

MINUTES

ENERGY FACILITY SITE EVALUATION COUNCIL OF WASHINGTON

February 2, 2004 - Regular Meeting
925 Plum Street S.E., Building 4, Room 308
Olympia, Washington - 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The regular meeting of the Washington State Energy Facility Site Evaluation Council will come to order. This is the meeting of Monday, February 2, 2004. We are meeting in the conference room at the Plum Street headquarters. Clerk, call the roll, please.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Richard Fryhling

Department of Ecology

Hedia Adelsman

Department of Fish & Wildlife

Chris Towne

Department of Natural Resources

Tony Ifie

Kittitas County

(via phone) Patti Johnson

Chair

Jim Luce

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

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal

Mike Mills

Mariah Laamb

Irina Makarow

Pete Dewell – ALJ (via phone)

Shaun Linse - Court Reporter

EFSEC GUESTS

Karen McGaffey – Perkins Coie

David Reich – Ecology

Chuck Lean – Kittitas Valley Wind Project

Mike Torpey – BP Cherry Point

Mark Anderson – CTED EP

Lauri Vigue – Fish & Wildlife

Bill LaBorde – NW Energy Coalition

Dave Grant – Whatcom County (via phone)

Jim Hurson – Kittitas County (via phone)

Mike Robertson – Intervenor (via phone)

Mary Barrett – CFE, BP Cherry Point (via phone John Lane – CFE, Kittitas Valley Wind

NO. 3: APPROVAL OF MINUTES

CHAIR LUCE: We will proceed to the next item on the agenda. That is the approval of the minutes for January 5, 2004. Have Councilmembers had an opportunity to review the minutes, and are there any recommended changes, additions, or other?

MS. TOWNE: I have marked up a few, but they are not substantive in nature. I will give them to Mr. Fiksdal.

MR. FIKSDAL: Thank you.

CHAIR LUCE: Are there any other comments by Councilmembers? Hearing none and noting that the comments by Councilmember Towne are not substantive in nature, is there a motion to approve the minutes as authored?

MR. FRYHLING: So moved.

MR. IFIE: Second.

CHAIR LUCE: All in favor say aye.

COUNCILMEMBERS: Aye.

ITEM NO. 4: ADOPTION OF THE PROPOSED AGENDA

CHAIR LUCE: Thank you. The next item on the agenda is the adoption of the proposed agenda. Have the Councilmembers had an opportunity to review the proposed agenda? Are there any changes, additions? Hearing none, the proposed agenda is adopted.

MR. FIKSDAL: Before we go any further, let's have the people on the conference line identify themselves for the court reporter's convenience. So I have Mike Robertson; is that correct?

MR. ROBERTSON: Mike Robertson, active intervenor and interested party.

MR. FIKSDAL: David Grant?

MR. GRANT: David Grant, Whatcom County on the BP project.

MR. FIKSDAL: Patti Johnson has already said you're here. And, Judge Dewell, are you on the line? Is there anybody else on the line?

MS. BARRETT: Mary Barrett, Counsel for the Environment for BP.

CHAIR LUCE: Oh hi Mary.

MS. BARRETT: Hello.

MR. FIKSDAL: Thank you.

CHAIR LUCE: All right. Those identifications have been made.

ITEM NO. 5: PROJECT UPDATES

<i>Kittitas Valley Wind Power Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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CHAIR LUCE: We have noted as Item No. 5 Project Updates, information items. Irina, can you update us, please, on the Kittitas Valley Wind Power Project and on the Wild Horse Project and the BP Cherry Point Project.

MS. MAKAROW: With regards to the Kittitas Valley Wind Power Project just a very quick update. The one item I forgot to update the Council on the last Council meeting was that we had not received any petitions for late intervention, so that deadline closed I believe on January 16. The Draft EIS comments, the comment period also closed. I think we received all the comments we were supposed to. You've all received the first batch. There are three or four comments that came in within the required postmarked date that I will be circulating to you all very shortly also. And then the final item is the next prehearing conference which has been scheduled for the morning of February 19, and it will go from 9:00 to 11:00 in the morning. Mariah is working on travel arrangements, and I and Adam Torem will be working out the agenda and circulating that to you and all the other parties probably later this week or early next week.

CHAIR LUCE: Great.

MR. FIKSDAL: Where is the meeting going to be located?

MS. MAKAROW: Ellensburg.

MR. FIKSDAL: Do we know what room or location?

MS. MAKAROW: Yes. The County Fairgrounds, the Fine Arts Room.

CHAIR LUCE: Any questions from Councilmembers? Patty, you're on the phone. Do you have any questions?

MS. JOHNSON: No.

<i>Wild Horse Wind Power Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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CHAIR LUCE: Wild Horse Wind Power Project.

MS. MAKAROW: For the Wild Horse Wind Power Project, there are no new items to report. We did receive the review document from Jones & Stokes regarding the draft application, and the future applicant is working on it's application, and we would expect to get it towards the end of February or early March.

CHAIR LUCE: Thank you. The next item on the agenda is BP Cherry Point Project.

<i>BP Cherry Point Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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MS. MAKAROW: Julian Dewell, are you on the line?

JUDGE DEWELL: Yes, I am now. I got cut off I guess.

MR. HURSON: Jim Hurson. Julian Dewell and I were calling the old number, so we kind of missed everything.

CHAIR LUCE: You haven't missed much.

MR. FIKSDAL: So you didn't hear any of Irina's report on Kittitas Valley?

MR. HURSON: No, I didn't. We called the 2225 number, and I called around and realized I guess it's 2226 now.

MR. FIKSDAL: That's right.

MS. MAKAROW: Yes.

CHAIR LUCE: Irina, you want to recap.

MS. MAKAROW: A quick recap on Kittitas Valley. There were no petitions for late intervention, prehearing conference, February 19, 9:00 to 11:00, at the Kittitas County Fairgrounds in Ellensburg, and we are going to start working on the Draft EIS comments with Shapiro.

MR. HURSON: Okay.

MS. MAKAROW: Wild Horse, nothing.

MR. HURSON: Sounds good. Thanks.

MS. MAKAROW: You're welcome. BP Cherry Point Project. Last Friday we received, actually last Thursday we received a request from the BP West Coast to have the Council postpone its decision on the land use consistency part of the project as well and to request a postponement of the briefing schedule. On Friday we also received a comment letter with regards to the Draft PSD permit which also requested another 30-day comment extension on that draft permit.

MR. FIKSDAL: Mr. Chair, I see that the representatives from BP are here. Do we want them to come to the table and summarize?

CHAIR LUCE: If they would like to do so, we certainly would entertain any comments they wish to make.

MS. McGAFFEY: Thank you. With respect to the first letter, the Thursday, January 29 letter, this actually reflects a joint request on behalf of both BP and Whatcom County, and I know Mr. Grant is on the phone. We are continuing settlement discussions with the County trying to resolve the issues that were presented to the Council during the hearing. We had what I think was a very productive meeting early last week, and our continuing discussions and what we're requesting basically is to put off further briefing and for the Council to defer on a decision on the land use issue as we try and resolve those issues amongst ourselves.

MS. TOWNE: Mr. Chair, I have a question for Ms. McGaffey.

CHAIR LUCE: Absolutely.

MS. TOWNE: You made reference to the last land use consistency question. What other issues? Are you seeking a comprehensive settlement package or focusing just on the land use?

MS. McGAFFEY: Ideally it would be a comprehensive settlement package. It's too early to tell whether we will be able to resolve everything, but we're trying to.

MS. TOWNE: Okay. Thank you.

MR. GRANT: And I would parrot from Whatcom County's perspective as well, Your Honor.

CHAIR LUCE: Any other questions from Councilmembers?

MR. IFIE: Would this settlement result or the settlement discussions are they going to result in an extension of the time for review of this project? I guess I don't know. I don't know if the question is going to be to Irina. I'm looking at the letter. You have a letter here that was –

MS. TOWNE: That was last June.

MR. IFIE: There was a letter that you had sent earlier that says the decision on this project will be sometime towards the end of January or so.

MS. MAKAROW: Well, there are a number of issues that came up in staff's mind with respect to the request that was made for postponing the adjudicative process. First of all, we did ask ourselves whether the Council had already extended beyond the one-year review period, and I did go back to the files, and I did find our June 10, 2003 letter to the Applicant which did confirm to us that, yes, that has already been dealt with. Now, of course, in this letter it states that the Council would try to do its best to reach a decision by the end of January 2004. So obviously with this current request for extension of the adjudicative process that's not possible.

A number of other things also need to be considered, and it's the degree to which the adjudicative process interlinks with all the other processes that are happening; the draft permits that were up for public comment that our Ecology contractors are currently looking at and preparing responsiveness summaries for and also the Draft EIS. At some point in time these three processes come together for the Council to actually make considerations on the project and to pull their decision together. So

obviously, if we delay the adjudicative process, the other two might be delayed also. And if the Applicant does come to us with a settlement agreement with the County and asks for us to quickly resume the process and issue a decision, there still might be some delay for the other processes to catch up and take into account other information that comes to the Council with regards to the settlement agreements that might be reached or resolution of the land use consistency process. And the final thing that I would like to raise is that even if there are periods in time where EFSEC staff might not be working on the project, although our contractors right now are in a very busy period responding to comments both on the permits and the Draft EIS, there will still be some project management costs associated while we wait for the County and the Applicant to come up with their new proposal to the Council.

CHAIR LUCE: Okay, a couple of questions. I guess in the order that you just concluded does the Applicant understand that there will be some modicum of cost? And I don't know what the exact number of continuing project costs will be while we wait. And you're acceptable with that?

MR. TORPEY: I understand.

CHAIR LUCE: The answer is yes?

MR. TORPEY: Yes.

CHAIR LUCE: Okay. You would clarify the same way, Karen. I understand it's not a responsive answer. All right. I guess the second question I have is the PSD that you said there's been a letter requesting an additional month for the PSD hearing.

MS. MAKAROW: Yes.

CHAIR LUCE: Or for the PSD process to be complete.

MS. MAKAROW: Yes, another 30-day extension to the comment period, so the Applicant and any other persons can continue to submit comments on that draft permit.

MR. FIKSDAL: If we do extend or the Council does extend the permit time, we would issue a letter to all those that were on our mailing list stating that.

MS. MAKAROW: Correct. We would have to issue another notice that the comment period has been extended.

CHAIR LUCE: But the work on the PSD, I mean there will be an additional month, but processing the PSD permit is not going to stop. The work will be taking an additional month.

MS. MAKAROW: No, we have actually enough information to begin response to the comments. Not all of the comments deal with the issues that the Applicant is trying to resolve with EPA Region 10, so the work has started and is going to be at full speed.

CHAIR LUCE: Okay. Are there plans on continuing that?

MS. MAKAROW: Yes.

CHAIR LUCE: I guess the next question I have is both of the Applicant and Whatcom and the Council and that is would it be helpful if we gave a date certain by which these issues need to be resolved? You know, pick a month from now, six weeks from now, put some sort of a time limit on the periods within which these negotiations which you both characterize are going quite well should be concluded.

MR. FIKSDAL: I have a comment, Mr. Chair. The Council could pick a date or we could ask Whatcom County and BP to suggest a date, since they know best on how they're going to go about it.

CHAIR LUCE: That would be perfectly reasonable, too, but I think we do need some -- I think sometimes everybody is benefited by having a date certain against which we are going to work. I've

lots of examples in my personal and professional life earlier when that didn't happen and things kind of tend to drift.

MR. FIKSDAL: The Council would ask BP to agree -- first of all, I think there's a question here. One is, is the Council willing to extend the period, and I don't think there is a -- because this is a part of the adjudicative proceeding you can deliberate on that if you wanted to. You don't have to take a vote here. It's not an action item as far as the Council meeting goes. You could just say yes now or no or discuss it, whatever you want to do. You could say it seems appropriate, and then the Applicant and Whatcom County could submit a proposed schedule for your review, and then issue an order on the dates, and then you would have some date certain. There's numerous ways to go about this, so it's up to the Council to decide how they want to decide.

CHAIR LUCE: Councilmembers have any thoughts on that?

MS. TOWNE: Just a comment that it is, I think, in everyone's interest to achieve a settlement of the issues, and that we should afford them the latitude to work out that process, though I agree that a target date at least would be beneficial.

CHAIR LUCE: Dick?

MR. FRYHLING: That would be my feeling too, yes.

CHAIR LUCE: Hedia?

MS. ADELSMAN: My only question, and it's maybe procedurally. The land use is subject to public meeting, and there were some comments by people. Does the agreement, I mean do you foresee the agreement again going out to the public meeting or is it just up to us or is the County planning at all on having the agreement out there for people to comment on or not?

MR. GRANT: From the County's perspective, ma'am, I don't think our agreement if and when it's constructed would be subject to additional public comments. I think you would probably see obviously a different argument posed by the County. I think what we would tend to see as a result of the agreement is that Whatcom County would be altering its position in regard to the land use consistency question to the affirmative from the current position. You would probably get an affirmative statement from us that it is consistent. And so as far as I could understand the situation, it would seem to me that that would resolve that land use consistency issue in total.

CHAIR LUCE: So I think, Hedia, what we're saying here is that Whatcom County as the representative of the citizens of Whatcom County would be making a decision, potentially a settlement on behalf of the citizens, and the citizens have had an opportunity to get all of their comments in.

MR. GRANT: The process has already been undertaken.

MS. MAKAROW: Although I think that we would have to check what our rules say, we might have to reconvene the Land Use hearing to accept whatever documentation the County is putting in and the Applicant is putting in.

MR. GRANT: Fortunately you recessed that hearing and you actually have the prerogative to do that.

MS. MAKAROW: Yes, it would just be a matter of coordinating and reopening the hearing.

MS. ADELSMAN: I think that's maybe why I asked the question because I wasn't sure whether procedurally we need to go back and close that loop. So you are going to check with Ann. Okay. All right.

CHAIR LUCE: So I guess I will ask the --

MR. FIKSDAL: You didn't ask Tony.

CHAIR LUCE: Oh, I'm sorry. I thought Tony indicated. Tony, are you all right?

MR. IFIE: Yes, I'm in agreement with moving forward with the settlement. I think the Council is on record encouraging settlement, so anything that we can do to make the settlement happen is something I would support. I also agree with Allen that the parties should be the ones deciding on the time or should give us a proposal with regard to what time would make sense as far as the target time date or that target period.

MR. FIKSDAL: I also have asked Dan McShane, and he wanted to call in today to be part of this discussion, but he was unable to attend today either by phone or in person. He did send me an email saying that he would support a delay if that's what both parties are requesting.

MR. FIKSDAL: For the record, Dan McShane is the representative of Whatcom County sitting with EFSEC on this case.

CHAIR LUCE: Back to both Counsel for Whatcom County and for the Applicant, would you be willing to include a date within which you will wrap up these negotiations? Because I think everybody is advantaged by having a date certain against which we're going to wrap things up.

MS. McGAFFEY: What I would suggest is that David and I talk about that and come up with a schedule. Given the nature of our discussion, we are currently in a negotiation phase which might, if we reach an agreement, might result in some additional field work being done. So the schedule might have more than one step to it. But I agree with you completely that having a timetable that we're working under will help us all focus on getting it done, so why don't David and I talk about it and submit something to the Council along those lines.

CHAIR LUCE: That's would be very helpful. David, do you have anything?

MR. GRANT: I agree with Karen.

CHAIR LUCE: Okay.

MS. BARRETT: For the record, the Counsel for the Environment also supports settlement of the remaining issues.

CHAIR LUCE: Judge Dewell, do you have any comments or observations on what was discussed so far?

JUDGE DEWELL: No.

CHAIR LUCE: Well, it's been a good discussion. Oh, I'm sorry, Irina.

MS. MAKAROW: I just want to make sure that everybody is clear on the procedure from here on in. The Council has to issue, will consider the request as a motion and will have to issue an order responding to that motion. And so if you can get your schedule, if the Applicant and the County can get their schedule as soon as possible, then we would be able to get the order out quickly.

MS. McGAFFEY: I guess I take it from the comments today that we have assurance that our brief isn't due this Friday.

CHAIR LUCE: Friday is the deadline?

MS. McGAFFEY: Yes.

MS. MAKAROW: There appears to be a sense of the Council the motion might be granted.

CHAIR LUCE: Yes, I think that's a fair reading of the Council.

MS. McGAFFEY: Thank you.

CHAIR LUCE: Anything else on the issue of BP?

MS. ADELSMAN: So we don't need to take a formal action?

CHAIR LUCE: We are going to have a formal action. It will come in the form of a motion.

MS. ADELSMAN: Not for the Friday?

CHAIR LUCE: Between now and Friday.

MR. FIKSDAL: Because it's part of the adjudicative proceeding you can deliberate. You don't have to do it in public.

MS. ADELSMAN: I'm learning.

MS. MAKAROW: So staff will prepare an order, and we'll email it to all the Councilmembers, and you can all nod your heads or not, and we'll get comments and get the order out.

MS. ADELSMAN: Okay.

CHAIR LUCE: Great. Thank you very much. Appreciate you coming.

MR. TORPEY: Thank you.

CHAIR LUCE: Mike, do you have a report on the status of the Columbia Generating Station at WNP-1 and 4 and Chehalis? I'm sorry. Did I interrupt?

JUDGE DEWELL: Yes, I'll bow out.

CHAIR LUCE: Okay, Judge Dewell. Thank you very much.

MR. GRANT: Whatcom County will do the same.

MS. BARRETT: And CFE will too.

CHAIR LUCE: Thank you, David. Thank you, CFE. All right. Here we go. Three strikes and you're out.

<i>Columbia Generating Station</i>	<i>Mike Mills, EFSEC Staff</i>
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MR. MILLS: I have a brief reports on the two operating plants. Columbia Generating Station is currently at 100 percent power, and they've been on line 214 consecutive days.

<i>Chehalis Generation Facility</i>	<i>Mike Mills, EFSEC Staff</i>
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The Chehalis Power Plant has been running pretty consistently for the past two weeks. They fluctuated in power some, but they're currently at full load which is about 520 megawatts, and they are just about finished up with the noise silencer work on several pieces of equipment that they've been working on. We'll have the company come in at one of your next meetings and provide an update on the noise improvement work that they've done at the plant.

CHAIR LUCE: Okay.

<i>WNP-1/4</i>	<i>Jim Luce, EFSEC Chair</i>
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MR. MILLS: WNP-1 and 4, Jim, I think you could give that report.

CHAIR LUCE: All right. Well, we had a very good meeting, Mike, myself, and Chris Towne, with the Director of the Department of Fish and Wildlife (WDFW), Jeff Koenig, and staff on issues associated with off-site mitigation planning for WNP-1 and 4. We indicated to the Director that we had made the request to Energy Northwest for the three and a half million dollars to be provided by way of the settlement agreement, and I think that that 30 days was just about up, right?

MR. MILLS: Just about up. We expect the money to be transferred in the next two days.

CHAIR LUCE: So those funds will be transferred into an EFSEC account or into an account under which EFSEC has control.

MR. MILLS: Yes.

CHAIR LUCE: The WDFW agreed that that made sense. We told WDFW we still had as a very, very high priority or highest priority on pursuing the McWhorter Ranch, which a number of us visited. The McWhorter Ranch negotiations which were being conducted by the Rocky Mountain Elk Foundation about a year ago, you may recall, collapsed when Mr. McWhorter offered to sell the

property, but was conditioned in so many ways that fee simple absolute was -- well, I can't find the right words, but we weren't purchasing fee simple. We were purchasing something substantially less than that, and the value of what you were purchasing was not commensurate with the price you were paying. The Director indicated that WDFW is still very much interested in the McWhorter Ranch, and they will accelerate, reaccelerate, reinitiate negotiations with Mr. McWhorter through their Yakima Regional Office. We said we would hope that these negotiations could be completed within a reasonable period of time, and we discussed generally 60 to 90 days. After that period of time, if it's not possible to achieve settlement on the McWhorter property, we asked WDFW to give us their technical assistance in working with Dick and Hedia and Chris in putting together an RFP that would have appropriate criteria in it that would be commensurate with the settlement agreement, and that would reach out and advise the greater Benton County Area. I think the bulk of the funds need to be spent, by virtue of the agreement, in Benton County. So I guess I would characterize, Mike and Chris can speak for themselves, but I think it was a very positive meeting. And I'm happy that the Director seems to be on board with the way we want to proceed.

MS. ADELSMAN: Mr. Chair, I think I missed it. Did we give them a certain amount of time to continue the negotiation?

CHAIR LUCE: We gave them a general time frame of 60 to 90 days. It will take a little while just to get ramped back up. Maybe they will call Mr. McWhorter, and he'll say I still don't want to sell in which case it will be a very short period of time. Again, time lines are somewhat helpful to moving negotiations along.

MS. ADELSMAN: Okay.

CHAIR LUCE: Mike, do you have anything to add?

MR. MILLS: I don't think so. Would you like staff to contact or send a letter to the Director?

CHAIR LUCE: I would like staff to send a thank you letter to the Director for the time that he spent with us, he and his staff, and I think we also discussed staff was going to contact the Director's key staff person on this and make sure that the area office was going to be handling the negotiation. That was what we were told, and that's what we want to double back on.

MR. MILLS: And that would be the regional office.

CHAIR LUCE: It would be their office, right.

MR. MILLS: Headquarters in Yakima.

CHAIR LUCE: Right. I think, Chris, is that right?

MS. TOWNE: Yes.

MR. MILLS: Staff will do that.

MR. IFIE: Could I get clarity on who has authority of us on spending of the 3.5 million dollars?

CHAIR LUCE: EFSEC. Spending may be the wrong word, perhaps control of and the ability to disburse.

MS. TOWNE: The final decision authority remains with EFSEC.

CHAIR LUCE: We make the decision. We consult with them.

ITEM NO. 6: EFSEC RULES DISCUSSION

<i>Rules Review Discussion</i>	<i>Jim Luce, EFSEC Chair</i>
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CHAIR LUCE: EFSEC rules discussion. When we last left this item everybody was going to complete all their work by today. Right?

MS. ADELSMAN: Well, I have three issues that I want to discuss. I don't know what the other members have in mind, and I wrote some handouts. Do you want me to talk about this?

CHAIR LUCE: Sure. Certainly. Maybe you start with a brief overview of the work that you and Chris are doing in terms of synthesizing the rules.

MS. ADELSMAN: Yes. Chris and I had a couple meetings last week and this week, and we both had the opportunity to go through all the rules from the beginning to the end, including the existing rules amended, and what we decided before getting into some sections that dealt with wetland and fish and wildlife, we really felt that the rules needed some, in our opinion, better reorganization. So we both took the liberty, and I worked on them this weekend and today. We actually went through it today and kind of suggested, we're suggesting to the Council a way of organizing the rules like SEPA rules that are organized in parts, and we know the Code Reviser does actually organize several rules in part. So we kind of used that formatting to organize some of this, we have five parts to the rule sections. One of them I didn't count on having an area where a chapter just deals with organization of the rules, and then anything that is agency procedures, we put it in Part 1, and you could see we brought a section from different places. And what this pretty much does is really talks about what are some of the areas that are the responsibility of the Council, from the Council meeting all the way to Council public meetings, information meetings and land use hearings and so on, and so we brought up everything that is a Council responsibility in the front as procedures. On the first page there are a couple things that are raising a question. Number one is, there are definitions throughout the whole document and the original rules say that this includes all definitions. I think we propose that if the definition is strictly related to a particular chapter, that it should remain in that chapter; that if they cut across all the rules, then they should be brought up front. So we may want to look at that organizationally. On the applicability there was a question in our mind in there. If you read certain parts of the rules even within a particular rule, -- and I believe, Chris, which was the one that you read?

MS. TOWNE: Oh, it related to I think it was in 42.

MS. ADELSMAN: Noise, the noise.

MS. TOWNE: Okay.

MS. ADELSMAN: We actually within the same even chapter, we in, some cases, we say it's applicable to energy facilities. In other cases we say it's fossil fuel. In another case we talk about something else, so we feel like it's really very important that we clarify what are these rules applicable to, and if they're not applicable like the CO2 which made a lot of sense to say it's only fossil fuel, then we clearly say that in the specific chapter. But if you read the rules, it's very inconsistent even within the same chapter. So I think that's maybe one thing that the Council needs to decide, in the question relating to wind projects, does this rule apply to it or not. On the need of energy it's a separate one that I want to bring up later on, so we also made some suggestions in here. The second part is one that really deals with the standards, mitigation, and monitoring, so we're trying to bring all of this together, including CO2 in there. Our number three is everything that the Applicant is required to do, the application, the content, you know, both, and you can see we brought potential site studies, expedited processing, and then the application itself and made some comments on various sections. And I don't know if we have the time to go through them, but in some areas we're actually recommending some sections move completely out of the application, especially the one dealing with restoration plans and so

on and move them to Part 4, which is the site certification agreement. And we said that it really pertains, kind of fits better because there's a lot of loose ends, after the site certification agreement is issued, you know what you do with it, termination of the project, suspension of the project and so on. Then Part 5 is the permits part of it. We'd like to propose this at least and have Chris also speak for herself, but from my perspective there was a lot of improvement that had been done when the rules got organized and what's in the web. But I believe from the readability and for somebody to follow through the rules and see some of the thinking of the Council, it's not there right now. There's a lot of mixtures of standards. Some of the standards have actually requirements for applicants. In the application there are requirements that come after the application is issued, so there may be some needed organization. I believe personally that by better organizing we may actually cut down on the pages. We may actually cut down on that. So this is the first thing, and Chris and I talked about who will do what. So we are not bringing a suggestion, but we also want to bring a, you know, how we are going to address this. So that is the first thing that we have done, and, you know, we had a lot of -- anyway, I'll stop there and then we can talk more about this part.

CHAIR LUCE: Chris, you want to speak now?

MS. TOWNE: Yes. She eloquently stated the results of our rather thorough deliberative process, and I stand with her representation.

CHAIR LUCE: Here's a couple of --

MR. IFIE: Can I make a comment? I think this is a very worthwhile effort that both of you have taken on. Some of the things you have come up with are the ideas we had at one time I thought. I thought we put out effort and the best that we could at one time. But bringing in fresh eyes, -- you guys weren't involved in the process at that time, but bringing in fresh eyes looking at this, at what has been done is helpful. So you've seen some holes that need to be filled, and it's worth giving out total consideration to your input.

CHAIR LUCE: Dick?

MR. FRYHLING: Yes, I agree.

MS. ADELSMAN: Tony hasn't seen what we're going to give him as work. I'm just joking.

CHAIR LUCE: Here are a couple of observations. First of all, I think the idea of organizing into sections, whether it's along these lines -- more efficient organizing is always to be commended. We have a schedule. The schedule says July. The schedule means July. It doesn't mean August, September, October. If we get into October, once we've gone out with our CR 103 -- Chris, did you get a copy yet? Once we get into October, then we are back to doing this thing all over again.

MS. ADELSMAN: I'm looking at July.

CHAIR LUCE: I am looking at EFSEC Council action issues CR 103, July 5, '04, EFSEC Rule adoption schedule revised October 8, '03.

MS. ADELSMAN: I agree with you, Mr. Chair. Let me say that I took liberty for two reasons. One of them within Ecology and I'm personally involved with several rules right now and called the Code Reviser, and they told me it would take three to four weeks minimum before they could take any rules during session for them to even do the drafting. So there is a strong recommendation if you need to wait until we're almost done which is really, what March? Is that, right, March 15?

CHAIR LUCE: I understand. We can't move until Dave finishes his SBEIS and cost benefit analysis. That's a show stopper.

MS. ADELSMAN: That is correct.

CHAIR LUCE: After that, how we move with the Code Reviser, we will also consult with the Governor's office in terms of what the Governor's office priorities are working with the Code Reviser. So just as a footnote, you know, because the Code Reviser says this is three or four weeks, priorities are priorities, and sometimes things can get moved up. I don't want to move it up and rush it and make mistakes. I think you're taking the exact, correct approach. On the rules themselves just this admonition. I don't want to get in the middle of the rewrite, it's not rewrites, it's reorganization. One of the reasons that they're longer than you might think they should be is a lot of parties sat around a table for a long, long time working out what might seem to be in some people's minds details that were, why did they put that in there? And the reason that sometimes they put that in there was that they wanted and agreed rightly or wrongly that that gave the level of certainty they were comfortable with. And so I guess my admonition in doing this work would be people who thought long and hard about what needed to be in those rules, and certainty and clarity was present among the key stakeholders and the Krogh Group and that at least at that point in time among the Councilmembers when they worked with their individual agencies. I'm not saying they got it right. Nobody says they did an A+ job, but I'm a little concerned about things that are just a reference back to WAC something or other in somebody's agency because that could open the door to all sorts of interpretations about, well, we don't really have a rule. Our rule is dependent upon whatever. I don't want to pick on Ecology or Fish and Wildlife, somebody else's WAC, you know, how they're going to interpret that down the road, and that's not what the Governor means by certainty.

MS. ADELSMAN: Mr. Chair, I really appreciate it, and I'm trying to be very, very sensitive to that, but I will give you an example. We're not talking about -- I mean, yes, there's a lot of cleanup substantively, but if you look at the standard for the air, we have three lines that refer to existing standards. If we look at others where there's fish and wildlife or the wetland, we have 17 pages which gets into -- so I talked to several people within Ecology, and I think, first of all, a lot of what's in there is changing as we speak which kind of scares me. That means we used some stuff in our guidelines that are subject to the science developing. So as a Council we need to go back and say, do we want that much specifics in our rules or do we want a combination policy, some very clear principles, guidance, and then the applicant uses certain, you know, documents that we know? And I think that's how Chris and I are looking at it. We're not looking at completely erasing all the work that people have done.

CHAIR LUCE: Good. That's really good.

MS. ADELSMAN: But I would have to admit there would be some areas, and I don't know if you've lately had the opportunity to look at them, but I look at the fish and wildlife sections. There are certain areas that says applicant prepare an HCP, and I'm looking at that and I'm saying is that what we really have in mind as Council or should we clean up that? So I think a lot of it is cleaning up. It's clarity.

CHAIR LUCE: I think we're on the same wavelength. All I'm trying to signal is that 17 pages versus three lines, I like those three lines.

MS. ADELSMAN: I think we can go for more than three lines.

CHAIR LUCE: But the point is 17 pages is not exactly a rule. It's a master's dissertation. So if we can get there with less, that's fine. Now, I'm not going to jump in and roll up my shirt sleeves and work on this project because I think we earlier had asked --

MS. ADELSMAN: Too bad because we gave all of that to you. We said Jim, Jim, Jim. Just joking.

CHAIR LUCE: I think that earlier we had asked Allen and I know we asked Chris and our contractor who will be coming on board in the not too distant future and I believe, you, Hedia, I believe to work

through this. So you've been delegated the responsibility to do it. I just think along the way both our contractor and Allen, you can kind of help steer the history of the Council with respect to where we were. What we don't want to do, in my opinion, is bring forth a revision that looks so substantially different from what we worked on for the last year and a half that the applicants and the other stakeholders and environmental groups look at it and they say, "What planet were they on? This isn't what we talked about."

MS. ADELSMAN: Hopefully we will bring in some improvement, not some things that –

CHAIR LUCE: I totally understand. I've gone on too long, but I just wanted to make that clear to you.

MS. ADELSMAN: Okay. As I told you, Mr. Chair, I'm committed even though I'm taking vacation starting the 16th, but I'm committed between now and then to spend whatever it's going to take at least on the areas that Chris and I talked about that would be good to spend some time.

CHAIR LUCE: I deeply appreciate that, and you're working on weekends, and that's above and beyond the call of duty.

MS. ADELSMAN: That's okay. I'm going to take a month vacation. I have two other quick issues that I wanted to bring up. One, --

MR. IFIE: Can we finish up on this part? Is there a schedule for what you plan on doing with the reformatting of the rules?

MS. ADELSMAN: Chris and I, we have not talked to the people except for she and I that we assigned, but we thought for Part 1 is to have Allen and Chris work on that together, you know, on the reorganization. Part 2, I will suspect it would be myself and Chris. You know, she agreed to do a lot of edit, so I don't have to worry about a lot of that, but at least I will try to work on that part. Part 3, and we haven't really talked to Irina on this one, but we thought maybe Irina, Chris, and myself or some part of it. And then we have Part 4, that's Mike and Chris. And then Part 5, which is the water quality, I just wanted to have somebody again in water quality review the NPDES. And I don't know if there's anything under air, but that is one of the two permits. So because I am leaving on the 16th at least my own parts and responsibility I am committed to doing them before the 16th, then I will give everything that I will work on to Chris in the sense she will be editing with Allen and with –

CHAIR LUCE: Our contractor.

MS. ADELSMAN: Yes, and I think pooling together, organizing, labeling I think it's going to be depending on really Chris and Allen. But I believe that this product can be ready at the same time.

CHAIR LUCE: It sounds to me like it can. Again, I want to commend you for the hard work you put in.

MS. ADELSMAN: Okay, two other things. One of them is real quick, and I think I want Dave also to comment. Mr. Chair, you and I talked about this at the last meeting I believe, maybe the meeting before, I made a proposal that we look at the \$2.30 as part of the analysis for the economics. And one of my reasoning, and I wanted to make clear why I felt that it would be appropriate for us to do that type of analysis, number one is we did have a lot of comments from people suggesting the dollar figure, and I felt that if we're going to deliberate between what the numbers should be and come up with our proposal, that we should have the evaluation done for all those numbers. So with your agreement I did talk to Dave, and I believe Dave has talked to Jeff, and I would like to have Dave just quickly report what he learned.

CHAIR LUCE: Sure. Just to remind the Council, Hedia and I talked. My feeling was people have requested all sorts of appropriate dollars levels from one dollar to –

MS. ADELSMAN: Five.

CHAIR LUCE: No, actually one dollar to whatever the market cost is, and that wasn't defined, plus some additional increment above and beyond that.

MR. FIKSDAL: Can I interject for the minutes' sake?

CHAIR LUCE: Right.

MR. FIKSDAL: We're talking about the CO2 rule.

MS. ADELSMAN: Yes, I'm sorry, thank you.

CHAIR LUCE: We're talking about the CO2 rule and what the cost per ton should be, and people have suggested in the course of public comments everything from, there shouldn't be any mitigation so there shouldn't be any cost, to there should be mitigation to whatever the market cost is 100 percent, actually more than 100 percent. I think a couple people testified it should be 100 percent with a penalty on top of that - I won't call it a penalty. Maybe call them incentives, an incentive on top of that for something. So the question I had raised with Hedia was, first of all, hadn't we really modeled enough? Second, could we extrapolate from what we had already done? I mean if it's \$2.30 why not \$4.60? Why not \$9.20? And third, if you couldn't extrapolate and if it wouldn't take any more time and if Hedia says, Ecology, out of their own budget, will pay for this, then okay. Only other comment and if it wouldn't slow down Dave's work. Those were the kind of parameters that we talked about.

MR. REICH: So I should probably tell you what happened with Jeff. He is completely booked this week, but he says he would have some time to work the following week on those analyses, then he's got a vacation in there, so he could commit to the end of the month. Likely have it before that, but it's not for certain. It depends on if it goes right. What he has right now, and, well, I have stuff to talk about too. But what he has right now is the analysis I asked him to run already, he has it about halfway done. So he hasn't had a chance to finish them yet. So assuming we get those next week, he would then start running the additional analyses after that.

MR. IFIE: Summarize for us what he's working on right now, the range of numbers. I thought we agreed on some numbers. I was surprised the \$2.30 was out of it after the fact. I'm wondering now what are the numbers?

MR. REICH: Yeah, I talked with Jeff. He's in the middle of doing the generation portion of their plan, so he was looking to run some analyses to see how sensitive his results are to carbon dioxide. So we thought, well, is there some way we can work together on this and meet both of our needs in the same runs? So what he looked at is basically the Oregon standard in the model, and the Oregon standard is very close to two of our alternatives which was to look at the Oregon standard and also the \$1.60 times 60 percent capacity. So to me I felt like, well, hey we're getting two of our runs, two of our alternatives looked at in those same runs, so that's really useful. So he isn't running a \$2.30 run or \$2.30 analysis at all, and I hadn't asked him to at this point. So we can do it certainly, and it would certainly make a better document. But it's a question of if the deadline, the time line will slide some is all.

CHAIR LUCE: Assuming he gets it to you by the end of next month -- is that when he said he could do it?

MR. REICH: No, end of this month, end of February.

CHAIR LUCE: End of this month. All right. Well, add two weeks because it just happens that way.

MR. REICH: Yeah, it could take longer. There's a possibility. He thought he was pretty confident he could have it done by the end of the month.

CHAIR LUCE: So add two weeks hypothetically. That would be March 14th, right? That's when you're currently anticipating getting us the draft, right?

MR. REICH: No, the draft is due in two weeks from now. I thought I would have a draft to you in two weeks from now.

CHAIR LUCE: Oh, that puts a different light on it. From my perspective we really are slowing down the process quite a bit. What about extrapolation?

MR. REICH: I don't have any runs at that dollar amount. I do have some of the results that he gave me already for the analyses he's run, and I have preliminary runs they did when they were trying to finalize what they wanted to use. The problem with that is a lot of things changed. It wasn't just the dollar amounts. It was a lot of other things changing too, so I'm uncomfortable extrapolating with those. So basically what the results are, for example, the one that he got us already tells us how much coal-fired plants we expect to see in Washington State in the next 20 years versus gas. What will happen if the dollar amounts change? Where will they relocate? Where does that electricity come from? So they're really useful models to have. The problem is if you start raising the CO₂, it's kind of, I can't really say without the run what will happen.

CHAIR LUCE: Right. What I think I'm hearing you say is you're planning currently to have us the draft in two weeks.

MR. REICH: I think that's going to slide too because I'm not going to get the results from Jeff probably until next week for my part.

CHAIR LUCE: I'm trying to do an accurate time line here, so maybe February 25.

MR. REICH: Yeah, yeah.

CHAIR LUCE: February 25 –

MR. REICH: That's not including any addition of the \$2.30 one.

CHAIR LUCE: No, I understand. So February 25 you would have a draft to us that would have the two Oregon's and \$1.60.

MR. REICH: Yeah. Well, yeah. So the Oregon analysis for Washington and \$1.60 analysis for Washington.

MS. ADELSMAN: Now the redraft I saw says \$1.80, the one we got from Tim.

CHAIR LUCE: That's Tim's number.

MS. ADELSMAN: See, we started to throw all kinds of numbers.

CHAIR LUCE: Precisely. It's from zero to you pick it.

MS. ADELSMAN: That's for the analysis. That's why I really feel strongly and we're talking about a week, if his document is slipping by a week. So it's the third week. February is short. An additional week to get the two dollar analysis. So if we have in front of us from one extreme to the other, and we could select anything in between, we would be a little bit better informed about which number to select than if we had just kept creeping up and not knowing how far up we could creep.

CHAIR LUCE: You want to put five dollars in there?

MS. ADELSMAN: No, because I think if the two dollars which is the lowest of the high gives us some information that says, hey, at this price these plants are not going to choose to come to Washington, and it's going to be some major impact, there's no need to look at \$5.00 or to look at \$20.00. We could make a decision based on that.

CHAIR LUCE: You want to put \$1.85 in there?

MS. ADELSMAN: It's like we're bargaining in Tonesian souks here.

CHAIR LUCE: We all consider ourselves experts on what the right cost for mitigation is.

MS. ADELSMAN: The only reason I selected the number is it's the number we received from a lot of comments. We didn't see \$1.85. We didn't see one -- you know, it doesn't mean that's -- I don't know where we're going to end up landing, but from the analysis point of view I thought it would be nice to have two bookends.

CHAIR LUCE: Dave, how much time would this add to your work to get us a finished product? Drop back of the envelope. I'm not holding you to it.

MR. REICH: A final document or another draft?

CHAIR LUCE: Another draft.

MR. REICH: Well, assuming that Jeff gets me the results by the end of this month, it won't take me long to convert those into what I need to do. So it would be by the 7th, 10th of March, something like that for a draft.

CHAIR LUCE: Okay. And Ecology is going to pay for this.

MS. ADELSMAN: If there's a cost, I said we'll pay for it, and I got the agreement from our management to do that.

CHAIR LUCE: And Linda's going to bind it.

MS. ADELSMAN: As long as he doesn't charge us for all of this.

CHAIR LUCE: No.

MR. REICH: Jeff said there wouldn't be a charge.

MR. FRYHLING: In our minutes going back to January 5th we said we were going to 60 at \$1.60 and 60 at \$2.30, and so that's what came out of our minutes.

MS. ADELSMAN: That's consistent now.

CHAIR LUCE: That's fine. Let's do it as long as it doesn't cost -- if there's additional cost, Ecology gets the bill. And we're working against the two week thing here, not a, you know, gosh, I don't know when. I know you're busting your gut. Okay? And the work you've done so far is really first rate. It has been very helpful. I just want to make it perfectly clear that there is no right number. If there was a right number, we wouldn't be putting in \$1.85 or \$1.60 or 100 percent capacity.

MS. ADELSMAN: I know.

CHAIR LUCE: It doesn't exist. But if your level of comfort is greater, significantly greater by putting in \$2.30 at 60 percent capacity, God Bless. Let's go get it done. Let's figure on another ten days to get it done.

MS. TOWNE: Aren't you saying we already directed that?

MR. FRYHLING: This is Chair Luce and then we're doing 60 at \$1.60 and 60 at \$2.30. That's from the minutes.

CHAIR LUCE: I just confirmed that.

MR. FRYHLING: That's what our minutes said on January 5.

MS. ADELSMAN: There was some question in between that meeting and today, but I want to thank the Chair for, and I think we are committed at least if it exceeds the time line, then we reevaluate that.

CHAIR LUCE: The only thing I'm going to say -- that's probably too strong a word. There could be other requests for additional modeling based on what comes back from \$2.30 at 60 percent that needs to be configured differently. So what I want to get the Council on board with today is that's it in terms of the modeling, unless there's some Friday surprise that just nobody has ever anticipated that has just -- I can't conceive of the scenario. But I can very well conceive of the scenario when people get the

model, they'll come back and there will be formal or informal requests for, "Well, it's only another three weeks. Couldn't we do some more modeling along from these lines?"

MS. ADELSMAN: It's not going to come from me.

MR. IFIE: I think the door was open once you modified a decision that was made at the last meeting. At the last meeting we decided three options like the minutes reflected, three options of analysis, and that was it. So when you called off the \$2.30 from the analysis all of a sudden now we have to try to bring it after the fact which is doing something that I don't want us to do which is extending the time. But the other thing happened because we broke the agreement that we made at the last meeting, so I would say let's stick to that agreement to where it is now and the door won't be open again.

CHAIR LUCE: Okay. The door is not open again, right?

MR. IFIE: Closed.

CHAIR LUCE: Closed. The door closed, Chris?

MS. TOWNE: Yes.

CHAIR LUCE: The door closed, Dick?

MR. FRYHLING: Yes?

CHAIR LUCE: The door is closed, Hedia? Is the door closed, Hedia?

MS. ADELSMAN: I'm not asking for another analysis.

CHAIR LUCE: That's a yesable proposition. Is the door closed? Yes or no.

MS. ADELSMAN: Well, I cannot vote for it.

CHAIR LUCE: I'm not asking you to vote. Is the door closed? Yes or no.

MS. ADELSMAN: Well, based on what we have as discussion today, I'm happy with the \$2.30 analysis.

CHAIR LUCE: I want a yes.

MS. ADELSMAN: I don't know if I can really say the door is closed because I would not ask for another analysis, so maybe that means the door is closed, but I don't know if that's exactly what I'm saying.

MR. IFIE: I think the issue was with you, Jim.

CHAIR LUCE: The door's closed as far as I'm concerned, and, Hedia, is on record as she's not sure the door is closed.

MS. ADELSMAN: I think what Tony was saying it was closed last meeting, but then the \$2.30 got reevaluated. Now we're just reaffirming that.

CHAIR LUCE: I just reevaluated in terms of how long an extra long time it was going to take.

MS. ADELSMAN: Okay. The door is closed as far as I'm concerned I mean.

CHAIR LUCE: That's what I wanted to hear. Thank you, Hedia. Have a great vacation. This will all be wrapped up by the time you get back.

MS. ADELSMAN: I know. I know it will. So are okay then with –

CHAIR LUCE: Right.

MS. ADELSMAN: Okay. I have one more after that.

CHAIR LUCE: Okay. We're having so much fun.

MS. ADELSMAN: Do you have anymore?

MR. REICH: I do, but do you want to finish up?

MS. ADELSMAN: No, you can finish up. You're here.

MR. REICH: I'll try not to take up too much time. First, I have some handouts for you. I just needed some guidance from Council on a couple of issues, some of which you just gave me. But there's some other ones too that we haven't talked about. So there's two handouts that I'm passing around, one is a Table of Contents and one is called EFSEC Standard Revisions, for you to look at. So what I basically wanted to do is, first, just look over the Table of Contents. I just have a couple of issues that I needed to talk to the Council about. There was an email sent out by Ann the week before last. Did you all get that?

CHAIR LUCE: Right.

MS. ADELSMAN: Yes. Yes.

MR. REICH: So I wanted to talk about that. I wish Ann was here today, but I'm sure she'll follow up with any comments or any questions that we have. But I wanted to just kind of go through this. This is a very rough draft table of contents for the benefit cost, kind of where I'm at right now. I don't want to go through all of them, but I did want to go through a couple. Chapter 1 is just an introduction, but on Chapter 2, Chapter 2 is really where I try to establish the difference between the old rules and the new rules. Okay? So in Chapter 2 it's called Basis Development and Existing Proposed Rules, so one of the things in the benefit cost, of course, we talked about before you have to identify what's the change. We're going from something to something. That's how you get benefits and cost. And so the first question I had for you regards the second subtitle, Basis Development, Chair Luce and Ann and Allen and I had a conversation about exactly how we should approach the changes in the rule. So usually what I would typically do is read the old rule and read the new rule, and it's apparent what the difference is. But with EFSEC there's a lot more. It's a little more complicated. One thing is the old rules aren't very specific in a lot of cases as to what the actual rule language is, and then, of course, a lot of things are just determined through adjudication. So if I was to say, well, there's no rule right now for carbon dioxide mitigation, so we'd say the rule right now is zero. There is no rule. So the change is from zero to what it is going to be. But of course, in real life, there's been several projects where you've required carbon dioxide mitigation. So what we've talked about on the phone was looking at two different bases. So one assumes that by just reading the rule, strictly the rule, that would be one basis. There's no current rule for it, then it's zero. There is no rule. And the second would be to look at your past decisions through adjudication on what you guys decided. So you use both of those as basis points to consider the changes. Does that make sense?

CHAIR LUCE: It does. I mean I think rules over time, decisions over time can become a de facto rule, so it makes sense as long as the work load is not impossible for you.

MR. REICH: Okay. I just wanted to give everyone a chance to be comfortable with that, so that it's not a surprise when you see it. So that is kind of the approach that we talked about and that I'm taking. So you'll see kind of two bases. It makes it a little more complicated, but I think it probably provides better information for people reading this document, so you will see that. Also I handed out and it goes with the next subtitle Proposed Rule, the new rule. I handed out this comparison of the old and new rules. I thought since it looks like you might be sliding a little bit on date, one of the things that I would want to establish in the draft is agreement on what the economic impacts are from the changes. Okay? So what I've done, what I provided you there is my interpretation of the changes. So I've actually gone through, and I read every single section. This is an actual. These are as the standards were last fall, and I don't know. They're changing a little bit now. It might be a little bit confusing, but what I guess I'm asking you to do is perhaps to read these and see if you see things that I missed as far as impacts,

benefits, or costs associated with the rule changes. What I don't want to happen is for me to give you a draft, and for you to say, oh, you missed all this stuff.

CHAIR LUCE: Right.

MR. REICH: So I thought if we can jump start it here, then we can speed up the process a little bit. I guess what might be, and I'll let you guys decide, but maybe I can come up with another criteria document that talks about the actual benefits and cost of these changes. And we can hopefully either as a smaller group or as the Council agree what those changes are now, so that I can go out and value them.

CHAIR LUCE: I think that would be helpful.

MR. REICH: Not today.

CHAIR LUCE: No.

MR. REICH: So what I could do is within a week provide you with some criteria document kind of like I think Ann forwarded you the one for carbon dioxide that I prepared, so I could do the same thing for all the other rule decisions. I'll try to make it simpler, so you can see what I think of as the benefits and costs, and you can tell me whether you agree or disagree.

CHAIR LUCE: That would be very helpful.

MR. REICH: So I will write something up and then email it to you all.

CHAIR LUCE: Could I ask you to email it to everybody, but everybody get comments back, unless Allen has an objection, through Allen, so we have a consolidated place to get these comments instead of Dave gets comments from Councilmember 1, 2, 3, 4, so I think focusing things through Allen makes a lot of sense.

MR. REICH: Okay. Good. So I will do that. And maybe I should email it to Allen, and he can forward it out, so he can keep the chain of communication going. So that was the main stuff. I just wanted to get rolling on that. Oh, down in Chapter 4 I guess we don't really need to talk about it that much anymore because we just discussed about the modeling situation. So I don't really need to bring that up and I won't.

The only other thing I had to ask you about, and Ann mentioned it in her email, was the least burdensome analysis. Do you remember that discussion? You get three bullet points I think in her email, and there was this question of, in the Administrative Procedure Act, there's a bunch of requirements that you're supposed to walk through. One of them besides the benefit cost is the least burdensome analysis, and I was simply asking Ann is that something we want to do? And maybe we need to wait until Ann is here to talk about that. She's the one who probably should be weighing in I guess on whether or not it's a good idea or a bad idea. But it is an analysis we have to do when we're trying to follow the letter of the law of the EPA, and I know that's not necessarily the case in this situation. So we don't have to decide today actually. We can talk about it next session if you want to talk with Ann.

CHAIR LUCE: Okay. Let's do that. In the interim Ann will be back from ski break, and we will talk to Ann about it maybe later this week, least burdensome. It's a good idea. All right.

MR. REICH: Thank you.

CHAIR LUCE: Is that it?

MR. REICH: Yes.

CHAIR LUCE: Thank you very much. You continue to do really remarkable work.

MR. REICH: Thank you.

CHAIR LUCE: I don't know how anybody can analyze it. I mean analyze jello. Hopefully it's not jello. Certainly it's fluid. Hedia, you had something else.

MS. ADELSMAN: Yeah, I had one last item, given that I may be gone. I mean unless the Asian virus gets out of control we're still planning on our trip to Asia. So I wanted to bring up an issue that I know you may have discussed it in the past, but I wanted to see at least if we could discuss it one more time. And I'm passing out two documents. One of them is a proposed rewrite of a new small paragraph that was added on need for power, and the other one is just a page for comment letters that we received from CTED relating to a particular section. And given that this section is very important to the Chair, I wondered if I should wait. It shouldn't take us too long. Well, you know, I read all the comments and then when I read this section, there was a couple things that really for me at least was of concern, and especially the second sentence in the original language. And unfortunately when I typed this, I should have taken the existing language and done a strike out, but I think most of the committee remembers what the existing language said. It pretty much says that the applicant for site certification for power plants complying with the standards set forth in this chapter is not required to demonstrate the need for power. Then it said the Council shall not consider the question of need for power in the site certification. And I have several concerns. Many of them are expressed by CTED, but one of them is not in there that I posed as a question. Given that we are making a recommendation to the Governor on site certification proceeding is the fact that we are not going to even ask in some cases the applicant or even ourself to consider the question of need for power are we really then putting the Governor in a position where he or she either won't be able to ask for that type of information or they'll have to get the information from somewhere else? CTED in their comment, they bring several things that also I wanted to bring to your attention. The fact that, you know, and you could maybe let everybody read it, you know. What I would like to do is at least look at an amendment of this section where it still gives the Council the discretion. It's our own discretion whether we may consider the question of need for power but not to prohibit us completely from considering the need for power. Not only prohibiting us, but prohibiting our successors or the Councilmembers. And then also when the record goes to the Governor the way this is stated, if there are some situations where we may want to consider this question, this prohibits us from doing it and really the information would be forwarded to the Governor without that in it. So I knew this was something that was discussed before, but I thought –

CHAIR LUCE: It was discussed for a long time by a lot of people, and I would encourage you to go back and review the Krogh Report on this particular issue.

MS. ADELSMAN: And I did. I reviewed it. I looked at it, and I'm not sure whether -- I may be completely wrong -- whether the report went as far as saying the Council shall not consider. Maybe I'm wrong in that.

CHAIR LUCE: I'd be glad to take a look at your language, and maybe we can talk about this issue later.

MS. ADELSMAN: Okay. Okay. It's my proposal. I just wanted to have it on the table and either have the opportunity to talk about it now or we could talk about it later.

CHAIR LUCE: I would be glad to talk about it.

MR. IFIE: I think that's fine, but I would need to go back and review how we got to where we got to. Giving us more time would be helpful.

MS. ADELSMAN: Yeah. No, I'm not asking for action today.

CHAIR LUCE: Good.

MS. ADELSMAN: I was not.

CHAIR LUCE: I appreciate that. One of the ways we got to where we are is that we were modeling ourselves after Oregon, if you can recall, and there's always been an issue. First of all, I don't think there's an issue because the statute makes it very clear the policy of the State of Washington recognizes there's a need for increased energy facilities. If you go back and look at one of our previous decisions - - not all of them because our decisions in all instances are not necessarily consistent. But if you go back and look at some of them, there is language that says that the Council doesn't decide issues like need for power. Others, such as Energy Policy, they may have a view on the need for power, and they've expressed that from time to time. And I would assume that in the forums that are available to them they'll continue to do that. But the legislature, we conclude, has spoken to this.

The other part of that was the quid pro quo. CO2 was an issue in Oregon, so was need for power. Now it was even more difficult to bend toward Oregon because they absolutely had to show a need for power. But as the discussions evolved you recall at the very beginning of our discussions people would start walking out of the room when the Council raised the issue of CO2. The lawyers wouldn't allow parties to even talk about CO2 mitigation except in the hallway and off the record. So then we broached the subject, "Look, this is a package deal. Lots of different parts of it." Not everybody likes every part of it, but something is in it for everybody. In the something that's in it for everybody at least in part from the applicant point of view was additional clarity which I personally am not sure it needed, but it's crept into so many of our cases on this issue of need for power. So while it's not written down anywhere as quid pro quo, the understanding among many parties is that we will support CO2 mitigation obligation requirements, but part of the deal that we need to get is clarity on this need for power. Did the legislature say that that was a done deal or didn't they? And that's why the language is written the way it is.

MS. ADELSMAN: I think if you look at the first sentence, we have not changed it. I have not changed it. It says they are not required. We are still saying the applicants are not required.

CHAIR LUCE: The second sentence, Hedia, with all due respect, takes away everything the first sentence says. I mean but Council may under its discretion consider the need for power. You know, if you put a period, if you had struck the second sentence, you might get there. But you're leaving the door wide open on that issue. You're not -

MR. IFIE: I'm sorry. Keep on going.

CHAIR LUCE: No, I apologize. I was rambling. You asked what the history was. That's the history.

MR. IFIE: If I was to make, you know, make a decision today on this issue, my feeling is that I don't think we need this rule because the statute is clear on the fact that need for power is not one of the paramount criteria that the legislature felt needed to be used in considering the location of the power plant as far as I could tell. So what we've done here is we're making this an issue without -- I mean it won't be an issue because it keeps quiet on it. It's not an issue. The law says, what the statutes reads right now it says it assumes there is need for abundant power. That was an assumption, period. Now if we bring this up on Satsop, well, we would consider it or we won't consider it that much, all you've done is you've raised the issue on it, and it becomes something that would become a point of contention. So but again I'm willing to go back and reconsider.

CHAIR LUCE: I appreciate that, Tony, and I would agree with you under most circumstances. All I would say is it shouldn't be an issue. All right? But it has been, and we have entertained testimony on that issue repeatedly even though as you say it shouldn't be an issue, and we have written orders around

that issue that shouldn't be an issue. And I go back to this is a package deal, and one of the quid pro quos -- My choice of words, nobody else's. One of the things that the applicants get out of this in addition to some certainty is clarity on this need for power standard, and I guess, Hedia, I'll talk to you some more about that. I don't want to talk about it anymore here today.

MS. ADELSMAN: No.

CHAIR LUCE: I don't think you have the history that stands behind this.

MS. ADELSMAN: I have just only one quick question. Does the Governor when he approves the site certification, is he then bound by this saying? I mean he has to state the record as it is.

CHAIR LUCE: The Governor is going to review the rules, and he will give us his advice with respect to what he thinks about the rules.

MS. TOWNE: You're talking about a certification.

MS. ADELSMAN: I'm talking about not the rules, the certification.

CHAIR LUCE: He's bound by the site certificate. It's a contract. He signs the contract.

MS. TOWNE: But in considering whether to sign it, is he bound by the record? Is his decision within the four corners of the EFSEC record?

CHAIR LUCE: Yes.

MS. ADELSMAN: Or can he bring in the question of need for power?

CHAIR LUCE: Sure. If EFSEC adopts the rule that says need for power has already been resolved, it's not to be a subject anymore. That's an interpretation of law. I'm not practicing law, but this is my guess. That would be an interpretation of law which would be binding on all officers of the State of Washington. So it's much like it sounds. Reserve this for Ann. My guess is if you sent him up a site certificate that said the applicant has satisfied all of the standards that EFSEC wrote that are codified in the WAC and the WACs are derived from RCW 80.50, the Governor's ability to change that would be very, very minimal. You would have to find some basis outside of the law to do that.

MR. FIKSDAL: I recall the Sumas recommendation to the Governor. The Governor received the Council's recommendation for the Sumas project of the last recommendation, and then he did hold separate hearings or one public meeting or I don't know what you call it, and he heard from whatever, you know, entity came in and said whatever they wanted to say. Now whether in his deliberations and what his advice was from his attorney, we are not privileged to it.

CHAIR LUCE: Right, precisely. He will get whatever -- I'm just guessing that.

MS. ADELSMAN: Now, just the last final thing. Existing rules restate what's in the statute and whatever new section will be an amendment to that existing rule or it will be added to the existing rule?

MR. FIKSDAL: We don't have a rule.

MS. ADELSMAN: Number 463-14-020 need for energy legislative intent binding and you pretty much restate what's in 80.50.010. It just says dah-dah-dah requires the Council. And I'm saying you have that, and then you have the new section, and either you have to amend this new section, this section, or we have to somehow attach to it.

CHAIR LUCE: What we're doing, Hedia, I think, what was intended was to interpret as we actually could go back, and I don't have the cases off the top of my head. In the past we have dealt with this issue, and there's Council language and opinions I believe that state that the legislature's pronouncement recognizing the pressing need for increased energy means that there is not a need to demonstrate power. Now I will be the first to admit we have not been consistent. We have been walking all over this road

like a tumbleweed. Let's put it that way. And my interest in doing this again is to facilitate a package so everybody gets something, and second of all to bring clarification so there's certainty.

MS. TOWNE: Mr. Chair, I think the question though before us is since we have an existing need for power section, and we have a proposed new need for power section, are we going to go with two need for power sections in our collective regulations or are we going to consolidate the two? Is that not the question?

CHAIR LUCE: We have a need for power standard, and I wasn't assuming that you would be changing that need for power standard that's in the draft. If you're going to propose that we change the need for power standard that's in the draft that's on the website, then we need to have an extended discussion about that.

MS. TOWNE: No, but there's already one in the regs.

MS. ADELSMAN: There's one in the existing rules.

MS. TOWNE: Right, published WAC.

MS. ADELSMAN: And then I'm saying that the one that we published in the new section that's the one that I'm raising today, and one of the things that bugs me about this, and then I will be quiet, is SEPA requires we look at alternatives. And when we have a plant, you look at alternatives as to whether they're, you know, somehow the need kind of is built into the SEPA process. So are we going then when we do the EIS and SEPA, are we going to tell our consultant don't look at the need for power as part of your SEPA? I mean if you're going to do that, then I think we need to go into the SEPA rule and say that also. I'm just kind of saying I think we have to be careful what is it that we really are doing. And if that's what we're doing, then I think the alternatives that are going to be looked at by a consultant for us for the EIS SEPA, requires to look at alternatives.

CHAIR LUCE: It's clear we need some discussion on this issue.

MS. ADELSMAN: Okay. I may not be here, but at least I was able to express some of my concerns. That's why I wanted to do it today.

MR. IFIE: You can call in from wherever you are.

MS. ADELSMAN: As I'm avoiding the chicken market I'll try to.

CHAIR LUCE: From the duck pond. You might, if you want to, touch base with Chuck Carelli because he has an extensive background on this, but I'm not suggesting you do that. I'm saying you could if you want to.

MS. ADELSMAN: I talked to him once, and he said he didn't think about SEPA. I mean there's a lot of implication.

MR. FIKSDAL: I think your previous question about do we need to amend 463-14, whatever it is, --

MS. ADELSMAN: 020.

MR. FIKSDAL: -- because of this, is a good thing we need to look at.

CHAIR LUCE: Okay.

MS. ADELSMAN: And it's in my outline. So, last, are we okay with proceeding and organizing and so on with this? Do we have the blessing?

CHAIR LUCE: Right. I want to work on the policy section as you might have guessed.

MS. ADELSMAN: I put Hedia and Jim and I'm not touching the CO2.

CHAIR LUCE: Okay.

MS. ADELSMAN: I'm not even going there.

CHAIR LUCE: That's good. That's okay. You can go there if you want to.

MS. ADELSMAN: No, there's other people like Tim and Chris and others, but I think the draft I'm going to mostly focus on are water and fish and wildlife and wetland.

CHAIR LUCE: Well, you and Chris have been doing from what I understand really great work.

MS. ADELSMAN: And everybody will have the opportunity to look at all that. Sure. Okay. Thank you. That's it.

MS. TOWNE: Before we get off rules are we going to talk about CO2 and Tim's redraft at all?

CHAIR LUCE: No, I wasn't planning on it. Tim sent out some comments on how he would change the draft. Others have sent in their comments regarding how they would change the draft. I think everybody has got a good idea. All right? So we probably need a workshop in which we talk about these ideas.

MS. TOWNE: Is anybody accumulating suggestions?

CHAIR LUCE: We are working, I think, off of Carelli's last draft, the 12/18 draft.

MS. TOWNE: Rather than Tim's 1/27?

CHAIR LUCE: I haven't had a chance to read all of Tim's, but I don't want to do this on LIFO. Well, it's sort of a LIFO takeoff. I don't want to do this on let's review based on who got the last comments in because trust me I'll make some comments, and then you can review my draft, and then we'll use that as a starting point, you know, probably. So that doesn't seem to be a logical way to go. Let's use the last person who made the last comments in. Tony probably would get some comments in and you know.

MS. ADELSMAN: So how are you -- I mean seriously how are we going to be proceeding? Because I thought Tim was the lead in taking a shot in redrafting based on some discussion.

MS. TOWNE: On Chuck Carelli's 12/18 version.

CHAIR LUCE: Tim and I and plus Chuck, now it's you --

MS. ADELSMAN: Now it's me.

CHAIR LUCE: -- are working on the CO2. Tim sent in some comments. I haven't had a chance to look at them yet. I suppose I will have responses to Tim's comments, might. You may have some response. You said you weren't going to delve into it, but that would be okay if you wanted to.

MS. ADELSMAN: So once the three of us review them then the other members can see them. I'm trying to look at procedurally how we're going to -- because we're to have a bunch of redrafts how do we want to do it procedurally?

CHAIR LUCE: Procedurally how do we want to do this? I think we need to take a draft. I guess my inclination would be, and this is right off the top of my head. Okay? You tell me. I just saw it on the screen briefly. Tim has done extensive changes.

MS. TOWNE: Yes, significant.

CHAIR LUCE: Okay. I still think my inclination would be to go with Chuck's draft of 12/18, and then we talk through the other proposed changes. I mean that's the last time the Council has really drilled down on a draft. Individual Councilmembers will have their suggestions. I may have some. You may have. Some others may have some I hope. But I think we need to pick a draft that Councilmembers have had a chance to read. I know Tony's had comments. Let's start with that draft, and then we'll have a work session. People can go around the table, and we'll go through it paragraph by paragraph, line by line, and make some decisions.

MR. FRYHLING: When do we want to do this?

MR. IFIE: Time is flying.

CHAIR LUCE: Well, time is flying. We're also waiting for the SBEIS, and we are out in front of our consultant over here with respect to the economic impacts, so let me go look at Tim's extensive changes. I'm surprised they're extensive.

MS. TOWNE: Well, there's a cover memo that characterizes changes, and there are sections deleted, sections added.

CHAIR LUCE: Well, let me go talk to him about that because at some point in time like everything else it's got to be pencils down. I mean you can refine and refine and change and reorder and structure and restructure –

MR. FRYHLING: I think it would be helpful for the committee to take whatever comments you get in and come up with a draft for us to consider at the full Council.

MS. ADELSMAN: I thought that's what Tim was doing. Maybe he should have not sent it to the full Council. Maybe he should have gone just to you and I.

CHAIR LUCE: I think he should put in –

MS. ADELSMAN: I think he was trying to reflect some of our discussions but not –

CHAIR LUCE: I will talk to him, and he's off on an adventure today I think with the family, and we'll have a little meeting of the CO2 committee and work through these things. There's only so many ways to revise a rule called CO2. The bottom line from my perspective is still cost per ton over how many years, what's the administrative cost. I mean we've got members of the public here who are interested in CO2. What does the public think about this?

MR. LaBORDE: About procedure or about the rule?

CHAIR LUCE: No, we start on that we'd go for the rest of the day. It still seems to me that on CO2 the bottom line is the bottom line. What is the mitigation that's got to be provided, who's going to provide it, and over what period of time?

MR. LaBORDE: I do agree there's some bottom line issues, and we're certainly interested in all the aspects of the rule.

CHAIR LUCE: Right. But whether there's preference and priority and how that's accorded and to whom and there's a lot of stuff in there that's fun to play with.

MR. LaBORDE: A lot of those are secondary, tertiary issues.

CHAIR LUCE: Right. It's interesting, Hedia and others, it's all about the money. Not to quote Chinatown or anything, but it really is about the funding levels that are going to be required and what the impact on the economy is going to be both for the applicants and for the consumers of power. That's really what it's all about from my perspective.

MS. ADELSMAN: So do we want to wait until we got all the analysis then to plug in the numbers?

CHAIR LUCE: No, I don't think we need to do that. I mean plug in the numbers. Everybody pick a number. I mean lots of us have picked different numbers, you know. In essence there's a blank, you know, no matter what. There's a blank which has to wait for the cost benefit analysis before we can really plug the number in. I thought you'd never ask.

MR. ANDERSON: I won't address need for power.

CHAIR LUCE: Good.

MR. ANDERSON: I think it is important that you make your decision on the substantive issues first, not just what the text is going to say. Getting down to the money is the issue is correct. One of the substantive issues that we were concerned about was trying to get the payment to be as closely or more closely associated with actual emissions, so that you make some sort of decision about not just that it's

an assumption it's going to run for 30 years, and it's going to be this assumed say 60 percent capacity or 80 percent or 90 percent, but you try and get close to what they're actually operating at. If there's ten wet years and they're operating at 40 percent capacity, you're going to have lower emissions. If there's dry years and they're operating at 80 percent capacity, you're going to have more emissions. So it is about the money, but it may be in terms of equity how closely it's related to actual operation, that kind of stuff.

CHAIR LUCE: Understood.

MR. ANDERSON: The only other thing would be that we've encouraged just simplifying to look at the natural gas consumed rather than having to deal with the heat rates and those kinds of things. It does get down to money, but it could be one size fits all or it could be more closely related to what actual emissions are and we were hoping for that.

CHAIR LUCE: Understood, thank you. Comments by others? Okay. Well, we've had a robust discussion of the rules. Well, I'll call a meeting of the CO2 subcommittee here even later this week to sit down and go through this.

MS. ADELSMAN: Friday maybe we can do it. If we're still having that other meeting Friday, maybe we could do it.

CHAIR LUCE: The other meeting on Friday being?

MS. TOWNE: OFM.

CHAIR LUCE: That one, yes. Chris tells me Friday is not good for you. Wednesday is good.

MS. ADELSMAN: I can do Wednesday.

CHAIR LUCE: And it depends on where Tim is. I know he's not in the office today but what his availability is.

MS. ADELSMAN: Wednesday works for me too if you want to do both, if we could do both.

CHAIR LUCE: Okay. Mr. Fiksdal.

MR. FIKSDAL: Chris, did you have anything else on rules? You didn't have any rules to discuss?

MS. TOWNE: No, no, Hedia and I did it all for you.

ITEM NO. 7: OTHER

Legislation	Allen Fiksdal, EFSEC Manager
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CHAIR LUCE: Allen, legislation.

MR. FIKSDAL: Legislation. As of last Friday it's now called Substitute House Bill 2340, and that is the bill that would enable an entity to opt into the EFSEC process for siting of electrical transmission lines passed out of the House on Technology, Telcommunications, and Energy and is in the House Rules. And Bill 2338 which was concerning the mitigation recommendations for nonfederal power licensing did not pass out of committee last week.

CHAIR LUCE: It's still under consideration as far as you know.

MR. FIKSDAL: As far as I know.

CHAIR LUCE: Still pending.

MR. FIKSDAL: There are several bills that have to do with renewable energy that CTED is following, but those are the only two bills that directly affect EFSEC.

MS. ADELSMAN: Allen, I'm sorry. Hydro, did it get amended?

MR. FIKSDAL: No, it didn't pass out of committee. It's still in the House Energy Committee. And as I'm sure a lot of your agencies know there's quite a few bills that have to do with rule making and substantive rule making that will probably be exciting to watch those.

MS. TOWNE: What became of 3040?

MR. FIKSDAL: 3040. I haven't seen anything scheduled yet on that.

MS. TOWNE: Okay.

CHAIR LUCE: Refresh my memory.

MR. FIKSDAL: 3040 is prohibiting the regulation of carbon dioxide emission from fossil fuel power plants.

CHAIR LUCE: Okay. It hasn't been scheduled as far as I know.

MR. LaBORDE: Unlikely to be scheduled.

MR. FIKSDAL: That's my sense too. It's unlikely to be scheduled.

MS. ADELSMAN: And the cutoff is tomorrow?

MR. FIKSDAL: Friday I think is the hearing in committee for its house of origin or read into committee. I can't remember which one it is.

MR. IFIE: Get out of committee.

MS. ADELSMAN: I heard the hydro may actually still go out, and we talked within Ecology, and I think our feeling is and I talked to the Chair about this, the adjudicative part of it is real problematic for us. The coordination, having EFSEC do the coordination is maybe a good thing to do, but there's some parts of the bill that need to be clarified, perhaps it could be changed and improved.

MR. FIKSDAL: If it comes in the committee, we'll work with the committee if necessary.

CHAIR LUCE: The Governor's office has no position either for or against that bill.

MS. ADELSMAN: I understand.

CHAIR LUCE: Okay. Anything else?

MR. FIKSDAL: No.

CHAIR LUCE: Let's see. The last item is –

MR. FIKSDAL: Before we get to the last item should I just cover one other thing? In your packets you have draft minutes from September 30 in there, and we forgot to do the September 30 meeting whenever they first came out, so we put this in your packet, so you can look at it, so you can take action at your next Council meeting which is two weeks and a day from today. So that's why these are in here. We never got around to them, and we want to take action at the next Council meeting.

<i>Council Operations</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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CHAIR LUCE: Good. The next issue is EFSEC funding. I think I've talked to a lot of you about this. Here's the issue basically. The statute currently provides -- let me back up. EFSEC practice for as long as I can recall, forever, you –

MR. FIKSDAL: That you can recall?

CHAIR LUCE: That you can recall.

MR. FIKSDAL: Or Mike can recall.

MR. MILLS: Forever.

CHAIR LUCE: EFSEC practice forever has been to bill applicants and licensees for all costs associated with EFSEC operation. That includes O & M. Some parties have raised an issue with us about whether that's appropriate, and they have pointed to RCW 80.50.071(1)(b)(c) I believe. In essence I will just tell you what the statute says unless you really want to look it up. Basically what it

says is that the applicants and the licensees who are being monitored shall pay "such reasonable costs as are actually and necessarily incurred by the Council in processing the application or," and I can't find the other spot right now, but basically in monitoring. The issue has been raised about whether that's an appropriate approach, and we need to address that issue. We have basically I think three different options. Option one would be just keep doing what we're doing. Some parties have suggested that they feel strongly enough about that that they might seek other redress. Perhaps in the form of requesting an AGO letter on that. The second option would be for us just to say, "Well, you're right. We were wrong. For the last 40 years we have been conducting business inappropriately. Now, the third option is to take a hard look at the statute and what our policies have been and try to determine whether we want to change those or not. So what I've laid out here is the latter approach. Allen is going to help me on this, and what I hope to do is to have an agenda item here in the not too distant future that puts this issue before anybody who shows up and gives them an opportunity to comment on it because the only people who have raised this issue and with whom we've discussed this issue are the applicants and the licensees, so other stakeholders who normally appear before EFSEC are unaware of the discussions that are ongoing. And it seemed to me just as a matter of fairness they need to know that this issue isn't being submitted by the Council and to give those people, any people, a reasonable amount of time within which you can pick it, two weeks, three weeks in which to provide written comments. The upshot of which would be EFSEC would have an informal, I stress, informal policy development during which we would make a recommendation. We would come to a recommendation among ourselves on how to proceed. We could proceed just as business is now or we could choose to do something different. If we choose to do something different, we need to make that decision in time to approach CTED and OFM prior to the next budget biennium being prepared. Which is when?

MR. FIKSDAL: We'd probably have our information by August or September.

CHAIR LUCE: I would hope we could do it well before then. But in any case in the interim what I've asked Allen to do is to try to start looking at what actually that would be in terms of if you construed actually and necessarily incurred by the Council in processing the application or monitoring if you construed that very, very narrowly what would that mean in terms of additional cost that were not reimbursed by applicants and licensees of EFSEC; in other words, what would you need to cover or what would you need. And you could try and get some grants or you could request money from the legislature or you could -- there's a number of options available. So I think we need to have that discussion among ourselves, I think we need to let the public have an opportunity to comment on that, and then I think we need to make a recommendation to CTED. CTED would be the appropriate person to make that determination?

MR. FIKSDAL: Well, our budget is included in the CTED budget. We would work with CTED and be included, and it has to be part of the Governor's proposal, so the Governor's office is involved, OFM. Just the normal process.

CHAIR LUCE: So that's what this memo is all about. It's just an issue that I think some of you actually sat in on a meeting with the independent power producers when they raised this issue. And the other option would just be, maybe I mentioned it, just to say, well, we've been doing things for 40 years and to change. But doing that without bringing this to the attention of other people who come to EFSEC didn't seem to me, it just didn't taste right. It seemed like they need an opportunity to comment. Yes, Hedia.

MS. ADELSMAN: Mr. Chair, I may be wrong, but in reading the rules I thought there was an amendment that we're also suggesting adding to the rule on the overhead cost, so it actually looks like we should maybe look at that section in light of this discussion or because you're talking about a time line.

MR. FIKSDAL: There are different ways to interpret what the rule says. I think if you're looking at overhead, the question then is what goes into overhead? And I think that's more the case of what we're looking at under this memo is what are all of those factors that go into an overhead or do you want to call it that or the general things that we charge to applicants? I think part of the one interpretation of the proposed changes to the rule could be, you know, just to make clear that things like rent, copy machines, and computers, and you know types of overhead costs are included in that.

MS. ADELSMAN: Because OFM does define overhead. The only reason I brought it up is because we do have in the rules a proposed change.

MR. FIKSDAL: I mean there's a CTED overhead too that gets charged on stuff.

CHAIR LUCE: How much is it now? 40 percent?

MR. FIKSDAL: Thirty percent.

CHAIR LUCE: Thirty percent of our budget is directly –

MR. FIKSDAL: Well, some of it.

CHAIR LUCE: Thirty percent roughly of our budget –

MR. FIKSDAL: Excluding contracts, goods and services, travel and equipment¹.

CHAIR LUCE: -- goes directly to CTED.

MR. FIKSDAL: That's the agency it goes through there, and that's controlled by OFM and all sorts of other factors. But for me a lot of this is there's some big gray zone, and some people have brought up issues that they don't think are actions or Council work they should be paying for. But there's a lot of importance for me to find out exactly where is the line or is there a bright line because I can see a lot of gray areas and to identify the gray areas what's in and what's out is one of the most important things for me.

MR. IFIE: I think the proposal that Jim has on the table is a good one. It would consider a good faith effort on our part to try to find out if there were any issues that need to be addressed with regards to how EFSEC funding is done. I'm talking about an open forum where all the different stakeholders have a chance to have input into it, so I would say let's go for it and schedule it.

CHAIR LUCE: Okay.

MR. IFIE: That would be my recommendation. I would schedule it, do it, so that the people that are raising the issues could have a sense that we are taking their word seriously and doing something about it.

CHAIR LUCE: I would like to talk to Allen and any Councilmembers who have ideas, but I think we need to get the word out to the community at large maybe by an email or otherwise that this issue is alive and we are going to solicit input from you either orally or in writing. In a large agency such as DNR or Fish and Wildlife or CTED or Ecology a 20 percent cut can be absorbed painfully, but you can move empty FTE slots around. You can do lots of different things. If hypothetically your O & M here was 20 percent -- I'm not saying it is -- that you couldn't recover from applicants and licensees, there's no place left to cut. I mean in a real sense -- well, I won't finish the sentence. But, you know, it would

¹ CTED indirect rate is applied to Salaries and Benefits only.

be significant, very significant to EFSEC's continued operation. It also would obviously and appropriately show us that's the way it goes and put our program, whatever it may be, before the legislature. Nothing wrong with that. You go up and defend your program. But some people might, you know, propose a rule to do something that they think may be good for the environment and maybe you disagree. There's a very easy way to deal with that is delete the funding for that program. Sorry. Don't want to go there. Conversely the opposite can happen as well. So there's some longer term consequences to this that people need to think through in terms of EFSEC's operation in the future. That's why I think it requires a little bit of deliberation.

MR. IFIE: So what kind of time frame are you thinking about?

CHAIR LUCE: We need to get it done in time to have a recommendation to go, if necessary, to CTED and OFM and get ready for the next budget biennium if in fact we go that direction. I would like to do it by sometime this late spring, early summer. It doesn't seem to me like it should take forever to do that. We could talk about it for a long time.

MR. IFIE: The sense I got was that because I was at the same meeting that you were at and it seems like the time frame that the people expressed concern or opinions about was February. We are in February now. So are we going to start it now or shall we postpone it?

CHAIR LUCE: I talked to the people. I talked to Bob Kahn and told him what we were going to do. And obviously they would prefer that we move right now, and I told him that I don't think that that's possible. I told him that's possible, but it wouldn't be fair to other stakeholders. So I told him that we're going to go ahead in this direction, and they will have to make whatever decisions they want to.

MR. IFIE: I think the other part of this discussion is that it's still a good thing whether or not even if the people concerned are going to go in a different route, even if they're going to go ask for an AGO, it's still a good thing for us to look at how we are financed or how the budget works and make any fine tuning that needs to be made.

CHAIR LUCE: Right. And another option would be going to each one of our member agencies and ask them to contribute to a certain amount of O & M to our budget in addition to anything else.

MR. IFIE: Ecology could probably contribute a lot, right?

CHAIR LUCE: They've got all the money for the modeling. At least you could bring along a few dollars for O & M.

MS. ADELSMAN: We talked about it generally. We talked about certain things like the rules. Maybe we would be open to that. You know, if it's project specific, that's different.

MR. FIKSDAL: I think there's things we can talk to other councils and boards and see how they're funded.

MS. ADELSMAN: Yeah, good idea.

MR. FIKSDAL: I think this Council is pretty unique in it's a regulatory body and it's fee supported where most other Councils' get money from the legislature.

MS. ADELSMAN: A hundred percent from the general fund like all the environmental hearing boards. But either I'm under hydraulic, again, so my agency pays or gets paid by the general fund.

MR. FIKSDAL: We are almost unique in state government, but we can still check.

CHAIR LUCE: Anything else for the good of the order?

MS. TOWNE: Mr. Chairman, can you tell me why the September 30 draft minutes are appended to the agenda?

MS. ADELSMAN: Oh, you were outside.

CHAIR LUCE: Allen.

MR. FIKSDAL: Because we forgot to ever do them, and so we gave them to you to review, so at your next meeting you take some action.

MS. TOWNE: I guessed that.

MR. FIKSDAL: In other words, it's a dope slap.

CHAIR LUCE: We wanted to see how bright and alert Councilmembers were. We'll put the April 1st meeting in.

MS. ADELSMAN: If Allen didn't bring it up, I wouldn't have caught it, but Chris did. Good.

ITEM NO. 7: ADJOURN

CHAIR LUCE: Okay. That's it. Anything else for the good of the order? Any comments from the public? We stand adjourned.

(Whereupon, the Council meeting was adjourned at 3:22 p.m.)