

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:)	
Application No. 2003-01)	
)	
SAGEBRUSH POWER PARTNERS, LLC,)	Prehearing Conference
)	
KITTITAS VALLEY WIND POWER PROJECT)	Pages 1 - 59
_____)	

A prehearing conference in the above matter was held in the presence of a court reporter on August 22, 2005, at 1:05 p.m., at 925 Plum Street S.E., Conference Room 308, in Olympia, Washington, before Energy Facility Site Evaluation Councilmembers.

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The parties were present as follows:

SAGEBRUSH POWER PARTNERS, LLC, Darrel Peebles, Attorney at Law, and Timothy McMahan, Attorney at Law; 325 Washington Street N.E., Suite 440, Olympia, Washington 98501.

COUNSEL FOR THE ENVIRONMENT, Michael S. Tribble, Assistant Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, Washington 98504-0100.

KITTITAS COUNTY, James L. Hurson, Kittitas County Prosecutor, Kittitas County Courthouse, Room 213, Ellensburg, Washington 98926.

Reported by:
Shaun Linse, CCR

1 Appearances (cont'd):

2 DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC
3 DEVELOPMENT, Mark Anderson, Senior Energy Policy Specialist,
4 Energy Policy Division, P.O. Box 43173, Olympia, Washington
5 98504-3173.

6 RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT),
7 James C. Carmody, Velikanje, Moore & Shore, P.S., 405 East
8 Lincoln Avenue, P.O. Box 22550, Yakima, Washington 98907.

9 F. STEVEN LATHROP, Jeff Slothower, Attorney at
10 Law, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP,
11 201 West Seventh Avenue, Ellensburg, Washington 98926.

12 ECONOMIC DEVELOPMENT GROUP, Debbie Strand,
13 Executive Director, 1000 Prospect Street, P.O. Box 598,
14 Ellensburg, Washington 98926.

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16 CHAIR LUCE: The meeting of the Washington
17 State Energy Facility Site Evaluation Council will come to
18 order. This is a prehearing conference in the matter of
19 Kittitas Valley Wind Power Project, Application No.
20 2003-01, and today is Monday, August 22, 2005. It is
21 approximately five after 1:00 p.m., and we are meeting in
22 Olympia, Washington at the 925 Plum Street offices.

23 I am Chairman Luce, Chair of the Washington
24 State Energy Siting Council, and we have today a
25 prehearing conference in the matter which I have just

1 mentioned. Presiding over this conference will be Judge
2 Adam Torem, our Administrative Law Judge. I would at this
3 time ask Judge Torem to assume control of this meeting.

4 JUDGE TOREM: Thank you, Chairman Luce. I'd
5 like the Councilmembers--and I know there's a few members
6 that are new--to introduce themselves and the departments
7 from which they've been appointed to serve on the Council.

8 We'll start with Ms. Wilson.

9 MR. FIKSDAL: If I may interject, please
10 speak very loudly so the people on the phone can hear.

11 MS. WILSON: No problem. Judy Wilson,
12 Department of Natural Resources.

13 JUDGE TOREM: I note that Chris Towne from
14 Fish and Wildlife is scheduled to be here but has not yet
15 arrived, and Tim Sweeney is scheduled to be here from
16 Utilities and Transportation and he has not yet arrived.

17 MS. JOHNSON: Patti Johnson, Kittitas
18 County.

19 MR. FRYHLING: Richard Fryhling. I
20 represent the Department of Community Trade and Economic
21 Development.

22 CHAIR LUCE: Jim Luce, Chair.

23 MS. ADELSMAN: Hedia Adelsman, representing
24 the Department of Ecology by phone.

25 JUDGE TOREM: And we also have EFSEC staff

1 here of Irina Makarow and Allen Fiksdal and also our legal
2 counsel, Ann Essko, from the Attorney General's Office.

3 Other parties let's see from the Applicant
4 in the room Darrel Peeples and we have Chris Taylor, and
5 I'm going to miss this one.

6 MR. PEEPLES: Tim McMahan.

7 JUDGE TOREM: Tim McMahan.

8 All right. Who is on the telephone with us
9 today? We're going to kind of get back into knowing all
10 the names again for at least today's purposes.

11 MR. CARMODY: This is Jamie Carmody. I'm
12 here representing ROKT.

13 JUDGE TOREM: Any other folks from ROKT on
14 the line today?

15 MR. GARRETT: Ed Garrett.

16 JUDGE TOREM: All right. Anyone else?

17 MR. ROBERTSON: Mike Robertson.

18 JUDGE TOREM: Renewable Northwest, anybody
19 on the line today?

20 Okay.

21 MR. SLOTHOWER: Jeff Slothower here
22 representing Lathrop.

23 JUDGE TOREM: All right. Is Mr. Lathrop on
24 the line as well?

25 MR. SLOTHOWER: No.

1 JUDGE TOREM: Apparently not.

2 Kittitas County?

3 MR. HURSON: Jim Hurson, Deputy Prosecutor.

4 JUDGE TOREM: Others on the line still?

5 MR. TRIBBLE: This is Mike Tribble, Counsel
6 for the Environment.

7 JUDGE TOREM: Mr. Tribble, nice to meet you
8 on the line anyway.

9 MS. STRAND: Debbie Strand, Economic
10 Development Group Kittitas County.

11 JUDGE TOREM: Good. I thought I heard you
12 call in earlier.

13 Anyone else?

14 MS. MCGAFFEY: This is Karen McGaffey. I'm
15 just observing. I'm not representing anyone.

16 JUDGE TOREM: Fair enough. Any other
17 parties or observers on the line?

18 We've got the roll taken then, and we'll go
19 next to Item No. 3, the adoption of the proposed agenda.

20 The agenda today notes some withdrawals,
21 some scheduling, and an update on the land use consistency
22 and other negotiations, and we also have something from
23 Mr. Tribble on a motion to move some items into the public
24 record. That's the agenda that's been set. Is there a
25 motion to approve it?

1 CHAIR LUCE: So moved.

2 JUDGE TOREM: Second?

3 MR. FRYHLING: Second.

4 CHAIR LUCE: Call for question.

5 JUDGE TOREM: Question's been called. All
6 those in favor?

7 COUNCILMEMBERS: Aye.

8 JUDGE TOREM: All right. The agenda has
9 been adopted. Let's move then to Item 4, a withdrawal of
10 Chris Hall.

11 Mr. Peeples, did you receive that or want to
12 comment on it further?

13 MR. PEEPLES: No, I think it speaks for
14 itself.

15 JUDGE TOREM: All right. Anything from the
16 Applicant on was there any settlement with her or anything
17 you want to advise the Council of?

18 MR. PEEPLES: We came to an agreement.

19 JUDGE TOREM: All right, and that will be
20 disclosed at the appropriate time.

21 MR. PEEPLES: Yes.

22 JUDGE TOREM: Any other questions or
23 comments on the withdrawal of Chris Hall from the parties
24 on the line?

25 Hearing none, I imagine that we just need to

1 note that. There's no need for us to approve it. She can
2 withdraw on her own.

3 Then we'll move on to Item No. 5, the format
4 and procedure for updates regarding land use negotiations
5 with Kittitas County. Let me just set the stage for that
6 by saying today it's late August of 2005, and we're hoping
7 to have a hearing on the merits on this issue in March,
8 starting on March 13, and we'll talk more about that
9 schedule which I think everyone has been advised of
10 previously and find out whether or not we are going to be
11 dealing with a request for preemption that still sits on
12 the table for the Kittitas Valley Wind Power Project if
13 that can't be obviated and eliminated by a settlement as
14 there was in the previous application from in the Wild
15 Horse Wind Power Project.

16 Mr. Peeples.

17 MR. PEEPLES: We have met with the County,
18 and we plan to file a new application with regard to the
19 County the same way that we did with the Wild Horse
20 process. I'm going to have Tim McMahan go over it and
21 Chris fill in the details. I was not at the meeting with
22 the County but they were; and we will with that also
23 formally withdraw our request for preemption. Right now
24 it's suspended, and these things probably are not really
25 operative if we're going to go through the County process;

1 and if we ever need to go back to ask for preemption, it
2 would be at a minimum if we didn't withdraw an amended
3 request because the facts and circumstances have changed.
4 As far as we're concerned probably all the old evidence in
5 the record about preemption is no longer operative. We're
6 going through the County process, and we'll be sometime in
7 the not too distant future formally filing a request to
8 withdraw that preemption and go through.

9 Tim, would you add anything?

10 MR. McMAHAN: Just to fill in a few details,
11 tim McMahan, here for the record, and I'm here with Chris
12 Taylor. Chris Taylor and I and our local counsel, Erin
13 Anderson, did meet with Darryl Piercy, the planning
14 director for the County a couple weeks ago in Ellensburg.
15 The purpose of the meeting was really to ask if we do
16 refile a local application will and can this process look
17 pretty much like Wild Horse, and if we get a complete
18 application of the quality of the Wild Horse application,
19 can we pretty much count on the time frame for processing
20 the local application so that we can still aim for a March
21 hearing date.

22 Now, that threshold of when we get an
23 application filed is a very relevant component of that
24 question for Mr. Piercy, but he did confirm that in his
25 view that the County should be able to accommodate that,

1 and particularly if we'd pitch in, the Applicant pitches
2 in and works as aggressively as we did to help the County
3 through the process not, of course, knowing the outcome
4 that they felt strongly that they could hold to a very
5 similar schedule.

6 So with that at least it's my opinion that
7 the March hearing date remains a reasonable target for us
8 without regard for how the County process is resolved one
9 way or the other. I think that we should be able to come
10 out of the County process toward the end of the year as
11 Mr. Peeples has indicated. I have to just say that I at
12 least for the moment it was a good meeting. We feel that
13 there is a reasonable spirit of cooperation and we're
14 hopeful that we can at least get a reasonable, fair
15 process there.

16 Mr. Taylor is here. Do you have anything to
17 add, Chris?

18 MR. TAYLOR: Just that we're well on our way
19 towards having that application ready to submit to the
20 County, and in our own internal target we would like to
21 have it as close as possible to the end of this month, end
22 of August. So obviously the County's ability to get
23 through that within the time frame that's been laid out we
24 recognize that us getting the application into the County
25 in a timely fashion is a necessary prerequisite for the

1 County getting their work done in a timely fashion; and we
2 expect that the application given that it's the third time
3 we filed an application hopefully we've understood the
4 process and know what's expected of us, and we're well on
5 our second and third draft; so well on the way.

6 I would just without getting into the
7 details of that we're not prepared to address at this time
8 just note that we do tend to, we do intend to and we
9 indicated this to the planning director, Darryl Piercy, to
10 introduce some modifications to the project, to scale it
11 back, reduce the size and density of the proposed
12 facility. It will still be within the parameters of our
13 ASC to EFSEC contained, but in order to respond to some of
14 the concerns that have been raised through not just this
15 process but some of the other wind energy siting processes
16 through the County, in an attempt to address some of those
17 concerns we will be filing an application which reflects
18 some changes to the layout.

19 JUDGE TOREM: Let me note that while
20 Mr. McMahan was giving his comments Councilmember Chris
21 Towne joined the discussion here in Olympia.

22 Let me just sum up. If I understand
23 correctly, we will see a notice at some future EFSEC
24 meeting that you're formally withdrawing the request for
25 preemption.

1 MR. PEEPLES: Yes.

2 JUDGE TOREM: And that will be removed from
3 the table only to reappear if at the end of the year the
4 result from the County is essentially a denial of land use
5 consistency or the application approval that you're going
6 to be setting forth in the next few weeks.

7 MR. PEEPLES: Correct.

8 JUDGE TOREM: Now, if the end of the year
9 comes and say let's use January 1 as you know in the new
10 year 2006 that the County has not approved the package and
11 therefore land use consistency certificates are not
12 forthcoming, I guess I want to make sure we anticipate a
13 schedule for dealing with a new amended request for
14 preemption if it becomes necessary and allowing responses
15 to it similar to what we did last time I guess almost a
16 year ago.

17 So I don't want to make that schedule now,
18 but I would like to make sure that the item is posted by
19 in December for whenever the Council meeting is. I won't
20 be here, and it may be magical that I could participate by
21 phone from Bagdad, but let's not count on that. But I
22 think we would leave Chairman Luce to make sure that
23 that's an agenda item so that the Council can be apprised
24 if it looks like the vote is going to be delayed or you
25 know that the negotiations have gone sour and preemption

1 is put back on the table; that there's something that can
2 be done in January, February to set up a schedule for
3 doing that. But only if necessary. It's no reason to
4 speculate about it more today, but I'd just like to at
5 least say let's put it on the agenda for a December
6 meeting or an early January meeting, and if necessary
7 issue deadlines so that we can have the hearing dates that
8 are scheduled out there in March and then talk a little
9 bit about what that does to your proposed hearing schedule
10 dates, the witness scheduling.

11 Perhaps because preemption will be removed
12 simply not scheduling preemption until the second week of
13 hearings may be the way to go, or it may be if you can
14 schedule everything for just the second week of the
15 hearing; that we hold that first for week for preemption
16 if necessary; cancel it, if not. There's a variety of
17 options, and maybe you've already thought those out when
18 we get to that item on the agenda.

19 Did you have anything else you want to add?

20 MR. PEEPLES: Just response. I believe if
21 there is a request for preemption necessitated the
22 testimony, etc., will be much simpler than I believe what
23 was presented in the first go around, and to a large
24 extent I think it will be more related to legal arguments
25 and evidence with regard to the state's interest maybe

1 versus the local interest. It's going to be I believe
2 much simpler. I could be wrong, but I don't think so. I
3 think it would be much simpler on that.

4 The other thing as far as getting there
5 untimely, the County has been through this twice, and
6 we've been through it once with them; and I think we've
7 hopefully shaken everything out, and we're going in with a
8 very hopeful attitude that we will have it resolved one
9 way or the other; and hopefully we won't ever need to come
10 back for preemption by the end of the December.

11 JUDGE TOREM: That certainly would simplify
12 the process from EFSEC's procedure as we've anticipated
13 from last year would be very complicated hearings to deal
14 with preemption for the first time. Even if the
15 regulations have four criteria, it's the first time and
16 there will be sticky wickets for certain. If we avoid
17 them, fantastic.

18 My understanding then, Mr. Taylor, is that
19 once you have your application ready to go to the county
20 so that it's presented in good faith and without any black
21 clouds looming thereover, that's when we would receive the
22 withdrawal.

23 MR. PEEPLES: Yes.

24 MR. TAYLOR: Once our application has been
25 deemed complete by the County, and we're into that process

1 is what we anticipate that would be the trigger for
2 submitting the withdrawal. We communicated that to the
3 County prior to this.

4 JUDGE TOREM: Not being familiar necessarily
5 with the County's procedure on this, I would imagine that
6 any interested parties on EFSEC as intervenors or
7 otherwise would certainly be able to participate in the
8 public processes in Kittitas County regarding the land use
9 issues. So I would encourage those that are on the line
10 today to be in touch with the County to participate in
11 that what will now become a parallel process at least
12 partially and make sure that voices that need to be heard
13 at the County level are heard there and not only heard as
14 echoes back at the EFSEC procedure if there is a
15 preemption discussion next March.

16 Mr. Hurson, anything to add on that or from
17 the County's perspective?

18 MR. HURSON: Jim Hurson. As far as timing,
19 and unfortunately I was on vacation when the folks from
20 Zilkha met with our planning director so I wasn't there at
21 the conversation. The thing as I understand I did hear
22 that they were going to withdraw the preemption request,
23 and as I understand it was set up to be similar to what we
24 had in Wild Horse. I think that if we follow the process
25 we had in Wild Horse, the March date works. The thing we

1 had in Wild Horse because of the timing and everything
2 there wouldn't have been enough--if the County had turned
3 it down, there wouldn't have been enough time for
4 everybody to brief for that March date. So it was agreed
5 that it would have been stricken and then a new date was
6 set if there was a preemption request.

7 When we can process things internally
8 through the County depends a lot upon scheduling a
9 planning commission and then the commissioners and, of
10 course, when we get the application and the quality of the
11 information. So the County, of course, is very glad to
12 hear that they're going to submit an application to the
13 County and withdraw the preemption request. I just want
14 to avoid a situation where we get jammed up trying to make
15 a March '05 hearing date if there's an adverse decision
16 from my board in December or January or early February,
17 something like that. There's lots of variables on the
18 timing. I don't have the time frames down, but it seems
19 to me that about a year ago we were at a similar time
20 frame except I think we already had an application on the
21 Wild Horse project for the County.

22 JUDGE TOREM: Let me just suggest,
23 Mr. Hurson, that we're here at the end of August, and when
24 we have really I think four months that the Applicant
25 apparently intends to work with your planning director,

1 and including I'm sure they're aware of the
2 November-December holidays that seem to clutter the
3 calendar and reduce productivity for all of us so we end
4 up with that factored into the discussions I'm sure, and
5 I'm seeing nodding heads from people at the Applicant's
6 table. We want to ask that you and the Applicant provide
7 regular details back to this body in the form of land use
8 negotiation updates, and the sooner that we and the
9 Council see a calendar of scheduled planning commission
10 meetings and hearings and not necessarily meetings of a
11 substance other than the people's feeling which will only
12 be revealed to be right or wrong by a vote of the
13 commission and the county commissioners. If we know what
14 the scheduled dates of those are probably by the end of
15 October, we'll have a better idea of your, again, well
16 understood comments today as to nothing is for sure are
17 going to require pushing back of the dates in March sooner
18 rather than later.

19 MR. HURSON: Right. And I would assume that
20 everybody would, you would like to know a date sooner
21 rather than later. But if one of the thoughts is you want
22 to keep the March date if there's consistency, I don't
23 think the County would have a problem with that because I
24 assume if we approve it, our position would be the same as
25 it was in Wild House, which is if we've approved then the

1 County is done. But if we don't approve, then there would
2 be another issue as far as scheduling. I just wanted that
3 out on the table so everybody was aware of it.

4 JUDGE TOREM: Well understood. That's why I
5 think if we know that the County is not going to approve
6 by December or early January even, then the six to eight
7 weeks that would be remaining before the March 13 kick-off
8 date should allow sufficient time to brief those issues,
9 and we just deal with that at a January meeting.

10 MR. HURSON: Okay. The thing is one of the
11 problems year end in county government is the GMA
12 comprehensive plans once a year those are always finalized
13 in December or they always have been, and then we always
14 have the annual budgetary process; and those are two huge
15 projects both of which are very commissioner intensive
16 time issues so it makes December really tough to force in
17 other big issues. But we had hearings on wind farms last
18 December on one of the other applications so we managed to
19 push them in there.

20 JUDGE TOREM: Any other questions from
21 parties on the line on this proposed withdrawal of the
22 preemption request and another round of negotiations and
23 applications for land use consistency?

24 MR. CARMODY: This is Jamie Carmody. Just a
25 couple quick comments. It seems to me that if the

1 preemption request is being withdrawn, it ought to either
2 be noted today or formalized relatively quickly.

3 JUDGE TOREM: I expect, Mr. Carmody, that
4 we'll have something on the next EFSEC regular meeting in
5 September that will note it, and it will probably be sent
6 out to the service list immediately upon receipt and then
7 formally noted at the next update. But that's what I
8 asked from Mr. Taylor to understand if they intend to file
9 at the end of the month and we'll get something formal at
10 that point.

11 MR. PEEPLES: If I could just interject.
12 Right now it's suspended, and to me there is absolutely
13 very little as a practical matter difference between
14 withdrawing and suspension. If we ever have to go ahead
15 with the request for preemption, that will be a totally
16 amended request and for all practicable purposes we'll
17 start over on the preemption issues. So I don't think it
18 makes that much difference, but we plan to formally
19 withdraw.

20 JUDGE TOREM: Anything else from other
21 parties on the line?

22 MR. CARMODY: This is Jamie Carmody again.
23 The other question I had is in terms of the application at
24 the County level. Is it anticipated or what would the
25 handling be on the environmental impact statement and the

1 process associated with that? because it seems to me with
2 the timetables that go along with EIS preparation of a
3 draft and a final that you're pushing it to come up with
4 final hearings by the end of the year.

5 JUDGE TOREM: Well, EFSEC certainly will be
6 not hiring a contractor to do anything. The EFSEC EIS
7 that's already available and the supplement that went with
8 that looking at alternatives are documents that we'll
9 discuss whether they need to be updated during the next
10 agenda item, and there may be some validity to a
11 discussion as to requirement for additional information if
12 there is any. But those documents have been created,
13 Mr. Carmody, and I would imagine--I'll defer to
14 Mr. Hurson--that the County would want to take advantage
15 of the existing environmental impact statements that have
16 been done on this project, the Wild Horse project, and the
17 enXco project that seem to look at a variety of
18 overlapping impacts for wind power projects in the county.

19 MR. CARMODY: I understand that. What I was
20 suggesting is if there's an adoption of the other EISs,
21 however they choose to do it, there's a notice period that
22 goes with that and a finalization period that goes with
23 that in the context of an application and those time frame
24 works which are 30 days on draft to final; and
25 finalization realistically will take more time than seems

1 to me would be budgeted. So it seems to me unlikely just
2 ordinary course procedurally that you will be able to get
3 to hearings by the end of the year. That's the only
4 question I was raising.

5 JUDGE TOREM: Let me defer that issue to the
6 County and the Applicant to handle this. I know we've had
7 extensive discussions on what were functional equivalents
8 of final environmental impact statements before, and I
9 think that that's been hashed out enough; that the County
10 did what it had to do with the Wild Horse Project, and
11 I'll let Mr. McMahan comment to shed some light on their
12 view and strategy.

13 MR. McMAHAN: Tim McMahan here. I think the
14 simple answer is this will be done just like Wild Horse.
15 That's our expectation, and we did work things out with
16 the County with regard to lead agency status. I think we
17 reached a reasonable accommodation, and I don't expect any
18 rough waters on that one.

19 JUDGE TOREM: Can you remind--we have some
20 new members on the Council that didn't go through that
21 process--just in a nutshell what occurred with the
22 environmental documentation that EFSEC had created and how
23 the County utilized that to get to the land use
24 development agreement with Wild Horse.

25 MR. McMAHAN: Well, just backing into this,

1 the Department of Ecology did issue a determination for
2 the KV project that also, of course, was applicable for
3 the Wild Horse project that determined that EFSEC was lead
4 agency, and we sat down and worked with the County in the
5 Wild Horse project on how to fold that into the County
6 process in a meaningful way and essentially--and
7 Mr. Hurson can jump in and correct me if I'm wrong--if my
8 memory serves me, the County hired it's own environmental
9 consultant and reviewed the EIS and provided some
10 additional comments and information that went into the
11 Wild Horse EIS that was addressed both by the Applicant
12 and EFSEC's environmental consultant.

13 We may already be through that chapter
14 because the County has already provided comments in the
15 Draft EIS in the KV project, but we certainly can sit down
16 again with the County and ask if they're comfortable with
17 that document and be prepared to do the same kind of a
18 process. So there really isn't a need then for the
19 additional notice periods and the like. This isn't a
20 matter of adoption to the formal SEPA process because the
21 lead agency has already been pretty well determined.

22 JUDGE TOREM: Mr. Carmody, let me just jump
23 in.

24 If I understand you correctly, Mr. McMahan,
25 you're anticipating there won't be a need for the County

1 to open it up for public comment again on another agency's
2 document. That would have already been done in the Draft
3 EIS procedure and the Supplemental EIS procedure that
4 EFSEC has already held.

5 MR. McMAHAN: That's my view, and, again, my
6 bottom line answer is I think that we can use the same
7 process that seemed to have worked very well with Wild
8 Horse and sit down with the County and they were happy
9 with that process I believe, as happy as they could be
10 with a process like that. Our goal would be to have the
11 same discussion with Mr. Hurson and Mr. Piercy when we get
12 there.

13 JUDGE TOREM: Mr. Carmody, let me just
14 suggest that if procedurally you think additional notice
15 is required under SEPA or any other county ordinance that
16 you raise those concerns to Mr. Hurson and/or the Board of
17 County Commissioners and the Applicant, however you want
18 to do it. But today if it doesn't work out, if the
19 schedule proves to be too rosy, we'll find out by the end
20 of the year, and I am sure that on behalf of ROKT you and
21 the rest of your clientele will go forward and participate
22 actively at the County level to make sure that your
23 interests are observed there.

24 Councilmembers, any questions or comments on
25 the issues with preemption and the schedule for land use

1 negotiations with the County?

2 MS. ADELSMAN: No.

3 CHAIR LUCE: No.

4 JUDGE TOREM: Seeing none, I'm going to move
5 onto the next item on the agenda.

6 Mr. Taylor.

7 MR. TAYLOR: I note you had the word
8 procedure and perhaps an update. Do we want to agree or
9 do you want us to agree--sorry. I'm not doing your job
10 here. But so we have a clear understanding of what the
11 format and time frame is for subsequent updates back to
12 the Council on the status, I'm assuming monthly.

13 JUDGE TOREM: My thought, Mr. Taylor, is at
14 each monthly meeting because we really only have four
15 months of meetings until the end of the year. We'll have
16 monthly updates just to see how the schedule is going and
17 if it's being stuck to. Hopefully in September we'll hear
18 that the application was filed, and that's probably all I
19 would hope for in September. In October we will hear that
20 there will be a planning commission meeting and perhaps a
21 target date to this on the agenda for the Board of County
22 Commissioners before the end of the year, and then in
23 November we'll see what's really happening and December
24 again.

25 Does that sound about right, Mr. Luce?

1 CHAIR LUCE: Well, Judge Torem, I guess that
2 sounds reasonable, especially since the Council meets once
3 a month, but I would ask and I'm sure it will happen that
4 the County and the Applicant keep staff apprised of
5 developments with this process throughout the course of
6 these monthly updates; and if there's a hitch in the get
7 along, I think the Council would probably like to hear it
8 sooner rather than later, rather than wait for a one-month
9 period. So if negotiations are going well, I think the
10 Councilmembers would like to know that. If they're not
11 going well, we would also like to know that, and we would
12 like to know that before the one month has elapsed,
13 especially if they're not going well.

14 JUDGE TOREM: Does that answer the
15 questions, Mr. Taylor?

16 MR. TAYLOR: Yes.

17 JUDGE TOREM: I'm sorry. I guess I had
18 implied that, but let's get it--

19 MR. TAYLOR: I just wanted to formalize
20 that, and then those should be due prior in time for you
21 all to get those before your monthly meetings.

22 JUDGE TOREM: If we're going to get a letter
23 a few days in advance given electronic filing the way it
24 is, that's fine.

25 MR. PEEPLES: Do you want letters or do you

1 just want an oral update? It seems to me oral updates
2 right at the meeting would be good enough.

3 JUDGE TOREM: That would be sufficient
4 unless there's a dramatic item that requires something in
5 writing. We hadn't had anything but oral updates along
6 the way before so I don't see a reason to raise the bar.

7 MR. TAYLOR: Okay.

8 JUDGE TOREM: All right. Item 6 is the
9 actual schedule, and I want to confirm that everyone has
10 got on their calendars, first, we have nine days of
11 hearing scheduled. March 13 through 16 is a Monday
12 through Thursday in 2006, then we have a week break and
13 March 27 through 31.

14 Mr. Peeples, that's what you have on the
15 calendar?

16 MR. PEEPLES: Yes.

17 JUDGE TOREM: Mr. Tribble, from CFE I take
18 it you've cleared your calendar for those couple of weeks?

19 MR. TRIBBLE: I have the 13th through 16th
20 on my calendar, and then you said there's a second week of
21 the 27th through the--

22 JUDGE TOREM: Through the 31st.

23 MR. TRIBBLE: Yes, I have that.

24 JUDGE TOREM: Since you're the new addition
25 to the procedure, I want to make sure your calendar was

1 not in conflict as well.

2 Has anyone else in the parties have any
3 problems or issues that they want to raise now with the
4 hearing dates?

5 Any Councilmembers have any issues or
6 problems with hearing dates?

7 All right. That's the answers we wanted to
8 hear.

9 MR. ANDERSON: Can you just state one more
10 time.

11 JUDGE TOREM: Yes, March 13 to 16 and the
12 27th through the 31st.

13 Now, when we left off back in 2004 and
14 suspended the hearing on this matter in favor of going
15 forward with the Wild Horse project there had been a
16 flurry of motions, there had been prefiled testimony, and
17 a heck of a lot of prehearing activity, and we stopped
18 just short of going to hearing. I wanted to be sure that
19 the parties were of the mind-set that the Council was that
20 we're simply despite the withdrawal of the preemption
21 request and taking another shot at avoiding the need to
22 have that discussion on the merits, the Council believes
23 that we're just picking up and reviving these issues where
24 they dropped off last time. So the deadlines that applied
25 previously still apply, and the prior prehearing

1 conference orders still apply. We'll simply again add
2 water and revive this project and bring it back to life
3 next March where it was before.

4 So the Council is not inviting any
5 dispositive motions or any prehearing motions to be filed
6 and create additional work for the parties and/or the
7 Councilmembers or quite frankly myself ahead of the
8 hearing. All that work should have been done ahead of the
9 original hearing on the merits. That being said, there
10 are two issues that I think we need to look at as to the
11 information that's on file with the Council and whether it
12 is all the information that's necessary or whether it
13 needs to be modified or added to in some way.

14 I want to hear first from Mr. Peebles from
15 the Applicant's perspective and then Mr. Hurson from you
16 at the County and any of the other parties that wish to
17 comment whether additional prefiled testimony would be
18 necessary and/or I guess it's related to any additional
19 environmental documentation that would need to be filed.
20 Thus far the Council is not seeking to update its EIS. If
21 any of the members of the public think that it should be,
22 any members of the group of intervenors need to, today's
23 the day at least to present why; and we may a set motion
24 and quick order to be heard on that or may just simply be
25 ruled on verbally by the Council today after some

1 comments.

2 Mr. Peeples, what's your feeling as going
3 forward on the record as it stands?

4 MR. PEEPLES: We believe the only--and I
5 would like to follow up with a few more details. But
6 overall we feel the only area that where there would be
7 supplemental testimony would be in the event the Applicant
8 asked for preemption in December or January. If that
9 doesn't happen, all of the present preemption testimony
10 will be just withdrawn.

11 We will come out with a different array of
12 turbines. They will be within areas that will be studied.
13 It will be less turbines, and the impact would even be
14 less than what exists on the present EIS and all of the
15 studies. So everything has been done to date that creates
16 maximum potential impact, and the impact will clearly of
17 the project as we're going forward with it will clearly be
18 less; so therefore we don't think there is any real need
19 for any testimony except as it might relate to the
20 preemption.

21 JUDGE TOREM: Now as to the witnesses that
22 were prefiled are each and every one of your witnesses
23 still available as they would be necessary to testify in
24 March?

25 MR. PEEPLES: Yes.

1 JUDGE TOREM: Recognizing that delay
2 sometimes is the vane of making a case and witnesses tend
3 to die, become sick, move, lose interest, or change jobs,
4 if any of that occurs for any of the parties, I certainly
5 would think the Council and the parties would be
6 understanding that someone equivalent being made available
7 to give substitute testimony as long as they are made
8 available for the other parties for cross-examination or
9 discussion in advance that can be accommodated in a case
10 such at this.

11 Mr. Peeples, are you anticipating--

12 MR. PEEPLES: To my knowledge none of our
13 witnesses have died, and I'm sure I would know had that
14 happened. We have one witness who has changed jobs, but
15 he's I'm positive will be available, and two, three
16 witness changes.

17 MR. TAYLOR: At least Clay White has a new
18 job.

19 MR. PEEPLES: But that's preemption.

20 MR. TAYLOR: And Andrew Linehan is
21 preemption. The only one would be Sonja Ling from RNP,
22 and I would assume that would be her successor from RNP,
23 but I have not spoken with them directly.

24 JUDGE TOREM: And they're not participating
25 on today's phone call apparently.

1 MR. PEEPLES: Other than the preemption
2 things, no, and that we would anticipate either that
3 testimony would be withdrawn or there would be new
4 testimony.

5 JUDGE TOREM: What I'm hoping then as we go
6 along at least from the Applicant, and this would go for I
7 guess every other intervenor presenting testimony, would
8 file as necessary a motion to substitute witness, and that
9 could be noted; and it would have to be done I would guess
10 by the end of January as long as the motion came in with
11 the prefiled testimony to give folks a chance to review it
12 and ensure that it's substantially similar to what is
13 already in the other parties' hands.

14 MR. PEEPLES: Would there be any showing
15 needed to be made as with regard to why that witness needs
16 to be substituted? It would seem to me I don't want--

17 JUDGE TOREM: Something that the other
18 witness due to the delay became unavailable. If there's a
19 reason they become unavailable such as death, moving onto
20 other new business, or some other such thing, I think that
21 would be the sort of thing where we have declarations
22 coming in where witnesses are unavailable in a Superior
23 Court proceeding to allow hearsay things to come in. That
24 sort of thing would go on and a decision could be made by
25 the Council.

1 Granted this is an administrative hearing
2 and the bar would not be governed by the civil rules or
3 rules of evidence, but we want to make sure that there was
4 a good reason. I say this simply to make sure there's no
5 prejudice to the other parties. There's been enough delay
6 in the procedure that some might argue they've been
7 prejudiced just by having to hang around and wait this
8 long. That is well appreciated and yet if there's a bona
9 fide reason that a witness that we already are aware of
10 cannot testify, I want to give those parties an
11 opportunity that have been so prejudiced to substitute,
12 and that includes the Applicant, the County, and anyone
13 else that's a player in these proceedings. So just out of
14 a sense of fairness to everybody, I wanted to throw that
15 out there so the Council gets the best evidence it can
16 have to make a decision, and that the Council wants to get
17 the testimony that they were advised previously they
18 would. And if it comes from a different talking head, if
19 you will, so be it as long as that's not changing the
20 nature of what's the testimony being put forth and the
21 point that the other party is trying to get across.

22 So let's have the other parties realize that
23 it won't simply be a notice of substitution but motion,
24 and it will be carried with some sort of reasoning that
25 will be subject to inquiry by the other parties to make

1 sure that it's not just changing horses midstream for the
2 heck of it but a true we can't get this witness forward
3 any longer because, and we'll hear the reason if there are
4 any at a Council meeting. So give notice if you know in
5 advance if somebody were to get sick. At the last hearing
6 I remember we had health concerns. We had to convert some
7 folks to testifying by telephone as opposed to traveling
8 to Ellensburg. Those issues I'm sure are going to come up
9 as they did last time and family emergencies, deaths in
10 families. You can't schedule those; so we'll just hear
11 those motions to substitute as they come up between now
12 and January and anything else after that we'll just fold
13 in as we need to and be flexible.

14 Mr. Hurson, any of the other parties on the
15 line want to comment if they know a witness is already
16 unavailable?

17 MR. HURSON: This is Jim Hurson. As far as
18 I think the County's concern is we agree with Mr. Peebles
19 that if they were to request preemption we would need to
20 have additional testimony, documentation undoubtedly. If
21 there's not a request for preemption, I would assume the
22 County would be withdrawing from the process like we did
23 in Wild Horse. So other than that, I can't imagine the
24 County needing any witnesses.

25 JUDGE TOREM: Are there any other parties on

1 the line now that know that witnesses whose testimony was
2 prefiled in 2004 would not be available in March of 2006?

3 All right. As I noted, if it does become a
4 question, then let us know in a motion to substitute or
5 contact EFSEC staff sooner rather than later. I will set
6 the motion for the next scheduled meeting or we'll hold a
7 special prehearing conference as timing requires.

8 Are there any parties on the phone who want
9 to comment as to the need for additional prefiled
10 testimony from new witnesses?

11 MR. GARRETT: Ed Garrett, ROKT.

12 JUDGE TOREM: Mr. Garrett, go ahead.

13 MR. GARRETT: Yes, I have three concerns
14 about that. First one is since the information from the
15 last set of prefiled testimony back in September of 2004,
16 there's been some changes within the structure of the
17 County. We've had new people move in, new subdeveloping
18 going on in the area which is going to be bringing new
19 people in the process that may want to make some testimony
20 on that.

21 The other question I have is not knowing
22 what the substantive changes are to the application that
23 Mr. Taylor was talking about when they file with the
24 County, there may be a need to add some additional
25 testimony or response time to that.

1 And then third is the issue of we have a new
2 Counsel for the Environment now and the last prefiled
3 testimony we had was from Mr. Lane, and the new CFE may
4 want to submit something different if he reviews the
5 record and finds that there's some other issues he would
6 like to have added.

7 So just those three issues there I think we
8 should have an option to be able to submit additional
9 testimony.

10 JUDGE TOREM: Well, I would presume that
11 Mr. Tribble is getting his feet more than wet and stepping
12 into Mr. Lane's shoes, and if he wants to substitute, he
13 has been advised of that procedure. If he wants to add,
14 he will let us know how he might find Mr. Lane's
15 preparations for the case to be wanting or deficient. Not
16 that we would say that about John. But if Mr. Tribble
17 finds that there was an angle that he wants to explore, he
18 will come to us and say he's bringing a different approach
19 to the CFE role and let us know why it should be added to
20 the case.

21 On the other items as to the issues of
22 changes by Mr. Taylor, then I think those will mostly be
23 presented to the County, and there will certainly be a
24 role for any new people in the County to participate
25 directly in their own government's procedures within

1 Ellensburg and within Kittitas County.

2 If it comes to the attention here certainly,
3 Mr. Garrett, that there's a need for more response time to
4 talk about the actual strings of turbines and other
5 layouts, cross-examination is wide open, and that's one of
6 the things that Mr. Peeples is going to be needing to work
7 with and get a schedule. So that certainly wouldn't be
8 additional prefiled testimony, but there would necessarily
9 be time for additional cross-examination, and I think the
10 schedule, especially if the County is able to settle out
11 of the case, will be more than ample to deal with that.

12 MR. PEEPLES: Your Honor, I would suggest
13 that when we get close to hearing go through the same
14 process we did last time: sending out the charts, asking
15 people who they're going to cross and the time. That's
16 going to need to happen.

17 JUDGE TOREM: I don't think we're ready to
18 do that now today.

19 MR. PEEPLES: We're not ready to do that.

20 JUDGE TOREM: But I want to advise the rest
21 of the parties that last time we sent out from Mr. Peeples
22 the request for "Are you going to cross-examine Witness A,
23 B, or ?" not everybody participated, and I will tell you
24 now if we come to the first day of hearing and there's not
25 been cooperation as to asking for time to cross-examine,

1 none will be given. The hearing process is going to go
2 forward, and the process is when Mr. Peebles says the
3 Applicant sends out a request to know if you want to
4 participate, whether you agree with the Applicant or not
5 you need to return that phone call or that e-mail and
6 chime in and tell them, no, I don't want to participate;
7 and if he makes a representation to the Council and to me
8 at the hearing that he didn't hear from parties and they
9 now want to stand up and cross-examine a witness, it will
10 be not happen in March.

11 So when he sends it out hopefully November,
12 December, January time frame, respond and let's get the
13 witness schedule put together so that it can be given to
14 the Council in February, and they know when we meet in
15 March which witnesses will be testifying on which day and
16 which of you will be cross-examining and which will not.
17 So, again, failure to cooperate will just waive your right
18 to cross-examine any particular witness that you don't
19 give a time or request for.

20 Are there any other parties that have
21 comments on the additional need for any prefiled
22 testimony?

23 MR. CARMODY: This is Jamie Carmody. The
24 only points that I would add to what Ed Garrett was
25 talking about would be that I think it would be

1 appropriate to allow parties an opportunity to update
2 prefiled testimony based on new studies, new analysis, new
3 information, those type of things. It doesn't seem to me
4 that it ought to be based on September 10 2004, but that
5 additional information, if it exists and I don't know,
6 parties would be allowed to supplement on those points.

7 JUDGE TOREM: Mr. Peeples, Mr. McMahan, what
8 would you think as far as the Applicant was concerned if
9 rather than another additional prefiled testimony, if
10 there were updates--and there very well may be updates as
11 to county land valuation. I recall seeing those types of
12 testimony and economic issues may have come out, updated
13 wildlife studies that may come up--how those be handled
14 rather than submit new narrative testimony? Would it be
15 objectionable for the procedure in March of 2006 to have
16 someone adopt the testimony they have and say "Are there
17 any there any additions that you're aware of?" at which
18 point they perhaps make reference to those studies so long
19 as they had been provided essentially saying here are some
20 studies that I have reviewed and will comment on at the
21 hearing say five minutes of testimony, and then that
22 document, that study might be moved into the record as
23 something for the Council to consider.

24 MR. PEEPLES: Are we talking existing
25 witnesses, your Honor? I would be thinking that it would

1 need to be an existing witness.

2 Mr. Carmody, were you thinking the folks
3 that were already there might want to update and say my
4 views have changed or have been solidified by a new study?
5 Is that what you're thinking, Mr. Carmody?

6 MR. CARMODY: I had not thought that
7 through, but it seems to me that there may be if there's a
8 new study, for example, prepared by someone that wasn't on
9 the original list that there would be an opportunity to
10 supplement in that regard also. It would be filed in
11 advance of the hearing so everyone would have notice.
12 They would see what it was, and the Council would have the
13 benefit of the information on a prefiled basis and then
14 proceed with the hearing that included cross-examination.

15 MR. PEEPLES: Well, your Honor, let me kind
16 of plan out what I don't want to happen. Let's assume I'm
17 the person doing it. I don't think I should be allowed to
18 go out, hire a witness, do a study for this case, come in
19 and say, "Oh, I have a new study. I need a new witness."
20 It seems to me when we're talking about studies, we're
21 talking about existing. At that point you're just opening
22 it to all new witnesses. So if there is some type of
23 separate environmental study done by some say WDFW or
24 something, that might be something that an expert
25 previously testifying can say, "Oh, we have a new study by

1 WDFW and this is what it is."

2 JUDGE TOREM: I also think if a new study
3 say on bat or bird mortality were to come out this winter
4 and someone put on a witness that didn't even mention it,
5 cross-examination doesn't seem to stop. The scope would
6 be open to that. So I'm wondering if we extend that
7 courtesy to direct examination to note the passing of time
8 even if we had stayed with September of 2004 and they
9 hadn't testified and say, "Are you aware that since you
10 filed your testimony study X came out. What do you
11 think of it?"

12 MR. PEEPLES: That's proper cross.

13 JUDGE TOREM: I think it might even be
14 proper direct because it wasn't available to comment on
15 when they filed. Would you agree?

16 MR. PEEPLES: I think if there's a study of
17 that nature, that's fine. What I want to avoid is
18 somebody going and hiring somebody to do a specific study
19 to put in an additional witness with regard to this
20 project.

21 JUDGE TOREM: And I see that as distinctly
22 different.

23 MR. PEEPLES: I see that as distinctly
24 different than a new batch study coming up where you have
25 experts in the field that are always updating their

1 database coming in. That does not bother me. What
2 bothers me is if this thing is open to the extent to allow
3 me or anyone else go out and have a new study done
4 specifically for this project to bring in a new witness.

5 JUDGE TOREM: No, I think any guns that were
6 to be hired should have been done at the previous
7 deadlines. So that's not what I'm suggesting, but I'm
8 just thinking of the normal course of developing
9 information that the Council wants to make a complete
10 decision with all of the information that is available in
11 March 2006 and not necessarily limited to what was
12 available in September 2004 if the normal course of
13 scientific study or economic study provides those items.

14 Mr. McMahan.

15 MR. McMAHAN: Tim McMahan, for the record.
16 Just to jump on something Jamie started to say on the
17 phone there; so I'll put words in his mouth whether he
18 likes it or not. But what I would suggest if this is new
19 information was it readily and reasonably available to the
20 parties, and that there be some process to screen for
21 relevance before it just shows up in cross-examination or
22 direct testimony, supplemental direct testimony on March
23 16. I think we need a little bit of a prehearing process
24 a couple weeks before to make sure we all know what the
25 field looks like, and Mr. Carmody indicated, of course,

1 we'd provide in that advance. So at least I think I would
2 be comfortable with that, and we may very well want to
3 supplement some information on property values ourself.
4 So I think it would be reasonable for us to provide that
5 to the other parties.

6 JUDGE TOREM: I just don't want--

7 MR. CARMODY: I agree with Mr. McMahan on
8 that. My only thought is that a hearing and decision made
9 in 2006 ought to be based on 2006 information, not 2004
10 information.

11 JUDGE TOREM: I think all the heads are
12 nodding affirmatively here in Olympia, Mr. Carmody. So
13 what I want to make sure is just that that spirit of that
14 allowance informally at this point to allow for
15 supplementing of testimony be done only in the discussion
16 in the way we said it today, not and "Is there something
17 you would like to, Mr. Witness?" and another three hours
18 of testimony comes flying out. I think we're going to
19 have a good faith objection five minutes into that that
20 nobody has been advised of such new additions, and there
21 better be good reason to supplement something.

22 So the farther out in advance one knows that
23 a witness will comment on additional or new studies, my
24 initial informal ruling would be as long as it's within
25 the scope of their originally filed direct testimony. No

1 one needs to be too surprised, and everybody that's a
2 party to this case that knows what the witnesses are
3 intended to present is watching those subject matter areas
4 anyway. And if they see new studies come out, I don't
5 think any of us would not want to hear about them in
6 making the decision.

7 I think that in January or February a
8 meeting of this body can confirm and formally tell people
9 are there any known studies that may, and if you know
10 about them today circulate them now. If you know about
11 them in November circulate them, then we'll have staff put
12 it on the agenda for January and again in February to
13 formalize that because it will be around January, February
14 that Mr. Peeples will know what's happening with the
15 County, and he'll know what the witness schedule he's
16 going to propose will be and will be doing that work.

17 I will be keeping abreast of this by getting
18 e-mails overseas, but nonetheless I'm hoping that the
19 parties are just getting a general flavor for we're not
20 saying everything is stopped in September 2004, but we're
21 not flinging the barn doors open for new witnesses and new
22 manufactured testimony to come in and take different
23 angles on others supporting or opposing this project.

24 I think we've got the general scope of what
25 will be heard and updates are welcome, but additions

1 outside the scope of what's already been filed will not
2 be; and in January, February we will formally get out on
3 the record are there any new supplements to the testimony
4 and what will they be, and folks will have a chance to
5 object in January and February rather than on March 13 for
6 the very first time hearing about it. Everybody's
7 witnesses then are better prepared to say, hey, if you're
8 going to cross-examine Witness A, B C, or your rebuttal
9 witness is going to rebut something everybody will know
10 about new studies at the same time.

11 Any other comments on--so we're not going to
12 have any additional prefiled. It sounds like
13 supplementation within reason, and we'll formally lay that
14 out and hear suggestions and objections and have the
15 Council rule on that in January and February.

16 All right. Moving down the list then the
17 post-hearing schedule. I've got a copy of what
18 Ms. Makarow put together earlier today, and there was an
19 issue as to looking at post-hearing briefs. Do we need
20 not to decide this today clearly because we don't know
21 what's going to happen? and I don't want to add dates to
22 calendars that will fall off. But is there any comment
23 today on the suggestions about mid April and late April
24 post-hearing and response briefs with the reply briefs in
25 by May 5?

1 The concept then would be that the Council
2 would then deliberate sometime in May starting with or
3 shortly thereafter on the issuance of the Final EIS which
4 is projected Monday, May 15, and I had let Ms. Makarow
5 know that I may not be available for deliberations until
6 the following week on May 22, but those will all be ironed
7 out as we get closer. So the actual deadlines and
8 suggested deadlines for getting things to the Governor, of
9 course, would be dependent on how long deliberations took
10 and how long it would take to get that proposed either a
11 site certification agreement or a recommendation to deny
12 the project depending on what the outcome might be on this
13 one. Sometime in May or June next year is probably
14 reasonable for the parties to foresee and anticipate. No
15 later I would hope than the end of June for getting things
16 to the Governor and this Council announcing in public its
17 recommendations and issuing on paper that recommendation
18 for all to see and comment on.

19 Anybody else have items or conflicts or
20 suggestions, additions to that post-hearing schedule that
21 we need to talk about today?

22 All right. Then finally the witness
23 cross-examination times there was a schedule out there
24 before, and I'll leave it to Mr. Peeples to deal with in
25 January or February as appropriate to get those finalized

1 and again encourage, if not I guess use the word threaten,
2 please cooperate or you will not participate.

3 Any other questions on this schedule?

4 MR. PEEPLES: Not especially on the schedule
5 but with regard to supplemental testimony. Since the
6 layout will change to a certain extent I think to me the
7 way I was anticipating handling that would have been with
8 supplemental testimony stating by our engineering witness
9 what that is, and that's how I was going to put that into
10 the record. Is there any comments on doing it in that
11 fashion? In other words, we have gone from one thing to
12 the other, and now we're going to be saying this is what
13 the project will look like. I was going to bring that in
14 with supplemental testimony.

15 JUDGE TOREM: As to the change in I guess
16 the reduction and scale of the project?

17 MR. PEEPLES: Yes. But perhaps I think that
18 should wait. Those will be--I'm thinking out loud now so
19 it's probably dangerous. But we will have that. That
20 will be in the county. IT will be in the County so people
21 are going to want to know. That will be adequately
22 described in the County when we go through that process.
23 So it would seem to me that any supplemental on that would
24 come at a later time.

25 JUDGE TOREM: I would anticipate that the

1 supplements you're talking about for reduction in scope
2 would say previously reviewed this project and you stand
3 by your prefiled testimony. I would like to adopt it
4 except I now see the project a little different and I
5 think A, B, C. It would be a very short modification.

6 MR. PEEPLES: Right. That's how I was going
7 to do it and do it after because we're going to go through
8 the County process. We'll get input from the County
9 process, and then I was planning to supplement it at that
10 time later, and I just wanted to the Council to know
11 that's kind of how I was thinking of approaching it.

12 JUDGE TOREM: Timing wise I don't think
13 there's any other way to do it. Would you be
14 supplementing in writing or would you simply be waiting to
15 ask those questions in March based on what's the reality
16 of the new version of the project?

17 MR. PEEPLES: I don't know. That would have
18 to be determined by how we decide to supplement testimony
19 when we go through that process.

20 JUDGE TOREM: My suggestion that sounds
21 good, and it may even be a requirement to take out--I
22 don't know how many or how your specific changes will be.
23 But say that there's a 30-page prefiled testimony and
24 pages 15 to 18 dealt with the prior suggested layout of
25 the turbine strings and those have changed. Then the

1 questions on those pages become irrelevant. They might be
2 substituted, but as long as the testimony falls within the
3 scope that's within the spirit of what I'm suggesting
4 could occur to prepare all the parties and the Council
5 adequately for the hearing on the merits in March if you
6 substitute four pages of testimony. Forty pages clearly
7 it's not, and there's going to be some grouching I'm sure,
8 "This is new. I need to respond to it." But again I
9 encourage the parties to participate in the County
10 process. It sounds like all of the changes to the project
11 per se will occur there before the Board of County
12 Commissioners where there should be more than adequate
13 opportunity for participation and public comment, and
14 there will always, of course, be a public comment meeting
15 during EFSEC's hearings on the merits probably that first
16 week of March 13 through 16 on a Tuesday or Wednesday
17 evening. We'll give you notice of that far in advance.
18 But that will be another place that new information that's
19 only coming to light by modified prefiled testimony or
20 modifications of testimony at the hearing itself can then
21 be addressed hopefully adequately at those public comment
22 sessions from folks that didn't go to the County
23 proceedings.

24 I think it's only fair to say that's a good
25 way to look at it rather than have the County read

1 testimony that is clearly not applicable. If we could
2 substitute with what's more on point for the project as it
3 stands, especially if it truly is a reduction in impact, I
4 have a hard time thinking there's any prejudice to anybody
5 in that regard.

6 Parties, any comments or disagreement?

7 MR. CARMODY: Your Honor, would the County
8 record then become a part of the record before EFSEC so
9 that testimony and comments on that before the County
10 would become a part of the record that would be
11 considered?

12 JUDGE TOREM: I don't think the full record
13 would be, Mr. Carmody. Certainly the County's action
14 would be reduced if it was the same as Wild Horse to a
15 development agreement, and the land use consistency which
16 is the County's main interest in this item would come out.
17 If there was testimony offered to the Board of County
18 Commissioners on other issues that didn't deal with land
19 use consistency such as the appropriate nature of the site
20 and its other impacts on the environment human, natural,
21 or otherwise, I don't think those would necessarily come
22 in. They did not in the Wild Horse case. So only the
23 County's reduction of their proceedings to either a land
24 use certificate and/or a development agreement would come
25 in.

1 If there were another portion of that record
2 that you wanted to obtain either in a transcript form
3 which I guess would have to be or copies of written
4 letters that were submitted, those could certainly be
5 adopted and incorporated by reference of somebody turning
6 them into the Council to consider and become aware of at
7 that public meeting that would be held in the course of
8 our own deliberations and our own adjudicative process.

9 Does that answer the question, Mr. Carmody?

10 MR. CARMODY: Well, I think so. I mean you
11 had talked about or suggested that that opportunity to
12 comment on the modified proposal would take place during
13 the course of the County process.

14 JUDGE TOREM: As far as their decision
15 making goes.

16 MR. CARMODY: The wouldn't mean anything if
17 that evidence or that testimony were not incorporated into
18 your review.

19 JUDGE TOREM: Point well taken. Certainly
20 telling one body of decision makers that has a limited
21 decision making ability as to the land use consistency
22 they certainly are not the permitting authority, but EFSEC
23 is on this case for the appropriateness of the site and
24 the project that would be sited there. So certainly that
25 testimony would go for one purpose before the Board of

1 County Commissioners, and perhaps if it's relevant another
2 purpose would have to be repeated either in person or by
3 submitting the written copies again to this decision
4 making body and recommending body for that matter. It's
5 the Governor that makes the decision. That would become
6 part of the record separately if it's not incorporated in
7 the County's decision.

8 CHAIR LUCE: Just bring it to the public
9 meeting and it will be part of the record.

10 MR. CARMODY: One other quick question on
11 that. Would it be appropriate if there's a modified
12 proposal that's going to be presented to the County would
13 it not be appropriate to have that proposal also submitted
14 in the form of an amended application to the Council?
15 That is, if there's a modification shouldn't that or
16 couldn't that be immediately submitted to the Council as
17 an amendment of the original application so that we have
18 the same proposals being incorporated in each review
19 process?

20 JUDGE TOREM: Well, I'll leave that to find
21 out what the scope of the changes are, Mr. Carmody. If
22 they're dramatic enough, then certainly if they're outside
23 the scope of the original application, then we would have
24 a different approach and the Council here to ask for a
25 newer amended process and look and see if there's

1 additional environmental review that needs to be done. As
2 Mr. Taylor presented it today these will be reductions in
3 scale and scope, and they would hopefully, if he's
4 correct, would fall within the scope of the original
5 application for site certification and wouldn't
6 necessarily require a formal amendment.

7 But, again, if I understand your reason for
8 the question is to make sure the public is adequately
9 notified of the changes in scope to see if they have their
10 concerns that may have previously existed are addressed by
11 the reduction. If there are new concerns, they have an
12 opportunity to voice them as well.

13 MR. CARMODY: Exactly. If it seems the
14 intent is to make that modification, we don't have to make
15 a judgment on whether it's a material change or that sort
16 of thing. You just submit it both places and the
17 information is there now.

18 JUDGE TOREM: I don't know how Mr. Taylor on
19 behalf of his client intends to turn this into the
20 Council. Certainly they're going to the Board of County
21 Commissioners with one item and will keep us abreast of
22 it. It may be an update in September or October there
23 will be a quick review of perhaps a written letter
24 describing, summarizing the changes. That might be
25 helpful to the parties to have something in this forum

1 noted well in advance, and if they're not actively
2 participating in Kittitas County with the land use
3 consistency issues but their concerns lie elsewhere, they
4 have as much advance notice of what the project is now
5 perceived to be by the Applicant. You can make your own
6 judgments as to whether there are major changes or minor
7 changes from each individual interest and concern.

8 MS. TOWNE: Judge Torem, in the Applicant's
9 presentation today there was mention in addition to
10 modification or reduction of the strings a change in
11 turbines which may or may not have an impact but needs to
12 be analyzed. So that is not specifically the County's
13 purview. So it may be something that we would like notice
14 of so we can let everybody else know the nature of the
15 change.

16 MR. PEEPLES: Well, I would like to respond
17 partly and invite Tim to get in too. We're going through
18 the County process like we did last time and hopefully
19 we're going to come out with the agreement. And I guess
20 one of the things going through my mind is, first of all,
21 staff will get a copy of the application to the County so
22 that will explain--

23 MS. TOWNE: --the nature of the change.

24 MR. PEEPLES: The nature of the change.
25 Hopefully when we come to an agreement with the County

1 that will put it just as it did in Wild Horse. That will
2 put parameters around the project. So I guess to a
3 certain extent it may be premature in my mind while we are
4 going through the County process--it's a complete process.
5 It really is--while we're going through that process to
6 come in and say this is what we're going to do until we
7 get through the County process.

8 MR. TAYLOR: Right.

9 JUDGE TOREM: Would it be agreeable as you
10 present these items to staff--certainly staff would advise
11 the Council if they have any belief that new SEPA
12 documentation or analysis are required--but could you give
13 a written summary of the changes, sort of an executive
14 summary revised to the Council by the October meeting?

15 MR. PEEPLES: Sure. No problem.

16 JUDGE TOREM: I want to let you focus on
17 September for getting the application. Maybe in the form
18 of a written update bring to the Council in October and
19 let the service list take a look at it as well and maybe
20 make a ten-minute verbal presentation on that at the
21 meeting.

22 MR. PEEPLES: Sure. That would be just
23 fine. Good idea.

24 JUDGE TOREM: If you can do it for
25 September, let staff note it up. But I don't want to push

1 your time for preparing for what we're not dealing with
2 until March. You've got to get to the County sooner than
3 later.

4 Ms. Makarow, is there anything that you want
5 to suggest as to how they do that or how that be brought
6 to the Council and the parties' attention?

7 MS. MAKAROW: I think if the Applicant can
8 supply that information by early October then staff
9 certainly could make sure it's being circulated to the
10 parties and the parties noticed at the Council's October
11 meeting.

12 MR. TAYLOR: I'm just going to note that I
13 think it's preferable to wait until not only have we filed
14 with the County but the County has deemed our application
15 complete, and it's a formal we're off down the road where
16 the final application that will be the subject of the
17 County's proceeding rather than we file it and we--

18 JUDGE TOREM: --change it again.

19 MR. TAYLOR: I don't want to go down that
20 road.

21 JUDGE TOREM: So does the later October
22 meeting sound applicable at this point?

23 MR. PEEPLES: Yes.

24 JUDGE TOREM: Well, keep staff abreast if
25 you have to change it to the November meeting, and so that

1 we can at least note that to the parties in October as
2 well.

3 Okay. Let's move onto the Counsel for the
4 Environment's previously filed motion from Mr. Lane to
5 move a variety of things into the record. Hang on one
6 second.

7 MR. ANDERSON: I was not able to make the
8 beginning of the meeting. Could you note the appearance
9 of Mark Anderson for CTED?

10 JUDGE TOREM: Yes. Mr. Anderson is here for
11 Community Trade and Economic Development in Olympia.
12 Thank you, sir.

13 Mr. Tribble, you have that motion in front
14 of you still?

15 MR. TRIBBLE: I do.

16 JUDGE TOREM: Any comments on it?

17 MR. TRIBBLE: No. As you know this motion
18 was filed I think almost a year ago by former Counsel for
19 the Environment John Lane. I have read it as well as a
20 number of the other although not the totality of the
21 record so far. I agree with Mr. Lane's analysis. I think
22 because the DEIS, the Supplemental DEIS, and the
23 corresponding public comments have been referenced by
24 multiple parties in prefiled testimony and opening
25 statements I think it would be useful for it to be moved

1 into the adjudicative record. I also agree with the
2 second point that rather than having the public resubmit
3 public comment information during the public comment
4 portion of the adjudicative hearing it would make sense to
5 have all the public comments also moved into the
6 adjudicative record. I have not received or at least I am
7 not aware of any objections to this motion, but perhaps I
8 have not looked in the accurate places for those
9 objections.

10 JUDGE TOREM: You've looked everywhere
11 because there have been no responses that the Council is
12 aware of either.

13 Let me ask the Applicant if they have
14 comments on the motion and then we will ask if the other
15 parties do, and we'll see what the Council's action will
16 be today.

17 MR. PEEPLES: We have no problem. It was
18 done that way in Wild Horse too.

19 JUDGE TOREM: Yes, it was the established
20 procedure in the previous wind farm case.

21 MR. PEEPLES: And I believe in the one
22 before that.

23 JUDGE TOREM: Any other parties have
24 comments on Mr. Tribble's motion?

25 Hearing none, Councilmembers, any comments

1 or discussion on the motion before you for action today?

2 CHAIR LUCE: Motion to approve the request
3 by the Counsel for the Environment.

4 MS. WILSON: So moved.

5 JUDGE TOREM: Is there a second?

6 MS. TOWNE: Second.

7 JUDGE TOREM: Any other discussion?

8 CHAIR LUCE: Question has been called for.
9 All in favor say aye.

10 COUNCILMEMBERS: Aye.

11 JUDGE TOREM: Mr. Tribble, will you let
12 Mr. Lane know that his motion has been passed?

13 MR. TRIBBLE: Thank you. I will.

14 JUDGE TOREM: Those will now become part of
15 the adjudicative record.

16 Are there any other items of business
17 regarding this wind power project, Kittitas Valley Wind
18 Power Project that the Council should take up today?

19 All right. Hearing none, are there any
20 other items for the Council or any other matters that need
21 to be discussed today?

22 CHAIR LUCE: A question for you, Judge
23 Torem. Will you be issuing an order?

24 JUDGE TOREM: There will be a written
25 prehearing conference order. I'm hoping to have it in

1 draft form by Friday, and we can hopefully get it out
2 before the next holiday week, September 1 or August 31
3 have it finalized and out. I will just summarize
4 everything that we've done today, and I will be keeping
5 tabs on anything that develops.

6 I will still be for those that are
7 interested at McChord Air Force Base in September and to
8 mid to late October until I depart overseas for Bagdad,
9 and I'm hoping to be back earlier than the first week of
10 March, and well, we'll see.

11 Mr. Hurson, we'll see if the hospitality in
12 Ellensburg remains better than what I understand it is in
13 the Green Zone. We'll go forward from there.

14 CHAIR LUCE: Remember this. Get out and
15 vote.

16 JUDGE TOREM: That's right. Then it's about
17 2:14. We are adjourned. Everybody have a good one until
18 I actually speak to you in person next time.

19 * * * * *

20 (Whereupon, the prehearing conference was
21 adjourned at 2:14 p.m.)

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A F F I D A V I T

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 August 22, 2005,
in Olympia, Washington.

Shaun Linse, CCR

CCR NO. 2029