it, and if they verify that
23 that's the case, and I have nobody in mind now that I'm
24 thinking of, but there very well may be, would those people
25 have the right to submit comment even at this point?

1 JUDGE WALLIS: If that is found to occur, then
2 we'll ask staff, Mr. Wright, to make an administrative
3 decision as to whether that would be received.

4 MR. KAHN: Okay.

5 JUDGE WALLIS: All right. Is there anything
6 further upon the administrative matters?

7 MS. DRUMMOND: This is Susan Drummond for Skamania
8 County. I have a couple questions on the administrative
9 record. Would this be an appropriate time?

10 JUDGE WALLIS: Yes.

11 MS. DRUMMOND: First, if the Council would like a
12 clean copy of the 1977 Comprehensive Plan for Skamania
13 County, we would be happy to provide that. The one in the
14 record has a number of markups on that. Friends and SOSA
15 had indicated they would not object to a copy of that. Just
16 so you know the 1977 Comp. Plan is the old plan and not the
17 current plan. So I wanted to know if the Council would like
18 a clean copy of that.

19 JUDGE WALLIS: Is there any objection?

20 MR. ARAMBURU: No, subject to reviewing it. We
21 had an e-mail exchange this morning and that's fine with
22 SOSA.

23 JUDGE WALLIS: Certainly. It would be our
24 preference I believe to have a clean copy in the record.

25 MS. DRUMMOND: Okay. We will take care of

1 providing that then.

2 The second question had to do with the Census
3 data. I'd indicated earlier this morning to Friends and
4 SOSA that Skamania County would consider withdrawing its
5 objection if they wanted to have that data in the record.
6 So I wanted to bring that to the Council's attention.

7 JUDGE WALLIS: Very well. We will momentarily be
8 going through the exhibit list to verify our understanding
9 of the exhibits, and my preference would be to take that up
10 at that time. Would that be acceptable?

11 MS. DRUMMOND: Yeah, that's fine.

12 JUDGE WALLIS: Is there any anything else before
13 we go into the exhibit list?

14 Let the record show that there is no response.
15 Let's be off the record.

16 (Discussion off the record.)

17 JUDGE WALLIS: Let's go back on the record,
18 please.

19 I have that in front of me a draft exhibit list
20 dated January 4, 2011. Is that a document that is common to
21 people who are in the room? All right. On it I have set
22 out the names of the witnesses, the information that I have
23 as of today from the reporters and from my notes. There are
24 some blanks in that.

25 First of all, I would like to go through the

1 exhibits of Mr. Spadaro. My understanding is that exhibits
2 1.00 through 1.06 were offered and exhibits through 1.05r
3 were admitted on January 3 and 1.06r was withdrawn. Is that
4 consistent with parties understanding?

5 MR. BAKER: Yes.

6 JUDGE WALLIS: Yes. Very well. 1.07c was
7 admitted on January 3, 1.08c, 1.09c, and 110c were offered
8 on January 4, but I don't have a record that they were
9 admitted into evidence. I'm sorry, on January 4.

10 MR. BAKER: My recollection is that they were
11 admitted. Those three exhibits are related to the pending
12 issue on Exhibits 24.01 and 24.09, the Rick Till maps.

13 JUDGE WALLIS: Yes, that's correct.

14 MR. BAKER: But they were admitted on January 4.

15 JUDGE WALLIS: Then we had subsequent discussion;
16 is that correct?

17 MR. McMAHAN: Your Honor, frankly, I can't
18 remember whether they were admitted or not. I remember we
19 objected to their admission I think one might need to check
20 the record on that.

21 JUDGE WALLIS: The record does not indicate that
22 they were received, and the Council later took up that issue
23 and directed that parties provide further information in
24 conjunction with Mr. Till's proposed exhibit, and that is
25 correct. I'm going to suggest that we defer that to one of

1 the last items we consider because there may be some
2 discussions about it.

3 MR. McMAHAN: Your Honor, I'm not sure what
4 wildlife is doing next to 1.09c and 1.10c.

5 JUDGE WALLIS: No, that was not an appropriate
6 note.

7 MR. McMAHAN: It's a wild issue.

8 JUDGE WALLIS: The other notes I have are that
9 1.11c through 1.20r have been received in evidence. Is that
10 consistent with parties' understanding?

11 MR. KAHN: Just for the record, Your Honor, 1.12c
12 and 1.13c those are e-mail exchanges that I asked to be
13 admitted three different times during the testimony and you
14 indicated you would reserve your ruling on that. Before we
15 finished the hearing I asked again about those, and at that
16 point you indicated that you thought they had been admitted
17 so I don't know where we are on it, and you have question
18 marks here.

19 MR. McMAHAN: I agree there was ambiguity about
20 that, although I do believe from what I heard the Council or
21 you indicate on behalf of the Council is that they were
22 admitted along with the WDFW letters that we later offered
23 later as the official position. So I believe basically
24 everything came in.

25 MR. KAHN: Which is fine. I just want to make

1 sure we're on the same page.

2 JUDGE WALLIS: Very well. That is consistent with
3 my recollection.

4 MR. McMAHAN: I frankly don't recall. I remember
5 we objected to the GE Power Brochures. I don't remember
6 whether they were admitted so I would trust Your Honor if
7 that's your recollection.

8 JUDGE WALLIS: Well, my recollection now that we
9 are discussing this is that the Council, this was a matter
10 on which the Council did confer, and following that we
11 returned and I believe indicated that the earlier documents
12 which had been admitted would be properly supplemented with
13 the three documents from the Applicant, and that would also
14 be admitted. So the net result is that, yes, these
15 documents are now admitted and the responding documents that
16 Ms. Anderson presented are also admitted. Is that adequate
17 for a ruling today?

18 MR. McMAHAN: That has to do with the wildlife
19 issues.

20 JUDGE WALLIS: Yes. Very well. I don't see any
21 issues regarding Katy Chaney's exhibits or Don Meier's
22 exhibits.

23 MR. McMAHAN: I'm sorry. If I could just back up
24 a second here. The 1.18c and 1.19c again I recall we
25 objected. I don't recall if those were admitted and I don't

1 know. So if it's Your Honor's recollection they were
2 admitted, I certainly wouldn't argue.

3 JUDGE WALLIS: Apart from my recollection would it
4 be acceptable to record those as admitted?

5 MR. ARAMBURU: They were discussed with
6 Mr. Spadaro so I think they would be appropriate exhibits.

7 JUDGE WALLIS: My recollection is that they have
8 been admitted.

9 MR. McMAHAN: Then I'm not sure what 1.20 is. Was
10 that the guidelines? Was that wind guidelines because I
11 think the e-mails were covered above.

12 JUDGE WALLIS: Is this not the documents that
13 Ms. Anderson presented?

14 MR. KAHN: Yes.

15 JUDGE WALLIS: Yes.

16 MR. McMAHAN: So they're in here twice. So I
17 think there is no 1.20r because these three were that one.

18 MS. ANDERSON: Nos. 1.12, 1.13, and 1.14 are the
19 three e-mails. In response to those the Council admitted
20 1.20r which is the agency level comment letters.

21 MR. McMAHAN: So the three were grouped together
22 in one?

23 JUDGE WALLIS: Yes.

24 MR. KAHN: That's what we did.

25 MR. McMAHAN: All right. Got it.

1 JUDGE WALLIS: All right. Ms. Chaney's exhibits
2 are accurately represented, Mr. Meier's exhibits as well.

3 Mr. McMahan.

4 MR. McMAHAN: I think there may be just -- yeah,
5 there is one thing missing here which is Appendix A to the
6 application. So you have the application section and
7 Appendix A. Mr. Aramburu spent actually most of his time on
8 Appendix A and not so much the sections so I think this
9 should reflect that.

10 JUDGE WALLIS: That would merely be a note in the
11 descriptive phrase here.

12 MR. McMAHAN: Right.

13 MR. ARAMBURU: We did spend a lot of time talking
14 about Appendix B to which was the geotechnical report that
15 was Appendix B to the EIS.

16 MR. McMAHAN: Maybe I misspoke. I want to make
17 sure it reflects that. If it was Appendix B, it's the
18 appendix document I was referring to.

19 JUDGE WALLIS: For the parties' information this
20 short-hand representation is for identification purposes.
21 It has no bearing whatsoever on the substance that was
22 contained in the document. I just entered that so that I
23 could have a better handle on what in fact the parties were
24 talking about.

25 MR. McMAHAN: Okay.

1 JUDGE WALLIS: Now, Mr. Aramburu.

2 MR. ARAMBURU: So on Mr. Meier the record ought to
3 reflect that there were questions concerning the
4 geotechnical report of whether we want to admit that as an
5 exhibit or simply indicate that the parties could refer to
6 it would be fine with me.

7 MR. McMAHAN: Well, I don't think it's an exhibit.
8 It's in the record as part of the application. That's my
9 view of it. So I think it's essentially covered by the ASC
10 references that you're discussing, Judge Wallis.

11 JUDGE WALLIS: So it would be within the documents
12 that were referenced.

13 MR. ARAMBURU: So we can refer to that in our
14 briefing.

15 JUDGE WALLIS: Yes.

16 Let's be off the record for just a moment.

17 (Discussion off the record.)

18 JUDGE WALLIS: Let's be back on the record.

19 For Mr. Walker, Exhibits 4.00, 4.01, and 4.02 are
20 received in evidence. For Jeff Reams the exhibits were
21 offered and received in evidence. It is noted that Exhibit
22 5.07 it consists of federally protected information that is
23 excluded by law from the public record, and it will be
24 retained in the Council's records of the proceeding
25 identified, marked, and protected as a confidential document

1 and available for judicial review.

2 (Exhibits Nos. 4.00 through 4.02 admitted into
3 evidence.)

4 (Exhibit No. 5.07 marked and admitted into
5 evidence.)

6 MR. BAKER: Your Honor, I think we did request
7 that colored copies would be given to the parties. If
8 that's possible we would still request that so that we
9 could -- the black and white version is hard to
10 differentiate what's on the map.

11 MR. McMAHAN: And you're talking about which is
12 marked what --

13 JUDGE WALLIS: That's the circle exhibit. Right?

14 MR. BAKER: Yes.

15 MR. McMAHAN: Yes, I mean I'm just concerned on
16 how that is addressed frankly in briefing at all. I don't
17 have a great answer to that, but I'm concerned about that.
18 As Mr. Cantrell acknowledged there's a very good reason that
19 that kind of data should not be public, including the briefs
20 I think.

21 JUDGE WALLIS: Again, my experience from the
22 Utilities Commission indicates that counsel can be very
23 resourceful in capturing their arguments without revealing
24 critical information.

25 MR. BAKER: Absolutely.

1 JUDGE WALLIS: So we would encourage parties to do
2 that and if any argument is undecipherable as a result,
3 opposing counsel who asked that question are certainly
4 welcome to inquire into it and participate in phrasing that
5 will allow the information in the document from becoming
6 public.

7 MR. BAKER: Back to the color copy issue. I guess
8 what I would suggest is we will take a look at that, and if
9 we need a color copy we can contact the Applicant and take
10 it up at that point.

11 JUDGE WALLIS: Would the Applicant be able to
12 provide that?

13 MR. McMAHAN: Yes, I mean I need Mr. Reams for it,
14 but I assume so.

15 JUDGE WALLIS: Very well. Testimony of
16 Mr. Johnson Exhibits 6.00 through 6.09 were marked and
17 received in evidence. I have a question as to 6.10, 6.11,
18 and 6.12.

19 MR. BAKER: I think I can clarify a couple of
20 things. This is Nathan Baker for the record.

21 Friends withdrew 6.06c. That one was been
22 withdrawn. I had 6.10 as the three WDFW and U.S. Fish and
23 Wildlife Service letters which we've previously identified
24 today as 1.20r. And so if it is 1.20r then that means there
25 is no are 6.10.

1 MS. ANDERSON: I would agree with that.

2 MR. BAKER: Then 6.11c is the August 2003 version
3 of the WDFW Wind Power Guidelines which was admitted. 6.12c
4 is the U.S. Fish and Wildlife Service Wind Power Guidelines
5 which was also admitted. I would agree that all with the
6 exception for 6.06c which has been withdrawn all of these
7 have been with admitted.

8 MS. ANDERSON: I agree. He's correct.

9 JUDGE WALLIS: Very well.

10 MR. McMAHAN: Just so there's not a -- I don't
11 mean to be anal retentive. Just so there's not an incorrect
12 description of it, it is a U.S. Fish and Wildlife document
13 not the U.S. Fish and Wildlife Service Guidelines and say
14 FAC or FAC recommendations to the Department of Interior. I
15 think we all know what we're talking about for the record.

16 JUDGE WALLIS: The testimony of Mark Storm is
17 supplemented with the exhibits I marked and received in
18 evidence today. Chris and Tom Watson my review of the
19 record with the assistance of the court reporters indicate
20 that all of the noted exhibits 8.00 through 8.20c are
21 admitted into evidence.

22 MR. McMAHAN: I just had a colleague look at this
23 and what he noted was 8.04 and 8.05 are reversed. 8.04 is
24 the map of turbine visibility from the Columbia River and
25 8.05 is the map of the turbine visibility from I-84 so you

1 might double check that. And then the cross exhibits 8.11c
2 and through 8.15c I believe were offered and admitted
3 through cross-examination of Mr. Pearce and not Mr. Watson.

4 MR. BAKER: We would agree, but that wouldn't
5 change the number of the exhibit.

6 JUDGE WALLIS: The numbering is apparently not
7 changed so my view is that it would create more confusion
8 than resolve if we change the numbers at this time.

9 The remaining exhibits 9.00 through 9.06 for
10 Witness Pearson are received in evidence. For Sarah
11 McDaniel we have testimony, resume, and a supporting letter
12 as 10.00, 10.01, and 10.02, and I have a corrected
13 declaration. I don't believe I have a copy of the original
14 declaration. Is it appropriate to identify the corrected
15 declaration as 10.03?

16 MR. McMAHAN: Yes.

17 MR. BAKER: Yes.

18 JUDGE WALLIS: Very well. And those are all
19 received in evidence.

20 (Exhibit No. 10.03 marked for identification.)

21 (Exhibit Nos. 10.00 through 10.03 admitted into
22 evidence.)

23 JUDGE WALLIS: Nathan Larson Exhibit 11.00 and
24 11.01.

25 Timothy Homann I don't have records that his

1 testimony was offered.

2 MR. KAHN: He testified. We did offer and it was
3 admitted. It should be admitted one way or the another. We
4 certainly have no objection.

5 JUDGE WALLIS: So it is admitted.

6 (Exhibit No. 12.00 admitted into evidence.)

7 JUDGE WALLIS: My proposal is that following our
8 discussion and agreement of the parties we will declare this
9 list to be the official list of exhibits subject to
10 supplementation as noted further on.

11 Similarly for Mr. Nierenberg, 15.00, 15.01r, and
12 15.02c I have no record that they were received in evidence.

13 MR. KAHN: They were withdrawn. Mr. Nierenberg's
14 testimony was withdrawn by the Applicant.

15 JUDGE WALLIS: That explains why.

16 For Randal Hardy we have 16,00r, 16.01r, 16.02r,
17 and his declaration we will number 16.03, and all of these
18 documents would be received by agreement; is that correct?

19 (Exhibit No. 16.03 marked for identification.)

20 (Exhibit Nos. 16.01r through 16.03 admitted into
21 evidence.)

22 MR. BAKER: Yes.

23 JUDGE WALLIS: Mr. Raschio has an exhibit that is
24 rebuttal testimony, his resume and declaration, and I have
25 numbered the declaration as Exhibit 17.02, and these

1 documents are received; is that correct?

2 MR. KAHN: That's correct.

3 MR. BAKER: Yes.

4 (Exhibit No. 17.02 marked for identification.)

5 (Exhibit Nos. 17.00r through 17.02 admitted into
6 evidence.)

7 JUDGE WALLIS: Cameron Yourkowski -- excuse me,
8 someone on the bridge line is moving some it sounds like
9 heavy moving boxes, but I'm sure it's something very light
10 on your desk that your telephone is picking up and
11 transmitting as being somewhat noisy. So we would really
12 appreciate your consciousness of that.

13 Cameron Yourkowski 18.00r through 18.04r I show as
14 admitted. 18.04r is designated PJM report excerpts and I'm
15 wondering if one of the parties could indicate what PJM
16 stands for?

17 MR. McMAHAN: I will get that to you. I don't
18 remember.

19 JUDGE WALLIS: Joe Mentor, Jr., proposed rebuttal
20 testimony was rejected.

21 Mr. Apostol 21.00 through it 21.07 are received,
22 and following that my quick look indicated that there was a
23 21.07c that was submitted and a 21.08c. I am wondering
24 whether the parties think it would be better to renumber
25 those or retain the original 21.07 would be distinguished

1 from the cross exhibit by the letter C?

2 MR. McMAHAN: Let me comment on that. First of
3 all, Mr. Apostol's the spelling is o-l and not a-l, did come
4 in by declaration.

5 MR. BAKER: Just to clarify, Mr. Apostol did spend
6 all day at the hearing then was admitted orally.

7 MR. McMAHAN: Correct. But we did not
8 cross-examine him so the cross-examination exhibits
9 shouldn't be listed. One of these is actually in the wrong
10 place. The eco stats is actually related to the Smallwood
11 not the Apostol but also did not come in.

12 MR. KAHN: There should be no cross-examination
13 exhibits for Mr. Apostol.

14 MR. McMAHAN: Correct.

15 JUDGE WALLIS: Very well. So we will remove what
16 I have as 21.08 and 21.09.

17 MR. McMAHAN: Correct.

18 JUDGE WALLIS: And what I have as 21.10c letter
19 from Mr. Kahn.

20 MR. KAHN: That would have been the
21 cross-examination exhibit for Mr. Apostol, but the Applicant
22 did not cross-examine so those were not admitted.

23 JUDGE WALLIS: Very well. For Mr. Smallwood
24 Exhibits 22.00 through 22.10.

25 MR. BAKER: Your Honor, 22.00 through 22.04 were

1 all admitted. The remaining exhibits were not offered.

2 MR. KAHN: They were cross-examination exhibits
3 and Mr. Smallwood was not cross-examined.

4 MS. ANDERSON: They stop at 25.05c and are out
5 from that.

6 MR. KAHN: They stop at 22.04. That's the last
7 one admitted.

8 JUDGE WALLIS: He was present and was sworn; is
9 that correct?

10 MR. KAHN: Yes.

11 MS. ANDERSON: Correct.

12 JUDGE WALLIS: And that's when the exhibits were
13 received.

14 MR. KAHN: Correct.

15 JUDGE WALLIS: Mr. Baker's exhibits were rejected.
16 There was a question about the Skamania County ordinance.
17 Has that been resolved?

18 MR. KAHN: I believe we asked the Council to take
19 official notice of it and you said yes.

20 MR. BAKER: Actually that was reassigned a
21 different number. It was admitted for Mr. Pearce. I don't
22 have the number off the top of my head. It's been admitted
23 under a different number.

24 MR. McMAHAN: That is correct.

25 JUDGE WALLIS: Very well. I've been going through

1 the land use transcript, and I don't recall whether that
2 particular ordinance was received in or not.

3 The exhibits of Mr. Till we have addressed
4 earlier. Exhibits 24.02 through 24.08 and 24.00 and 24.10
5 were withdrawn, and the only documents in play are 24.01 and
6 24.09; is that correct?

7 MR. BAKER: Correct.

8 MR. KAHN: And that's consistent with your earlier
9 ruling you made.

10 JUDGE WALLIS: Yes, that's correct.

11 MS. ANDERSON: Can I get clarification on that.
12 Did you say 24.01 and 24.09 or did you say 24.04?

13 JUDGE WALLIS: It is 24.01 and 24.09.

14 MR. KAHN: We withdrew all of the other ones.

15 MR. BAKER: Correct.

16 JUDGE WALLIS: Mr. Lang's rebuttal testimony and
17 cross exhibits 25.00 through 25.06 are received.

18 Mr. Aramburu's exhibits were rejected earlier.
19 The Skamania County Comprehensive Plan and Hearing
20 Examiner's decision on appeal I believe are part of the
21 record either in the land use hearing or otherwise; is that
22 correct?

23 MR. ARAMBURU: I believe when we had Mr. Pearce's
24 testimony we presented both of those items to him and at
25 that time those were admitted I think without objection.

1 MR. BAKER: And I can't recall which witness, but
2 I do believe that both of those were admitted.

3 MR. KAHN: One way or the other they were
4 admitted, as long as we know we can refer to it.

5 JUDGE WALLIS: It's fair game and we'll try to
6 figure out the details here.

7 Exhibit 30.00, 30.01, 30.02 through 30.25
8 testimony of Robert Michaels and rebuttal testimony of
9 Robert Michaels and 30.25 Mr. Michaels' declaration of
10 authenticity and all those documents are received.

11 (Exhibit No. 30.25 marked for identification.)

12 (Exhibit Nos. 30.00 through 30.25 admitted into
13 evidence.)

14 JUDGE WALLIS: For Mr. McIvor Exhibits 31.00, his
15 testimony, his resume 31.01 and bat activity document 31.02
16 have been received in evidence.

17 For Mr. Usibelli Exhibits 34.00 through 34.05 have
18 been received. I note for the record that Exhibits 34.02 a
19 correction has been presented pursuant to agreement among
20 the parties and we will call that Document 34.02 corrected.

21 MR. BAKER: I just wanted to clarify that we
22 objected to that, but it was admitted over our objection.

23 JUDGE WALLIS: Yes.

24 Howard Schwartz Exhibits 35.00 through 35.04 are
25 received. 35.04 through 35.11 have been received. I show

1 35.12c as being offered, but I don't have an indication of
2 whether it was received.

3 MR. ARAMBURU: Those were the estimates from NREL
4 concerning the available area for placement of wind
5 resources. We asked that those be admitted. I think you
6 rejected those.

7 MR. McMAHAN: I think that's right.

8 JUDGE WALLIS: Yes, thank you for that. I believe
9 that was rejected.

10 (Exhibit No. 35.12c rejected from evidence.)

11 MR. ARAMBURU: Over our objection.

12 JUDGE WALLIS: Leonard Bauer Exhibit 36.00r his
13 testimony, 36.01r resume, and 36.02r scenic area report from
14 2010 I show as admitted.

15 MR. BAKER: Correct.

16 JUDGE WALLIS: The Yakama Nation the exhibits for
17 Ms. Lally, Ms. Meninick, and Mr. Spencer have been
18 withdrawn.

19 I have from the Skamania County Public Economic
20 Development agency the testimony of Mr. Hovee, his resume,
21 memorandum of fiscal effects, and rebuttal testimony, but I
22 do not have an indication that they were received.

23 MR. McMAHAN: Your Honor, two things. First of
24 all, there was not rebuttal testimony and he did submit a
25 declaration.

1 JUDGE WALLIS: I do not have a copy of that.

2 MR. McMAHAN: We'll make sure that gets in then.

3 MR. KAHN: And we have no objection to the
4 declaration.

5 JUDGE WALLIS: So we'll mark the declaration as
6 41.03.

7 (Exhibit NO. 41.03 marked and admitted into
8 evidence.)

9 MR. McMAHAN: I thought that went in with Brad
10 Andersen's group of declarations. He submitted four or five
11 of them all together. I'll check with him, but we will make
12 sure it happens.

13 JUDGE WALLIS: Very well.

14 MR. ANDERSEN: I'm right here. I'm sorry, guys.
15 Where are you at?

16 JUDGE WALLIS: Mr. Hovee.

17 MR. McMAHAN: Wake up.

18 MR. ANDERSEN: Wake up.

19 MR. McMAHAN: I'll call you, Brad.

20 JUDGE WALLIS: Bryan-Miller. That is a matter I
21 believe has been resolved.

22 MR. BAKER: They were admitted.

23 JUDGE WALLIS: Exhibits 42.03 was initially
24 rejected, but in light of documents that I'm calling 42.06,
25 these three documents are Employment Security Administration

1 from the State of Washington Employment Security Department
2 documents. 42.06 is Klickitat and Skamania Labor Area
3 Summary, Volume 2010, No. 11, Exhibit 4207 is Historical
4 Data for Commuting Patterns, and 42.08 is Historical Data
5 for Civilian Labor Force and Unemployment Rate, and those
6 documents along with 42.03c are received in evidence.

7 (Exhibit Nos. 42.06c through 42.08c marked for
8 identification.)

9 (Exhibit Nos. 42.03c, 42.06c through 42.08c
10 admitted into evidence.)

11 MR. ARAMBURU: As I recall the e-mails we had
12 submitted the U.S. Census material for Skamania County,
13 Klickitat County, and for Hood River by way of comparison,
14 and I thought that your rulings and the request would
15 include all three of those documents. That is what I
16 recall, but I may be wrong.

17 JUDGE WALLIS: My recollection of that,
18 Mr. Aramburu, is that your documents spoke to matters that
19 were not addressed in 42.03c, 42.06c, 42.07c, or 42.08c and
20 there being no foundation and it being really a late filed
21 exhibit as a consequence my ruling was that should not be
22 received unless there is agreement among the parties that it
23 should.

24 MR. ARAMBURU: Well, as I recall the situation,
25 when we got the 42.03 which was the information regarding

1 Skamania County that was rejected preliminarily by the
2 Council, and we didn't go farther because it was rejected
3 because it was census data. So I didn't really get to
4 42.04c. I think it would be fair because some of the
5 materials that has been submitted from Employment Security
6 deals with Klickitat County that the Klickitat Census Bureau
7 Data from Klickitat which is 42.04C be received, and we
8 would agree if we get this other information in we don't
9 have probable data for Oregon County. So we would agree to
10 withdraw 42.05. So we would ask that 42.04 be received.

11 JUDGE WALLIS: Very well. Is there objection to
12 that?

13 MR. ANDERSEN: Your Honor, Brad Andersen. Other
14 than pointing out that Ms. Bryan-Miller never laid the
15 foundation and therefore my concern that when an exhibit as
16 in No. 42.04 that somehow the Commission will consider that
17 document as though it was somehow relied upon or
18 authenticated by Ms. Brian-Miller. If these come in as any
19 kind of public documents or something like that, I don't
20 have objection to them coming in. It's just kind of where
21 they placed those documents they could almost sound like
22 that Ms. Bryan-Miller relied upon them when she said that
23 they don't rely on those because they're not as accurate as
24 the others.

25 Having said that, I don't object to 42.03c and

1 42.04c coming in. I just don't like their position, you
2 know, as somehow related to Ms. Bryan-Miller's testimony.
3 Does that answer your question?

4 JUDGE WALLIS: It does. Thank you very much,
5 Mr. Andersen. We will record both of 42.03 and 42.04 as
6 admitted, and I will assure you based on my experience that
7 the Council will be aware that in light of the discussions
8 that we've had about these documents that her testimony
9 remains that she believes them to be less accurate than the
10 Employment Security documents, but receiving all of those
11 documents does provide a background for the Council's
12 evaluation of the information that is proposed and is not to
13 be attributed to her judgment.

14 (Exhibit No. 42.04c admitted into evidence.)

15 MR. ANDERSEN: Great. Thank you, Your Honor.

16 JUDGE WALLIS: For Mr. Wittenberg I have 43.00r
17 reported as not offered, 43.02c and 43.07c as withdrawn,
18 43.01c, 43.03c, 43.04c, and 43.05c is admitted.

19 MR. ARAMBURU: 43.06c perhaps was my error in not
20 asking that that document be admitted. That was a document
21 that had been prepared by Skamania County PUD indicating its
22 water use efficiency in its water use system. There was
23 testimony from the witness regarding that. So we would
24 request that 43.06c be admitted. And I don't think
25 Mr. Wittenberg -- did he have rebuttal testimony? I don't

1 believe he did.

2 MR. ANDERSEN: He did not so that's a mistake. He
3 only had direct testimony. This is Brad Andersen.

4 MR. ARAMBURU: So 43.00r.

5 JUDGE WALLIS: We will remove that from the list.

6 MR. ARAMBURU: So we would ask that 43.06c be
7 admitted, and that perhaps was my oversight in not asking
8 that be included in the record.

9 MR. ANDERSEN: Brad Andersen, Your Honor. I don't
10 think -- I mean it's hard going back in time. I don't think
11 there was a -- it says it wasn't offered so that tells me it
12 was never presented to the witness which tells me that there
13 was no foundation laid for it. I don't have the document in
14 front of me, but it actually looks like it's a Department of
15 Health water. I think the reason counsel didn't introduce
16 it is because I had objected to even the relevancy of
17 getting in too far on the water. So I don't think you can
18 admit it at this point because it was never presented to the
19 witness; therefore, it's a lack of foundation. So I object.

20 JUDGE WALLIS: Very well. There were questions
21 about the documents in the record.

22 MR. ARAMBURU: I believe we did ask the witness
23 questions regarding that exhibit.

24 JUDGE WALLIS: Okay. I'm going to reserve a
25 ruling on that until we look at the record. My recollection

1 is that it was of uncertain relevance, but I will have to
2 read the record to review that.

3 MR. ARAMBURU: Okay. Very good.

4 MR. McMAHAN: Your Honor, one other thing on
5 Wittenberg. I don't think this was corrected when I was out
6 of the room, but what you have is 43.01c was actually an
7 exhibit to Mr. Wittenberg's testimony so it's not a cross
8 exhibit. It's just 43.01.

9 MR. ARAMBURU: That's correct and that was
10 admitted.

11 JUDGE WALLIS: So would you tell me now what
12 number should appear on that line?

13 MR. McMAHAN: I think 43.01 because there was no
14 rebuttal testimony.

15 JUDGE WALLIS: Then I can pick up with 4301c as --

16 MR. KAHN: That is 43.01c. We're saying eliminate
17 the C.

18 MR. McMAHAN: That's right. Just get rid of the
19 C.

20 JUDGE WALLIS: Let's be off the record for second.

21 (Discussion off the record.)

22 JUDGE WALLIS: Let the record show that 43.01, the
23 testimony of Robert Wittenberg includes a diagram BPA line
24 route so that they be included within the same number.

25 MS. ANDERSON: So the exhibit is still 43.01 but

1 no little letter c.

2 JUDGE WALLIS: Yes.

3 MS. ANDERSON: Okay. Got it.

4 JUDGE WALLIS: Port of Skamania County testimony
5 of John McSherry at Document No. 44.

6 MR. McMAHAN: Here again this is a declaration
7 that came in by declaration. And, Brad, I remember seeing
8 an e-mail from you where you packaged together several of
9 the witness declarations, and I think this plus Hovee, plus
10 one or two others were all transmitted.

11 MR. KAHN: I think it was just Covert and
12 McSherry.

13 MR. ANDERSEN: Up at the hearing I gave the
14 originals to Tammy, and I gave copies to each of you. So
15 the originals should be in the record. And you're right.
16 It was Mr. McSherry and Mr. Hovee. I just couldn't remember
17 if Mr. Hovee had direct and rebuttal. I think he did, but,
18 yeah, I did a declaration that each of them signed, and I
19 submitted the originals with Tammy on I think it was your
20 last day or second to the last day of hearings. I gave
21 copies to each of the parties.

22 JUDGE WALLIS: Very well.

23 MR. KAHN: One way or the other they're admitted
24 in the record. We certainly don't have any objection.

25 MR. McMAHAN: Those declarations should be in the

1 record.

2 JUDGE WALLIS: We will show the declaration as
3 44.01.

4 (Exhibit No. 44.01 marked for identification.)

5 (Exhibit Nos. 44.00 and 44.01 admitted into
6 evidence.)

7 JUDGE WALLIS: For Mr. Canon we have 48.00,
8 48,01r, 48.02r, and 48.03, the declaration of authorization.

9 (Exhibit No. 48.03 marked for identification.)

10 (Exhibit Nos. 48.00, 48.01r, 48.02r, and 48.03
11 admitted into evidence.)

12 JUDGE WALLIS: For Mr. Covert we have the 49.00
13 and 49.01 which is the declaration of authentication.

14 (Exhibit No. 49.01 marked for identification.)

15 (Exhibit Nos. 49.00 and 49.01 admitted into
16 evidence.)

17 JUDGE WALLIS: For Mr. Pytel we have 50.00r and
18 50.01 which is the declaration of authentication for
19 Mr. Pearce. We have 41.00r as the rebuttal testimony. I
20 have in my chart here ruling reserved, but that's not
21 consistent with my recollection. What do the parties have?

22 MS. DRUMMOND: Yeah, his testimony was admitted as
23 and I think it's 51.00 in terms of the numbering.

24 JUDGE WALLIS: I'm sorry. Yes, it is 51.00.

25 MS. DRUMMOND: It's 51.00r and then 51.01r then.

1 JUDGE WALLIS: Yes. Very well. Thank you. So
2 those three documents were received.

3 Next, I am proposing that the written opening
4 statements the Applicant, the Friends, the Counsel for the
5 Environment, the Seattle Audubon Society, and Skamania
6 County, et al., be received as Exhibits 101, 102, 103, 104,
7 and 105 so that they are in the record. Is there any
8 objection to that?

9 (Exhibit Nos. 101 through 105 were marked for
10 identification and admitted into evidence.)

11 MR. BAKER: No objection. I think Commerce is
12 missing from the list. I think they had an opening
13 statement as well.

14 JUDGE WALLIS: Very well. And Commerce will be
15 marked as 106.

16 (Exhibit No. 106 marked for identification and
17 admitted into evidence.)

18 JUDGE WALLIS: And I am reserving 110 as a spot
19 holder for the completed exhibit list and the other
20 documents may be as added as needed and appropriate.

21 Very well. Does that conclude our discussion?

22 MR. BAKER: It does, but I didn't quite get the
23 numbers for a couple of Peggy Bryan-Miller's exhibits.
24 Perhaps we could discuss that off the record.

25 JUDGE WALLIS: Yes. Is there anything further to

1 be considered at this point?

2 MR. ANDERSEN: Your Honor, Brad Andersen. On the
3 briefing schedule I'm not planning to submit any additional
4 briefing, but I would and maybe you addressed or maybe I was
5 sleeping, but I do plan to submit a six-page closing, just a
6 six-page closing argument. When does one do that?

7 JUDGE WALLIS: You may submit that in conjunction
8 with the briefing schedule for opening briefs.

9 MR. ANDERSEN: Okay. Thank you.

10 MR. KAHN: And, Brad, I'm going to count your
11 pages. We're not going to read anything after page 6.

12 MR. ANDERSEN: Well, does that include the Table
13 of Contents here?

14 JUDGE WALLIS: Ms. Talburt, you had a question or
15 a point.

16 MS. TALBURT: Your Honor, we have four written
17 documents from the public hearing. Did you want those added
18 to the exhibit list?

19 JUDGE WALLIS: Yes, we have written documents from
20 the public hearing that we are numbering as Exhibit 60.01,
21 60.02, 60.03, and 60.04. In addition, it's my proposal that
22 we lump the public comments that have been received and any
23 that may subsequently be added pursuant to the earlier
24 discussion as 61.05.

25 (Exhibits Nos. 61.01 through 61.05 marked and

1 admitted into evidence.)

2 MR. KAHN: And those are part of the adjudicative
3 record; is that correct?

4 JUDGE WALLIS: Yes, that is correct.

5 MS. TALBURT: You said originally 60.00 or 61.00?

6 JUDGE WALLIS: My recollection is that we've used
7 No. 61.00.

8 MS. TALBURT: Yes. I have 00.01, 00.02, and 00.03
9 for admission of the combined 360 comments that have been
10 admitted as 61.05.

11 JUDGE WALLIS: Yes.

12 MS. TALBURT: I don't have a 61.04.

13 JUDGE WALLIS: My recollection is that there is
14 such a document and we'll discuss that. Very well. Is
15 there anything further?

16 Well, thank you for running the marathon with us.
17 I appreciate your attention, your cooperative spirit and
18 your contributions to the record to provide clarity, and for
19 today's purposes this session is concluded.

20 * * * * *

21 (Whereupon, the hearing was adjourned at 5:05
22 p.m.)

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1 I N D E X

2 WITNESS EXAMINATION PAGE

3 MARK STORM

4 Cont'd Cross by Mr. Kahn 1429

5 Cont'd Cross by Mr. Aramburu 1454

6 Redirect by Ms. Anderson 1462

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10 E X H I B I T S

11 NO. DESCRIPTION ID OF AD REJ

12 4.00 Testimony of Jeff walker 1495

13 4.01 Resume of Jeff Walker 1495

14 4.02 Declaration of Jeff Walker 1495 1495

15 7.02 C:L ARDAV/SLMUTIL/S 1428 1452 1466

16 7.03 TotalBB-1 1428 1452 1466

17 7.04 LoggedBB-20 1428 1452 1466

18 7.05 ST1-SW Photo 1441 1452 1466

19 7.06 ST1-NE Photo 1442 1452 1466

20 7.07 ST1-N Photo 1444 1452 1466

21 7.08 ST2-W Photo 1444 1452 1466

22 7.09 ST2-S Photo 1445 1452 1466

23 7.10 STW-E Photo 1446 1452 1466

24 7.11 Acoustics & Noise Control 1457 1466

25 7.12 Field Noise Measurements 1459 1466

E X H I B I T S (Cont'd)

NO.	DESCRIPTION	ID	OF	AD	REJ
30.10	BPA comments, FERC integration			1504	
30.11	Reserve Req. Of Integration			1504	
30.12	BPA paper, Columbia high-water			1504	
30.13	Page with load/wind gen chart			1504	
30.14	Chart, wind gen winter 08-09			1504	
30.15	Wind generation chart			1504	
30.16	Chart, Susidies/MWH gen 2007			1504	
30.17	Table, capacity factors			1504	
30.18	BPA wind generation capacity			1504	
30.19r	Michaels' rebuttal testimony			1504	
30.20r	Klickitat/Skamania response			1504	
30.21r	Electric Resources reprint			1504	
30.22r	PGE letter 12/31/09			1504	
30.23r	Pacific Power Letter 12/31/09			1504	
30.24r	Copy of e-mail, 14 Dec '10			1504	
30.25	Declaration of Michaels	1504		1504	
35.12c	NREL/AWS True Wind estimates				1505
41.03	Hovee declaration	1506		1506	
42.03c	U.S. Census Skamania County			1507	
42.04c	U.S. Census Klickitat County			1509	
42.06	Klickitat/Skamania Labor Sum.	1507		1507	
42.07	Commuting Patterns	1507		1507	
42.08	Civilian Labor Force	1507		1507	

E X H I B I T S (Cont'd)

	NO.	DESCRIPTION	ID	OF	AD	REJ
1						
2						
3	44.00	Testimony of John McSherry			1513	
4	44.01	Declaration of McSherry	1513		1513	
5	48.00	Testimony of Michael Canon			1513	
6	48.01r	Canon rebuttal to Michaels			1513	
7	48.02r	Letter, 11/23/10 from Klickitat			1513	
8	48.03	Declaration of Michael Canon	1513		1513	
9	49.00	Chuck Covert Testimony			1513	
10	49.01	Chuck Covert declaration	1513		1513	
11	101	Applicant opening statement			1514	
12	102	Friends, SOSA opening statement			1514	
13	103	CFE opening statement			1514	
14	104	Seattle Audubon open statement			1514	
15	105	Skamania/Klickitat open stmt			1514	
16	106	Commerce opening statement	1514		1514	
17	61.00	Public Hearing Comments	1515		1515	
18	61.01	Public Hearing Comments	1515		1515	
19	61.02	Public Hearing Comments	1515		1515	
20	61.03	Public Hearing Comments	1515		1515	
21	61.05	Public Comments	1515		1515	

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In re: Whistling Ridge Energy Project
Application No. 2009.10

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 20, 2011, in Olympia, Washington.

Shaun Linse, CCR 2029