

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

1 In the matter of:)
 2 Application No. 2004-01)
 3)
 4 WIND RIDGE POWER PARTNERS, LLC,) Prehearing Conference
 5)
 6 WILD HORSE WIND POWER PROJECT) Pages 1 - 50
 _____)

7 A prehearing conference in the above matter was
8 held in the presence of a court reporter on September 30,
9 2004, at 10:30 a.m., at the Kittitas County Fairgrounds in
10 the Heritage Center, in Ellensburg, Washington, before
11 Energy Facility Site Evaluation Councilmembers.

12 * * * * *

13 The parties were present as follows:

14 WIND RIDGE POWER PARTNERS, LLC, Darrel Peoples,
15 Attorney at Law, 325 Washington Street N.E., Suite 440,
16 Olympia, Washington 98501.

17 COUNSEL FOR THE ENVIRONMENT, John Lane, Assistant
18 Attorney General; 1125 Washington Street S.E., P.O. Box
19 40100, Olympia, Washington 98504-0100.

20 KITTITAS COUNTY, James E. Hurson, Kittitas County
21 Prosecutor, Kittitas County Courthouse, Room 213,
22 Ellensburg, Washington 98926.

23 FRIENDS OF WILDLIFE AND WIND POWER, David A.
24 Bricklin, Attorney at Law, Bricklin Newman Dold, LLP,
25 1424 Fourth Avenue, Suite 1015, Seattle, Washington.

Reported by:
Shaun Linse, CCR

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1 Appearances (cont'd):
2 DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC
3 DEVELOPMENT, Tony Usibelli, Assistant Director, Energy
4 Policy Division, P.O. Box 43173, Olympia, Washington
5 98504-3173.
6 F. STEVEN LATHROP, Jeff Slothower, Attorney at
7 Law; and F. Steven Lathrop, Attorney at Law; Lathrop,
8 Winbauer, Harrel, Slothower & Denison, LLP, 1527 Robinson
9 Canyon Road, P.O. Box 1088, Ellensburg, Washington 98926.
10 ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY,
11 Debbie Strand, Executive Director, 1000 Prospect Street,
12 P.O. Box 598, Ellensburg, Washington 98926.
13 * * * * *
14 JUDGE TOREM: This prehearing conference of
15 the Energy Facility Site Evaluation Council is called to
16 order. My name is Adam Torem. I'm an Administrative Law
17 Judge from the Office of Administrative Hearings, and I
18 have been appointed to preside over this prehearing
19 conference on behalf of the Council. I am also the
20 Administrative Law Judge presiding in another wind farm
21 matter here in Ellensburg, the Kittitas Valley Wind Power
22 Project. That matter as most of you in the room know has
23 been postponed and will be discussed at EFSEC's meeting in
24 March. The postponement was to focus on this one.
25 This is the Wild Horse Wind Power Project,

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1 and the purpose of today's prehearing conference is to
2 determine the objections, if any, from the Applicant and
3 the Council's rulings on the petitions for intervention
4 that have been filed thus far.
5 Today is September 30, 2004. It is Thursday
6 morning, a little bit after 10:30. I am going to have the
7 Councilmembers introduce themselves. We have two that are
8 joining us by telephone today. Council Chair, Jim Luce,
9 are you there, sir?
10 CHAIR LUCE: I'm here. It's difficult to
11 hear you, but I am present.
12 JUDGE TOREM: And, Tim Sweeney, from
13 Utilities and Transportation Commission are you on the
14 telephone as well?
15 MR. SWEENEY: Yes, I am.
16 JUDGE TOREM: All right. I'll ask everyone
17 and I'll try myself to project a little bit more, so those
18 two members of the Council can hear. I'll start down at
19 the left with Patti Johnson.
20 MS. JOHNSON: Patti Johnson, Kittitas County
21 representative.
22 MR. FRYHLING: Richard Fryhling. I'm the
23 Department of Community, Trade and Economic Development
24 representative.
25 MS. TOWNE: Chris Towne, representing the

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1 Department of Fish and Wildlife.
2 MR. IFIE: Tony Ifie, representing Washington
3 State Department of Natural Resources.
4 MS. ADELSMAN: Hedia Adelsman, representing
5 the Department of Ecology.
6 JUDGE TOREM: And then the Council's
7 Assistant Attorney General.
8 MS. ESSKO: I'm Ann Essko.
9 JUDGE TOREM: She'll be providing legal
10 advice to the Council.
11 I also note for the Applicant we have Darrel
12 Peoples who's here.
13 MR. PEEPLES: Right. I'll turn off my cell
14 phone. Sorry about that. It won't ever happen again.
15 JUDGE TOREM: Representing the Applicant,
16 Zilkha, is Chris Taylor. I'll go around the room and also
17 note Counsel for the Environment, John Lane, is present.
18 We have several petitioners for intervention starting with
19 Kittitas County, Jim Hurson, who is the Deputy Prosecutor,
20 and Clay White, who is currently with the Kittitas County
21 Planning Department apparently I understand on his way to
22 potentially greener pastures.
23 MR. WHITE: Yes. I'm on my way northeast of
24 here, but it's been a pleasure working with the Board, and
25 we'll be having staff that will be representing the

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1 planning department.
2 JUDGE TOREM: You will let us know when the
3 new person is identified and when they'll be sitting in
4 the room with us.
5 MR. WHITE: Yes.
6 JUDGE TOREM: Also representing F. Steven
7 Lathrop, one of the petitioners, is Jeff Slothower, and
8 Mr. Lathrop is here as well. All right. I don't think
9 I've put a name and face together yet.
10 Representing this one is the Friends of
11 Wildlife and Wind Power?
12 MR. BRICKLIN: Yes.
13 JUDGE TOREM: Is Attorney David Bricklin and
14 Robert Kruse is here as well. I remember him from the
15 Draft Environmental Impact Statement comment session.
16 Here from the Community, Trade and Economic
17 Development agency in the state is Tony Usibelli, and he
18 is not yet a petitioner for intervention, but he's here
19 today to represent CTED.
20 Debbie Strand of the Economic Development
21 Group of Kittitas County, also petitioner for
22 intervention, is here today.
23 There may be a later deadline for late
24 intervention, and it may be that CTED who is an intervenor
25 party in the other wind power case may yet decide to file

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1 a petition for intervention depending on how things go in
2 this matter.

3 Today I want to hear from the Applicant as
4 to the status of the application. First, a quick status
5 report, and then we will go through the petitions for
6 intervention taking the County first, the Economic
7 Development Group second, then, Mr. Bricklin, your client,
8 Friends of Wildlife and Wind Power, and finally we'll take
9 Mr. Lathrop's petition fourth today in that order.

10 Councilmembers, were there any other pieces
11 of the agenda we need to identify before we get into
12 hearing from the Applicant?

13 All right. Seeing none, Mr. Sweeney and
14 Mr. Luce, are you able to hear things reasonably well?

15 MR. SWEENEY: When you speak up, yes.

16 JUDGE TOREM: Okay. Well, I'll have
17 Mr. Peeples speak up and give us the application status,
18 so we know where we are today.

19 MR. PEEPLES: As far as the status goes are
20 you talking with regard to --

21 JUDGE TOREM: Anything you want to tell me,
22 Mr. Peeples.

23 MR. PEEPLES: We are working with the County
24 at this point trying to come up -- working on their land
25 use procedures to come up with compliance. That is where

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1 most of our efforts have been. We are in the process, and
2 it's been a good process. So that's the only status thing
3 I have to say I guess at this point.

4 JUDGE TOREM: Do you have anybody here in
5 the audience that might be helping with that work, so that
6 the other players can know who that is?

7 MR. PEEPLES: Not in the audience that I can
8 see, no.

9 JUDGE TOREM: All right. Right now there's
10 a land use inconsistency determination that's been issued,
11 and you're working to resolve that still.

12 MR. PEEPLES: Correct. I will be filing a
13 request to extend the time period for preemption for
14 several months, and I will probably get that filed for you
15 next meeting. Your next meeting is Monday?

16 JUDGE TOREM: There's an October 11 meeting
17 I think scheduled.

18 MR. PEEPLES: I will get it filed for that
19 meeting.

20 JUDGE TOREM: You have until November 15.

21 MR. PEEPLES: Right. We're going to file it
22 early.

23 JUDGE TOREM: My thought is we may schedule
24 something for this next at the November 1 meeting, and
25 that would still be enough time to hear from everyone and

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1 let those that are granted intervention status a chance to
2 discuss that with you, and there won't be any rush to
3 judgment on whether it should be extended or not. But we
4 can get it done in a timely fashion on November 1.

5 MR. PEEPLES: Okay. November 1, that's
6 fine. I'll file the request, and then you can just hear
7 it on November 1.

8 JUDGE TOREM: All right. Then on November 1
9 you can be expected to be asked how long that request
10 should be, and I think by then you will have a much better
11 picture.

12 MR. PEEPLES: Right. Okay.

13 JUDGE TOREM: All right. Mr. Lane, anything
14 from the Counsel for the Environment that you want to take
15 up before we get to the first petition for intervention?

16 MR. LANE: Not at this time.

17 JUDGE TOREM: Kittitas County's petition for
18 intervention indicates that there's about 8,600 of the
19 County's acreage that will be affected by the proposed
20 project and points out the land use inconsistency both for
21 the land use plan and the zoning regulations, and that the
22 County has a specific responsibility to see that any
23 siting of the project complies with the Growth Management
24 Act and its Land Use Comprehensive Plan and the Zoning
25 Ordinances.

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1 Mr. Hurson, were there any other specific
2 reasons you want to put on the record or amplify those
3 that were in your petition?

4 MR. HURSON: No. As far as our petition was
5 trying to be a fair summary of the issues that we're
6 involved in and that land use consistency can resolve.

7 JUDGE TOREM: Then I'll turn back to you,
8 Mr. Peeples, and determine if you have any objections to
9 the Council granting Kittitas County's petition for
10 intervention?

11 MR. PEEPLES: We have no objection. I would
12 imagine it would be granted pursuant to similar language
13 in the last intervention.

14 JUDGE TOREM: All right. Debbie Strand, you
15 have petitioned on behalf of the Economic Development
16 Group of Kittitas County indicating that the purpose of
17 your organization is to provide leadership that stimulates
18 business and promotes economic opportunities to support
19 the needs of this county, and that this decision may yet
20 set a precedent for future business development and
21 expansion and retention within the County, and that your
22 group has spent many hours analyzing and researching the
23 economic impacts, including taxes on the local community
24 and property values. Anything else you want to amplify
25 from your petition?

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1 MS. STRAND: No. Obviously this project
2 would have a significant impact on our county, and we want
3 to make certain that we are at the table to mitigate any
4 economic issues that may come forth.
5 JUDGE TOREM: Mr. Peeples.
6 MR. PEEPLES: No objection.
7 JUDGE TOREM: All right. Well,
8 Mr. Bricklin, you're up. Your clients, Friends of
9 Wildlife and Wind Power, have indicated their interest in
10 looking after -- well, I'll just sum it up. -- I believe
11 it's the elk migration area and a number of the other
12 wildlife issues. I'll let you point out whichever of
13 those you think is appropriate for today's record.
14 MR. BRICKLIN: Thank you. With me here is a
15 representative of the group, Robert Kruse. We're
16 concerned about a number of wildlife issues. Elk is one,
17 but deer, sage grouse habitat, large birds, small birds.
18 It is not just an elk issue by any stretch. We're also
19 concerned and very supportive of getting wind power
20 projects sited, and our interest here is ensuring that
21 wind power can go forward in this state, but an important
22 element of our energy mix we do so in conjunction with
23 appropriate protection for wildlife. We think both can be
24 accomplished at this site, but that some modifications in
25 the design at this site are necessary to accomplish those

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1 two goals.
2 JUDGE TOREM: That was my understanding from
3 hearing Mr. Kruse's testimony on the Draft Environmental
4 Impact Statement in his comments there. If I heard you
5 correctly, you mentioned sage grouse and its habitat.
6 MR. BRICKLIN: Yes.
7 JUDGE TOREM: What's the status of that
8 under state or federal endangered species projection law?
9 MR. BRICKLIN: It is a candidate species I
10 believe under federal, and I forget what the state
11 designation is. It has a designation under state law as
12 well.
13 JUDGE TOREM: What's the likelihood of
14 anything happening with those petitions as candidate
15 species between now and say the middle of next year?
16 MR. BRICKLIN: I would assume under the
17 federal administration it's very unlikely that there would
18 be any action.
19 JUDGE TOREM: If there's any change in the
20 administration in November would you expect anything to
21 happen otherwise?
22 MR. BRICKLIN: There would at least be a
23 reevaluation of that.
24 JUDGE TOREM: I'll trust that if you're
25 granted intervenor status, you will keep us posted after

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1 the election.
2 MR. BRICKLIN: Certainly.
3 JUDGE TOREM: Mr. Peeples, anything as to
4 this petitioner?
5 MR. PEEPLES: I believe the petition goes to
6 wildlife issues I believe, and I told Mr. Bricklin this
7 morning the only question I have, and it's a question with
8 regard to the group. Clearly Mr. Kruse I believe stated
9 the basis for intervention. Sierra Club I know and
10 Audubon. They've assured us that Friends of Wildlife and
11 Wind Power is a group. There's just not much in the -- I
12 don't know if it's an organization or there's just some
13 information I think kind of lacking about that group. I
14 don't know what their criteria would be for membership. I
15 don't know if that's relevant to this Council, but I would
16 just like to point that out. I know the Council has had
17 problems before when groups have come in without a real
18 basis for their organization.
19 JUDGE TOREM: Let's clear the air on that
20 and hear from either -- it's Mr. Kruse. Apparently I'm
21 mispronouncing your name. There's a judge from Kitsap
22 County named Kruse that sticks in my mind.
23 MR. KRUSE: That's fine.
24 CHAIR LUCE: Your Honor?
25 JUDGE TOREM: Yes.

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1 CHAIR LUCE: I think the nature of the room,
2 the facility that you're in swallows the sound, and it's
3 virtually impossible to hear anything.
4 JUDGE TOREM: All right. Well, I've got a
5 microphone right in front of me, Mr. Luce, so if you need
6 me to repeat back things I will. We're having a
7 discussion at this point as to Friends of Wildlife and
8 Wind Power, and the question was from Mr. Peeples as to
9 perhaps the nature of that group and whether or not -- we
10 know the national environmental groups like Audubon and
11 Sierra Club, and we're going to have Mr. Bricklin or
12 Mr. Kruse state the nature of the group; maybe how long
13 its been existence, who the members are, and if it was
14 formed specifically for this intervention purpose. That
15 may be fine as well. But just to tell us that and what
16 the ongoing goals of the group might be.
17 CHAIR LUCE: Thank you.
18 MR. BRICKLIN: Friends of Wildlife and Wind
19 Power was formed for this project. Its members include
20 residents and landowners in the area. The membership
21 continues to grow, so I don't want to be at all limiting
22 in terms of who the members may be at any given point in
23 time.
24 JUDGE TOREM: That I don't think is an
25 issue. We've granted intervention status in the past to

1 sole citizens, so the size of the group is not something
2 that I think would bother the Council unless the Applicant
3 has reason to believe that this is some pseudonym or way
4 to sneak around and do something. But tell us if you --

5 MR. PEEPLES: That is not -- and we believe
6 in the sincerity of the intervenor. That's not the issue.
7 We just want to get some type of background as to the
8 group.

9 JUDGE TOREM: Does that address it enough
10 for you, Mr. Peeples, or do you have additional specific
11 questions? And I'll have you lob those loudly, so that
12 the phone folks could hear but directly to Mr. Bricklin,
13 if you like.

14 MR. PEEPLES: What type of organization is
15 it I mean I guess would be my question? Is there a
16 membership? Is there a membership application process?
17 Is it just a couple people getting together with common
18 interest? Is that what it is or how many members do you
19 have at this point not limiting you to that at all? I can
20 understand you're just getting going, but right now we
21 just have a general idea. Mr. Kruse clearly has
22 intervention status as far as I'm concerned.

23 MR. BRICKLIN: I don't think those are
24 appropriate questions for intervention. We do have that
25 information. I can provide that if the Council insists,

1 but the size of the group and the internal workings of the
2 group, how its members are determined and so forth, I'm
3 not aware of anybody needing to know that information in
4 order to make a decision on intervention for petition.

5 JUDGE TOREM: I'm just trying to look
6 quickly to make sure you're correct. I believe you
7 probably are, Mr. Bricklin, but I'm looking at Washington
8 Administrative Code 463-30-400. That's the Council's
9 ruling on intervention and the RCW under the
10 Administrative Procedure Act is RCW 34.05.443. It talks
11 about any person. So I imagine if there's a corporate
12 status, maybe you could just disclose that, so we can see
13 is this group an official 501(C)(3)? Is this something
14 that's registered anywhere in the state, as I look at this
15 more just to make sure it qualifies as a person under the
16 statute?

17 MR. BRICKLIN: It is not incorporated. It's
18 a new group. It may well become incorporated in the very
19 near future. They have not sought 501(C)(3) status from
20 the IRS yet. Again, that's possible. You have to
21 remember this is very new to this group. The call for
22 intervention occurred only a month ago roughly, and so
23 they're still in the informative stage. I want to
24 emphasize this is not a group behind which there stands a
25 single person. There are multiple people involved in this

1 effort.

2 JUDGE TOREM: I'm looking now at the
3 Administrative Procedure Act definition of a person, Sub
4 14, and I think it's 34.05.020. It means any individual,
5 partnership, corporation, association, governmental
6 subdivision or unit thereof or public or private
7 organization or entity -- and this is great language -- of
8 any character that includes another agency. So you can
9 even have just one character.

10 MR. BRICKLIN: If that's as bad as it gets
11 then in characterizing Mr. Kruse, that's fine.

12 JUDGE TOREM: Okay. Well, if you want to
13 aim it that way.

14 MR. BRICKLIN: I was going to say much the
15 same thing. I know under the case law in this state,
16 State versus Bothell, I know that unincorporated
17 associations certainly have standard to pursue issues of
18 that kind.

19 JUDGE TOREM: Well, I appreciate the issue
20 of Mr. Peeples' questions.

21 Mr. Peeples, does that satisfy it?

22 MR. PEEPLES: Yes, it does. There has been
23 more made of this issue than I ever meant to be made of
24 it.

25 JUDGE TOREM: These things happen in these

1 proceedings. Have you noticed that?

2 All right. Let's turn, if there's no other
3 objections or things to be considered on Mr. Bricklin's
4 client, let's turn then to Mr. Slothower. I have to say I
5 had a copy of your petition, and I read it, and then I
6 misplaced it. So Ms. Essko is providing me one. This one
7 looks almost identical. I think maybe if you can tell me,
8 Mr. Slothower, if it's identical to the one your client
9 and law partner filed in the Kittitas Valley case.

10 MR. SLOTHOWER: Your Honor, Jeff Slothower.
11 This is not identical. It is different because the site
12 is in a different location and proximity to Mr. Lathrop's
13 property. I believe the one that we filed in the Kittitas
14 Valley case identified some mileage and distances, if I
15 recall correctly. But the basis for the request to
16 intervene remains the same; that Mr. Lathrop is an
17 individual property owner.

18 There are no other individual property
19 owners seeking to intervene and have a say in how this
20 process plays out. As a citizen and a property owner in
21 the county what this body does and how this facility is
22 sited or not sited has a direct impact on property values
23 and more importantly has a direct impact on future wind
24 power projects in this valley which may or may not impact
25 Mr. Lathrop's property value but certainly will impact the

1 property values and lifestyle of similarly situated
2 citizens in this county. We ask to intervene much like we
3 did in the Kittitas Valley project, simply to have a say
4 and participate in the process to ensure that we have the
5 ability to participate on these issues that will impact
6 Mr. Lathrop's property, on these issues that will impact
7 him as a citizen in this county. We're fully willing and
8 able to follow the process, to participate in the process,
9 and would ask that the petition be granted.

10 JUDGE TOREM: His property in this it says
11 it's within sight of -- and I just don't have an idea.
12 Agricultural property, of course, is usually a big piece
13 of land.

14 MR. SLOTHOWER: Yes. Mr. Lathrop owns
15 approximately 40 acres which is west and south of
16 Ellensburg, but it is a piece of property which has I
17 guess what you would call a view of the entire valley, and
18 either of these turbines at the proposed location will be
19 visible from his property, and it's not just the
20 visibility that we are concerned about. We're concerned
21 about the overall impact of these type of developments in
22 the county on Mr. Lathrop's property values and citizens
23 at large property values. Again, our interests are
24 actually almost the opposite, and I think it's a good
25 complement of Ms. Strand's group in that they seek to

1 intervene for purposes of promoting what they perceive is
2 the positive economics that flow from a project like this
3 whereas we represent the other side of the spectrum and
4 seek to question whether there are positive impacts and
5 more importantly to point out where necessary or mitigate
6 the negative impacts on the economics of the valley and in
7 particular property values.

8 JUDGE TOREM: You mentioned in the last
9 petition in the Kittitas Valley case you had stated the
10 distances from the property.

11 MR. SLOTHOWER: I believe we did. I don't
12 have it in front of me. I can't recall that.

13 JUDGE TOREM: Your client is here. Maybe
14 you can just ask him to tell us how far do you think the
15 borders of the properties are from both projects, so the
16 Council would have an understanding as why as an
17 intervenor in the other one you might also still have a
18 similar interest in this one for those viewpoint issues,
19 so we can understand if there's going to be any objection
20 from the Applicant on how to evaluate this.

21 MR. LATHROP: I'm not totally sure how far
22 west this particular project extends. I don't know what
23 the westerly boundary is. I do know generally where the
24 proposed tower sites are, and that would be to compare the
25 two, pure guess, someplace between three and eight miles

1 on the one, five to eight miles on the one and more like
2 fifteen miles on the other.

3 JUDGE TOREM: This one is farther away?

4 MR. LATHROP: This one is further away.

5 There's no question. But because of the way my property
6 is situated where I do have a rather commanding view of
7 the valley, I have a fair amount of ground that is
8 available and both projects are extremely visible.

9 JUDGE TOREM: Mr. Slothower, anything else
10 you want to add at this time?

11 MR. SLOTHOWER: No. I am available for
12 questioning if anyone has any.

13 JUDGE TOREM: The only one I had, and I
14 think you may have addressed it with Ms. Strand's group.
15 They had indicated an interest in looking at the impacts
16 to the community and specifically property values. You
17 think that Ms. Strand's group, and I'll have to give her a
18 chance to respond here, is representing a different
19 interest than what Mr. Lathrop would?

20 MR. SLOTHOWER: Clearly.

21 JUDGE TOREM: Ms. Strand, do you agree with
22 that?

23 MS. STRAND: No, I don't.

24 JUDGE TOREM: What sort of issues if your
25 group is granted intervention status would you be looking

1 at for property values that you think could adequately
2 cover Mr. Lathrop's interest?

3 MS. STRAND: The organization has in the
4 past done some research, and we've prepared a study that
5 talks about the property values. I guess I'm open minded
6 at this point in time, and I think the group is too. So
7 far what we've seen is we've seen things are pointing to
8 the fact that there is no significant impact; however,
9 we're certainly not tied to that decision if we were able
10 to get other information.

11 JUDGE TOREM: Mr. Slothower.

12 MR. SLOTHOWER: Yes.

13 JUDGE TOREM: I at this time don't recall,
14 but I know in the other case we had gotten to the point of
15 being ready to be at hearing this week. There was
16 prefiled testimony from your client. I just don't
17 remember if any of it covered property values.

18 MR. SLOTHOWER: No, there wasn't prefiled
19 from Mr. Lathrop. There was prefiled testimony from a
20 realtor.

21 JUDGE TOREM: What was the name of that
22 witness?

23 MR. SLOTHOWER: Mr. Weaver, Roger Weaver,
24 and he was there to directly contradict what we believe
25 was erroneous information provided by Ms. Strand's

1 organization. There are obviously two sides to this
2 issue, and Ms. Strand's organization represents a much
3 larger picture, if you will, whereas Mr. Lathrop is an
4 individual property owner.

5 You'll recall in the Kittitas Valley project
6 there were several individual property owners that sought
7 and were granted intervention status. There are no
8 individual property owners here, so it's a group. There
9 are no individual citizens that are seeking to intervene,
10 and it's a group that is sorely not represented if we're
11 not granted intervention status.

12 I believe that although Ms. Strand's group
13 may say that they have an open mind, we believe that that
14 is not the case. We believe that they're a proponent of
15 this project and in being a proponent have either put
16 blinders on to some of the impacts that may be there and
17 may need to be mitigated or have simply chosen to discount
18 them and discounting them to the detriment of Mr. Lathrop
19 and other similarly situated citizens.

20 JUDGE TOREM: Let me hear from Mr. Peeples
21 then and see if after all this clarification of the
22 petition if the Applicant has any objections whatsoever.

23 MR. PEEPLES: I think I've got some
24 questions. First of all, it's my understanding that
25 Mr. Lathrop's property is about 11 miles from --

1 JUDGE TOREM: Mr. Peeples, can you speak up
2 because I want the folks on the phone to hear this.

3 MR. PEEPLES: It is my understanding that
4 Mr. Lathrop's property is about 11 miles distant from the
5 Kittitas Valley site. That's my understanding. And it's
6 my understanding that it's about 20 miles distant from the
7 Wild Horse site, and I don't know where that measurement
8 --

9 JUDGE TOREM: What is that number again?

10 MR. PEEPLES: 20 miles.

11 JUDGE TOREM: Twenty miles. All right. So
12 it's your understanding it's nearly twice the distance.

13 MR. PEEPLES: Right. And most of the
14 citizens that intervened in the KV were people in the
15 immediate and adjacent area. So I believe that for a
16 person to intervene you have to show some type of
17 potential perceptible harm and adverse impact that is more
18 specific to that person rather than a generalized issue.
19 What I think we have here is a person that is 20 miles
20 distant asking to intervene, and the basis as I can see
21 for that is that he states that he can see the wind
22 turbines from his house, and that it's going to affect his
23 property values or he fears that it's going to affect his
24 property values.

25 It seems to me anybody in this county could

1 come in and say the same thing. The County is represented
2 by Mr. Hurson, and I have a real question on that because
3 it seems to me that I have seen nothing demonstrated that
4 would make a special relationship for this person to come
5 in. And some of the grounds he asked for potentially, if
6 he says, yes, I have agricultural property, well, maybe.
7 Local property values, well, maybe. But local concerns
8 and attitudes I mean what's that? So I have a real
9 question whether this person should be granted any
10 intervenor status because there's no special effect and
11 harm has been shown.

12 Mr. Kruse has shown that he lives directly
13 very close to the area, and I think that's different. So
14 my reaction is I don't know whether intervention should be
15 granted on this basis, and if this person can intervene
16 you could have five thousand people intervene on that
17 basis.

18 JUDGE TOREM: Mr. Peeples, so if I
19 understand it, you're going to object to this particular
20 intervenor.

21 MR. PEEPLES: Yes. And if intervention is
22 granted, then I think it should be granted only to those
23 things which he listed where he can demonstrate
24 perceptible personal harm and adverse impact, not a
25 general nature.

1 JUDGE TOREM: Would it be of any assistance
2 do you think to the Council, Mr. Peeples, given that the
3 Administrative Procedure Act on intervention refers out to
4 any reason under law, it's fairly liberal intervention
5 status, and if you want the Council to sustain your
6 objection and not grant intervention status are you
7 prepared to file any briefs in support of that? We could
8 give time to do that and maybe take this up again on
9 November 1 because the language is clear petitions for
10 intervention can be granted at any time. This was timely
11 filed without a doubt, so we have plenty of time to take
12 this up. There's not a schedule being set today for
13 anything else in this hearing. The first time scheduling
14 that would perhaps be taken up would be at November 1. Do
15 you want to file briefs in support of that or do you want
16 to count on the loose liberal standard that's available
17 today for the Council to review to make their decision?

18 MR. PEEPLES: I'll leave it to the Council
19 to make their decision on that standard.

20 JUDGE TOREM: All right. What I want to do
21 now is turn back to Mr. Lane and Counsel for the
22 Environment as one of the statutory parties to this case.
23 Mr. Lane, do you have any comments on any of the four
24 petitions for intervention? I would think that perhaps
25 Mr. Kruse's group would be the one most likely to be

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1 aligned with the statutory interests that you're said to
2 have and see if you think that Counsel for the Environment
3 would be able to adequately cover those issues. I know
4 there's no objection from the Applicant, but is there
5 concern from CFE to have another group of that nature
6 involved?
7 MR. LANE: No, Your Honor. Counsel for the
8 Environment the idea is to make sure the public has full
9 access to the Council. We certainly wouldn't stand in the
10 way of anyone, so we don't have any objection to the
11 intervenors that have applied at this time.
12 I would have one sort of clarifying question
13 on Mr. Lathrop's status intervention because my reading of
14 his initial filing was that he was intervening on behalf
15 of himself as an individual with an individualized right
16 of entry in the proceeding, and yet today's presentation
17 seems to indicate that he may be speaking on behalf of a
18 larger group which seems like more of a generalized
19 grievance. So I would just like a clarification on what
20 he sees as his role and who he sees as representing in
21 this proceeding, but I don't have an objection.
22 JUDGE TOREM: Mr. Slothower.
23 MR. SLOTHOWER: He's seeking to intervene as
24 an individual. What I indicated earlier was that there
25 are similarly situated individuals as Mr. Peeples

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1 indicates. There are other citizens that could intervene,
2 but the simple fact is no other individual citizen has
3 intervened. Kittitas County doesn't purport to represent
4 the interests of all citizens. They represent county
5 government in this and have a different issue.
6 In fact, if we look at Kittitas Valley as a
7 guide, they didn't participate in issues related to
8 property values and how this might or might not impact an
9 individual citizen. I would suggest that proximity to the
10 project in and of itself is not the determining criteria.
11 These type of projects will have an impact on property
12 values and an impact on an individual citizen's lifestyle,
13 and I think that you've already pointed out that
14 Washington rules on intervention are liberal and also
15 there's a significant abiding case law that is out there
16 that says those rules are liberally construed. I believe
17 that just as in the Kittitas Valley project Mr. Lathrop
18 has a direct interest in this matter, and there's no
19 reason not to grant him intervention status.
20 MS. TOWNE: You make reference to cases,
21 and, Mr. Peeples, would you be willing to file a brief for
22 our consideration?
23 MR. PEEPLES: I guess my point is I would
24 agree that it is liberally construed.
25 MS. TOWNE: Are there any limitations? I

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1 don't know the case law.
2 MR. PEEPLES: I think you have to show a
3 specific perceptible impact that is specific to that
4 person or group.
5 MS. TOWNE: Could you provide us with the
6 cites?
7 MR. PEEPLES: I could provide you with the
8 cites, yes, for that.
9 MS. TOWNE: I would appreciate it.
10 MR. PEEPLES: It's really general. It's a
11 general law in the area.
12 JUDGE TOREM: Chairman Luce, do you think we
13 could have a briefing schedule today that would allow the
14 Council to take this particular petition up on November 1?
15 Are you there?
16 All right. Let me see if we still have
17 folks on the line. Chairman Luce?
18 CHAIR LUCE: I'm on the line. I'm not
19 hearing a lot of the discussion.
20 JUDGE TOREM: Let me summarize it then to
21 this point, and, Councilmember Sweeney, are you there as
22 well?
23 MR. SWEENEY: Yes, I am.
24 JUDGE TOREM: As it stands right now there
25 are three petitions for intervention to which there are no

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1 objections. Those are for Kittitas County, the Economic
2 Development Group, and the Friends of Wildlife and Wind
3 Power. Those were discussed a little bit today, but it
4 doesn't seem as though there's any objection or
5 controversy as to the status or eligibility of those
6 parties, potential parties to intervene.
7 As to Mr. Lathrop there's some questions
8 being raised today not only from where I'm sitting as to
9 the exact nature of the interest. Those have been echoed
10 a little bit by Counsel for the Environment, but there is
11 a strong objection from the Applicant as to Mr. Lathrop's
12 participation, and now there's going to be some question
13 as to whether a briefing schedule would be appropriate.
14 Councilmember Smith Towne has asked whether Mr. Peeples
15 would provide some citations regarding the APA and perhaps
16 our own rules or just general intervention rules that may
17 come from the rules of Superior Court in the state.
18 So I'm asking whether you have any guidance
19 as the Chair as to what sort of briefing schedule and the
20 nature of what you think would best help your fellow
21 Councilmembers.
22 CHAIR LUCE: I think, Judge Torem, didn't
23 you mention a briefing schedule just now of November 11?
24 JUDGE TOREM: November 1 would be the next
25 Council meeting that we would take up anything on the Wild

1 Horse project from what I have discussed with staff prior
2 to today's meeting.

3 CHAIR LUCE: November 1 or the next
4 appropriate time would be fine with me. Briefing makes a
5 lot of sense.

6 JUDGE TOREM: Today's date is September 30.
7 Mr. Peeples, do you think you could have a brief to us in
8 approximately ten days as to this issue?

9 MR. PEEPLES: Sure. I mean that wouldn't be
10 an issue. You stated it as a strong objection. I have an
11 objection, but it's not a strong objection. My concerns
12 really to a large extent are highlighted by the Counsel
13 for the Environment is what is the nature of it? If it's
14 individual, then we've got to look at the individual.
15 From the statements I only see two things there with the
16 properties values and maybe ag land.

17 JUDGE TOREM: Let me put it this way then.
18 I'm going to ask, Mr. Slothower, if your schedule allows,
19 and I know up to a little while ago you were clear next
20 week. Could next Friday work for you to file an initial
21 brief?

22 MR. SLOTHOWER: Do you want me to file the
23 initial brief or Mr. Peeples?

24 JUDGE TOREM: As I thought about it it's
25 your motion to intervene and maybe some briefing to

1 justify that would help clarify the rules for the Council,
2 and then we can see what objections. It may do away with
3 the objection entirely if Mr. Peeples withdraws it and
4 wants to just file a response to your brief saying he
5 withdraws the objection. That may be the most streamlined
6 path to handle this particular issue.

7 If next Friday, the 8th, gives you
8 sufficient time and maybe Friday, the 15th, for
9 Mr. Peeples, and what I'll suggest is that we send service
10 copies of this. Can you file it, since I know we have
11 cumbersome filing restrictions to have it in our office
12 fax would be okay.

13 MR. SLOTHOWER: I could get it to you by the
14 8th. I mean it's pretty clear to me what the law is on
15 this issue, so I don't anticipate any lengthy brief.

16 JUDGE TOREM: I don't expect it to be more
17 than a few pages either, but as long as it addresses the
18 Council's rule under WAC 463-30-400 and any other rules
19 that are derived from the Administrative Procedure Act
20 which is where these rules are authorized from, then I
21 think that will be a sufficient brief. If you want to go
22 to anything I think maybe CR --

23 MR. SLOTHOWER: 21.

24 JUDGE TOREM: 21. Okay. I was going to say
25 23 or 24, somewhere in that range, that have additional

1 case law that might provide better guidance because I
2 don't think you'll find a whole lot of case law citing
3 EFSEC rules or citing particularly the APA and its
4 standards for intervention, but CR 21 would probably be
5 the place to check.

6 Mr. Peeples, if you will file by the
7 following Friday, the 15th, then for certain that gives
8 the Councilmembers enough time to review this.

9 MR. SLOTHOWER: Can I have just a moment?

10 Those dates are fine. I will get you your
11 brief by the 8th. One question I had is there's a
12 question as to whether CTED will be intervening. Are you
13 anticipating setting a late intervention deadline?

14 JUDGE TOREM: Typically that's been done in
15 past cases. Mr. Fiksdal, that's been done in almost every
16 case that I understand from what you and Ms. Makarow have
17 told me.

18 MR. FIKSDAL: There has been some late
19 filings in the past.

20 MR. PEEPLES: The basis of those late
21 filings have always been because the Draft EIS. We had
22 intervention before the Draft EIS.

23 MR. FIKSDAL: That's correct.

24 MR. PEEPLES: In this situation so then
25 there would be an intervention for people to review the

1 Draft EIS to see if there are any additional areas or
2 additional people that would want to intervene after the
3 EIS. This situation we have the Draft EIS out.

4 MR. SLOTHOWER: I was just asking a
5 question.

6 JUDGE TOREM: That's all right. I don't
7 want to necessarily -- if Mr. Usibelli wants to speak to
8 that before the end of the meeting he may, but I don't
9 know if there will be or not. There's never a guarantee.
10 I think it's been a custom to the past, and I don't know.
11 Mr. Peeples has been around EFSEC longer than I. Whether
12 or not that custom has been based on filing and dates for
13 the Draft EIS, I don't know. But this case appears to be
14 less controversial than the other project before the
15 Council, and it appears that all the state agencies
16 certainly had notice and ability to file petition for
17 intervention now. I would imagine that additional
18 criteria if Mr. Usibelli wants to file he would tell us
19 why they weren't here today for petition for intervention.
20 So that's all I know about it and would anticipate on the
21 subject.

22 One other thing. Did you want to file a
23 reply brief just in case there is a response brief and not
24 a withdraw or an objection?

25 MR. SLOTHOWER: I would like to reserve the

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1 ability to do that, and I can do that quickly. I just
2 need a few days. I don't know when your next meeting is.
3 You said your next meeting is the 11th?
4 JUDGE TOREM: There's a meeting on the 11th,
5 but we won't take this up again until November 1, and
6 there will be a decision made at that hearing as to all
7 the petitions if they're not made today. It sounds like
8 we'll take up your client's petition on that date as the
9 one remaining. So if the 15th is Friday, then the
10 following Friday is the 22nd.
11 MR. SLOTHOWER: That's more than enough
12 time.
13 JUDGE TOREM: That gives us more than enough
14 time as well to have ten days after your filing to review
15 it. So we'll set those dates the 8th for you to file your
16 initial brief on intervention and then a response from the
17 Applicant on the 15th, and the 22nd, the following Friday,
18 for any reply brief that's necessary.
19 MR. SLOTHOWER: Thank you.
20 JUDGE TOREM: Send it electronically if you
21 will. I know we've got into the habit of that. But then
22 if we granted party status today to anyone else as
23 intervenors you will have to serve them to be in
24 compliance with the rules.
25 MR. SLOTHOWER: Okay.

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1 JUDGE TOREM: So go ahead and if there's a
2 need to exchange electronic addresses that can be done.
3 Everybody is here today. So you can courtesy copy them as
4 well, and, Mr. Peeples, you'll just follow the normal
5 service as we've done for this one.
6 MR. PEEPLES: I'll do electronic. I do
7 everything electronic.
8 JUDGE TOREM: Okay. We will also have the
9 hard copies.
10 MR. PEEPLES: I'll get the hard copies.
11 Everybody will have it electronically.
12 JUDGE TOREM: Ms. Essko, you had something
13 else perhaps to add.
14 MS. ESSKO: I just have a comment to make,
15 and that is as individuals think about who has to actually
16 file a petition to intervene and who doesn't, I would
17 direct people's attention to WAC 463-30-060 which draws a
18 distinction between parties who are parties by virtue of
19 being member agencies as defined in RCW 80.50.030 and
20 parties who are parties because they have been granted
21 intervenor status. Then, of course, the other categories
22 are the Applicant and the Counsel for the Environment.
23 So, again, as you think about who does or
24 does not have to actually file a motion to intervene
25 please look at 463-30-060.

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1 JUDGE TOREM: Councilmembers, is there any
2 further discussion or inquiry for any other petitioners?
3 Otherwise, I would entertain a motion to grant the
4 petitions for intervention from the County, from
5 Ms. Strand's Economic Development Group, and for
6 Mr. Kruse's Friends of Wildlife and Wind Power based on no
7 objection from the Applicant on either of those or any of
8 those three nor from Counsel from the Environment.
9 MS. TOWNE: So moved.
10 JUDGE TOREM: Is there a second?
11 MR. IFIE: Second.
12 JUDGE TOREM: All right. Any discussion on
13 the motion? Mr. Sweeney and Chairman Luce, any
14 discussion on a motion to grant intervenor status to the
15 County, the Economic Development Council and Friends of
16 Wildlife and Wind Power?
17 CHAIR LUCE: No, I would support that
18 motion.
19 JUDGE TOREM: Mr. Sweeney?
20 MR. SWEENEY: No discussion, and I say vote
21 on it.
22 JUDGE TOREM: All right. Is there a call
23 for the question?
24 MR. FRYHLING: Question.
25 JUDGE TOREM: Because of the nature of the

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1 vote today, we'll take a roll call vote. All those in
2 favor will say Aye.
3 Chairman Luce?
4 CHAIR LUCE: Aye.
5 JUDGE TOREM: Councilmember Sweeney?
6 MR. SWEENEY: Aye.
7 JUDGE TOREM: Councilmember Ifie?
8 MR. IFIE: Aye.
9 JUDGE TOREM: Councilmember Adelsman?
10 MS. ADELSMAN: Aye.
11 JUDGE TOREM: Councilmember Smith Towne?
12 MS. TOWNE: Aye.
13 JUDGE TOREM: Councilmember Fryhling?
14 MR. FRYHLING: Aye.
15 JUDGE TOREM: And for the County,
16 Ms. Johnson?
17 MS. JOHNSON: Aye.
18 JUDGE TOREM: Thank you very much. It's in
19 favor unanimously for all of the three intervenors, and
20 let's take a look then the briefing schedule is set up for
21 your client, Mr. Slothower.
22 Mr. Usibelli, before the end of the meeting
23 did you want to state anything on behalf of your agency?
24 MR. USIBELLI: I did.
25 JUDGE TOREM: All right. Speak up so the

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1 folks on the phone can hear you.
2 MR. USIBELLI: I'm Tony Usibelli,
3 representing the Department of Community, Trade, and
4 Economic Development. I want to start out with an apology
5 to the Council. I've been out of the office this week,
6 and I thought that the Council had been served with our
7 notice of appearance. It is our understanding that based
8 on what Ms. Essko cited and in consultation with our
9 Assistant Attorney General we have standing in these
10 proceedings, and that we merely need to file a notice of
11 appearance as opposed to a notice of late intervention,
12 and it is our intention to do that. Again, I apologize to
13 the Council. That notice of appearance should have been
14 provided to you prior to this meeting.
15 JUDGE TOREM: I don't recall seeing it.
16 MR. USIBELLI: It was not as far as I know.
17 So it will be provided to the Council and to all of the
18 other intervenors by no later than tomorrow.
19 JUDGE TOREM: So am I to understand that
20 based on Ms. Essko's comments and reading of the law that
21 your agency sees it that there's no need to file a
22 petition for intervention but simply the notice of
23 appearance will make you a party?
24 MR. USIBELLI: That's our understanding, and
25 our notice of appearance will be essentially identical to

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1 the notice of appearance that we filed in the Kittitas
2 Valley case.
3 JUDGE TOREM: And I came into the Kittitas
4 Valley case well after this stage of the granting of
5 petitions for intervention. So it's your assertion that
6 there was not a notice for a petition for intervention by
7 Community, Trade and Economic Development but a notice of
8 appearance in that case.
9 MR. USIBELLI: I believe formally it was a
10 notice of appearance.
11 JUDGE TOREM: Mr. Fiksdal is nodding his
12 head, yes, that is his recollection. So I don't think
13 that if the law is correct, Ms. Essko, your reading of it
14 that there's any need to formally have the Council vote on
15 intervention status today.
16 MS. ESSKO: That's right.
17 JUDGE TOREM: If that changes, Mr. Usibelli,
18 from further look, then we'll let you know November 1 and
19 take that issue up as necessary and go through a similar
20 process that we did today with the other nonstatutory
21 parties that are petitioning for intervention.
22 Councilmembers, is there any other business
23 that needs to be addressed at this time?
24 Chairman Luce, any other business?
25 CHAIR LUCE: Judge Torem.

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1 JUDGE TOREM: Yes.
2 CHAIR LUCE: Could you briefly summarize the
3 discussion that you just had with Mr. Usibelli.
4 JUDGE TOREM: Yes, I will do my best.
5 Community, Trade and Economic Development has not yet but
6 intends to file a notice of appearance, and it's
7 Mr. Usibelli's belief that they did that similar process,
8 and Mr. Fiksdal concurred that's what happened in the
9 Kittitas Valley case. Ms. Essko's reading of the law is
10 that that's all that is necessary for that state agency to
11 become a party. If that's correct, that's how it happened
12 last time, I would believe that there would be no further
13 proceedings necessary. If after some further legal review
14 of that -- I will take a look at that with Ms. Essko just
15 to confirm that she and I are in agreement on that, and if
16 that's correct, that's what happened last time, I can't
17 imagine there's any reason to do otherwise.
18 CHAIR LUCE: Thank you.
19 JUDGE TOREM: Other parties if they disagree
20 might raise that at the November 1 prehearing conference
21 which will probably just be done telephonically in Olympia
22 because it will be part of a regularly scheduled meeting,
23 and the only purpose for that prehearing conference, and I
24 see Mr. Hurson frowning at me, to be done will be to
25 discuss where are we on the preemption issue and the

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1 extension of that date and setting a date for that and
2 discussing potential dates for the scheduling of this
3 matter. So there won't be a whole lot of substance in my
4 view, at least anything to justify a trip for the entire
5 Council to this side of the mountains.
6 CHAIR LUCE: Thank you.
7 JUDGE TOREM: That's what we will try to do
8 on November 1, so all the parties are aware.
9 MR. HURSON: Just so you know, I wasn't
10 frowning at you. If you thought I was, I apologize.
11 JUDGE TOREM: I just take everything
12 personally from you.
13 MR. HURSON: I was in deep thought about
14 something.
15 JUDGE TOREM: All right. Other parties that
16 have been granted intervention status the County,
17 Ms. Strand, your group, as well as Mr. Bricklin, your
18 client, are there any other questions or comments that
19 need to get on the record today?
20 Mr. Hurson?
21 MR. HURSON: No.
22 JUDGE TOREM: All right. Ms. Strand?
23 MS. STRAND: No.
24 JUDGE TOREM: Mr. Bricklin?
25 MR. BRICKLIN: No.

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1 JUDGE TOREM: I would appreciate if those of
2 you and include Mr. Slothower and Mr. Lathrop in this
3 because they will be intimately involved in the process I
4 am sure to exchange your addresses, telephone numbers, if
5 they haven't been already through the media that we have
6 exchanged in the petitions. But take the opportunity to
7 get to know your fellow intervenors and petitioners for
8 intervention as it stands now while we're all gathered
9 today. We probably won't be back in Ellensburg the rest
10 of the year because there won't be another proceeding that
11 requires a prehearing conference beyond the scheduling of
12 matters.

13 My anticipation is that in November we will
14 ask and hope to be able to put some hard dates on the
15 calendar for adjudicative hearings. If this matter
16 develops an issues list similar to the one in Kittitas
17 Valley, there is a Council order. I don't remember the
18 number now, but 790 something that sets out the briefing
19 schedule for filing of issues, filing of prefiled
20 testimony. It also sets out the issues for what will be
21 covered at the hearing, and it keeps on that list the
22 issue of preemption for land use. That has not reared its
23 head yet in this case, but it may, so I want all the
24 parties that are granted status now to look at the
25 Kittitas Valley order, see if the issues there are

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1 sufficient, and review those with the Counsel for the
2 Environment, so that we can discuss those quickly.

3 If there are any additional issues, perhaps
4 a letter to the Council stating in addition to those or
5 some of the ones that are listed in the Kittitas Valley
6 are not appropriate with this. But because they're both
7 wind farm cases with the same Applicant I would anticipate
8 some similarities in the types of issues. Now the
9 specifics, of course, will prove out differently, but we
10 will be prepared to discuss those issues on November 1 and
11 then set the hearing schedule if at all possible.

12 MS. ADELSMAN: Would it be possible by
13 November 1 to get a schedule from the County and
14 Mr. Peeples on what's happening at the County, like what
15 is the various time line and how long and so on for that
16 process? I think we would like to have that.

17 JUDGE TOREM: I think, Councilmember
18 Adelman, that Mr. Peeples and Mr. Hurson understand that
19 when the deadline for November 15 which is now set on the
20 issues for resolving land use consistency and filing for
21 preemption that to justify any further extension of that
22 we'll expect such a recitation from both sides as to where
23 they are and what that schedule will be.

24 MS. ADELSMAN: Okay.

25 JUDGE TOREM: Especially based on the

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1 representations that this was going to be the focus of
2 both the County and the Applicant with setting Kittitas
3 Valley aside for six months, we hope to see a pretty firm
4 schedule of what we can expect and to know if land use
5 inconsistencies can be resolved or not.

6 Any other Councilmembers have questions or
7 comments for the record?

8 Mr. Lane.

9 MR. LANE: I have some questions. There
10 were some other issues that were identified in the
11 prehearing order today. My understanding we're not going
12 to take those up today but those would be at another
13 prehearing?

14 JUDGE TOREM: Which specific issues do you
15 refer to?

16 MR. LANE: It's on Page 2, Items A through
17 H. In particular I have some issues about the discovery.

18 JUDGE TOREM: The discovery if you saw the
19 attached guidance, and you will remember the discussion
20 from the fairgrounds last I think it was January or
21 February about discovery issues in the other cases. Once
22 we set something for prefiled testimony, we can have the
23 formal discovery rule, and we can take that up and perhaps
24 look at it. I think it's in the same order that I
25 referenced earlier in the Kittitas Valley case. If anyone

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1 has comments on how that discovery might be set, we can do
2 that on November 1, but for informal discovery I think
3 Mr. Peeples would voice some of the similar willingness to
4 disclose whatever people want to ask of him and his client
5 anywhere along the way. So anyone that is a party that
6 has questions about what witnesses are anticipated, I
7 would be willing to venture that some of the same
8 witnesses that prefiled testimony that's available for
9 your review will be echoed in this case, and that
10 Mr. Peeples would be willing to tell you which ones will
11 be called as witnesses and which ones won't. So much of
12 the homework I would think for a general wind farm case
13 has been done, Mr. Lane, and I don't know if there's any
14 need to set any formal discovery rules today that would
15 affect anything that has to occur between now and November
16 1. Are you anticipating taking any depositions?

17 MR. LANE: Possibly. So I guess my question
18 is in our last prehearing conference there was discussion
19 of holding this hearing in January. If we don't meet
20 until November to start discussing, I have some concern
21 about that time period if we're rushing that fast. I
22 think if we're waiting until November to start settling
23 some of these issues when things consume to prefiled.

24 MR. PEEPLES: My suggestion is to have the
25 Counsel for the Environment talk to me. If he wants to

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1 sit down, clearly informal discovery whoever he wants to
2 talk to we will make available to him. If he wants
3 something more formal after doing that, then sure. I
4 don't think you have to wait until then to work with me.
5 JUDGE TOREM: If there's no objection to you
6 sending a deposition notice, then I don't think there's
7 any need for the Council to get involved. You certainly
8 have leave of -- I'm not formally appointed as a presiding
9 officer yet, but if that is going to happen as in the
10 Kittitas Valley case, I don't know that the Council has
11 any objections to friendly depositions being set up for
12 that.
13 MR. PEEPLES: I didn't offer friendly
14 depositions. I said that may be the next step, but
15 clearly right now we will sit down and make anybody
16 available that you want.
17 JUDGE TOREM: You go ahead and if you want
18 to serve a deposition notice, I'll hear from Mr. Peeples'
19 objection. Then we can take it up at another hearing if
20 you we need to, if you think that's what you need to do
21 for your schedule.
22 I don't think we're going to have a hearing
23 back here in January. But given where things are going,
24 it sounded that's like where the Council and they're all
25 nodding their heads from the County as well, that would be

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1 when they could complete their land use process. And that
2 could be when hopefully we would hear from them that we're
3 going to have a resolution of land use issues or not. But
4 the following month or the month after that might be more
5 likely in my humble opinion as to when we would start a
6 hearing.
7 Anything else, Mr. Lane?
8 MR. LANE: No.
9 JUDGE TOREM: Councilmembers, anything?
10 Other parties?
11 Mr. Bricklin.
12 MR. BRICKLIN: I have one question. In the
13 guidance document there's a description of three different
14 hearing formats that are available to the Council for use.
15 Has there been any preconceived notion as to which of
16 those the Council would expect to use in this proceeding?
17 JUDGE TOREM: I believe what's typically
18 been done is listed as the third one, individual hearings
19 sessions for simply cross-examination.
20 CHAIR LUCE: Could you speak up a little
21 bit, please.
22 JUDGE TOREM: Yes. We are talking about in
23 the hearing format there were some guidance on Sub 4, and
24 there are three different format models. And, Chairman
25 Luce, I think they are as follows: An exchange of

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1 evidence followed by single hearing session or second
2 individual hearing sessions for cross-examination of each
3 case of the parties by Applicant, intervenor, and Counsel
4 for the Environment, or, third, what I think we were
5 trying to do in the Kittitas Valley case individual
6 hearing sessions to cross-examine evidence on a given
7 topic. I don't know that we formally ever said that, but
8 Mr. Bricklin that was my opinion as to what the Council
9 thought was going to work best when we set up the issues
10 list last time and to kind of try to flow the hearing
11 schedule by witnesses according to topic.
12 Mr. Peeples, is that essentially how you set
13 up your witness schedule to that third format?
14 MR. PEEPLES: Yes.
15 JUDGE TOREM: So I think that's generally
16 been an informal agreement that that was the most helpful,
17 so that if there were issues on preemption or there were
18 issues on land use perhaps your group would sit back and
19 not have any questions, especially depending on the order.
20 We will look again at the petition and issue a formal
21 order on intervention and look to limit based on what was
22 asked for in their certain areas. So yours may focus on
23 wildlife and any other issues that were raised in your
24 petition.
25 Certainly if the Council then issues that

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1 written order between now and November 1 and any of the
2 intervenors believe they were improperly limited in scope
3 bring it up November 1, and we can see about modifying
4 that if we misread petitions of if there's any need to
5 cover additional areas.
6 MR. BRICKLIN: Thank you.
7 JUDGE TOREM: Any other comments for the
8 record today?
9 All right. Seeing none, then at 11:36 this
10 meeting is adjourned.
11 * * * * *
12 (Prehearing conference adjourned at 11:36
13 a.m.)
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AFFIDAVIT

I, Shaun Linse, CCR, Certified Court Reporter,
do hereby certify that the foregoing transcript
prepared under my direction is a true and accurate
record of the proceedings taken on September 30, 2004,
in Ellensburg, Washington.

Shaun Linse, CCR
CCR NO. 2029