

Draft **MINUTES**

**STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

December 15, 2003 - Special Meeting  
925 Plum Street - 4th Floor Conference Room  
Olympia, Washington 1:30 p.m.

**ITEM 1: CALL TO ORDER**

CHAIR LUCE: This is a special meeting of Washington State Energy Facility Site Evaluation Council convened on Monday December 15, 2003, at 1:30 p.m. or shortly thereafter. The meeting will come to order. The clerk will call the roll.

**ITEM 2: ROLL CALL**

**EFSEC Council Members**

**Community, Trade & Economic Development**  
**Department of Ecology**  
**Department of Fish & Wildlife**  
**Department of Natural Resources**  
**Kittitas County**  
**Chair**

Richard Fryhling  
Charles Carelli  
Chris Smith Towne  
Tony Ifie  
(via phone) Patti Johnson  
Jim Luce

MR. MILLS: The Chair is present and there is a quorum.

**OTHERS IN ATTENDANCE**

**EFSEC STAFF AND COUNSEL**

Allen Fiksdal  
Mariah Laamb  
Ann Essko – AAG

Mike Mills  
Irina Makarow  
Shaun Linse - Court Reporter

**EFSEC GUESTS**

Hedia Adelsman – Ecology  
Darrel Peeples – Kittitas Valley Wind Project  
John Lane – CFE  
Mark Anderson – CTED EP  
Chris Taylor – Zilkha Renewable  
Bill LaBorde - NW Energy Coalition (via phone)  
Steve Lathrop – Intervener (via phone)  
Jim Hurson – Kittitas County (via phone)  
Kirk Deal – Carpenters Union

David Reich - Ecology  
Duncan McCaig – Chehalis Power  
Adam Torem – OAH  
Cindy Custer - BPA  
Sonja Lieng – NW Renewable (via phone)  
Mike Robertson – Interested Party (via phone)  
Jeff Slothower – Intervener (via phone)  
Clay White – Kittitas County (via phone)

**ITEM 3: APPROVAL OF MINUTES**

CHAIR LUCE: Thank you. The first item of business appears to be the approval of minutes for the October 13, 2003 regular meeting. Have Council members have had an opportunity to review the minutes?

MS. TOWNE: Yes. Mr. Chairman, I have some questions of a technical nature of the staff.

CHAIR LUCE: Thank you. Do other Council members have corrections or additions or deletions?

MR. FRYLING: I move that they be adopted and approved.

CHAIR LUCE: With the technical amendments, all right. There has been a motion and a second; all in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR LUCE: Approval of the minutes for October 13th is a matter of record.

**ITEM 4: ADOPTION OF PROPOSED AGENDA**

CHAIR LUCE: The next issue is the adoption of proposed agenda. Have Council members had an opportunity to review the proposed agenda? Are there any changes, additions, or deletions to the present agenda? Is there a motion to approve the agenda -- is the proposed agenda agreed to?

MR. IFIE: Yes.

CHAIR LUCE: Agenda is agreed to.

**ITEM 5: KITTTITAS VALLEY WIND POWER PROJECT**

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| <i>Extension of One-Year Review Period</i> | <i>Irina Makarow, EFSEC Staff</i> |
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CHAIR LUCE: The first item on the agenda is Kittitas Valley Wind Power Project. Mr. Fiksdal?

MR. FIKSDAL: Before we begin, maybe we should have everyone that's on the phone line identify themselves for the record here. Patti Johnson, we already heard that you're there. I guess, Jim Hurson, would you announce your name and who you are?

MR. HURSON: Jim Hurson, Deputy Prosecutor in Kittitas County, and with me in the room is –

MR. WHITE: Clay White.

MR. FIKSDAL: That was Clay White.

MR. SLOTHOER: Jeff Slothoer, I represent intervener Steven Lathrop.

CHAIR LUCE: All right.

MR. FIKSDAL: Thank you, Jeff.

MR. ROBERTSON: Mike Robertson, I am an intervenor interested party.

MR. LABORDE: Bill LaBorde from Northwest Energy Coalition.

MS. LIENG: Sonia Lieng.

CHAIR LUCE: Sonia could you spell your last name for the court reporter.

MS. LIENG: L-I-E-N-G.

CHAIR LUCE: Thank you.

MR. FIKSDAL: And I believe that's all that's on the phone line. Thank you, Mr. Chairman.

CHAIR LUCE: Thank you. The first item under Kittitas Valley Wind Power Project is an action item, extension of a one-year review period. Staff for this next item is Irina Makarow, EFSEC staff. Irina, would you care to make a presentation on this matter?

MS. MAKAROW: Just a very brief one. On August 20th, the Council received a request from Sagebrush Power Partners through their counsel Darrel Peeples to extend the twelve month period required for completion of Council's review, a statutory requirement, Chapter 80.50.100 of the Revised Code of Washington, and I believe that the Council was due to act on this item today. Darrel, is there anything that you would like to brief the Council on with regard to this request?

MR. PEEPLES: Not this request. I assume what you want us to talk about is with regard to the update, that report that I have filed?

MS. MAKAROW: Yes.

MR. FIKSDAL: Darrel, could you come up closer?

MR. PEEPLES: All right.

MR. FIKSDAL: Would you repeat what you just said?

MR. PEEPLES: You asked whether I had anything to add to the request to extend the time period for application beyond the one-year statutory period; is that correct?

MS. MAKAROW: That is correct.

MR. PEEPLES: I think our request pretty much speaks for itself. We have nothing to add. We would just request that the Council extend the time to approve the application beyond the one-year period set out in the statute.

MS. MAKAROW: For Council's benefit, the application was received on January 13th of 2003.

CHAIR LUCE: Question, Darrel, your letter dated December 8, 2003 indicates that based on the verbal indications that you have received from the County, it doesn't appear that the County would complete its decision-making process before July of 2004; is that correct?

MR. PEEPLES: That was my report, but that is as opposed to -- that's different than I think the request to extend the period for processing beyond the one year, but that is correct.

CHAIR LUCE: Are you requesting an extension to the process to a date certain or?

MR. PEEPLES: For the one-year period?

CHAIR LUCE: Yes.

MR. PEEPLES: No. I think it's an open extension beyond the one year. That's generally what has been done in the past.

CHAIR LUCE: All right, would you provide us a letter to that effect?

MR. PEEPLES: Sure, that's no problem.

CHAIR LUCE: Similar to the letter that you've provided in the past indicating that the request is the applicant's request.

MR. PEEPLES: Yes.

CHAIR LUCE: Thank you.

MR. PEEPLES: But the request is an open ended request beyond the one year.

CHAIR LUCE: Thank you. Do Council members, other Council members, have questions? Council members on the phone? This is an action item. Does anyone on the Council wish to make a motion to extend this matter beyond the one year?

MR. HURSON: May I make a comment for Kittitas County?

CHAIR LUCE: Jim, certainly you may make comment.

MR. HURSON: Thank you. Jim Hurson, deputy prosecutor, Kittitas County. The only comment I did want to make is it's frankly because I have been hearing rumors flowing around in

our community that some people are making it sound like the County is somehow delaying the EFSEC process and I just wanted to make it clear for the record that the failure to meet the one-year deadline isn't anything having to do with the County's involvement in this matter. We're going to be one year when we have the hearing on the comments on the draft EIS whether there was consistency or not or whether the County was involved or not.

There was still no way that this would have been able to be done in a one-year time frame. So, I just -- I wanted that to be reflected in the minutes of the Council so that that sort of rumor could be kind of dispelled through the public record and then we will deal with this -- the timing on the status and the next item on the agenda.

CHAIR LUCE: All right. I do have a question for you, Jim, but I will deal with that after we have dealt with the issue of the extension. And I would like to note that neither our representative from the Trade and Economic Development Department nor from the Department of Natural Resources will be voting on this extension. I want that noted for the record, please. So do we have a motion to extend the period one beyond one year?

MR. CARELLI: I would like to move that the Council extend the -- accept the request by the Applicant in the Kittitas Wind Power Project application date and continue working with the Applicant and the County to resolve the language issue.

CHAIR LUCE: And to move forward to an adjudicative hearing on this case, if that's appropriate?

MR. CARELLI: If that is appropriate.

CHAIR LUCE: Do I have a second?

MS. TOWNE: Second.

CHAIR LUCE: Thank you. Discussion, questions? All in favor say aye.

COUNCIL: Aye.

CHAIR LUCE: The motion carries. And it will be continued for an open ended period of time and, Darrel, if you would provide the Council with a letter to that effect that this extension was at the request of the applicant that would be very much appreciated. Thank you.

MR. PEEPLES: Yeah, no problem.

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| <b><i>Progress Report</i></b> | <b><i>Irina Makarow, EFSEC Staff</i></b> |
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CHAIR LUCE: Jim, I do have a favor to ask of you. Are you there?

MR. HURSON: Yes, I am.

CHAIR LUCE: We're going to be coming over as I understand it in the middle of January. Is that about right for a public meeting?

MS. MAKAROW: Yes, January 13th.

CHAIR LUCE: For a public comment session on the draft EIS which I think you now have in your possession and it includes the cumulative impact analysis that the County thought was important to have; is that correct?

MR. HURSON: I haven't had a chance to review the draft EIS. It showed up on my desk about eleven o'clock this morning.

CHAIR LUCE: Assuming that it has the cumulative impact analysis in it as you've requested, we will be coming over to have this meeting and I have had a chance to take a look at it and it does have that analysis in it. So what I would like to request from the County at that time is a description of your decision-making process and the schedule in writing that you would intend to follow between now and perhaps the next spring or early next summer so we will have some certainty with respect to how the County intends to proceed.

MR. HURSON: Well, I know -- it sounds like we're into the second item on the agenda. Again, for the record, Jim Hurson. I trust everybody got the letter, or hope they did, the one I emailed earlier this morning.

CHAIR LUCE: Just arrived on my desk at eleven o'clock. I haven't had a chance to read it yet.

MR. HURSON: That's part of the problem with a telephone call, that I can't hand it to you at the time and it gets there, but it was basically pointing out the difficulty with trying to set a schedule from the County's perspective particularly when we have absolutely no control over the timing or the detail of the draft EIS. Thus far in the process, we have had multiple draft schedule deadlines and timing and they always keep slipping. Frankly from the County's perspective, we just -- just as a normal course don't like to engage in the process of making schedules that are so uncertain that they don't provide much guidance to it. Where we are right now is we can fill out a schedule that we think we could follow assuming certain parameters. We have discussed that with the Applicant and their attorney and their representatives over time. The parameters continually get slid back because we have not had -- met the initial deadline that it takes for us to go forward. That being said we would -- certainly when you come here in January, we could try to put something together. We at this point don't know if the draft EIS is adequate for the County to proceed as it is equivalent to a final EIS.

CHAIR LUCE: Well, you're going to have between now and January 13th to review that draft EIS, so hopefully you will have some pretty good indication of that between now and then, you and your planning staff. So, I would hope you would not take until January 13th to do that. What I would ask is that you work with our EFSEC staff, our manager Allen Fiksdal and our staff lead Irina Makarow, and be prepared with a schedule when we come over there. And you can sit down with our staff and work out whatever assumptions you want, but we need some certainty with respect to what the County is going to do here.

MR. HURSON: Jim Hurson again for the record. With all due respect, I believe the public process requires planning on the draft EIS. I can't at this point anticipate what all the public comment could be, what possible flaws the public might identify, and what possible corrections might be necessary. We may have a draft EIS that needs no changes. We may have one that has substantial changes.

CHAIR LUCE: I understand that. There is always the issue of what public comment will be made and we can build that into whatever schedule you build into and show to our staff, but we need some definitive statement from the County in terms of how they intend to proceed here. So you go ahead and take a look at the draft EIS between now and January 13th. You sit down between now and then with the EFSEC staff, you work out -- take whatever assumptions you want with respect to how the process goes forward from here and lay out a time line within which we're going to get some resolution of this issue.

MR. HURSON: I will do that. Although, I know you have not had a chance to read my letter, but that was one of the comments I made in my letter is, I think in what you, let's see, sometime back in May, EFSEC staff and the applicant put together some schedules that would have had the draft EIS issued in July with adjudication done in October, so if you are looking for something that's accurate as that, that is not a problem. Our preference is to not create inaccurate schedules to create misconceptions or flaws in time frames.

CHAIR LUCE: I understand that, Jim.

MR. HURSON: Okay.

CHAIR LUCE: So I will look forward to you and Allen and Irina getting together and working on this with your County planning staff as well. They will be in touch with you after this meeting to set up a time to do that.

MR. HURSON: Okay.

CHAIR LUCE: Thank you.

MR. HURSON: Thank you.

MS. MAKAROW: Before we leave the land use issue, maybe Mr. Peeples or Mr. Taylor would like to make some comments to the Council?

MR. PEEPLES: Yes. The County, in response to what Mr. Hurson, I just got –

MR. HURSON: I can't really hear very well. Could you speak up?

MR. PEEPLES: Mainly I would like to make some comments in response to Mr. Hurson and the letter that we received from him. I see -- I just want to point out to the Council, I see some issues really starting to be -- to be created right now. We have done everything we -- I think I believe we could do to cooperate to try to get through the land use process with the County. And, you know, I understand that you can't give a date certain for a schedule, but we don't even have kind of a time line which they've committed to in writing and that's what I referred to in my letter and we don't even know exactly what the process is for their land use decision and we need to get some idea of that so we can at least analyze how we're going to proceed.

It was my understanding that the County wished to have a draft EIS before it commenced its process and that was fine with us if they wanted to use that as a reference document. But now reading Mr. Hurson's letter I received today, it seems to me that they're going to be going through a separate EIS process and it also would appear to me that, you know, that they're going to say they're going to determine the adequacy of EFSEC's EIS. I see some heads starting to butt at this period of time.

We are concerned with the tentative schedule that was given to us running this matter way into July, August, we don't know when, and running a separate EIS process. If that is the case, we wouldn't even be able to start the EIS -- the hearing process of EFSEC until September of next year and that is just not acceptable to us. The County is exempted from doing an EIS. It was our understanding that they would be in their process immediately after the draft EIS came out. They are exempt from the process and I disagree with a lot of points made in Mr. Hurson's letter. They do not have an EIS role in this case. EFSEC has that role. And one of the things that stretches out the County process is their treating the EIS as their own process and this is going to extend out their land use decision making well into July, August, at least that is what we were told.

So, I want to point out to the Council there is some real serious issues coming up right now. We didn't want to get into duplication of our siting process. We're now it looks like, that's what we're going to be expected to do. We originally tried to get the County to go along with the Walla Walla ordinance, type of ordinance, where if it was -- if the matter was certified by the Council, it would be considered consistent with land use. They didn't want to do that. So we started through, trying to please them, started through a process, you know, that essentially was a siting process. Understanding that we didn't have to -- we would save some time because they didn't have to go through the SEPA process. Now they're going through the SEPA process, what we thought would be a process, what we thought would be done very shortly after the draft EIS, now is spread out almost indefinitely. So we have some real concerns at this point. We just want to put those things straight out. In fact, I had minor concerns before I got the letter from Mr. Hurson. And now I think, the way they are structuring this, I have got some very significant

concerns about that. You know, I guess Mr. Hurson and I can argue the law as to whether or not they need to go through this thing, but also you can refer to your own AG for your opinion. I think the exemption in 80.50.180 is -- they're exempt. They don't have to do it. Do you, Chris, do you have anything to add?

MR. TAYLOR: Chris Taylor representing Sagebrush Power Partners for the record. The only thing I would add was that when Darrel referred to a time line based on comments from the counties, Darrel and I met with Clay White and Jim Hurson to discuss what the process and schedule would look like going forward and, you know, we never have received anything in writing. I wrote up the meeting notes and sent them back to Clay and Jim and asked, "Is this -- did I accurately capture what you described in terms of process," and with the caveat that we don't -- at that time we thought that the EIS would be out in November and so that July/August that I got to was based on their comments would be, I would assume, pushed out at least another month given that the EIS came out a month later in December. And I would also -- so I am not sure, you know, whether that schedule was something that we're referring to because it's all we got. But I just want to stress the importance of we don't even know what the substantive steps are definitively. The County's ordinance talks about what is required but it doesn't articulate that it will be this kind of a hearing with this much of a period after that hearing and then you move to this. So we are just concerned about not having a blueprint of what the substantive steps are and that has changed and evolved as things have gone on.

In particular, the DEIS was originally -- the County's desire to have the EIS prepared in advance of the County making a land use decision was described in a meeting which was Mr. Hurson and Mr. White as being we did discuss the legality, the issue that I just raised of whether the County needed to go through the SEPA process. From a legal standpoint, Mr. Hurson and Mr. White said that they thought it was important as a decision-making tool for the County decision-makers whether it was legally required or not and we said, "Okay, that seems reasonable; that that gives them more information upon which to base their decision. "So that document is now out and we hope that this will -- we should be able to have a schedule. That's it. Thank you.

CHAIR LUCE: EFSEC's perspective, I don't want to get into the legalities of this at this point in time in terms of what the County's prosecuting attorney says and what the applicant says. I simply want to get a schedule and I want to get as much certainty into this as possible. The draft EIS is out. It includes the analysis that was requested in terms of the assessment of comprehensive land use of all the impacts and cumulative impacts. And so, by January 13th, I would like to see something in writing about where we're headed and to come some good assessment of when we're going to get there. So I will leave that to Irina and Allen, and Jim and the planning department and it sounds like our AG, Ann Essko, will probably be helping Allen because he's meeting with the involved attorneys. So that's all I have to say about it. I think everything that can fruitfully be said probably has been said today.

MS. MAKAROW: Are there any other questions from Council members regarding the wind power status report? Seeing no nods, then I will move onto the next project.

MR. HURSON: Just a second, this is Jim Hurson. I just want to make one comment, because I think Mr. Peoples not intentionally but may have mischaracterized it, it is Kittitas County's position that we're going to do our own separate EIS. It never has been our position for that. It is simply that EFSEC is the lead agency under SEPA and that the County needs to use EFSEC's EIS to do our land use planning under the growth management act and the planning enabling act and the SEPA. And so all we are saying is: EFSEC, do you have a good adequate functional equivalent to an EIS for us to use? We will proceed with that. If we don't have that, then we

cannot proceed because it violates the growth management act, the planning enabling act, and the state environmental policy act. Not saying that we want a separate one, just want a good one.

CHAIR LUCE: Thank you for that clarification.

MR. PEEPLES: I think the legal issue here is, 180 says they don't need one. I mean, they are exempt from that process because EFSEC has an overall EIS and is making its decision on the time frame, that's the difference, and I didn't mean to say that they're developing their own, and I think the issue now is fairly well stated. Thanks, Jim.

CHAIR LUCE: All right. What Irina was going to say was the next issue here.

MS. MAKAROW: The draft EIS was issued on Friday and the Council members in their packets have the notice of the issuance of the draft EIS. It was put up on our website also and citizens may have requested either a hard copy or received a CD-ROM copy and I will have CD-ROM copies for you later but the Council members already have it.

MS. TOWNE: Will we have hard copies?

MS. MAKAROW: Yes.

MS. TOWNE: Thank you.

MR. FIKSDAL: This is Allen Fiksdal. We did mail out the draft EIS's at the end of last week, so people should be receiving their copies in the mail today or tomorrow.

CHAIR LUCE: Thank you.

MS. MAKAROW: With regard to the comment period, it extends through January 20th and we have a public comment hearing scheduled for Tuesday, January 13th, in the evening in Ellensburg.

CHAIR LUCE: That will be from what time to what time or do we know yet?

MS. MAKAROW: Open house from 6:30 to 7:00 and the public comment starting at 7:00 p.m.

CHAIR LUCE: At the fairgrounds?

MS. MAKAROW: Yes, at the fairgrounds, at the same location we had before. Mariah is working on travel plans so I think she will be contacting you in the not so distant future.

CHAIR LUCE: All right.

MS. MAKAROW: The other item that was issued on Friday was the Notice of Opportunity for Late Intervention and as a refresher for the Council, when the Council initiated its intervention -- excluding intervention process, part of that included an opportunity for late intervention once the draft EIS was issued on issues that were not known before issuance of the draft EIS. The deadline for submitting petitions, either new petitions for intervention or for adding issues for existing interveners, is January 16th and we will be waiting to see if there are any new petitions that are filed.

The final item that I would like to report on is that a new Council For the Environment (CFE) has been appointed for both Kittitas Valley and Wild Horse projects and his name is John Lane. John is here with us today and if John would like to introduce himself or say a few words.

MR. LANE: My name is John Lane. I work for the Attorney General's Office and am taking over for Mike Lufkin, who's moved on to other things and look forward to working with everyone.

MS. MAKAROW: That's all I have to report on Kittitas Valley. Are there any questions from the Council?

MS. TOWNE: Mr. Chair, one question, probably Irina would be the recipient of the question, just so I understand how our process should work, okay, and does work. Why was the DEIS delayed several months in your judgment?

MS. MAKAROW: In my judgment, one of the -- well, in addition, to collecting the requisite information that as needed to prepare the draft EIS, one of the delays was due to the County's requesting that we include a discussion of reasonable site alternatives, that is other sites than those being considered within the County in our draft EIS, and we worked with the County and with the County's consultant, Huckle Wineman, to produce that analysis and also another thing that delayed it was the cumulative impact analysis. At the time that we would have been ready to issue the draft EIS, probably at the end of October without the reasonable alternatives analysis, we had a cumulative impact analysis developed based on the information that we gathered by end of the October. And in the meantime the most reasonable alternatives analysis did become available to us and independent consultant Shapiro -- Huckle Wineman had pulled together periodic additional information that we did not have on hand and we decided to update our cumulative impacts analysis to a higher level of inclusion of data. So those are the main reasons that delayed our draft EIS.

MS. TOWNE: I appreciate it.

MR. HURSON: Can I interrupt there? This is Jim Hurson, Kittitas County.

CHAIR LUCE: Mr. Hurson?

MR. HURSON: Frankly, it is offensive for EFSEC staff to try to make it sound like Kittitas County has caused a five and a half month delay on the process. We have not delayed this process one day. The initial schedule had it out at the end of June. If their consultant was unaware of the requirements under SEPA and didn't know they had to do a cumulative impact analysis and didn't know that they had to do an off site alternative analysis, that is not the County's fault. We saved them time. We were not even privy to the draft. We heard through the grapevine that they were omitting statutorily required elements to make it even legal and advised them of that. We could have kept our mouth shut. We probably could have had this issued maybe two weeks earlier and then here we would be with massive, huge holes in a draft EIS that could not even come close to passing muster.

Our goal here is to try to get this process in as timely a fashion as possible. We were left out of the input on how the draft EIS is being put together, the issues that are being addressed. We were not given privy to the draft. And it seems that any delay is somehow being attempted to be placed upon the County. Every action of the County says thus far in this matter has been to help expedite this process. When we saw there were errors, even though we weren't part of the team putting it together, we pointed them out to help them get this put together better. And I take exception to the inference that the County is causing the delay because nowhere in the explanation of why it was five and a half months late was there any explanation other than supposedly the County delayed it.

CHAIR LUCE: Your comments are noted for the record. Thank you, Mr. Hurson. What's the next item on the agenda?

MR. FIKSDAL: No. 6.

## **ITEM 6: WILD HORSE WIND POWER PROJECT**

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| <b><i>Progress Report</i></b> | <b><i>Irina Makarow, EFSEC Staff</i></b> |
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CHAIR LUCE: Wild Horse Wind Power Project progress report, Irina?

MS. MAKAROW: A brief progress report. Potential site study report was received from Johns and Stokes and was distributed to Council members and we also mailed an interested persons list

for that project letting them know that that report was available. At the beginning of November, the Applicant also submitted a draft application for review of the Jones and Stokes and Jones and Stokes is in the process of reviewing that draft. Now because the applicant had intended to include some of the analyses that had been prepared by Shapiro for the Kittitas Valley draft EIS and that draft EIS had not yet been issued when future applicants submitted theirs in draft application to Jones and Stokes, - I hope you're all following me, - we are going to extend the review period by two weeks for Jones and Stokes so they can have a look at the Kittitas Valley draft EIS and take that off to work with them to include that in their formal application -- that information in the formal application to EFSEC.

MR. PEEPLES: Can I ask a question on that? Would Jones and Stokes be able to get back to us the stuff they had reviewed at that point for us to get working on?

MS. MAKAROW: Yes.

MR. PEEPLES: Okay, so that's no problem, so they just need two weeks to review the stuff that was in there?

MS. MAKAROW: Well, actually, I would have to check, but I don't know if it's just going to be two additional weeks for the draft EIS for Kittitas Valley or if it's -- it might be two weeks for everything as a whole.

MR. PEEPLES: If they could get the stuff back to -- their comments to us especially in the stuff they know that we may need to do other work on, we would appreciate it if we could get it back a little bit earlier while they are working on the stuff that they are just getting to date.

MS. MAKAROW: Yes. And I am giving further direction that if there are any major issues that pop out at them that they will contact you right now.

MR. PEEPLES: That's fine.

MR. LANE: I would just add another thing, it was actually November 26th.

MS. MAKAROW: I am sorry.

MR. PEEPLES: If they were here, they would want me to say that.

MR. HURSON: All right.

MS. MAKAROW: That's all I have to report on Wild Horse.

CHAIR LUCE: Okay. Any other comments from the public with respect to Wild Horse? All right, nothing from the public on Wild Horse.

MR. FIKSDAL: If I could interrupt, Mr. Chairman. I think that's all we have on the agenda as far as Kittitas Valley and Wild Horse. So, Ms. Johnson, if you want to sign off, you are more than welcome to.

MS. JOHNSON: I will be doing that. Thank you

MR. ROBERTSON: This is Mike Robertson, I am signing off as well.

## **ITEM 7: CHEHALIS GENERATION FACILITY**

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| <b><i>Water Use Mitigation – Close Out</i></b> | <b><i>Mike Mills, EFSEC Staff</i></b> |
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CHAIR LUCE: The next item on the agenda is Item 7, Chehalis Generation Facility, water use mitigation, close out. Mike, do you have a presentation for us on that issue?

MR. MILLS: Yes, I do. Duncan, could you come up to the table in case there are any questions? Please refer to an item in the packet. It's a letter from Preston, Gates, and Ellis dated September 23, 2003, a request from Chehalis Power asking the Council to recognize that they've satisfied the water rights mitigation requirements of the site certification agreement for the

Chehalis Project. Their letter indicates that through Resolution 304, the Council approved the proposed acquisition and dedication of a portion of the Hamilton water rights for purposes of satisfying the water rights mitigation requirement which was to attempt to acquire 102 acre feet. They are now requesting that we close this item, based on the documentation, provided that the process is complete. The package that they have submitted indicates that they've gone through the Department of Ecology process to receive a water right of 106 acre feet from the Department of Ecology, and it states that the water right has been conveyed to the Department of Ecology and a copy of that was included in the package. The requirements is set out in Resolution 304 as, "The Council determine that Chehalis Power has fully satisfied the water mitigation requirement of Articles VI.A.3 and 4 of the CGF SCA, so long as Chehalis Power completes the water rights acquisition approved in this resolution, and the water right exchange process with Ecology." Staff is satisfied that the documentation provided does, in fact, verify that Chehalis Power has satisfied the requirements and has acquired the rights and conveyed it to the Department of Ecology and we would propose a motion that Chehalis Power has satisfied the water mitigation requirement of the agreement.

MR. CARELLI: Is there any question from the Council members? Any questions? Hearing none, would somebody like to make a motion to close out -- is that the correct terminology.

MR. MILLS: Yes.

MR. CARELLI: -- the water rights mitigation requirements for Chehalis Power?

MR. IFIE: I so move.

MS. TOWNE: Second.

MR. CARELLI: It's been moved and seconded. Is there any further discussion? Call for the question. All those in favor of closing out Chehalis Power water rights mitigation requirement for the Chehalis Generating Facility indicate by saying aye. Those opposed? Motion carried.

MR. MILLS: Thank you. Actually, in this case, I would like to recognize the effort that Chehalis Power made in acquiring the right. I think it was first believed that they might end up taking a monetary pass, but they were in effect able to acquire not only the Hamilton right, but they actually had another right that was approved earlier and did end up with the Hamilton right. The Hamilton right was able to go through the Ecology process. I think that is -- they made a good effort and we want to recognize that. Thank you.

MR. MCCAIG: Thank you. I will be sure to thank our consultants for their efforts on that.

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| <b>Noise Monitoring</b> | <b>Duncan McCaig, Chehalis Power</b> |
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MR. CARELLI: Next is noise monitoring. Is that you or Duncan?

MR. MILLS: I am going to have Duncan in on that.

MR. MCCAIG: Thank you, Mr. Chairman and Council, for the opportunity to present Chehalis' proposed addition to the noise monitoring program. This is in response to the Notice of Incident and Request for Assurance of Compliance (NOI 03-01). As you are aware, I believe, Chehalis Power has been implementing a noise reduction program at the plant for the past four months. We believe that we've been quite successful in our efforts to install additional equipment and reduce the noise.

I will just quickly summarize that we have installed noise silencers on our steam ejector, on the HRSG blowdown drains, on our steam turbine external drains, and a silencer on our motive steam pressure safety valve. We have installed sound barriers on the high pressure bypass valves. We have installed enclosures around our boiler feedwater pumps. Williams has just completed the installation of an enclosure around the entire gas metering station. We also are in

the process of installing barriers for our closed cooling water system and we just added our first silencer addition to one of the large HRSG start up vents. We're fabricating additional extensions and we will be installing those over the next one and a half months and, finally, we have some additional sound reducing equipment on its way from Korea for the HRSG. We have continued to contact neighbors and the neighbors generally advise us that the operating noises are notably reduced. The augmentation that we would like to propose is one that will add to the program that has been going on since August. The program, the ongoing monitoring program, is now three times each day, 1:00 a.m. and 9:00 a.m. and 5:00 a.m., at five designated locations at our site boundaries. We proposed to add a component of off site noise monitoring and in fact we have begun to do that as of December 2nd. That off site monitoring will be at five locations that collectively encircle the plant. All are within approximately one half mile of the plant on public right of ways to allow us easy access and are adjacent to neighboring property. We have included in our proposal a diagram indicating these locations as Locations No. 20 through 24. Therefore, in addition to the daily monitoring that we are already doing at our site boundaries, this monitoring will be conducted once per week for the next four months. We will generally conduct this off site monitoring as part of our Tuesday, 9:00 a.m. check. We also commit to testing during the plant start up once per month during the four-month period. After the four months at best, as noted, we propose that the off site monitoring be conducted on a monthly basis together with our daily on-site monitoring. If the monitoring program confirms, as we hope, that there are no ongoing noise issues for the following three months, that is four months of weekly and then the following three months, then we will request approval of EFSEC to conduct all monitoring on a monthly basis. Then after an additional three months, if there are no further noise issues, we will request the Council to approve termination. Throughout our program of monitoring, we will continue to send EFSEC our monitoring results on a weekly basis and then later on, on a monthly basis if the program goes to monthly. That is the summary of our proposal.

CHAIR LUCE: Questions?

MR. MILLS: Again there were those handouts and the letter dated December 2nd from the company that were provided for your review. Staff would recommend that the Council approve the proposal as presented by Chehalis Power. I believe you also had an opportunity during executive committee meetings to be briefed on it. We believe that the off site component will provide the Council with an opportunity to review data and check with neighbors to verify that the noise limits from the plant do, in fact, meet the requirements.

MR. CARELLI: I would move that the Council approve the noise monitoring proposal that the Chehalis Generating Facility has presented in writing to the Council.

MR. IFIE: I so move -- I second it, I'm sorry.

CHAIR LUCE: All in favor.

COUNCIL: Aye.

CHAIR LUCE: Motion carried. Thank you.

MR. MCCAIG: Thank you.

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| <b><i>Status Report</i></b> | <b><i>Mike Mills, EFSEC Staff</i></b> |
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CHAIR LUCE: Status report, Mike, do you have a status report?

MR. MILLS: That was supposed to be Duncan. Duncan, could you just review the status of the plant right now for the Council?

MR. MCCAIG: Sure, I will be happy to do that. Certainly a lot of activity over the last month has been on noise mitigation efforts. We have been operating pretty much continuously since August except for times that we needed to take the plant down for punch-list modifications and repairs. Over the last two weeks, the plant has been off line due to economic reasons and it's given us quite a good opportunity to install the silencers and make some additional repairs. So, overall, we're pleased with the plant's performance. The design has been very reliable and we have encountered relatively few problems requiring modifications.

CHAIR LUCE: Thank you.

MR. MCCAIG: Thank you.

## ITEM 8: ENERGY NORTHWEST PROJECTS

### Columbia Generation Station

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| Status Report | Mike Mills, EFSEC Staff |
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CHAIR LUCE: Next item on the agenda is the Northwest Project, the Columbia Generating Station, Mike?

MR. MILLS: Very brief status report on the operating status of the Columbia Generating Station Nuclear Plant. We've been in operation for over 160 days and they are currently operating 100 percent.

CHAIR LUCE: Good.

### WNP-1/4

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| <i>Site Restoration</i> | <i>Jim Luce, EFSEC Chair</i> |
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CHAIR LUCE: The WNP-1/4 site restoration agreement has been signed. It was signed on December 3rd, and it was a nice ceremony. I don't have a lot to add beyond that. There is a press release which was accurate in some respects and slightly inaccurate in other respects, particularly regarding the origin of the fund, but not so inaccurate that it needs to be corrected at this point in time. We have before us a resolution today, Resolution 302, which I will ask Mike to report on because I am going to ask the Council to take action on it today, which will go one step forward actually and close the final loop on the four party agreement which was signed on December 3th. Mike?

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| <i>Resolution 302</i> | <i>Mike Mills, EFSEC Staff</i> |
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MR. MILLS: Thank you. In your packet, there is a Resolution No. 302. This is a resolution that would approve a site restoration plan for the WNP 1 and 4 sites. This plan was approved by the Council about a year ago and what staff will be asking today is that the Council re-approve this resolution at this time so that we can incorporate the recently approved four party agreement, which is Attachment D to this plan, into the 1/4 Site Restoration Plan.

MS. TOWNE: But we need the attachment?

MR. MILLS: You do have the restoration plan in this packet.

MS. TOWNE: Okay.

MR. MILLS: That did include the four party agreement that was approved on December 3rd.

MS. TOWNE: Oh, okay, got it. Thank you.

MR. MILLS: And that plan will be attached to this resolution, if it's approved by the Council. The plan that is before you is referred to as Level 3D and it is -- the key components of this plan

are to complete in the next 18 to 24 months a number of safety improvements and environmental protections at the 1 and 4 sites. Several of the Council members here have seen the site. I believe you are familiar with the kind of safety and environmental issues that this near term work would be addressing. Again, this plan has already been approved by the Council. What we are asking for today is that you re-approve it and then we can transmit that on to Energy Northwest as a condition of the four party agreement that was approved earlier this month. In transmitting this plan to Energy Northwest, we will also call for the 3.5 million dollars that has been committed for wildlife mitigation and environmental protection. So that will also go hand-in-hand with this approval. I don't think I have anything else. Staff would recommend that the Council re-approve Resolution No. 302 and that staff transmit it to Energy Northwest and that will be call for the 3.5 million dollars.

MS. TOWNE: Question, Mr. Chair, I guess jointly addressed to Mr. Mills and Ms. Essko. Does one normally change an adopted resolution and readopt it? Wouldn't you just do a new resolution? I have just never run into that procedure before.

CHAIR LUCE: Well, we're breaking new ground here.

MS. TOWNE: Well, it seems a little peculiar. If somebody isn't called out -- if somebody calls out Resolution 302, you might get the original one and you might get the -- it isn't identified as amended.

MR. MILLS: One of the statements on Page 3 indicates, "Now, therefore, be it resolved that EFSEC hereby re-approves Energy Northwest's site restoration plan subject to the commitments therein. "We have an asterisk noting that the resolution is being re-approved as it was initially approved by the Council on December 9th, and the way I was thinking that would cover how we dealt with the original approval of 302, and then it was re-approved on this date. We could certainly renumber it, but it's just easier if --

MS. TOWNE: Maybe you could recaption it to say Re-approved Resolution No. 302 or something. I am just thinking of -- for the record, over time, I mean this runs through 2029, somebody ought to be able to find the current superseding version without fumbling around through the files.

MR. MILLS: There is no 302 in the file because it was never signed. We sat on it for a over year. The Council took an action and then it was never executed.

MS. TOWNE: It said it was approved.

MR. MILLS: It was approved by the Council, but it was never executed.

MS. TOWNE: You're kidding?

CHAIR LUCE: No.

MR. MILLS: Because we didn't have a four party agreement that was part of the plan.

MS. TOWNE: Oh, so it doesn't exist, only this one exists.

MR. MILLS: Well, it existed on Allen's desk for a year, yes.

MS. TOWNE: Okay.

CHAIR LUCE: It was getting the four party agreement signed, this was negotiated in two months, it took two years to get it signed.

MS. TOWNE: Okay, got it. I wasn't aware of any of that background.

MR. MILLS: Thank you for your question. There is some logic to this and I would be perfectly happy to add something to the title.

MS. TOWNE: Well, no, because if it is the only 302 extant, then it is accurate.

MR. FIKSDAL: Maybe we could say on the back where it says approved but not executed or something.

MS. TOWNE: Yes. That would be certainly make it clearer. When we're all gone, nobody is going to remember about how this thing got there. Another question on Page 1, the second to last whereas, where it says, "Provided that the immediate near term health safety and environmental protection activities are completed, "so my immediate question is: And what if they are not?

CHAIR LUCE: Then Energy Northwest has the ability to come back and ask the Council for some additional period of time to complete them and that period of time will be not unreasonably withheld. In fact, I will just tell you there is an issue there because the initial amount of funding that was anticipated for the health and safety activities was something in the order of four million and since that point in time Energy Northwest is reexamining the budget, and it may take more than that, so they could come back and ask for a little more time, that's somewhat a fluid situation at this point in time. So, subject to being extended on a reasonable request, we will just work with that. As they develop their health and safety activity list, they may come back and say they need a little more time. This agreement provides that they will get a little more time as long as it's not unreasonable.

MS. TOWNE: Page 2, second whereas, you escalate the 2025 dollars, but the agreement covers a 26 year period, running to 2029. I just wondered why they were giving away the last four years of inflation?

CHAIR LUCE: To tell you the truth, it's been a year since we negotiated this. So, I am not prepared to answer that in the detail that you probably would like.

MS. TOWNE: Okay. Well, it is their money. No, I guess it's my money.

CHAIR LUCE: It's the rate payers' money, I assume.

MS. TOWNE: That is what I mean.

MR. IFIE: Quick question. On Page 2, third paragraph, where it talks about an external trust fund by BPA. Just for my information, I was wondering what the wording was about. What is the status of this external trust fund? Is it established, or will be established in the future?

CHAIR LUCE: Cindy is here, but I think that's what the plan is that Bonneville is going to take a chunk of money and establish an external trust fund at Bonneville, and that trust fund will grow over time and as it grows over time the corporate success will be big enough to finish to all of the restoration activities, okay? The miracle of compounding interest.

MS. CUSTER: It's not set up yet.

MR. IFIE: Is there a time line?

MS. CUSTER: No, we were waiting for the agreement.

CHAIR LUCE: Waiting to get this signed.

MS. CUSTER: They couldn't commit the money, couldn't put the money into it, until we have the agreement.

MR. IFIE: Is there a sense of how the money is going to be put in, the sequencing of it?

MS. CUSTER: I am not positive, but I believe there will be a lump sum. I don't believe there's sequencing of the funding, but I will check.

MR. IFIE: Thank you.

MR. FIKSDAL: For the record, that's Cindy Custer for Bonneville Power.

MS. TOWNE: One more question. There is reference in the resolution to Attachment D. Are any of the other pieces in the packet we received, C, B, and A, and are they also intended to become incorporated by referencing in this resolution?

MR. MILLS: Attachment D needs to be incorporated by reference.

MS. TOWNE: Do you need to use the magic word in the third whereas and then if you want to include A, B, and C, do you need to stick them in some place?

MR. MILLS: I am not sure what the answer to the question is. I need to look at A, B, and C, and if that's an appropriate reference then I would recommend that we do that.

MS. TOWNE: All right.

CHAIR LUCE: Anything else? Do I have a motion to adopt this resolution so we can get the 3.5 million subject to the inclusion of, if it's appropriate, A, B, and C?

MR. CARELLI: I would so move.

CHAIR LUCE: Do we have a second?

MR. IFIE: Second.

CHAIR LUCE: All in favor say aye.

COUNCIL: Aye.

CHAIR LUCE: Motion carried. Mike, if you would check on A, B, and C.

MR. MILLS: Yes.

CHAIR LUCE: Then we will get this signed and finalized.

MR. MILLS: Okay.

CHAIR LUCE: Good piece of work, 23 years in the making, but – no seriously, I do want to thank Cindy, you were very instrumental in helping us get through this. And Bonneville and Energy Northwest played a big role in it, so thanks. It took a while to get done, but it's done.

## **ITEM 9: BP CHERRY POINT PROJECT**

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| <b><i>Progress Report</i></b> | <b><i>Irina Makarow, EFSEC Staff</i></b> |
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CHAIR LUCE: Next item on the agenda is BP Cherry Point project, progress report.

MS. MAKAROW: Fresh in our memory.

CHAIR LUCE: Fresh in our memory. We're sort of familiar with that one. All right, what do you have, any progress since last week?

MS. MAKAROW: Well, I guess what we will be working on soon are the public comments. The deadline for all public comments, except for the air emissions permit, was last Friday and when there's no more trickling in we will get copies to all of the Council members. The PSD comment period was extended until January 9th and staff will get a notice out in the mail to interested persons regarding that. And I believe that is all we have and I promise for the first Council meeting in January to have a firmer schedule now that we have the post hearing briefing schedule established. I will be talking with Shapiro and Bonneville and I think we will have a schedule for production of the final EIS so we can start finding some dates for deliberations possibly.

CHAIR LUCE: Great. Any questions from the Council?

## **ITEM 10: CONTRACTS**

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| <b><i>Jones and Stokes Extension &amp; Shapiro &amp; Associates Extension</i></b> | <b><i>Irina Makarow, EFSEC Staff</i></b> |
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CHAIR LUCE: Contracts, Jones and Stokes extension. We have got two extensions, Jones and Stokes and Shapiro.

MR. FIKSDAL: Bill LaBorde might still be on.

CHAIR LUCE: Bill, are you still there? Irina?

MS. MAKAROW: I will pass the contract extensions to Mike Mills.

CHAIR LUCE: Mike Mills.

MR. MILLS: The Jones and Stokes and the Shapiro Associates contract that is referred to here are the on-call contracts and they're doing work on the BP and Kittitas Valley.

MS. MAKAROW: That's correct.

MR. MILLS: Those contracts were set to expire in early January and we are requesting the Council approve an extension to June 30, 2004.

MR. FIKSDAL: A caveat to this is it's not an extension of the actual -- they will not get new projects that come in. These are just extensions of the projects they're working on currently. We have had on-call contracts with those two companies, but if any new project came in they alternated on projects, that ends at the end of this month, and we are not extending that part of the contract. It's just their work on the existing projects.

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| <b><i>Shapiro &amp; Associates BP Contract</i></b> | <b><i>Mike Mills, EFSEC Staff</i></b> |
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CHAIR LUCE: Okay. The next one is Shapiro BP contract.

MS. MAKAROW: Staff did receive a request from Shapiro Associates for funding of some out-of-scope work that they performed while producing the final EIS and we are still considering that. We will provide that to you at the first January meeting.

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| <b><i>South West Clean Air Agency – Extension</i></b> | <b><i>Mike Mills, EFSEC Staff</i></b> |
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CHAIR LUCE: Southwest Clean Air, we're extending that.

MR. MILLS: Yes, as I reported to the executive committee for Southwest, we have a memorandum agreement with Southwest Clean Air Agency to do air permitting work for the Chehalis project. That agreement was set to expire at the end of December and we would like to extend that through the end of June; that will allow us to continue discussions with the Department of Ecology about a three party contractual arrangement.

CHAIR LUCE: Okay.

MS. MAKAROW: And we're going to proceed with that.

CHAIR LUCE: Well, do we need motions?

MR. FIKSDAL: I don't think we need motions.

CHAIR LUCE: Sense of the Council is to proceed.

MR. FIKSDAL: Staff is proceeding. We just wanted to make sure that you're aware of this. If you have any questions, you could ask, but it's not a real action item.

CHAIR LUCE: Okay, a semi action.

MR. FIKSDAL: Whenever you want to act on it.

CHAIR LUCE: Why don't you do it?

MR. FIKSDAL: We will. Thank you.

## **ITEM 11: EFSEC RULES**

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| <b><i>Rules Review Update</i></b> | <b><i>Allen Fiksdal, EFSEC Manager</i></b> |
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CHAIR LUCE: EFSEC rules, rules review update.

MR. FIKSDAL: You're on here, but I will jump in. At the last executive committee meeting, I think we set up a process where the Council after getting all of the comments in, we gave you all a package of all the comments on our rules. For those in BP, we gave it to you last week and Chuck just got his here, for you to look through those and try to identify what your issues, or if there are major issues that you have, or want to be resolved. Try to get a list of those issues to me prior to December 25th. I will then consolidate that list and get it back to you in one consolidated list and then what I think you need to do is discuss a little bit on how you plan to go back about tackling the items on that list and getting to some resolution. I think we promised Dave Reich, you would get a general sense, particularly the financial estimate, to him by the 20th or the end of January so he can get the draft small business economic impact statement to us around the first of February. So I think it would be beneficial to discuss a little bit what you see as the process for getting Dave some numbers, essentially. So you have two scheduled meetings in January, on January 5th and January 20th. I will remind you January 20th is a Tuesday, Monday the 19th is a state holiday, Martin Luther King Day.

CHAIR LUCE: I read all of the comments over the weekend. It is very exciting, but my wife -- in fairness, my wife was assisting her mother, disclaimer, disclaimer. It was that or go out and put the lights up in the pouring rain and two inches of rain. It was an easy choice. I had a fire and the cat and the comments.

MR. FIKSDAL: Did the cat get thrown into fire?

CHAIR LUCE: No, the cat --

MR. FIKSDAL: Got thrown into the fire?

CHAIR LUCE: The comments got thrown into the fire, right. First of all, a lot of comments are e-mail organized comments, which is not to say that they are not important comments, but they are organized comments in the sense that they came from a group and they're identical, "Please do X," about three lines. So, if you read one of those comments, you've read all 400 of them. Well, 200 or however many there are. So there's probably, I would guess, 30 comments that I would call of a very detailed substantive nature and of that 30 maybe 15 where people really drilled down on the specific issues and I will send out a list, if you want me to, of the ones that I thought were important. Judge them yourself. But SEPA had some good comments, Klein Trust, AWB, ICNU, WSU Energy Cooperative Extension, trying to think of other ones. People who have the Sumas plant, NESCO had some good comments. I think I mentioned Klein Trust.

MR. FIKSDAL: I think Energy Northwest.

CHAIR LUCE: Energy Northwest had some, yes. So there were some very thoughtful comments in there and some very thoughtful comments from a couple of legislators too, and then there are other comments that are very important, but they are not as detailed in the sense that they go through the rules. So I guess what I would say is read the comments first of all and then, what I would ask the Council members to do, each one of you has an area for which you were responsible when we were reviewing these rules coming out of Krogh Leonard. Ecology, for example, looked at water, water quality, water quantity, noise. So I would ask Ecology to go back and look at the specific rules that you started off with coming out of Krogh Leonard. Water quality, water quantity and noise, if noise seems to be fairly -- there weren't a lot of comments on noise. There was general acceptance of the fact that the noise standard was the standard for the State of Washington. Nobody really challenged that. Water quality, water quantity, there was some comments on that-- I think AWB had a comment with respect to water quality, I believe. With respect to Fish and Wildlife, there were some comments there. Seismicity, I think there was a comment there. So Council members who reviewed the rules coming out of Krogh

Leonard for their respective agencies, I would ask you to go back and drill down on the specific comments that came in as regards those rules and report back to the Council on what you think ought to be done in terms of changes, if anything, based on the comments that have been received to date. Does that make sense?

MR. IFIE: Um hum.

CHAIR LUCE: You had the responsibility at the outset and it seems like you should be able to carry that responsibility forward, bearing in mind that a whole lot of work has already been done in those areas, so I am not asking anybody to go back to ground zero, tear up everything that has been done, toss it in the waste can and start all over again. I would suspect that would not be the case, but if there are changes that need to be made and we missed, really missed, something then we need to go back and take a look at it. The CO2 subcommittee will continue as it is, minus Mr. Carelli, although he's left us plenty of food for thought, so his spirit will continue, and we will come up with some suggestions both at the January 5th and January 20th meeting. And at the January 20th meeting, we will come in with some specific suggestions as to what the cost is, the bottom line, in terms of cost per ton, administrative cost, operating characteristics of the plants, currently it's 100 percent, and the assumption is that in 30 years, given the current price of natural gas, expect it to be same for the next couple years, I am not sure that these plants are going operate 100 percent of the time. In fact, my best guess is they probably won't. So, we're going to look at those issues. I will be talking to you individually between now and then so we will have -- but we have this date on January 20th to get back to Ecology and to get back to our analyst with respect to that information. I think one of the things we need to do is to do a matrix and I am not sure who gets the short straw on this, but I think we need to do a matrix of each rule, CO2 is the one that got the most comments, who are the commentators, one, two, three, four, five, six, seven, and what were the issues, A, B, C, D, E, F, G, and line them up and, Chuck, you analyze that or you analogize that to basically what you do in our environmental impact statements, which I think is fair. Because if we're going to respond to the comments, which we will do, we need a rational way to do this and if you will read through the comments you will see that, short of doing some sort of matrixing, it's going to be very difficult to respond to them. Once you matrix them, I don't think that it will be that difficult.

MS. TOWNE: So, Jim, will you pick up the oral comments at our hearings as well as the written comments?

CHAIR LUCE: They're included. I shouldn't say that they are included. The written comments that were handed in as a result of -- the written comments that were handed in at Spokane and Seattle are included in the package, at least that's what I saw there and also the ones that were over here at the leg building were in there. Now we had our court reporter and I'm not sure that I saw the transcript.

MS. MAKAROW: We will track the transcript down and get it to you.

CHAIR LUCE: We're also going to --

MS. TOWNE: We have Tim's summary.

CHAIR LUCE: Right. We have Tim's summary. We're also going to pull the CO2 testimony out of the four adjudicative hearings in which testimony was offered; that is, Chehalis, Satsop, a little bit on Wallula and Sumas.

MS. TOWNE: And BP.

CHAIR LUCE: And BP, right, where there was good expert testimony offered. I think we need to draw that testimony out and include that in the rule making record. So basically that's the plan so far as the plan exists. On a parallel path, there continues to be some discussion about

legislation. We're not proposing legislation. Other people are talking about it. If it happens, it happens. I am not going to be particularly concerned about it one way or the other. The Governor's Office has some ideas about what it should have in it if it's going to go and I assume if it doesn't have those things in it, the Governor wouldn't be receptive to it. The Governor is not going to propose legislation. So, middle of February, after we get numbers, after we've tweaked the rules to the extent they need to be changed, then we will go over to CR-102. Strike that. We will go with our small business economic impact statement in the middle of March, the CR-102, followed by more hearings, followed by what, June, July, roughly?

MR. FIKSDAL: We hope. I would be happy to have them done.

CHAIR LUCE: Right, me too. In that context, that will be finished. Yes?

MR. IFIE: I am tracking with you with regard to time line -- I said I am tracking what Jim said in terms of discussion. The part that I am not sure about is the part that has to do with the CO2. If I heard Allen right, you were saying that we will get a list of issues from him by December.

MR. FIKSDAL: December 25th.

MR. IFIE: By December 25th, that's one line of activity occurring and that the subcommittee is working on something as well.

CHAIR LUCE: We're looking at the same issues.

MR. IFIE: So the same issues. I just want to make sure what Allen was asking for is going to happen and that it would be ready for the subcommittee.

CHAIR LUCE: Well, I think Tim Sweeney sent out to you, I think, and others a list of issues that he saw in the CO2.

MR. IFIE: Correct.

CHAIR LUCE: Did you get that?

MR. IFIE: Yes, I did.

CHAIR LUCE: Well, I think that is the key issue. Now what I would be more than glad to do -- I think Tim and I would both be glad to do it would be again to sit down and take a draft of the CO2 rule and, again, walk through it line-by-line and draw out the issues and just, you know, talk. I think they all pretty much these days jump off the page. The resolution of those issues doesn't necessarily jump off the page, but the issues are pretty clear. But if that would be helpful for you after you have looked at what Tim has flagged, I would be more than glad to do it.

MR. FIKSDAL: But I think if you have any other issues that you get them to me and we will add them to the list.

MR. IFIE: By December 25th?

MR. FIKSDAL: Yes.

MS. TOWNE: I will commit to communicating on the 25th, if you commit to receiving on the 25th.

MR. FIKSDAL: That's why I said earlier, prior to the 25th.

MS. TOWNE: No, you said on the 25th.

MR. FIKSDAL: Well, I mean prior to the 25th.

CHAIR LUCE: ICNU for example, Industrial Customers of Northwest Utilities, raised a question about preference and priority in the State of Washington. They are not so sure they want that. They say, look, this is a global issue. Maybe we should not go in the direction of preference and priority for the State of Washington. Well, it surprised me. They feel differently on that issue, you know, so that is an issue that I wasn't sure I would hear that from that particular group, but I did. So, you know, so -- but that's also an issue that is raised on Tim's sheet. The issues there are pretty clear, Tony, but raise any other ones you want to.

MR. IFIE: I think the intention was Tim's list was just a beginning list and that we could add more.

MR. FIKSDAL: Add as many as you want.

MR. IFIE: Or even ask for issues to be taken off the list if we –

CHAIR LUCE: That would be nice. Take them off.

MR. FIKSDAL: I would hope at your meeting on the 5th of January, you could kind of take a preliminary look at the issues, discuss a little bit more, take some off or refine what you're going to do.

CHAIR LUCE: Um hum.

MR. IFIE: Okay, thank you.

CHAIR LUCE: Does that help?

MS. TOWNE: Now what about Chuck's -- didn't you do a revision based on the comments?

MR. CARELLI: I did a red line version of the rule based on the oral comments that -- and the written comments that we received at the time of the two hearings.

MS. TOWNE: Okay.

MR. CARELLI: And those were at least one person's view of some suggested revisions to the standard that the Council should consider.

MS. TOWNE: I think, in Chuck's future absence, I think we should take a look at that piece also along with the other.

CHAIR LUCE: That's what I was saying. He's not going to be there physically, but he'll be there in spirit. The other thing that we have looked at since that point in time that I suggested is maybe -- Allen, maybe you can send it around? We have looked at this whole question as I alluded to of what's the right number. The question that of 87 cents has been suggested by some people as, you know, not adequate to offset a ton of CO<sub>2</sub>, the comments have been, so should that be more? Should it be a dollar and a half or two dollars? Or a dollar and a quarter? At the same time, the question of whether the plant is going to operate 100 percent of the time, that is what Oregon did, but Oregon did this by statute and it was -- I won't say that it wasn't arbitrary, but it was a number that was picked. Plants don't operate 100 percent of the time, particularly these days in a hydro system that's going pretty good, summer spill is like it's not going to be there anymore and gas prices are high, so maybe fifty percent, maybe you could pick a number, and I have had some discussion with people, all over the board again, but maybe 50 or 60 percent of the time on average thermal plants in the Northwest will operate. So all I am saying is you may end up increasing to get to a more realistic number in terms of the dollar cost for offset mitigation, but decreasing the actual to get to a more realistic number in terms of how frequently, how often the plant operates, and conversely you could do some things with the plant's operating life. What's the expectation of life?

MS. TOWNE: I think the question on the former is, is 100 percent realistic, do we want to pick a percent and then calculate price per ton based on that percent or do we want to tie it more nearly to actual emissions tied to actual megawatts generated? It t'aint fair to just pick a number even if it seems defensible or represents the average when an average basically means everybody is paying too much or too little and maybe we need to tie it more to an estimate and then an accommodating correction annually or something.

CHAIR LUCE: SEPA has some comments along those lines. I think in essence SEPA makes an argument that we should do this based on fuel usage.

MR. FIKSDAL: Rather than kilowatt hours.

MS. TOWNE: That makes sense.

CHAIR LUCE: How much gas in the pipeline.

MS. TOWNE: Or coal.

CHAIR LUCE: Or coal or whatever, you know, and then tie it to that. So, I mean I have an open mind on these things bearing in mind public power at reasonable cost, protection of the environment, and public interest. Those are the three standards. So, what I am saying is, yes, I understand what you're saying particularly about peekers, but we need to get some resolution of this by January 20th.

MS. TOWNE: Other thoughts that I had and, Chuck with your departure, I want to make sure that Ecology, which is essentially going to have to live with our decisions as to the below 350's, I think we need to pay particular attention to their input on any proposed modifications.

MR. CARELLI: In that regard, if I could, Jim, it's been suggested that there be a meeting between EFSEC and Ecology on this issue.

MS. TOWNE: I would heartily recommend that.

\*\*\*MR. CARELLI: What Ecology wants to do and would intend to do, all things proceeding as they are now, is to adopt by reference the EFSEC rule and my standpoint up to this point is wanting to make sure that what they are put into position of trying to adopt is not something that is going to cause some problems.

CHAIR LUCE: Right. And I understand how it could cause a problem depending on what our formula is, so we need to make sure that that, you know, works.

MS. TOWNE: Well, when we think of how we ought to fix our proposal as to those plants over which we have jurisdiction, we better keep in mind that it is –

CHAIR LUCE: That's the reason we're having a meeting. We wouldn't have a meeting if it wasn't for the 350, so let's put it this way, there wouldn't be as much of a need for a meeting.

MS. TOWNE: Right.

CHAIR LUCE: Anything else? When do we have a meeting?

MR. CARELLI: I don't know when it is set up.

CHAIR LUCE: You're the one that's volunteered to lead the meeting. You're on way out the door. I think that, you know –

MR. CARELLI: I am on leave beginning at four o'clock this afternoon.

CHAIR LUCE: Okay, all right, we will deal with that.

MR. FIKSDAL: We will tell you.

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| <b><i>Expedited Rulemaking for Repeal of WAC<br/>463-06-040 - Meetings</i></b> | <b><i>Allen Fiksdal, EFSEC Manager</i></b> |
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CHAIR LUCE: Expedited rule making for repeal of 463.06.040 meeting. Allen?

MR. FIKSDAL: In the back of your packets, you have expedited rule making. And I propose that the Council adopt today or essentially say yes to expedited processing. I have one question that hopefully Ann can answer right now and that is a need for -- it says in here under the notice, provide responses, and we have to have a date to receive responses. I'm not sure that we need to have responses.

MS. TOWNE: From whom?

MR. FIKSDAL: Yes, that's what -- well, whoever wants, it gets published in the register and, I guess, waiting for, you know, if Ann cannot answer, you know, within the next couple of minutes, I will leave it to -- for me, you know, to fill this in when I receive the answer from Ann. But I still think the should Council take the action to repeal 460.06.040, which is part of our rule that currently says that the Council meets regularly once a month and the executive committee

meets twice a month on Mondays. This would repeal that whole section and we would not have a section in our rules stating when the Council meets. However, you are required to publish in the state register at the beginning of each year your schedule and that is what we would use as the notice to the public besides our agendas and everything and what we have published in the register for 2004 is that you will be meeting the first and the third Mondays of each month is the schedule for meetings. So, with that, the recommendation to the Council is to repeal this rule, CR-105. Ann?

MS. ESSKO: I am not seeing anything either in the rule about expedited -- a statute about expedited rule making that has a notice requirement. The statement you have to say about notice and as you probably already know is comments have to be received by and then there is a parenthesis, insert date, close parenthesis. In going through here, quickly, I am not seeing anywhere in here where it says what date applies. So, two choices, you can either let me answer that question for you or we can call the code reviser and ask them what date to put in there.

MR. MILLS: I think that is a 20-day period that anyone requesting hearings within that period we can shove them back with CR-101.

MR. FIKSDAL: I think that's correct. We will check that out. If you adopt this today, this expedited rule making, we will put it in the register. I think we can get it in the state register that is published on December 24th and then there is a certain number of days that it takes to act or have it become effective.

CHAIR LUCE: Okay, do I --

MS. TOWNE: Do you need a motion?

CHAIR LUCE: Sounds like it.

MS. TOWNE: So moved.

MR. IFIE: Second.

CHAIR LUCE: Questions? All in favor? Motion is carried. Okay, that's the end of our agenda.

## **ITEM 12: OTHER**

MR. FIKSDAL: There is another.

CHAIR LUCE: The other is that this is the last meeting.

MR. FIKSDAL: Of this year.

CHAIR LUCE: Of this year and the last meeting of Mr. Carelli's tenure; is that correct?

MR. FIKSDAL: Shall we celebrate?

CHAIR LUCE: It's a wake as far as I am concerned. I don't know what to say. I mean, I've been here, what, two plus years. How long have you been a member.

MR. CARELLI: Six years.

MR. FIKSDAL: It's going to be a real loss. Chuck Carelli has been here six plus years, and he's a Council member, and I am going to -- other Council members and staff are going to really miss his advice and counsel. Every time I would get excited and impetuous, which I have a tendency to do from time to time, he would give me a word of caution to slow down a little bit, and now it's going to be up to Allen, Irina, and Mike.

MR. FIKSDAL: And other Council members.

CHAIR LUCE: And other Council members to fulfill that role. But, Chuck, we're going to have a little celebration after your last day on the job to bring you back here, and we are not letting you off this easy, but I did want to since this is the last Council meeting say how very, very much

we appreciate your service. And, I mean, you just -- I can't tell you the number of ways that you have bailed this Council out, both in adjudicative hearings and in the rule making process, and on the day-to-day basis in the terms of your advice. So I thank you so much.

MR. CARELLI: Thank you. And thanks for working with Ecology over -- well, 39 years, but the last six has been really enjoyable.

MR. FIKSDAL: At Ecology? Well, on behalf of the staff, I want to echo what Jim said. And we've worked with Chuck for six plus years, as long as he's been here, and I think he has epitomized what a Council member should be for the Council. Very responsive to questions that we had, particularly with those that had to do with Department of Ecology and issues that we have with the Department of Ecology and information that we may need from that department. He has been very responsive, very quick to get the right people -- get to the right people and bring about solutions in most cases. It's been an honor and a privilege.

MR. CARELLI: Thanks.

CHAIR LUCE: We will figure out some way to keep you involved with EFSEC in the future. You're not going to escape entirely. So thank you very much, Chuck. (Applause.)

MR. FIKSDAL: One other item, I just wanted to remind people that we do have a new employee on EFSEC staff, Tammy Talbert, she wasn't able to be here today. But when she comes back, you'll see her when you first walk in the office.

### **ITEM 13: ADJOURN**

CHAIR LUCE: Super. All right, we are adjourned.

(Whereupon the Special Meeting adjourned at the hour of 3:10 p.m.)