

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of: )  
 Application No. 2006-01 )  
 )  
 ENERGY NORTHWEST ) Prehearing Conference  
 )  
 PACIFIC MOUNTAIN ENERGY CENTER ) Pages 1 - 51  
 POWER PROJECT )  
 \_\_\_\_\_ )

A Prehearing Conference in the above matter was held in the presence of a court reporter on September 20, 2007, at 2:00 p.m., at the Kalama Community Center, 126 North 2nd Street, in Kalama, Washington before Energy Facility Site Evaluation Councilmembers.

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ENERGY NORTHWEST, Elizabeth Thomas, Attorney at Law, K&L/GATES, 925 Fourth Avenue, Suite 2900, Seattle, Washington 98104-1158.

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

NORTHWEST ENERGY COALITION, WASHINGTON STATE ENVIRONMENTAL COUNCIL, and SIERRA CLUB, Jan Hasselman, Attorney at Law; Steve Mashuda, Attorney at Law; and Joshua Osborne-Klein, Attorney at Law, Earthjustice, 203 Hoge Building, 705 Second Avenue, Seattle, Washington 98104-1711.

Reported by:

SHAUN LINSE, CCR

CCR NO. 2029

1 APPEARANCES (Cont'd):  
 2 COLUMBIA RIVER KEEPERS, WILLAPA HILLS AUDUBON  
 3 SOCIETY, and ROSEMERE NEIGHBORHOOD ASSOCIATION, R. Scott  
 4 Jerger, Attorney at Law, Field & Jerger, LLP, Oregon  
 5 National Building, 610 S.W. Alder Street, Suite 910,  
 6 Portland, Oregon 97205.  
 7 DEPARTMENT OF ECOLOGY, Laura J. Watson, Assistant  
 8 Attorney General, 2425 Bristol Court S.W., P.O. Box 40117,  
 9 Olympia, Washington 98504-0117.  
 10 \* \* \* \* \*  
 11 CHAIR LUCE: This is a meeting of the Energy  
 12 Facility Site Evaluation Council to consider an  
 13 application from Energy Northwest for the siting of a  
 14 Kalama Power project.  
 15 My name is Jim Luce. I'm the Chair of the  
 16 Energy Facility Site Evaluation Council.  
 17 Clerk will call the roll, please.  
 18 MR. POSNER: Yes.  
 19 Community Trade and Economic Development?  
 20 MR. FRYHLING: Dick Fryhling present.  
 21 MR. POSNER: Department of Ecology?  
 22 MS. ADELSMAN: Hedia Adelsman present.  
 23 MR. POSNER: Fish and Wildlife?  
 24 Jeff Tayer I believe is excused.  
 25 Department of Natural resources?

1 MS. WILSON: Judy Wilson present.  
 2 MR. POSNER: Utilities and Transportation  
 3 Commission?  
 4 Tim Sweeney I believe he is excused as well.  
 5 The Chair?  
 6 CHAIR LUCE: The Chair is present.  
 7 MR. POSNER: Local Government. City of  
 8 Kalama?  
 9 MR. ERICKSON: Justin Erickson present.  
 10 MR. POSNER: Cowlitz County?  
 11 MR. EATON: Vern Eaton present.  
 12 MR. POSNER: Port of Kalama?  
 13 MR. RADER: Bruce Rader, Kalama.  
 14 MR. POSNER: Administrative Law Judge?  
 15 JUDGE WALLACE: Bob Wallace.  
 16 MR. POSNER: Assistant Attorney General?  
 17 MR. CREWS: Kyle Crews.  
 18 CHAIR LUCE: There is a quorum. We will  
 19 proceed with this special meeting today, Thursday,  
 20 September 20, 2007, prehearing conference, and I will at  
 21 this time hand the gavel and all of the responsibility  
 22 over to Judge Wallis.  
 23 Judge Wallis.  
 24 JUDGE WALLIS: Thank you very much, Chairman  
 25 Luce.

1 This is a prehearing conference of the  
 2 Washington State Energy Facility Site Evaluation Council  
 3 held in Kalama, Washington on September 20, 2007. My name  
 4 is Bob Wallis and the Council has designated me as the  
 5 Administrative Law Judge for this proceeding.  
 6 This conference is being held on due and  
 7 proper notice to all interested parties. I am going to  
 8 ask for appearances at this time and ask that you state  
 9 your name and the name of your clients, the role of your  
 10 clients, your contact information, your street address,  
 11 telephone, fax, and email. If you have more than one  
 12 attorney representing the same client, I ask the lead  
 13 attorney merely to state the information for himself or  
 14 herself and then state the name of the associate counsel.  
 15 I'd like us to begin with the sponsor or the  
 16 Applicant in these proceedings.  
 17 MS. THOMAS: Thank you, Judge Wallis.  
 18 JUDGE WALLIS: It's for PBW and not for  
 19 amplification purposes.  
 20 MS. THOMAS: In that case I will stop  
 21 clanging in the ears of the viewers.  
 22 My name is Elizabeth Thomas. I represent  
 23 Energy Northwest. Energy Northwest is the applicant in  
 24 this proceeding. My address is 925 Fourth Avenue, Suite  
 25 2900, Seattle, Washington 98104. My telephone number is

1 206-370-7631.  
 2 JUDGE WALLIS: Counsel for the Environment.  
 3 MR. TRIBBLE: Good afternoon. My name is  
 4 Mike Tribble. I'm an Assistant Attorney General for the  
 5 State of Washington and my client for the purpose of this  
 6 proceeding is the people of the State of Washington. My  
 7 telephone is 360-753-2711 and my address is P.O. Box  
 8 40100, Olympia, Washington 98504.  
 9 JUDGE WALLIS: Councilmember Agencies,  
 10 Department of Fish and Wildlife counsel present today?  
 11 CTED counsel present today?  
 12 Petitioners for intervention. The Northwest  
 13 Energy Coalition.  
 14 MR. MASHUDA: Good afternoon. My name is  
 15 Steve Mashuda and I represent petitioners for intervention  
 16 Northwest Energy Coalition, Washington Environmental  
 17 Council, and Sierra Club. With me at counsel table is Jan  
 18 Hasselman also from my firm Earthjustice. Our business  
 19 address is 705 Second Avenue, Suite 203, Seattle,  
 20 Washington 98104, and the phone 206-343-7340.  
 21 JUDGE WALLIS: Columbia River Keepers?  
 22 MR. JERGER: Scott Jerger, Field & Jerger,  
 23 LLP, 610 S.W. Alder Street, Suite 910, Portland, Oregon  
 24 97205.  
 25 JUDGE WALLIS: Are there any other

1 representatives present?  
 2 MS. WATSON: Laura Watson, Assistant  
 3 Attorney General on behalf of the Department of Ecology.  
 4 Department of Ecology is a state agency charged with  
 5 protecting the state's air, water, and land resources.  
 6 Ecology plans to participate as a party in this  
 7 proceeding. My phone number is 360-586-4614, fax is  
 8 360-586-6760, email is lauraw2@atg.wa.gov. I'm sorry.  
 9 Did you also want a mailing address?  
 10 JUDGE WALLIS: Pardon?  
 11 MS. WATSON: Did you also want a mailing  
 12 address?  
 13 JUDGE WALLIS: Yes, please.  
 14 MS. WATSON: Mailing address is P.O. Box  
 15 40117, Olympia, Washington 98504.  
 16 JUDGE WALLIS: Does that conclude the  
 17 appearances?  
 18 Is there anyone else present today who  
 19 wishes to appear as a representative or party?  
 20 MR. JERGER: Point of clarification, Your  
 21 Honor, is that Columbia River Keepers is the lead  
 22 intervenor. It's also representing the interest of  
 23 co-intervenors Willapa Hills Audubon Society and Rosemere  
 24 Neighborhood Association.  
 25 JUDGE WALLIS: So noted.

1 Very well. I am going to ask you each to  
 2 submit all of your contact information to the Council and  
 3 we will prepare a service list and circulate that among  
 4 the parties. Thank you very much.  
 5 JUDGE WALLIS: Now it's time to consider the  
 6 petitions for intervention, and let me ask at this time  
 7 whether the Applicant will have any objections to any  
 8 petitions for intervention?  
 9 MS. THOMAS: Yes, we will and we'll have  
 10 some suggestions for consolidation.  
 11 JUDGE WALLIS: Very well. Let's take the  
 12 petitions individually then and begin with the joint  
 13 petition of Columbia River Keepers, Willapa Hills Audubon  
 14 Society, and Rosemere Neighborhood Association.  
 15 MS. THOMAS: Thank you, Your Honor. We have  
 16 no objection to the intervention of Columbia River  
 17 Keepers. We would like to suggest some clarifications to  
 18 the issues as they stated them and bring that up when it's  
 19 time to discuss the issues. We do not object to the  
 20 intervention of the River Keepers.  
 21 Willapa Hills Audubon Society I guess we  
 22 don't see that intervention is necessary for them to  
 23 protect their interests because their interest is largely  
 24 the same as Columbia River Keepers when it comes to the  
 25 environment. Also, we note that the petition is not

1 verified by the petitioner as contemplated by Washington  
 2 Administrative Code 463-30-091. What was submitted was a  
 3 statement from Brett VandenHeuvel who identified himself  
 4 as the staff for River Keepers and said he was authorized  
 5 to sign for Willapa Hills Audubon and also Rosemere  
 6 Neighborhood Association. But there is no one who has  
 7 said I am a member of this organization and I'm authorized  
 8 to sign this and again the same for the Rosemere  
 9 Neighborhood Association.  
 10 In the event that intervention is granted,  
 11 we respectfully request that Willapa Hills Audubon be  
 12 consolidated with River Keepers for purposes of the  
 13 hearings. So basically they would be submitting a single  
 14 set of testimony, conducting single cross-examination,  
 15 putting in a single brief on behalf of their River  
 16 Keepers, Willapa Hills, and the same would be for  
 17 Rosemere.  
 18 The Rosemere Neighborhood Association, again  
 19 the petition is not verified. In that case it does not  
 20 appear they have an interest that differs in any manner  
 21 than that of the general public. They're an organization  
 22 from Clark County. I looked on their website for their  
 23 mission statement, and I have a copy that I can hand out.  
 24 It doesn't appear to bear any particular relation to  
 25 energy facilities or anything going on outside of Clark

1 County so I don't see that they have an interest that's  
 2 different from any member of the general public. It's not  
 3 apparent that this proposed facility would have any impact  
 4 on the issues this organization does address and they  
 5 don't have any apparent expertise to work with this  
 6 Council. There isn't any particular interest that they  
 7 specify where they could add to understanding the issues.  
 8 So for that objection he would urge the Council to deny  
 9 intervention to the Rosemere Neighborhood Association.  
 10 JUDGE WALLIS: Mr. Jerger.  
 11 MR. JERGER: Assuming Rosemere, Willapa  
 12 Hills, and Columbia River Keepers are all allowed to  
 13 intervene, we would be submitting one brief on behalf of  
 14 all organizations. There wouldn't be three separate legal  
 15 briefs in that proceeding.  
 16 To address her concerns I'll start with  
 17 Willapa Hills. They do have a distinct industry interest  
 18 which is separate from the other groups in that they're an  
 19 Audubon society more concerned with aquatic habitat,  
 20 wetland fill issues as opposed to some of the more  
 21 discrete issues of Columbia River Keepers which are water  
 22 quality, water quantity, aquatic environment issues.  
 23 There have been declarations submitted by  
 24 members of the of the society with our motion for  
 25 intervention which explain in detail the members

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1 particular interest, how they would be impacted by the  
2 proposed facility, and the activities that the members  
3 engage in that affected area.  
4 In regards to Rosemere Neighborhood  
5 Association, they also have a very discrete topic which  
6 they actually do have expertise on which interests them in  
7 this proceeding and that's the aquifer issue. The aquifer  
8 that most of Rosemere uses, even though they are located  
9 in Clark County near Vancouver, is hydrologically  
10 connected to the river here and the aquifer here that the  
11 Applicant is proposing to inject and sequester carbon  
12 into. And Rosemere has been actively involved in that  
13 sole-source aquifer designation and in those aquifer  
14 issues and they do believe they have some expertise to  
15 bring and bear on that issue. And there are actually  
16 folks here in the audience from both Willapa Hills and  
17 Rosemere that would be happy to answer questions about  
18 their particular organizations and interests and how they  
19 are discrete from Columbia River Keepers.  
20 JUDGE WALLIS: What about the concern  
21 related to verification of the petitions?  
22 MR. JERGER: Sure. I believe that pursuant  
23 to this particular administrative rule all is required is  
24 that the attorney for Columbia River Keepers verify that  
25 he has the authority to represent the allegations made in

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1 the petition for intervention. We think that in  
2 combination with the numerous declarations submitted by  
3 members of all three groups should serve to satisfy the  
4 intent in the letter of the administrative rule.  
5 MS. THOMAS: Accepting representations from  
6 counsel, we would withdraw our objection to the Willapa  
7 Audubon group if their participation is limited to the  
8 issues of the aquatic habitat and we withdraw our  
9 objection to Rosemere if the issues they participate are  
10 limited to the aquifer that extends into Clark County.  
11 MR. JERGER: Again, I'm not so sure I  
12 understand what practical differences that would be. I  
13 think there's going to be one brief from all three groups.  
14 JUDGE WALLIS: Is the same qualification  
15 related to testimony?  
16 MR. JERGER: Well, I guess that would be the  
17 question for the Applicant.  
18 MS. THOMAS: Yes. As we stated for River  
19 Keepers we would ask that in the case of both sets of  
20 intervenors that they consent to consolidate every aspect  
21 of their participation in the proceeding. So they would  
22 put in a single set of testimony, have a single round of  
23 cross-examination, single consolidated approach to  
24 discovery and group brief.  
25 MR. JERGER: Well, I don't think, Judge, and

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1 forgive me if I don't understand exactly what the process  
2 is.  
3 JUDGE WALLIS: Let me ask counsel. Are you  
4 inquiring whether the three different groups would be  
5 submitting more than one view in terms of testimony and in  
6 terms of briefing on any issue?  
7 MS. THOMAS: That's part of it and part of  
8 it is just a numbers issue. River Keepers in the  
9 proceedings to date outside the adjudication has raised  
10 issues related to the aquifer and have raised issues  
11 relating to the aquatic environment counsel mentioned. So  
12 it's our view that River Keepers is actually covering  
13 already or is at least addressing to extend the issues  
14 that are being raised by Willapa and Rosemere.  
15 So what we would ask is that the  
16 consolidated, that the River Keepers, Willapa, and  
17 Rosemere set of intervenors present only one set of  
18 witnesses among them. They may have one witness on  
19 aquatic environment. They may have another witness on  
20 aquifer issues. But what we would not want to see is one  
21 Rosemere witness on aquifer and then a Willapa Hills  
22 witness on an aquifer and on top of that the River Keepers  
23 witness on aquifer. And the same would hold true on  
24 cross-examination. They would present a single set of  
25 questions for cross-examination and would not separately

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1 cross-examine witnesses.  
2 MR. JERGER: I don't foresee us presenting  
3 more than one set of witnesses on the same issue or more  
4 different sets of questions from different groups. I  
5 don't know that--you put me on the spot here--I can limit  
6 myself to that. I would like to object to that, but I  
7 can't foresee that we would be doing that.  
8 JUDGE WALLIS: Very well. What I am going  
9 to propose is that we take that as a commitment on your  
10 part, and if later in the proceedings it becomes necessary  
11 for you to approach that question again, you have leave to  
12 do so explaining the reasons and we will consider that at  
13 that time.  
14 MR. JERGER: Thank you.  
15 JUDGE WALLIS: Ms. Thomas, does that resolve  
16 your concerns about these interventions?  
17 MS. THOMAS: Yes, it does, Your Honor. We  
18 would still request that Willapa and Rosemere limit the  
19 intervention to those issues that they have.  
20 JUDGE WALLIS: Is that consistent with your  
21 representations, Counsel?  
22 MR. JERGER: Well, I still think if  
23 they--you know, I don't want to limit them to the interest  
24 that I just mentioned because they have a lot better idea  
25 of what they are doing than I do, and if there are other

1 interests they want to address, I don't want to limit  
 2 that at this point.  
 3 JUDGE WALLIS: Again, what I would like to  
 4 do here I believe is limit their participation in the  
 5 issues that have been identified in the documents that you  
 6 have submitted, and if they go beyond the issues that are  
 7 stated there, that if you approach the Council and ask to  
 8 expand the scope of their participation. Is that adequate  
 9 for both of you?  
 10 MS. THOMAS: Yes.  
 11 MR. JERGER: Yes, Your Honor.  
 12 JUDGE WALLIS: Very well. With that  
 13 understanding the petitions are granted.  
 14 Northwest Energy Coalition.  
 15 MS. THOMAS: Counsel for Northwest Energy  
 16 Coalition and I have spoken and I think we have an  
 17 understanding that that set of three intervenors will  
 18 consolidate for purposes of discovery, testimony,  
 19 briefing. And there is an open issue on whether they  
 20 would consolidate for appeal, but we think that would be  
 21 possible and that is the request of Energy Northwest.  
 22 On that basis--and I understand that  
 23 Northwest Energy Coalition would serve as the lead party  
 24 to the extent that there needs to be a lead party, and  
 25 with that understanding we would have no objection.

1 MR. MASHUDA: That's correct, Your Honor,  
 2 and just for a minute if I can touch on the appeal issue.  
 3 I think obviously these three groups are acting as one  
 4 through counsel in this matter, and to the extent that  
 5 there is a proceeding after this proceeding I think  
 6 obviously the intent at this point is to continue to act  
 7 as a group.  
 8 My only qualification I guess is that it's  
 9 difficult to make that representation in stone at this  
 10 moment sitting here at the beginning of the adjudicatory  
 11 process before we even get to the level of appeal. So  
 12 that's the only ambiguity I think that's left. I believe  
 13 certainly our intent is to continue to act as one. I  
 14 couldn't put a 100 percent guarantee that one group may  
 15 not continue on in the appeal process or the two or three  
 16 groups wouldn't continue on. I just simply don't know  
 17 that as we sit here today.  
 18 MS. THOMAS: And we would in turn request  
 19 that if more than one of them appeals that they remain  
 20 consolidated on appeal.  
 21 MR. MASHUDA: Again, our intent would be to  
 22 have that occur. I guess again not knowing where we're  
 23 going to go with this process and what the issues will end  
 24 up being, I just don't want to prejudge the outcome, you  
 25 know, even if there will be an appeal at this point. And

1 so I guess I'm willing to sort of similar to with River  
 2 Keepers sort of accept that as a necessary condition and  
 3 if that needs to be reexamined later come back and revisit  
 4 it.  
 5 JUDGE WALLIS: Is that then adequate,  
 6 Counsel?  
 7 MS. THOMAS: Yes.  
 8 JUDGE WALLIS: Very well. With that  
 9 understanding, the petition for the Northwest Energy  
 10 Coalition, the Washington Environmental Council, and the  
 11 Sierra Club are granted.  
 12 MR. MASHUDA: Thank you, Your Honor.  
 13 JUDGE WALLIS: What I would like to do at  
 14 this time is ask the parties what they would like to  
 15 accomplish today, and we will compare that with my list of  
 16 what I would like to accomplish today and see what we have  
 17 on our agenda for the remainder of the conference.  
 18 Counsel, let me ask specifically whether you  
 19 will have any procedural matters to raise?  
 20 Yes.  
 21 MS. WATSON: One procedural matter that--I'm  
 22 sorry. I'm a little congested so when you go like that,  
 23 it told me to raise my voice. I appreciate that.  
 24 One procedural matter that I would like to  
 25 raise on behalf of the Department of Ecology is my

1 understanding that my colleagues sitting at the table with  
 2 me want to raise this also. It pertains to the schedule  
 3 Energy Northwest has submitted. What we would like or  
 4 I'll speak for myself. What I would like to see on behalf  
 5 of Ecology is a true bifurcation of the issues. It was my  
 6 understanding based on watching the last EFSEC meeting  
 7 that there was likely to be a bifurcation so that issues  
 8 related to Senate Bill 6001 would first be decided before  
 9 we would delve into these other substantive issues, and so  
 10 that is an issue that I would like to see addressed today.  
 11 JUDGE WALLIS: Let me interject at this  
 12 point and say that topic will be addressed as will the  
 13 approval of schedule.  
 14 Are there other matters? Does any party  
 15 wish to make a dispositive motion in this matter?  
 16 I don't see any hands being raised so we  
 17 will take that as a negative.  
 18 Ms. Thomas?  
 19 MS. THOMAS: There are two things we would  
 20 like to address. We prepared a consolidated issues list  
 21 and I am hoping it may be possible to make some progress  
 22 on this today, although other counsel have seen this for  
 23 the first time only a few minutes ago. But we do have  
 24 that available and I gave a copy to Mr. Posner and have  
 25 several additional copies, and we are ready to embark on a

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1 discussion of how the issues should be articulated and  
2 which ones are within or without the scope of the  
3 adjudicative proceeding.  
4 The other is it occurred to me it might be a  
5 good idea to establish a ground rule that everyone would  
6 be willing to accept service by email, if indeed people  
7 are able to, just to expedite things generally and maybe  
8 save a few trees in the process.  
9 JUDGE WALLIS: Very well. That is a  
10 relatively direct question that I suspect won't particular  
11 take us a long time to resolve. Let me ask whether  
12 counsel are willing to accept service by electronic mail.  
13 Each of you.  
14 MR. TRIBBLE: Perhaps it would be easier to  
15 ask whether or not we have any objection or not.  
16 Personally I have none.  
17 JUDGE WALLIS: Does anyone have an  
18 objection?  
19 Because of the language in the  
20 Administrative Procedural Act which does not countenance  
21 electronic mail, my request is of all counsel that you  
22 submit to the Council a waiver of the APA requirement that  
23 service be by mail or personal delivery. And upon doing  
24 that then we will consider service by electronic mail to  
25 be adequate for purposes of the docket.

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1 Hard copies are still required for the  
2 agency, and any documents that you file with the agency  
3 should be filed in hard copy. I will work with staff to  
4 determine the number of hard copies that are required for  
5 filing and we will advise any parties of that.  
6 All right. Counsel have alluded to the fact  
7 that the siting Council does have some concerns about some  
8 issues in this docket, and I have a list of questions  
9 which unfortunately was not finalized until today. I will  
10 identify those questions and I will see that a copy is  
11 sent to each of the parties by electronic mail as long as  
12 you make sure that staff has your electronic mail address  
13 no later than tomorrow morning. We won't get back to the  
14 office until late tonight so we will handle this in the  
15 morning and we will distribute a list of the questions so  
16 you can look at them verbatim. There will be no surprises  
17 because we will have identified them this afternoon.  
18 You indicated that you have a consolidated  
19 issues list, Ms. Thomas, and I'm wondering what's the best  
20 way to approach that. If we take a brief recess at some  
21 point and you discuss this with other Counsel, would that  
22 be appropriate to then raise it with the Council?  
23 MS. THOMAS: Yes.  
24 JUDGE WALLIS: Very well. We also have  
25 questions of scheduling. Council has identified a

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1 preferred schedule for briefing in this matter of the  
2 questions that the Council has, and I will be sharing that  
3 with you after we discuss the questions, and then there is  
4 a question of the schedule for the main proceeding itself.  
5 I do believe the Council does have a  
6 preference for bifurcating the issues and addressing at  
7 least the legal aspects of the matters relating to ESSB  
8 6001 separately from the factual and legal issues that are  
9 in the docket. So we will before the day is done take a  
10 look at Ms. Thomas's proposed schedule and we will at that  
11 point look at the overall schedule for the docket.  
12 Are there any other issues that parties wish  
13 to raise?  
14 What I would like to do now is identify the  
15 questions that the Council has. Chairman Luce I believe  
16 prior to the meeting did indicate the general nature. To  
17 my thinking they fall into four different categories and  
18 I'm going to identify the categories. I will also  
19 identify the question, but again we will be distributing  
20 the language of these questions to each of you so that you  
21 will have ample opportunity to look at them and review to  
22 respond to them.  
23 The first category is as to rulemaking, and  
24 the question is whether ESSB 6001 requires the proceedings  
25 be stayed until the energy siting council and the

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1 department adopt rules to implement and enforce the  
2 greenhouse gases emissions performance standard. So the  
3 question is whether rulemaking is required before  
4 proceeding.  
5 The second part of that question is whether  
6 if rulemaking need not be completed under ESSB 6001 prior  
7 to consideration of the PMEC project because the project  
8 is pending before EFSEC on the effective date of the law  
9 does the greenhouse gas plan that has been submitted  
10 include all of the requirements of Subsection 11 of  
11 Section 5? If so, why do you reason that? And, if not,  
12 why do you reason that? And, if not, what specific  
13 conditional elements would be needed?  
14 The second group of inquiries relates to  
15 sufficiency of the PMEC greenhouse gas reduction plan.  
16 The first question related to that is whether the  
17 applicant's Greenhouse Gas Reduction Plan is legally  
18 sufficient for the applicant to proceed.  
19 Second question is whether the proposed PMEC  
20 greenhouse gas plan on its face works in the language of  
21 the statute in unison with the state's carbon dioxide  
22 mitigation policy, Chapter 80.70 RCW and its related rules  
23 for fossil fueled thermal electric generation facilities  
24 in the state. Why or why not, and, if not, what kind of  
25 modification of the plan would be needed for such unison?

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1 The third question is whether EFSEC if it  
2 were to issue a final site certification agreement under  
3 authority of RCW 80.50, would this submitted sequestration  
4 plan be capable of a demonstration of good faith effort to  
5 implement it? And why or why not with respect to the  
6 following elements:  
7 First, financial assurances--and, again,  
8 these are elements set out in the statute--geological or  
9 other approved sequestration commencing within five years  
10 of commercial operation, monitoring, penalties for failure  
11 to achieve implementation. If the project could not  
12 operate until EFSEC finds compliance would this not be a  
13 sufficient penalty?  
14 Provisions for the purchase of offsets under  
15 Section, 5(11)(e).  
16 And how may an applicant meet the  
17 requirement that full and sufficient documentation to  
18 support the plan of sequestration is met if technology to  
19 support such plans does not yet exist?  
20 The third group of questions relates to the  
21 timing of the Greenhouse Gas Reduction Plan.  
22 First, must the applicant submit a facially  
23 adequate Greenhouse Gas Reduction Plan before the  
24 adjudicative process may again? May the Council delay the  
25 adjudicative review of an application until the Applicant

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1 submits legally sufficient Greenhouse Gas Reduction Plan?  
2 If there is doubt under WAC 463-60-010 about  
3 the sufficiency of the Greenhouse Gas Reduction plan as  
4 submitted, should further application processing be  
5 altered until the applicant submits a plan that is  
6 arguably adequate on its face or maybe applicant agrees to  
7 modify its proposed plan during the hearing process under  
8 WAC 463-60-116? And state your reasoning.  
9 If the Council rules that a Greenhouse Gas  
10 Reduction Plan is deficient on its face and the applicant  
11 may not supplement it during the adjudication may the  
12 applicant reapply or resubmit its application with a  
13 revised plan and still be vested under the exception of  
14 Section 5(13) of ESSB 6001?  
15 The fourth group of questions relate to the  
16 possibility of a conditional permit.  
17 First, is whether an applicant must submit a  
18 legally sufficient Greenhouse Gas Reduction Plan before  
19 the Council submits a Draft Site Certification Agreement  
20 to the Governor or may the Council condition operating  
21 authority on later approval of such a plan prior to  
22 operation?  
23 Is the issue of a final gas reduction  
24 compliance with ESSB 6001 premature to consider at this  
25 time, given EFSEC's authority to issue a conditional

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1 certificate allowing construction upon reserving approval  
2 of commercial operation until construction is completed  
3 and all gas reduction goals established?  
4 Is the PMEC Greenhouse Gas Reduction Plan as  
5 submitted a sufficient, good faith demonstration of  
6 compliance to warrant issuance of a conditional  
7 certificate allowing construction? If not, what elements  
8 are lacking?  
9 And, finally, the applicant proposes to run  
10 the plant on natural gas for an initial period and if  
11 gasification is not feasible to run the plant indefinitely  
12 on natural gas is this an adequate alternative assuming  
13 that emissions under natural gas operations are  
14 anticipated to be lower than under gasification? If an  
15 operation is a natural gas fired facility will it comply  
16 to the requirements of ESSB 6001?  
17 So those are the questions and what I would  
18 like us to discuss now is the schedule for responding to  
19 those questions. Are parties feeling adequately prepared  
20 to talk about the briefing schedule?  
21 Very well. The schedule that I have  
22 penciled in subject to discussion here would have the  
23 opening briefs due on October 11 and answering on October  
24 25 and reply on November 2. It is possible that the  
25 Council might want oral argument, and if the Council does

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1 after reviewing the submissions desire for oral argument,  
2 we would propose to have that during the second week of  
3 November at a date to be determined.  
4 This schedule would allow the Council to  
5 consider the presentations and to deliberate and to  
6 resolve the issues prior to the end of the year.  
7 Is this a schedule that the parties feel is  
8 adequate for you to respond to the questions that are  
9 being asked?  
10 MS. WATSON: I have question. Who will be  
11 filing opening briefs? Would it be on the petitioners or  
12 intervenors or would the Applicant file the initial brief?  
13 JUDGE WALLIS: Is there a preference to have  
14 briefs presented in that manner, Ms. Thomas?  
15 MS. THOMAS: I'm sorry. In the manner for  
16 where the Applicant files an opening brief, the  
17 petitioners file an answer, and then the Applicant  
18 replies?  
19 JUDGE WALLIS: The other model would be to  
20 have everybody file an opening brief, respond to others,  
21 and then reply. So which is your preference?  
22 MS. THOMAS: We would prefer the first  
23 proposal and the schedule is more than ample. We could  
24 file in advance of everything by a week.  
25 MR. MASHUDA: I believe actually the second

<p style="text-align: right;">Page 26</p> <p>1 approach is preferable. That gives us all a little bit  2 more time to address it. That's a pretty comprehensive  3 list of questions; some of which are not susceptible to  4 the shortest and easiest of answers, and I think a  5 staggered three-brief schedule that we're each filing an  6 opening, a response, and a reply probably works best for  7 something this complex and as a matter of first impression  8 the interpretation of this law.</p> <p>9 I would also add that I think, if anything,  10 this is a fairly ambitious time line. So I think moving  11 it up a week is probably going to be a lot more difficult  12 for the parties to meet. I'll let others speak for  13 themselves.</p> <p>14 JUDGE WALLIS: Let me ask whether counsel  15 believe that it would be possible to coordinate your  16 briefing rather than submitting five or six different  17 briefs, to coordinate with one or at least coordinate on  18 issues?</p> <p>19 MR. TRIBBLE: If I may, thank you, Judge,  20 and thank you for speaking very slowly and clearly when  21 you left us with the number of well-articulated questions.</p> <p>22 Before answering that question I think it  23 would be necessary at least for me to have an opportunity  24 to read the questions, have a few minutes to think about  25 the questions, and discuss with other parties and</p>	<p style="text-align: right;">Page 28</p> <p>1 this issue and then additional five minutes to talk about  2 what?</p> <p>3 MS. THOMAS: The issue list five or ten to  4 talk about the approach, right.</p> <p>5 MR. TRIBBLE: I think at this point it would  6 be appropriate for us to talk about the specific issue at  7 hand, 6001 questions that you provided and coordination,  8 and I don't think I'm prepared at this time to limit  9 discussion on the overarching issues to five minutes. I  10 haven't had an opportunity to read them, but just taking a  11 quick look there are significant issues that I have to  12 some of the characterizations of the issues.</p> <p>13 JUDGE WALLIS: Very well. What I would  14 propose is that we take a 30-minute break, and we will  15 provide copies of the questions, and I would ask that you  16 begin approaching the question of the issues sometime to  17 scope, and we will ask you to report back at the end of  18 that 30-minute period. If it looks like you're close to  19 closure at that point, then we may extend the time and  20 we'll see what is going on at that point.</p> <p>21 The final question that I have has to do  22 with whether all other activity with regard to this docket  23 would be stayed during the period of preparation and  24 submission of responses to the Council's questions, and  25 that is a question that I will take up with you at the</p>
<p style="text-align: right;">Page 27</p> <p>1 intervenors whether or not coordination would be  2 appropriate.</p> <p>3 JUDGE WALLIS: Very well. Other thoughts on  4 that?</p> <p>5 MR. MASHUDA: I would support that,  6 especially for the issue of coordination. I think if we  7 could have a moment to look at those and discuss amongst  8 ourselves some of the coordination issues, I think that  9 would be beneficial.</p> <p>10 JUDGE WALLIS: All right.</p> <p>11 MR. JERGER: I concur with everything that's  12 been said.</p> <p>13 JUDGE WALLIS: I'm going to propose we take  14 a recess at this time. You've already indicated that you  15 would like some time to consider the issues list, and we  16 will also provide some draft copies of the questions and  17 you can review those. I'm not sure that we can provide  18 copies for everyone, but we will do our best to pass along  19 what we can. And let me ask how long a recess do you  20 think would be necessary to accomplish these two tasks?</p> <p>21 MS. THOMAS: Twenty minutes. It will take  22 ten to talk about coordinating and five or ten about the  23 issues.</p> <p>24 MR. TRIBBLE: Just for clarification  25 purposes, was the proposal 20 or 15 minutes to talk about</p>	<p style="text-align: right;">Page 29</p> <p>1 conclusion of your discussion of the points that we have  2 already identified.</p> <p>3 Is there anything else that parties would  4 like to accomplish before we conclude today's session and  5 the matters that they have identified?</p> <p>6 It appears not. So at this point let's take  7 a 30-minute recess. By my watch that would bring us back  8 at about 3:15 and we are in recess.</p> <p>9 (Recess taken from 2:45 to 3:15 p.m.)</p> <p>10 JUDGE WALLIS all right. Do we have reports?  11 One of the questions was coordination of the briefing.</p> <p>12 MR. TRIBBLE: Yes. Well, to report back, to  13 the extent that the government, intervenors, and parties  14 can, and we will make all good faith efforts to  15 coordinate, we will do that and that includes CTED who  16 doesn't have a representative here today. We have met in  17 advance of today's meeting and discussed just  18 preliminarily the 6001 issues and so I'm comfortable today  19 making that representation.</p> <p>20 JUDGE WALLIS: Very well. And all parties  21 agree?</p> <p>22 MR. MASHUDA: Yes, I think just to clarify I  23 think what we talked about was coordination to the extent  24 possible so not duplicating arguments, but not all filing  25 one brief was the preference from us. But each party has</p>

1 the ability to file a brief, but to the extent we can and  
2 we will do our best, especially amongst the conservation  
3 intervenors, coordinate so that we're not just repeating  
4 the same argument twice in five pages of briefing. We  
5 will definitely do that among ourselves and to the extent  
6 that we coordinate with Counsel for the Environment and  
7 Ecology and CTED we'll definitely do that as well.

8 JUDGE WALLIS: Very well. The subsidiary  
9 question is whether there are simultaneous briefs.

10 MR. TRIBBLE: We also spoke with the  
11 Applicant on this issue as well. What we have--and tell  
12 me if I'm wrong, anyone. What I believe we've agreed to  
13 is simultaneous filing of briefs, but there will be two  
14 rounds of briefing: an opening brief and a response brief.  
15 And what we would request is that the opening brief be  
16 filed on October 25, your proposed answer date, and then  
17 the response briefs of all the parties be two weeks after  
18 that.

19 MS. WATSON: To clarify, I believe one of  
20 the reasons that we thought that that might be a more  
21 workable briefing schedule is in looking through the  
22 questions that the Council proposed, it appears that there  
23 are some questions that are strictly legal questions and  
24 so we believe there would probably be a need to submit  
25 declarations on some of the issues that seem to be mixed

1 legal and factual issues.

2 JUDGE WALLIS: Very well. So with the  
3 opening on October 25 and the answering on November 8.

4 MS. THOMAS: We would be comfortable with  
5 that schedule but have a concern about the proposal for  
6 handling the mixed questions of law and fact.

7 We agree that there are mixed questions of  
8 law and fact. We have no objection to the other parties  
9 submitting evidence in declaration or otherwise, but our  
10 concern is that by taking this approach I think we're  
11 ending up with more of a trifurcated than bifurcated case  
12 because we have, first, the questions that the Council has  
13 posed and the evidence relating to them. The parties have  
14 identified a number of other issues relating to 6001, and  
15 as I understand it, the other parties are reserving their  
16 right to file additional evidence on 6001 issues after the  
17 briefing on the briefing schedule we're describing now is  
18 completed.

19 Our preference would be to see all of the  
20 6001 issues addressed as a consolidated whole so that the  
21 intervenors' prefiled and our rebuttal would come in in  
22 advance of the briefing. I don't have a specific schedule  
23 to propose, but I guess that's the conceptual issue I  
24 wanted to raise. That we have two rounds of evidence but  
25 only one round of evidence on 6001.

1 JUDGE WALLIS: What factual issues do you  
2 see being raised in this inquiry?

3 MS. THOMAS: Oh, I would imagine that one of  
4 them might be sufficiency of financial assurances. I  
5 don't know. The participants would have to speak for  
6 themselves, but we propose a couple of mechanisms that we  
7 believe are adequate financial assurances, and I sense  
8 that some of the other participants may not agree.

9 MR. MASHUDA: Your Honor, just from our  
10 perspective, perhaps one of the questions that falls into  
11 this realm of mixed law and fact would be Question 1(b),  
12 which ends with sort of identifying specific additional  
13 elements that should be included in an adequate  
14 sequestration plan. I believe that's one of these  
15 questions that, of course, all the lawyers could parrot  
16 the statute and testify or provide argument about what the  
17 statute says and what the elements are, but just merely  
18 repeating sufficient technical documentation, for example,  
19 doesn't tell us exactly what the parties think sufficient  
20 technical documentation is. And so that's an example of  
21 one of those areas.

22 And if I could just go back to something the  
23 counsel mentioned before. I think the confusion here is  
24 maybe we are confusing greenhouse gas issues with 6001  
25 compliance issues. I think at least speaking on behalf of

1 the intervenors we represent, our intention is to put into  
2 evidence or to offer evidence that's necessary to answer  
3 the questions of compliance with 6001.

4 I think there are greenhouse gas issues  
5 raised by this project. RCW 80.70, for example, is one of  
6 the issues we raised in our petition was compliance with  
7 Initiative 937 or the Governor's executive order that are  
8 not specifically related to 6001 but do relate to  
9 greenhouse gas emission and think what we're reserving the  
10 right to do is to be able to file if we get to those  
11 issues after we pass this bifurcated threshold; that at  
12 that point we would not be precluded from offering  
13 additional evidence on greenhouse gas issues because those  
14 would then be raised there. But for the purpose of 6001  
15 compliance certainly our intent is to present any and all  
16 evidence that we feel is necessary to be considered and  
17 whether or not the plan complies with 6001 and not to  
18 essentially wait and then three months later offer more  
19 evidence about why 6001 is a factor.

20 JUDGE WALLIS: My understanding and I  
21 believe the Council's understanding is that this exercise  
22 is preliminary and it is aimed largely at legal questions,  
23 and to the extent it relates to facts it would assume the  
24 validity of the facts that are offered and would not  
25 evaluate those facts. And if this threshold is passed,

1 then the evidence supporting that would be reviewed for  
2 adequacy.

3 The Council is aware that there are concerns  
4 about the underlying evidence and does not wish to  
5 foreclose the parties from addressing the evidentiary  
6 issues once the threshold question is determined.

7 So does that ease your concerns on this  
8 matter?

9 MR. MASHUDA: I think I understand. I guess  
10 we're maybe starting off a little bit behind the ball in  
11 this process because we have prefiled testimony that I  
12 haven't reviewed yet so I wouldn't want to characterize  
13 it, but maybe it gets to some of these issues already.  
14 And to the extent that testimony is relevant to resolving  
15 any of these questions, it would be necessary I think for  
16 the folks on this side to have the opportunity to address  
17 that evidence that's been prefiled and I don't know that  
18 we can put the toothpaste back in the tube at this point.  
19 Maybe we can.

20 But I guess our concern is there is some  
21 evidence out there. If it gets to any of these questions  
22 and ends up being utilized in this process one way or  
23 another, then it would be necessary for us to have an  
24 opportunity to address that in answering some of these  
25 questions.

1 JUDGE WALLIS: I think our anticipation  
2 going in would be that you would to the extent necessary  
3 for your presentation to assume the truth of the facts  
4 that are offered, and then in the later phase of the  
5 proceeding you would have the opportunity to rebut those  
6 facts, challenge them through cross-examination. But I am  
7 concerned that we not have two hearings with all of the  
8 related evidence on the threshold issue being heard and  
9 responded to testimony, cross-examination, and then go  
10 through it again.

11 But what I believe we're looking for is just  
12 the threshold question. Assuming the truth of the facts  
13 with the opportunity at a later date, again assuming we  
14 get there, to challenge those facts.

15 MR. MASHUDA: I think I understand. I guess  
16 my question is the facts that we're assuming the truth of  
17 what's that universe I guess for purposes of going forward  
18 here? Are they factual assertions that are made by one  
19 side or another and each side should treat those  
20 assertions as truthful for the purposes of briefing, and  
21 if we get there, are we limited to the face of the  
22 greenhouse gas reduction plan and those are the facts that  
23 we're talking about?

24 JUDGE WALLIS: My contemplation was that we  
25 would limit it to the face of the document that was

1 presented, the Greenhouse Gas Reduction Plan.

2 MS. WATSON: I'm sorry to keep beating on  
3 this, but you had asked what type of additional  
4 information, and I think something that I don't think  
5 anyone has addressed, again back to that question: 1(b)  
6 What specific additional elements would be needed?

7 I do think it's possible for the lawyers to  
8 parrot what's in the statute. On the other hand, I think  
9 that the Department of Ecology has been charged with  
10 reviewing the Greenhouse Gas Sequestration Plan, and I  
11 think through declarations of the Department of Ecology we  
12 would probably be able to at least shed some light on what  
13 that department would like to see as part of a  
14 sequestration plan. So I am wondering whether that is the  
15 kind of factual information?

16 JUDGE WALLIS: I do not believe that is  
17 inconsistent with what I've been contemplating. Yes, it  
18 would be the identification of those matters; that  
19 additional matters that would be required, plus a  
20 statement of rationale rather than the testimony that  
21 would support that potential.

22 MR. TRIBBLE: Judge, are you contemplating  
23 that there won't be need to file declarations in support  
24 of our argument, and that argument will contain--argument  
25 by the Department of Ecology or any of the parties will be

1 presumed to be supported by expert analysis?

2 So if I say, for example, or if Ecology says  
3 a carbon sequestration plan under 6001 should include the  
4 following elements.

5 JUDGE WALLIS: That would be your legal  
6 position and in your subsequent evidence should we get to  
7 that point you would be presenting testimony and  
8 supporting evidence to back up that legal contention.

9 MR. TRIBBLE: So now you're looking for  
10 argument and analysis and policy considerations on the  
11 construction of 6001.

12 JUDGE WALLIS: Yes.

13 MR. TRIBBLE: So getting back to  
14 Ms. Thomas's initial concern that we not readdress issues,  
15 it seems to me that the Council wants to deal with the  
16 legal issues first, and many of the same issues will be  
17 addressed again from the factual standpoint during the  
18 substantive portion of our adjudication.

19 JUDGE WALLIS: Yes. To the extent that the  
20 first question that we are asking has to do with the legal  
21 sufficiency, the second question has to do with the  
22 factual sufficiency.

23 MS. THOMAS: We're prepared to proceed any  
24 way the Council is going to find most useful, and if this  
25 is the approach that you will be doing it, I guess that

1 means I don't see the need to extend the schedule for 14  
2 days. I mentioned earlier we could prefile a week in  
3 advance of the dates proposed here, and we would not want  
4 to let the date slip beyond those proposed. We don't see  
5 a need for that.

6 These parties have been participating in  
7 this proceeding a very long time over the months and now  
8 over a year, and the greenhouse gas plan has been on  
9 record for over two months. All the lead parties have  
10 also all submitted comments on the plan already, including  
11 comments on the legal issues. So clearly they have been  
12 doing a fair amount of analysis and thinking already, and  
13 we don't see the need to let the schedule slip at all  
14 beyond what you proposed.

15 JUDGE WALLIS: I think that as the proposal  
16 is now before the Council it is consistent the schedule  
17 that we identified initially in that there would be no  
18 reply briefs contemplated, merely the answers, and also  
19 that opportunity for the Council's oral argument if it  
20 wishes to hear argument, the opportunity for a full  
21 deliberation by the Council and for preparation on an  
22 adequate order would be on the time frame that was  
23 initially contemplated. So while this set back the  
24 initial date for a period, it does not set back the  
25 schedule for any period, and with that understanding I

1 believe it to be acceptable to the Council.

2 Any questions?

3 MR. TRIBBLE: So for clarification purposes,  
4 opening briefs will be due October 25.

5 JUDGE WALLIS: October 25 and answering  
6 briefs two weeks later which by electronic memory turns  
7 out to be about November 8.

8 MR. JERGER: And then oral argument would  
9 be?

10 JUDGE WALLIS: And oral argument if desired  
11 would be to advise you shortly after November 8 and  
12 attempt to do that during the following week.

13 You might among yourselves determine what an  
14 appropriate day would be during that week and submit a  
15 first preference and a second preference, and we will hold  
16 those dates and that allows you to hold them as well.

17 All right. Any other questions related to  
18 the Council's question?

19 Let's move on then. You were going to  
20 discuss the proposed issues list. Who would like to  
21 report on that?

22 Ms. Thomas.

23 MS. THOMAS: We had some discussion on it  
24 and agreed that the best way to handle it would be for us  
25 to carry on in writing among ourselves over the next few

1 weeks. I think we agreed that it would be good to set  
2 dates, although we did not set dates. I think that the  
3 concept was that I would email this to the parties and  
4 they would mark up proposed revisions and send it back to  
5 me. I suggested that the responses come within a week.

6 JUDGE WALLIS: Is that acceptable?

7 MS. WATSON: I'm sorry. Ms. Thomas, you  
8 asked that our responses come within a week?

9 MS. THOMAS: I'm suggesting that the  
10 responses come back to me within a week. My sense is that  
11 it's going to take more than one iteration to reach  
12 agreement on the things that are susceptible to agreement  
13 and crystallize the issues that we need to present for  
14 decision on the issues list.

15 MS. WATSON: The only request that I would  
16 have is that a week from tomorrow just because I'm going  
17 to be out of the office so much between now and next week.

18 MS. THOMAS: That's fine.

19 JUDGE WALLIS: Very well.

20 MR. TRIBBLE: I would like to question at  
21 this time whether or not this is an appropriate time to  
22 deal with the remaining substantive issues, if what the  
23 bifurcation ordered by this Council during one of its last  
24 meetings is to be taken on its face. We will be dealing  
25 with the legal aspects of 6001, and if that means that the

1 application meets the change, then many of these issues  
2 will change also. Many of the intervenors and the  
3 statutory parties not excluded identified that they  
4 believe the application and the DEIS are vague at the very  
5 least, if not inadequate, in some of the issues that are  
6 identified. So some of the questions that we're dealing  
7 with at this time are our issues that we have identified  
8 to date. These are issues that I don't think we're going  
9 to be able to wrestle with any time soon.

10 And at this point with what I believe a very  
11 ambitious briefing schedule on the legal issues of 6001,  
12 the very many and very important legal issues of 6001, I  
13 believe it would be more appropriate to defer to  
14 discussion of the issues list and any arguments we might  
15 have amongst ourselves until after oral argument at the  
16 very least has been completed. If not at the very least,  
17 at a time when the Council has come back and said it's  
18 time to commence the entire adjudication, not just the  
19 preliminary bifurcated portion of the adjudication.

20 JUDGE WALLIS: Ms. Thomas.

21 MS. THOMAS: That is not acceptable to us.  
22 We have heard the comment a number of times that some  
23 parties feel the application or the Draft EIS is  
24 deficient. We would like to know with specificity what  
25 are those deficiencies. We're still waiting to understand

1 that better. I think this is an ideal time to resolve it.  
2 The parties now have two more weeks to submit the original  
3 briefs, the initial briefs on greenhouse issues, on 6001  
4 issues. And the Council originally contemplated it seems  
5 fair to use at least a little bit of that to try to work  
6 through the other issues list. Otherwise, I'm concerned  
7 that we will have lost substantial time not only through  
8 the briefing on the 6001 issues but also on the failure to  
9 make progress on identification and articulation and  
10 clarification of issues in the meantime.

11 MR. TRIBBLE: In reply, if I may, although  
12 I've had considerable discussion with counsel over the  
13 past 12 months, I harken back to one of the original  
14 briefing schedules that was proposed that allows for a  
15 greater time than is contemplated here and identification  
16 of issues after the prefiled testimony would have been  
17 filed on all the substantive issues.

18 Now, I haven't had the opportunity to look  
19 at the prefiled testimony to see if it fills in any of the  
20 gaps that we believe exist in the application and the  
21 DEIS, and whether or not we can more specifically pinpoint  
22 some of these issues after reasonable opportunity to  
23 review that and confer with experts as we need. But again  
24 for the near term we will be focusing our analysis and  
25 briefing and responses on the very important complex

1 issues of 6001 consistency. And so I feel a little bit  
2 hamstrung at this point to be put in a position where I  
3 need to reply to issues lists that the only, for example,  
4 the only analysis that I've received in criticism of some  
5 of my issues are the issue is too broad and it needs be to  
6 dropped or we need to specify impacts of concern or the  
7 issue is too broad, drop, or specify impact of concern.  
8 And so because of the very important schedule of the 6001  
9 issues, I would again request that this be a true  
10 bifurcation, and that these issues be spelled out after  
11 the Council makes its decision on the 6001 issue.

12 MR. JERGER: Briefly, Columbia River Keepers  
13 would support the position of Counsel for the Environment  
14 to hold off on addressing the issues list as well. We too  
15 have a number of issues that we have identified in our  
16 petition to intervene and a number of comments that the  
17 Applicant has made in response we feel we would like to  
18 deal with. It's going to take a fair bit of time and we  
19 would like to focus our resources right now on the 6001  
20 issue.

21 JUDGE WALLIS: I understand your desire to  
22 focus exclusively in reviewing the pros and cons here. I  
23 will note that the schedule is extended for the briefing.  
24 That gives you additional time. That the construction of  
25 a legal brief is different qualitatively from a review of

1 the issues, and I think that the Council would prefer  
2 given the statutory mandate for an expedited schedule in  
3 Council's matters that we not suspend all activity on the  
4 other side of this issue but certainly support the  
5 parties' efforts to work toward the point where you will  
6 be presenting evidence and joining the issues. So I am  
7 reluctant to allow the parties to suspend all activity,  
8 and certainly I think that it is not unreasonable at a  
9 minimum to expect the parties to work in developing the  
10 issues.

11 Beyond that, Ms. Thomas, is that the extent  
12 of your goal for the period between now and November?

13 MS. THOMAS: Yes. I mean as much as we  
14 would like to ask the parties to file their prefiled  
15 testimony in the interim, we're not going to ask for that.  
16 We know they're going to be too busy. But we do want to  
17 keep the process moving along and we would ask that once  
18 the parties have had a chance to complete the briefing on  
19 6001, November 8 I gather, that we move on promptly  
20 hopefully with a resolved issues list in hand and call for  
21 submittal of other parties' prefiled testimony.

22 If there is no activity at the conclusion of  
23 the briefing until the Council issues a Council order on  
24 6001, we will lose approximately two more months from the  
25 schedule which is very problematic for Energy Northwest

1 and we believe with the energy supplies in the region.  
2 Construction costs are going up while this is happening,  
3 and we don't believe that there is any reason to suspend  
4 other activities on the part of the parties in the case  
5 while the Council is deliberating and preparing its  
6 opinion on the 6001 legal issues.

7 JUDGE WALLIS: Is there any need for a  
8 discovery schedule?

9 MS. WATSON: I think based on the concerns  
10 that Ecology has raised, as well as CTED, as well as  
11 Counsel for the Environment about the insufficiency of the  
12 application, the insufficiency of the Draft EIS, we would  
13 anticipate needing a discovery schedule built in if the  
14 Council were inclined to move forward at this point.

15 We would, of course, prefer to get the  
16 ruling on the 6001 issues first so that we are not  
17 investing time and energy in these other substantive  
18 issues which promises to be pretty complicated based on  
19 the issues list that people have submitted. We would  
20 prefer to have a true bifurcation and get the decision  
21 first, but I guess regardless of whether we move forward  
22 at this point or wait until we get a decision on the 6001  
23 issues, I would anticipate we need some discovery built in  
24 there.

25 JUDGE WALLIS: Would you like to establish

1 some discovery deadlines?  
2 MS. WATSON: I'm sorry. I would like to  
3 first understand what the process is going to be from the  
4 Council's point of view before talking about discovery  
5 deadlines.

6 JUDGE WALLIS: The Council will ask the  
7 parties to refine the issues list and to complete the  
8 refinement of that issue list no later than mid November.  
9 That will allow the parties to work with the legal issues  
10 and will allow time to work on the issues lists, and then  
11 will put the parties in a position to take up at that  
12 point pending the Council's decision on the legal issues  
13 in a way that will balance the interests between the need  
14 to proceed and the parties need to focus their efforts.

15 In proceedings before the Utilities  
16 Commission, it's common to establish a schedule for  
17 discovery. That is a time frame in which questions may be  
18 asked and answers must be provided. I am not certain that  
19 that is necessary or whether informal discovery would be  
20 adequate for your needs. So let me ask the Council what  
21 your preference is in this setting.

22 MS. WATSON: I would have a preference for  
23 formal discovery in which case I suspect it would be  
24 prudent to set deadlines.

25 JUDGE WALLIS: Very well. Do you have a

1 proposal for such a schedule or would you prefer to file  
2 that after coordination among counsel?

3 MS. WATSON: I would prefer that. Thank  
4 you.

5 JUDGE WALLIS: Very well. Will you be able  
6 to consult with Ms. Thomas on behalf of the applicant in  
7 formulating that?

8 MS. WATSON: Yes.

9 JUDGE WALLIS: Very well. What would be an  
10 appropriate deadline for submitting that proposed  
11 schedule?

12 MS. WATSON: I would suggest November  
13 consistent with the file of the issues list.

14 JUDGE WALLIS: Very well.

15 Ms. Thomas?

16 MS. THOMAS: That's acceptable.

17 JUDGE WALLIS: All right. Is there any  
18 desire for periodic prehearing conferences?

19 MR. TRIBBLE: One of the things that we  
20 discussed, Judge, if I may, is if we have any questions as  
21 to your interpretation of these questions that are  
22 provided by the Council on the 6001 issues, we would  
23 request that you be available to answer those questions.  
24 That we would file those questions with you by e-mail with  
25 all of the other parties copied with the question and with

1 the request that you answer to the extent that you feel  
2 you can to the entire group.

3 MS. THOMAS: That is acceptable. We did  
4 discuss that, yes.

5 JUDGE WALLIS: Very well.

6 MS. THOMAS: To respond to the question on  
7 prehearing conference, I do think they would be very  
8 helpful and we may not need one until the briefing is in,  
9 but I think it would be very helpful to have one in mid  
10 November when the issues list is as complete as it gets so  
11 that we can present our differences on any issues for  
12 resolution, present any differences on the discovery  
13 schedule for resolution and so on.

14 JUDGE WALLIS: Is that acceptable?

15 MR. MASHUDA: It's acceptable to us, Your  
16 Honor.

17 JUDGE WALLIS: Very well. What I would  
18 suggest is that I have already asked you to identify a  
19 couple of days during that week after filing the answering  
20 briefs for possible oral argument, and why don't we  
21 establish a prehearing conference for the same day, and  
22 that way we will avoid unnecessary disruption of your  
23 schedules.

24 So if you could coordinate with each other  
25 as to what that appropriate day would be, those two days,

1 then we will follow up and identify that and include a  
2 notice of that prehearing conference in the order of this  
3 conference.

4 JUDGE WALLIS: I'm advised that November 15  
5 and 16 are not available so I would ask you to avoid those  
6 days.

7 All right. Are there other matters that the  
8 parties would like to address?

9 Let me ask how many of you are planning to  
10 attend the session this evening for public comment? Are  
11 all of you planning to attend? Are any of you not  
12 planning to attend?

13 MS. WATSON: I am not planning to attend.

14 MR. TRIBBLE: Nor am I.

15 MR. MASHUDA: Nor am I, Your Honor.

16 MR. JERGER: Nor am I.

17 JUDGE WALLIS: Okay. Very well. Thank you  
18 for that information.

19 Is there anything further to come before the  
20 Council at this time?

21 It appears there is not.

22 Councilmembers have any matters to raise at  
23 this time?

24 It appears that there are none.

25 I would thank you all for attending today,

1 for bearing with us as we get back in the swing of things  
2 with the Council, and for your many contributions to the  
3 effective prehearing conference. Thank you.

4 CHAIR LUCE: The Council will be in recess  
5 until this evening at 6:30.

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7 (Whereupon, the prehearing conference was  
8 adjourned at 3:51 p.m.)  
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5 AFFIDAVIT  
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7 I, Shaun Linse, CCR, Certified Court Reporter,  
8 do hereby certify that the foregoing transcript  
9 prepared under my direction is a true and accurate  
10 record of the proceedings taken on September 20, 2007,  
11 in Kalama, Washington.  
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16 Shaun Linse, CCR  
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