

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Hearing Volume I
WHISTLING RIDGE ENERGY, LLC.) Pages 1 - 166
WHISTLING RIDGE ENERGY PROJECT)
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A hearing in the above matter was held on Monday, January 3, 2011, at the Skamania Lodge, 1131 S.W. Skamania Lodge Way, in Stevenson, Washington at 11:05 a.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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WHISTLING RIDGE ENERGY, LLC, Tim McMahan, Attorney at Law, Stoel Rives, LLP, 900 S.W. Fifth Avenue, Suite 2600, Portland, Oregon 97204; and Darrel Peeples, Attorney at Law, 325 Washington Street N.E., No. 440, Olympia, Washington 98506.

COUNSEL FOR THE ENVIRONMENT, H. Bruce Marvin, Assistant Attorney General (via bridge line), Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.

REPORTED BY:

SHAUN LINSE, CCR
CCR NO. 2029

1 APPEARANCES (Cont'd):

2 DEPARTMENT OF COMMERCE, Dorothy H. Jaffe,
3 Assistant Attorney General, P.O. Box 40109, Olympia,
4 Washington 98504-0109.

5 FRIENDS OF THE COLUMBIA GORGE, Gary K. Kahn,
6 Attorney at Law, Reeves, Kahn & Hennessy, P.O. Box 86100,
7 Portland, Oregon 97286-0100; Nathan Baker, Staff Attorney,
8 522 S.W. 5th Avenue, Suite 720, Portland, Oregon 97204-2100.

9 SAVE OUR SCENIC AREA (SOSA), J. Richard Aramburu,
10 Attorney at Law, Aramburu & Eustis, LLP, 720 Third Avenue,
11 Suite 2112, Seattle, Washington 98104-1860.

12 CONFEDERATED TRIBES and BANDS OF THE YAKAMA
13 NATION, George Colby, Attorney at Law, Archeologist, P.O.
14 Box 151, Toppenish, Washington 98948.

15 SEATTLE AUDUBON SOCIETY, Shawn Cantrell, Director
16 of Conservation, 8050 35th Avenue N.E., Seattle, Washington
17 98115.

18 PORT OF SKAMANIA COUNTY, SKAMANIA ECONOMIC
19 DEVELOPMENT COUNCIL, and SKAMANIA COUNTY PUBLIC UTILITY
20 DISTRICT NO. 1, Bradley Andersen, Attorney at Law, Schwabe,
21 Williamson & Wyatt, P.C., 700 Washington Street, Suite 701,
22 Vancouver, Washington 98660.

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1 APPEARANCES (Cont'd):

2 SKAMANIA COUNTY and KLICKITAT COUNTY PUBLIC
3 ECONOMIC DEVELOPMENT AUTHORITY, Susan Drummond, Attorney at
4 Law, Law Offices of Susan Elizabeth Drummond, 1200 Fifth
5 Avenue, Suite 1650, Seattle, Washington 98101.

6 * * * * *

7 JUDGE WALLIS: This is a hearing of the Washington
8 State Energy Facility Site Evaluation Council. It is being
9 held in Stevenson, Washington on January 3 of the year 2011.
10 The Council in this matter is hearing an application for the
11 Whistling Ridge Energy Project, and the parties are
12 assembled here for the presentation of hearing and evidence
13 and cross-examination thereof.

14 My name is Robert Wallis and I am the assigned
15 Administrative Law Judge for this proceeding. Seated at the
16 head of the table we have Council Members and staff. I
17 would like to have the members introduce him or herself and
18 the agency that the member represents beginning to my far
19 left.

20 MR. HAYES: Andrew Hayes, Department of Natural
21 Resources.

22 MR. MOSS: I'm Dennis Moss with the Washington
23 Utilities and Transportation Commission.

24 MR. CREWS: Kyle Crews with the Attorney General's
25 Office.

1 CHAIR LUCE: I'm Jim Luce, Governor's office.

2 MR. FRYHLING: Dick Fryhling. I'm with the
3 Department of Commerce.

4 MR. TAYER: I'm Jeff Tayer. I'm with the
5 Department of Fish and Wildlife.

6 MR. SUTHERLAND: Doug Sutherland designated from
7 Skamania County.

8 JUDGE WALLIS: Thank you very much. I would like
9 to note for the record that one of the Council Members is
10 not able to attend the hearing in this matter. That is
11 Hedia Adelsman. She is an experienced Council Member and
12 will be reviewing the record in this proceeding and will
13 participate in further deliberations with the Council and
14 decisions to be made in this matter. Let's now ask the
15 parties to identify themselves beginning with the Applicant.

16 MR. McMAHAN: Tim McMahan for the record, Stoel
17 Rives Law Firm. To my left is Jason Spadaro, the applicant;
18 to my further left is Darrel Peebles, and in the audience is
19 Katy Chaney the lead consultant for the project.

20 JUDGE WALLIS: Counsel for the Environment?

21 MR. MARVIN: Bruce Marvin, Assistant Attorney
22 General, here on behalf of Counsel for Environment.

23 JUDGE WALLIS: The Department of Commerce?

24 MS. JAFFE: Dorothy Jaffe, Assistant Attorney
25 General, representing the Department of Commerce.

1 JUDGE WALLIS: Friends of the Columbia Gorge?

2 MR. KAHN: Gary Kahn with Reeves, Kahn & Hennessy
3 representing Friends of the Columbia Gorge. Along with me
4 is Nathan Baker, the staff attorney with Friends of the
5 Columbia Gorge.

6 JUDGE WALLIS: Save our Scenic Area?

7 MR. ARAMBURU: Richard Aramburu representing SOSA.

8 JUDGE WALLIS: Skamania County Public Utility
9 District No. 1?

10 MR. ANDERSON. Brad Andersen.

11 JUDGE WALLIS: And you're representing other
12 clients in this matter as well?

13 MR. ANDERSEN: Port of Skamania County and
14 Skamania County Economic Development Council.

15 JUDGE WALLIS: Skamania County Agri-Tourism
16 Association?

17 Let the record show there is no response.

18 Association of Washington Business?

19 Again, let the record show that there is no
20 response.

21 The Seattle Audubon Society?

22 MR. CANTRELL: Shawn Cantrell on behalf of Seattle
23 Audubon.

24 JUDGE WALLIS: The Port of Skamania County?

25 MR. ANDERSEN: Brad Andersen again.

1 JUDGE WALLIS: City of White Salmon?
2 Klickitat County Public Economic Development
3 Authority?

4 MS. DRUMMOND: Susan Drummond from Klickitat
5 County Public Economic Development Authority and Skamania
6 County.

7 JUDGE WALLIS: Klickitat and Cascade Tribes of the
8 Yakama Nation?

9 Let the record show that there is no response.
10 Confederated Tribes and Bands of the Yakama
11 Nation?

12 MR. COLBY: George Colby, Yakama Indian Nation.

13 JUDGE WALLIS: Thank you, Mr. Colby.

14 Again, I'm going to ask the persons who are
15 present in the hearing room if you are carrying a cell
16 phone, please turn it off at this moment to help us avoid
17 issues with distractions.

18 Very well. Let's proceed. We have a schedule of
19 witnesses. The schedule of witnesses that begins now with
20 the appearance of witnesses on behalf of the Applicant.

21 Mr. McMahan, would you like to call your first
22 witness.

23 I'm sorry, opening statements.

24 Mr. McMahan.

25 MR. McMAHAN: You threw me there. So I didn't

1 lose a minute on this.

2 OPENING STATEMENT

3 BY MR. McMAHAN:

4 Tim McMahan again for the Applicant. It's hard to
5 know what one says in ten minutes. So as you know we have
6 filed a written opening statement. That's been a past
7 practice of the Council in the several cases that I have
8 been involved in, a couple cases. This is the first time
9 we've been asked to deliver an oral statement as well so I
10 want to just say a few key things.

11 First of all, I did promise Mr. Colby from the
12 Yakama Nation that we would express our appreciation in
13 their decision to withdraw witnesses and in effect
14 opposition to the project. It is our joint intent to
15 cooperate with each other for mutual benefit in this
16 project, and we intend to follow that commitment. Again, we
17 greatly appreciate the efforts that the Tribe has made with
18 us to resolve issues, and we will continue to do so. We
19 provide that assurance to the Siting Council.

20 Secondly, I want to just sort of make an
21 observation about where you sit today. You are in an iconic
22 location. Obviously when I was thinking about this opening
23 statement, I thought, oh, my God, there's Skamania Lodge.
24 It's the most iconic place you could hold a hearing about a
25 project that is proposed in the vicinity of the scenic area.

1 I'm staying at Hood River Inn, and I look across at
2 industrial facilities, and I look across at mills, and I
3 look across at transmission lines, and I look across at a
4 significant bridge that is the context of the landscape, and
5 that is a really important thing to understand for this
6 case. That's something I don't think has been fully
7 understood or at least expressed in testimony by the
8 opposition. Context is everything. We understand that this
9 case boils down to a significant issue that I don't take
10 lightly about the scenic effects of the project. Please
11 understand the overall context and contrast in issues of
12 visual absorption and the like. That is a very, very
13 important issue as we proceed.

14 The next thing I want to just touch on here is we
15 are obligated as an applicant to do everything we can to
16 hold close to the Council's precedents and to follow the law
17 and to follow things like the siting guidelines, Washington
18 State Wind Power Siting Guidelines. That is our obligation,
19 and it is at our great peril should we not choose to do so.
20 As we proceed through this hearing I think it will become
21 evident there's some real issue with whether doing so is
22 appropriate in the mind of the opposition.

23 This Council has reviewed and approved three
24 different wind farms. You are charged with enforcing the
25 conditions and the operation of one that's operating which

1 was proposed and permitted on some very complex habitat, and
2 this project doesn't begin to compare with the complexity
3 and biodiversity of the Wild Horse site. So, again, when we
4 think about the testimony that's been presented which was
5 presented in full compliance with the guidelines and
6 Council's precedence, understand that we're not making this
7 up for the first time. Mr. Smallwood who will be testifying
8 his principle critique is, "The Washington Wind Power
9 Project Guidelines are deficient, therefore should not be
10 relied on. They're grossly deficient lacking among other
11 things the impact assessment tool and mitigation measures."

12 We're not at liberty to disregard the guidelines,
13 and your own rules require us at WAC 463-60-332 that we pay
14 total attention to those guidelines. This is a heavily
15 studied project. We have done avian analysis over a
16 four-year period. It's ironic to me that we're facing a
17 critique about those studies for not having them occur one
18 single year. In the other projects I've been involved in
19 opponents have said, well, a single year doesn't represent
20 variation in avian migration presence for a site. It would
21 better if those seasons were spaced over years. So mildly
22 ironic for me at least having a challenge like that here.

23 Just a few other comments. We have great
24 confidence in the quality of the application for site
25 certification and our witnesses. I remember another energy

1 developer recently that I worked for saying, expressing the
2 difficulty of being an applicant in these proceedings. We
3 are suppose to be perfect. We are not allowed to take
4 liberty. We are not allowed to make things up in terms of
5 regulatory compliance or meeting guidelines, and opposition
6 witnesses and testimony doesn't necessarily have to meet
7 that standard. We've raised that standard, but please
8 understand it is our view that there are a lot of liberties
9 that have been taken by the opponents' witnesses, and I
10 think we've addressed those very well in the rebuttal
11 testimony, and I assume and I hope that you will pay good
12 attention to that.

13 The last thing I'll say goes to the Michaels'
14 testimony, this issue of need, and I would note that the
15 opening statement, 20-page single-spaced opening statement
16 talks about the need standard as if it were a standard. You
17 know what your rules say. They actually quote the wrong
18 thing in the wrong rule and 463-60-021 couldn't be clearer.
19 RCW 80.50.010 requires the Council to recognize the pressing
20 need for increased energy facilities. For that reason
21 applications for site certification need not demonstrate a
22 need for the energy facility. This Council has already
23 largely adjudicated this issue, the issue of need and the
24 regulation of merchant power plants in Prehearing Order 12,
25 and we obviously will be talking about that further as we

1 proceed.

2 With that, I greatly appreciate your attention and
3 we're looking forward to getting this done. Thank you.

4 JUDGE WALLIS: Thank you, Mr. McMahan.
5 Counsel for the Environment.

6 OPENING STATEMENT

7 BY MR. MARVIN:

8 Council Members, CFE in cases -- because I know we
9 have a few new members here, I'll just go over a little bit
10 of background to provide some understanding in terms of what
11 I am doing.

12 The CFE is a statutorily charged representative of
13 the public and its interest in protecting the quality of the
14 environment. The involvement, my involvement in review of
15 this Whistling Ridge project is limited to the project's
16 environmental impacts.

17 At this point in time CFE neither supports nor
18 opposes the permitting of Whistling Ridge. CFE is, however,
19 concerned that if the project is permitted that its
20 environmental impacts be fully identified, documented, and
21 adequately mitigated. Development of renewable energy
22 resources is in the public interest so long as that
23 development does not adversely impact the quality of the
24 environment. Although wind energy has many positive
25 environmental attributes, such as reducing reliance on

1 fossil fuels and reducing emission of greenhouse gases,
2 construction of a wind power plant also poses environmental
3 impacts that must be carefully considered and appropriately
4 mitigated.

5 In this regard CFE believes that Whistling Ridge
6 has two areas of concern, the biological impacts and the
7 visual impacts. Evaluating these concerns is somewhat more
8 complicated than at other sites in that this is a project of
9 a somewhat unprecedented nature. If permitted this will be
10 the first wind power project constructed in a western
11 coniferous forest. All parties acknowledge that the impacts
12 of this project on wildlife is largely unknown. There is no
13 such -- we can't look to an existing example of a project
14 and determine what those impacts are.

15 Accordingly the proponent has on considerable
16 expense and time to develop studies and evaluate the risks
17 and has necessarily relied on reducing the information based
18 on data collected on sites that are not necessarily
19 equivalent habitats, and they've concluded that the data
20 collected from these other projects is appropriately used
21 and will be a predictor in terms of the impacts that will be
22 resulting in this project if the project is constructed.
23 The opponents argue otherwise.

24 What is known is that the project will adversely
25 affect wildlife, and those adverse effects will have to be

1 mitigated if it is permitted. Accordingly, if the project
2 is approved based upon what is known today, EFSEC must
3 impose a set of mitigation measures that will accurately
4 mitigate the actual impacts of the project if it's
5 constructed; two, minimize the known impacts that we can
6 determine at this point in time; and, three, to be
7 sufficiently responsive and robust to adequately minimize
8 the negative consequences on the unforeseen impacts.

9 The prefiled testimony of Don McIvor identified
10 many of the unknowns and perhaps weaknesses in the
11 Applicant's wildlife analysis, as well as setting forth a
12 number of mitigation measures that CFE believes should be
13 implemented to address this issue, and those mitigation
14 measures have been included in our written opening
15 statement.

16 The project's scenic impacts is a second area of
17 concern. Both the Applicant and Friends of the Gorge and
18 SOSA agree on one thing. The project if built will have an
19 impact on the scenic properties of the Columbia Gorge, and
20 it's undisputed these impacts will likely persist for a
21 minimum of 30 years and likely will last much longer. If
22 this project is built a full and complete exploration of
23 mitigation measures need to be conducted, and those
24 mitigation measures should include consideration of
25 alternative configurations of wind turbine strings to

1 minimize the visual impacts of the project on the
2 surrounding view shed.

3 While these are the two areas of primary focus on
4 this Counsel For the Environment, Counsel for the
5 Environment does anticipate conducting some limited
6 cross-examination of the witnesses on other issues
7 consistent with the charge of protecting the quality of the
8 environment as set forth in the CFE's statutory mission, and
9 I look forward to participating in the hearing with you
10 today or actually this week. Thank you.

11 JUDGE WALLIS: Thank you, Mr. Marvin.

12 The Department of Commerce.

13 MS. JAFFE: The Department of Commerce is going to
14 rely solely on the prefiled written opening statement and
15 not provide an oral statement at this time.

16 JUDGE WALLIS: Very well. Friends of the Columbia
17 Gorge.

18 OPENING STATEMENT

19 BY MR. KAHN:

20 Thank you, Your Honor. The Council has a tough
21 decision to make out of this proceeding. It's somewhat
22 unprecedented for two reasons. First, as Counsel for the
23 Environment pointed out, it's the first wind project in a
24 coniferous forest mountainous habitat in the west.

25 As a result of that as Mr. Martin pointed out,

1 there is virtually no data that can be derived from other
2 wind facilities to determine what the impacts are here. As
3 a result there is a significant scientific uncertainty as to
4 the environmental impacts of this project particularly on
5 wildlife.

6 The second reason that this decision is somewhat
7 unprecedented is that the proposed project is immediately
8 adjacent to the Columbia River Gorge National Scenic Area.
9 This is the first National Scenic Area designated as such in
10 the United States, and it's been repeatedly recognized for
11 its unparalleled scenic view, rare plants, and other
12 resources. Recently the National Geographic Traveler
13 designated the Columbia Gorge as the second best iconic
14 designation in the U.S. and the second best iconic
15 destination in the nation.

16 Approval of this project will mar that view
17 forever. The Applicant contends that if you reject this
18 project there will be no wind project that will meet the
19 criteria, and this will be the death of all wind energy in
20 Washington.

21 Actually we believe the opposite is true. If you
22 permit this project on this site, in this location adjacent
23 to the Columbia River Gorge National Scenic Area, there will
24 be no place in the state of Washington with the possible
25 exception of National Parks and Wilderness areas that will

1 be safe. If this project is approved, the bar will be set
 2 so low that virtually any application will pass muster.

3 There are a number of standards that are
 4 applicable to this proceeding. First, EFSEC must preserve
 5 and protect the quality of the environment. That is RCW
 6 80.50.010. There's a number of WACs and administrative
 7 rules that fill in the gaps here. 464-14-020 says that the
 8 location in operation of these facilities must make sure
 9 minimal adverse effects on the environment, on the Ecology
 10 and the land and on the wildlife. WAC Section
 11 463-47-110(1)(c) states that the overriding policy is to
 12 mitigate adverse environmental impacts. WAC
 13 463-47.110(1)(b) requires EFSEC to use all practicable means
 14 to preserve important historic cultural and natural aspects
 15 of our natural heritage.

16 Finally, in a previous order this Council
 17 determined that the standard is that it must be a net
 18 benefit after balancing the energy production and the
 19 environmental harm.

20 Let's talk a little bit about the environmental
 21 issues, and from our perspective there's predominantly two,
 22 scenic and wildlife, and I'll talk about scenic first.
 23 Placing up to 50 turbines in a highly sensitive landscape
 24 turbine will undoubtedly have significant environmental
 25 impacts. The turbines will be visible from numerous

1 viewpoints and historical locations. One and perhaps the
2 most important being the Historic Columbia River Highway,
3 Old Highway 30 in Oregon. This is the only roadway listed
4 on the National Register of historic places and runs much
5 the length of the scenic area.

6 The project will also be visible from a number of
7 key viewing areas which have been established through the
8 National Scenic Act and management land. We're hopeful that
9 tomorrow the Council will see fit to visit a number of these
10 so we can point out our concerns. These are locations that
11 were selected by the U.S. Forest Service and the Gorge
12 Commission for their scenic views. The National Park
13 Service and the U.S. Forest Service have also submitted
14 comments concerning the scenic impacts that will occur and
15 concluded they will be adverse.

16 We will present a landscape architect as a
17 witness. His name is Dean Apostol, and he has submitted
18 prefiled testimony. I believe he's the only landscape
19 architect that has submitted any prefiled testimony. The
20 Applicant does not rely on any landscape architects.
21 Mr. Apostol has 31 years experience as a landscape
22 architect. Much of that is U.S. Forest Service evaluating
23 similar projects to this. In his prefiled testimony, and in
24 his testimony that you will hear whenever we get to it, he
25 will explain and has explained how a landscape architect

1 measures impacts at scenic resources. He will explain what
2 constitutes scenic landscapes which are elements of form,
3 line, color, and texture. He will explain the key factors
4 used in assessing the visual impacts of turbines. He will
5 explain how turbines on the ridge line will have a
6 deleterious effect on scenic resources. He will explain why
7 the methodology the Applicant used in this case to look at
8 the scenic impacts is inappropriate, and he will point out
9 flaws in their analysis as well. He will also explain why
10 the methodology and the data used by the U.S. Forest Service
11 within the National Scenic Area should be applied here, and

12 I'll say this now, and I'm sure I'm going to say
13 it again, we are not suggesting in any way that EFSEC is
14 required to incorporate any of the standards from the
15 National Scenic Area. We are saying that it is the
16 appropriate methodology to use here. Most importantly he
17 will tell you why this project will result in significant
18 adverse impacts to scenic resources.

19 The second thing, and let me point out Mr. McMahan
20 in his opening statement spoke about the view from his hotel
21 room. I'd like to say something similar. As I wandered
22 around this building last night and today, I've seen at
23 least two pictures on the wall of the viewpoint of the
24 Mitchell Point Tunnels. The Mitchell Point Tunnels are
25 directly across from here on the Oregon side. They are part

1 of the Historic Columbia River Highway and built in 1914 or
2 1915 patterned after a famous highway in Switzerland. The
3 pictures that are on the wall here show cutouts, windows out
4 of the rock so you can see the view. It's ironic that that
5 was one of the first things I saw yesterday because these
6 turbines will be visible from that view.

7 I'd like to talk about wildlife resources. As
8 Mr. Marvin mentioned and as I've mentioned, this is the
9 first project in a forested mountainous habitat in the west.
10 Because of that there is significant scientific uncertainty
11 about the impacts, specifically to raptors, hawks, and
12 eagles and falcons, other birds and bats. Because it is a
13 new project and new habitat you cannot rely on any of the
14 data from other wind projects across the country.

15 As a witness we will present Dr. Smallwood.
16 Dr. Smallwood is a national recognized ecologist and an
17 expert on the effects of wind projects on wildlife. He has
18 authored numerous articles on the subject, and he will
19 explain how the methods used by the Applicant -- I'm sorry.
20 He will explain that the methods used to predict fatalities
21 by the Applicant are inappropriate. He will explain how
22 this project will likely have serious negative impacts to
23 local and transient bat populations. He will also point out
24 flaws in the Applicant's methodology. In this project the
25 methodology by the Applicant results in a prediction that

1 zero raptors will be killed. The same methodology resulted
2 in underestimates of fatalities at other wind project sites
3 by the same experts.

4 There's a third issue that comes in play and
5 that's land use. This project is currently inconsistent
6 with Skamania County rules and codes. Commercial wind
7 development is not allowed on most of this project. Most of
8 this site is unmapped. It is not zoned. A small portion of
9 it is zoned forest ag and a small portion of it is zoned
10 residential. On the unmapped designations wind power
11 generation is not an allowable use. Furthermore, and I
12 don't think there's any dispute over this, at least a
13 portion of this project will result in a conversion of
14 forest land to nonforestry use. Mr. Spadaro in his
15 testimony acknowledges that, although we quibble a little
16 with the numbers.

17 There is currently a moratorium in Skamania County
18 and they just renewed that last week. It's a
19 cross-examination exhibit we have, a moratorium on any
20 conversion of the forestland to nonforest use. We believe
21 that this is inconsistent with Skamania County land use
22 proceedings at this point.

23 In conclusion, this application should be denied.
24 The adverse environmental impacts will significantly
25 outweigh the marginal energy to be produced.

1 Mr. Baker just pointed out I made a slight error
2 before when I referred to Mitchell Point as directly across
3 from here. I meant it is directly across from the project
4 site. It is due south of the project.

5 In closing, I would note that throughout this
6 proceeding and even up to and including the written opening
7 statements the Applicant has chosen to attack Friends of the
8 Columbia Gorge and Save our Scenic Area and its attorneys
9 and insult our witnesses' opinions. In doing so they have
10 twisted our arguments and misrepresented witness testimony.
11 The Applicant has done this to distract the Council from
12 looking at the serious flaws in this project and the
13 significant environmental harm that will occur.

14 JUDGE WALLIS: You have 30 seconds.

15 MR. KAHN: Thank you. We urge you to ignore the
16 insults, listen to the testimony, and keep in mind your
17 statutory obligation to avoid adverse environmental impacts.
18 If you do, we believe that you'll agree that the negative
19 environmental impacts from this project outweigh the
20 marginal amounts of energy that will be produced and that
21 this is the wrong place for this project. Thank you.

22 JUDGE WALLIS: Thank you.

23 Save Our Scenic Area.

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1 OPENING STATEMENT

2 BY MR. ARAMBURU:

3 Members of the Council, I am Richard Aramburu
4 representing Save Our Scenic Area, a local environmental
5 organization. As Mr. Kahn pointed out there are two parts
6 to your balancing review. One of those is to review the
7 environmental harm that may come from the project. The
8 second and I think well stated in SEPA, is the balance of
9 harm against the value of the project that is proposed.

10 I'm going to talk a bit today about the value of
11 this project, and the evidence that will be produced which
12 leads to the result that the project will disproportionately
13 affect, adversely affect scenic resources and wildlife
14 resources, will not produce a meaningful amount of power
15 that has value for the Pacific Northwest.

16 We put up on the board and made frequent reference
17 to it just precisely what we are talking about here which is
18 a proposal for 50 turbines, the principal string of which is
19 approaching five to six miles and running in a north-south
20 direction.

21 The project produces only a very small amount of
22 energy. It's nameplate rating is at 75 megawatts, but at
23 most times it will not be producing 75 megawatts, and it may
24 not be producing any power at all over a significant period
25 of time. As we pointed out in our evidence, currently there

1 are 9,069 megawatts of wind energy that are either
2 operating, under construction or permitted in the Pacific
3 Northwest, and this project at 75 megawatts is a minimal
4 project.

5 It's a project that also cannot be in all
6 likelihood expanded to be a bigger project than it is. To
7 the north looking at our drawing our lands are owned by the
8 Department of Natural Resources. The inquiries regarding
9 the use of that land have been terminated by DNR and so
10 there is reasonable possibility that land would be used for
11 those resources. To the south and to the southeast are
12 lands in the National Scenic Area which cannot be expanded
13 for further use. So it's a tight little site not possible
14 to be expanded.

15 It is a marginal site and while various arguments
16 have been made concerning the value of this site, please
17 remember the reason these projects are going forward at this
18 point is there's an investment tax credit from the United
19 States government that gives wind developers a check from
20 the United States government for 30 percent of the
21 construction value of these projects. That's what drives
22 these projects, not ordinary economics.

23 This is a part-time project. Keep in mind that
24 wind energy is part time. It does provide some benefits to
25 some, but when we most need the power it's not available to

1 us. All the studies have indicated that during the summer
2 hot spells, during those winter cold spells, wind energy is
3 simply not available. A good example is as we're sitting
4 here right now, I put on my computer the amount of wind
5 energy that is being produced in the Northwest at this time.
6 Keep in mind 3,011 megawatts of nominal wind energy are
7 connected to the Bonneville Power Administration System.
8 Every five minutes BPA tells us how much energy that wind is
9 producing. From 10:30 this morning until right now 11:20
10 there was no generation from wind energy in the Northwest.
11 None, zero. It's not powering any homes. It's not powering
12 these lights. It's not powering my computer. Wind energy
13 is a part-time resource that cannot be balanced against the
14 value of the losses that we are seeing here.

15 The energy need in the Northwest is not really
16 related to the kind of energy that wind power gives us.
17 What we are need of in the Northwest, and this comes right
18 from BPA, an increased need for resources to provide
19 reliable energy to meet high-load conditions, reliable
20 energy to meet high-load conditions. These projects don't
21 provide that kind of energy. This project won't, and right
22 now it's not providing any reliable energy of any kind to
23 the system.

24 We also point out, and again this is confirmed by
25 BPA, for the most part new wind resources in the Northwest

1 are being developed for transmission to California
2 utilities. Forty-seven percent of the wind projects that
3 are being produced now which is, of course, zero at the
4 moment, but on an average basis are being sent to
5 California. That's the largest driver of these resources.
6 This project in all likelihood will be headed for California
7 consumers, not Washington or Oregon consumers.

8 We have also noted that only a certain amount of
9 power can be added to the system. There will be much
10 discussion of that by our witnesses, in particular
11 Mr. Michaels. But trying to integrate this power in the
12 system is a very, very difficult job, and lots of people are
13 working very hard and achieving some success in doing it,
14 but there's a finite limit. BPA says with another doubling
15 of wind on the BPA system, the doubling of wind BPA will
16 exceed its capability of its hydro assets to manage the
17 total variability of the wind fleet. So where are we now
18 when BPA said that? They said that was based on 2,800
19 megawatts of wind power.

20 Well, right now operating, under construction, and
21 permitted projects are over 9,000 so we're facing a very
22 difficult problem, and part of the result of that problem
23 when it comes to renewable energy is the proposition that
24 fossil fuel plants are plainly going to be needed in the
25 future to balance the energy that comes from these winds

1 projects. Gas turbines are now increasing being used as
2 backups for wind power when the wind power dies off to zero
3 as it is this morning.

4 So it's an irony that we're meeting here today to
5 deal with the renewable energy source when in truth to
6 provide reliable resources wind energy is not only a
7 part-time resource, but a minimal resource averaging about
8 30 percent of its nameplate capacity.

9 There will be discussion about the local economic
10 benefits. Professor Michaels will be addressing those
11 matters. There will be a number of construction jobs, but
12 those long-term family wage jobs for this project will be
13 minimal, if nonexistent.

14 So in summary you have a job of balancing before
15 you, balancing between the plain admitted adverse
16 environmental impacts principally to visual assets in the
17 Columbia Gorge and to wildlife, demands to be balanced
18 against the value of the resource to be put together. We
19 believe that that balance cannot be achieved and heavily
20 weighted in terms of the denial of this project overall. I
21 think I have taken about my ten minutes. Thank you.

22 JUDGE WALLIS: Pretty much.

23 MR. ARAMBURU: If Council Members have any
24 questions for me, I would be happy to answer.

25 JUDGE WALLIS: Skamania County Public Utility

1 District No. 1 and other parties.

2 OPENING STATEMENT

3 BY MR. ANDERSEN:

4 May it please this body, Brad Andersen. I'm going
5 to primarily speak on behalf of the Skamania County Economic
6 Development Council. I'll cover the PUD issues as well as
7 the port issues, but perhaps I should start off by
8 introducing myself. I am a lifelong resident of Skamania
9 County. I was formally the prosecutor of Skamania County.
10 So it's not just being a lawyer that's advocating on behalf
11 of this county. It's a real-life citizen that believes very
12 strongly in this. In fact, I believe so strongly that when
13 I left as the prosecuting attorney, I became the Chairman
14 for Skamania County EDC.

15 To my right used to be Peggy Bryan, now it's Peggy
16 Miller. She is also a lifelong resident, graduated
17 Stevenson High School, and she was our EDC Executive
18 Director for 23 years.

19 It's a little bit -- Mr. Kahn and I have been
20 advocating against each other under the Scenic Act for
21 probably 20 years. I know that act very, very well. My
22 father paid for me to go to law school so I could come back
23 as an advocate for property owners. So in some way I kind
24 of love that act.

25 But having said that, it's a little bit insulting

1 when people outside of this area like Mr. Michaels -- I just
2 got on this case last week and as you see, I've got one of
3 the biggest notebooks you could possibly get that has a lot
4 of testimony. But when Mr. Michaels comes in and he starts
5 telling us about what our economic effects or impacts may
6 be, and he has to fly into this community and we've got to
7 reserve a special place for him to testify, it's really
8 difficult for us with Peggy Bryan who's been with us for
9 23 years. We've lived here. We've gone through a
10 conversion from being a very timber dependent community to
11 one we are trying to diversify. So we know economic
12 development. That is why we are -- that's why we didn't
13 just submit comments. That's why we participated and became
14 an intervenor in this case because we need you to know how
15 important.

16 We're a big player in this case. We understand
17 that economic development is just one piece of the overall
18 thing you need to look at, but it's our life's blood. It's
19 what's very, very important to us. We meet once a year. We
20 put a priority on those things that are important to us, and
21 this project hits our top five as being very, very important
22 to us. You may say, well, it only creates maybe ten
23 permanent jobs. Well, when you have a population of 10,000,
24 and 50 percent of them go to Vancouver or Portland to work,
25 those ten jobs mean everything. So that's why we are

1 spending the time, the money, and the energy to intervene
2 and provide testimony to tell you how important it is.

3 It's so important to us that our committee we
4 don't have a lot of resources in the Skamania County
5 Economic Development Council, but we have hired Eric Hovee
6 to do a report. You have a report. It's Exhibit No. 41.02.
7 We don't have a lot of resources to pay for that. Mr. Hovee
8 provided a report and we're presenting that to you. He's
9 going to be subject to cross-examination, but his report
10 tells you two things. This project is vital to us. It's
11 going to create jobs, and we need those jobs in Skamania
12 County.

13 Secondly is we have a budget. When I was a
14 prosecutor I think our overall budget was about 14 million.
15 I think that's pretty close to what it is now. So if
16 \$600,000 of revenue that comes into the Skamania County that
17 would be created by this means a lot, especially as former
18 Commissioner Sutherland knows we rely a lot upon timber
19 dollars, both federal and also the DNR. And so when the
20 timber starts to go down, we have to replace those revenues.
21 600,000 may not be a lot to larger jurisdictions, but it
22 means everything to us.

23 So it's important to Skamania County. It's
24 important to the families that live here. It's important to
25 everyone every little job that can be created and these are

1 important jobs to Skamania County.

2 The PUD is going to testify. Robert Wittenberg is
3 going to testify next Monday. As you know or maybe you
4 don't know that Condit Dam is being removed. I think it's
5 set to be removed in 2012. Several of us fought that very
6 hard because it was an important resource, but now that
7 Condit Dam is being removed we the citizens of Skamania
8 County need an alternative emergency source, if there's a
9 problem with breaking down the line coming from the west.
10 Now that Condit Dam is being removed we need an alternative
11 source, and that's what this project will provide for us.
12 If we don't have it, then the lines break, which as you can
13 tell in the gorge we have bad inclement weather that happens
14 from time to time.

15 The other probably most concerning aspect of the
16 Friends of the Gorge's position, and understand Mr. Kahn and
17 I have fought for years, but you've got to realize they will
18 take a position that serves their current need. I heard
19 Mr. Kahn talk about the moratorium. The county passed a
20 moratorium. The moratorium exists under state law. You
21 simply when you convert forestland to some other use you
22 have to pay an additional fee, and the local planning
23 department looks at that. So there's no permanent
24 moratorium on conversion of forestlands. I can guarantee
25 you that Skamania County is very committed to making sure

1 that those resources are protected.

2 There is no moratorium that's going to prevent the
3 conversion of forestland through this type of use. That's
4 an example.

5 I just say that to you so you watch everything
6 that comes from the Friends of the Gorge. When they present
7 things, they will present in the manner that serves their
8 current needs. That's what they do, and we have to respect
9 the fact that that's what they're rallying for. But watch
10 carefully everything they say because there's usually
11 another side to that story.

12 Most concerning is the position they're taking on
13 key viewing areas for the scenic resources. They know that
14 the Gorge Act was compromised legislation. When Ronald
15 Reagan signed this in 1986, there was some concessions that
16 had to be made. One of the most significant concessions
17 that had to be made was that there was going to be no
18 regulations outside of the scenic area. That's in the
19 savings provision.

20 So the argument that somehow an activity that is
21 occurring outside the border of the scenic area can somehow
22 indirectly be regulated by the scenic area runs completely
23 contrary to what the Gorge Act stands for. You know that
24 the savings provisions will be argued by people much smarter
25 than me to talk about them, but I know what the legislation

1 provides, and I know the history of negotiations, and that
2 is one thing that local folks got was you get to regulate
3 the scenic area, but you don't regulate outside the scenic
4 area scene.

5 Why am I concerned about that? Can you imagine
6 the chilling effect that a ruling by this agency would have
7 if all of a sudden you take the Gorge Act, and you start
8 trying to use the substance of the Gorge Act to start
9 regulating activities outside the scenic area inside the
10 urban areas? People, businesses, enterprises will not come
11 to Skamania County if they believe that the important very
12 restrictive regulations of the scenic area somehow will
13 cross over its borders. Keep that in mind because your
14 decision could have long-term effects on other businesses
15 coming to Skamania County.

16 I will be presenting Peggy Bryan's testimony on
17 Friday. I will be presenting John McSherry who is the
18 executive director for the Port of Skamania County on Friday
19 as well. So I appreciate your attention. I hope you enjoy
20 yourselves while you're down here in Skamania County. Thank
21 you.

22 JUDGE WALLIS: Thank you.

23 Seattle Audubon Society.

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25 ///

1 OPENING STATEMENT

2 BY MR. CANTRELL:

3 Thank you, Your Honor. Many of the points that I
4 had mentioned in my written opening statement have been
5 touched on by other folks, and so I won't repeat all of
6 them. I will just highlight a couple key things for the
7 Council Members.

8 First off, just Seattle Audubon has a long history
9 engaged in forest-related issues and obviously the bird
10 issue is a key issue and bird habitat. This project as has
11 been mentioned several times is really going to help set the
12 bar, however high or low, for what is an acceptable wind
13 power project in a forested landscape, and that's what
14 brought Seattle Audubon to intervene in this process.

15 We recognize the significant threat that climate
16 change imposes to birds and bird habitat and that's why as
17 an organization we support appropriately-sited renewable
18 energy projects. Whether this project fits that definition
19 is to be seen. We have not taken a position for or against
20 this project to date, but we are very interested in making
21 sure that all the relevant issues related to birds and other
22 avian species are fully explored to the extent that they can
23 be minimized or mitigated for if the project does go
24 forward. That is a key issue for us, and I will highlight a
25 couple of those.

1 We are going to urge that this project provide a
2 significant amount of avoided emissions from combustion and
3 coal or natural gas or oil or other fossil fuels. There's
4 about 114,000 barrels of crude oil or 154 million cubic feet
5 of natural gas that could be displaced, the burning of
6 those, which is the equivalent of 131,000 tons of carbon
7 dioxide on an annual basis. Again, this is drawing from the
8 Applicant's application. So that is a very encouraging
9 aspect of this application.

10 On the flip side we are very concerned, however,
11 about the potential avian impacts of this. Just a few
12 months ago in May of 2010 the Northern Spotted Owl was
13 detected in very close proximity to the project on the DNR
14 lands, not on the project lands themselves, but it does show
15 the capacity. As you are all probably well aware the
16 spotted owl is an extremely endangered species, both
17 federally and state listed, and the fact that habitat in
18 close proximity of this project is able to support a spotted
19 owl says that these lands have key habitat value.

20 So if they are in fact to be converted to an
21 energy facility, it's important that we make sure that we're
22 minimizing impacts at all possible and to the extent that
23 they can be minimized or avoided that they are mitigated.
24 The key question obviously is it an appropriate project to
25 go forward, and, again, Seattle Audubon has not taken a

1 position on this. As you consider the testimony and the
2 cross-examinations, etc., over the next seven to ten days, I
3 would ask that you consider four key avian and wildlife
4 issues.

5 First is the specifics regarding wind turbines,
6 including how many different turbines are going to be placed
7 there, what are the size, the number, and the precise
8 locations, and how can the project go forward minimizing the
9 impacts that those turbines are going to have. Obviously,
10 the proposal from the Applicant calls for 50 turbines, but
11 there is a way to reduce that and still produce the same
12 amount of power. And if you did that, you could potentially
13 avoid some of the impacts by not placing them so near the
14 owl habitat on the northern end of the project or for scenic
15 considerations maybe not so far down on the south end. So
16 those sorts of tradeoffs I encourage you to evaluate and ask
17 questions about.

18 The second piece would be the precise details of
19 any habitat mitigation package that is put forward,
20 including the appropriate type, amount, and location of the
21 replacement habitat, and making sure that it's given
22 permanently for protection through a conservation easement
23 or other enforceable means. Again, there is specific
24 details in the Wind Power Guidelines that have been
25 referenced by other commenters this morning, but I would

1 urge you to make sure that you have firm details committed
2 in any site certification that may be issued for this if
3 that does go forward.

4 The third key issue would be the post-construction
5 avian monitoring. The standard to do mortality studies is
6 for one or two years how many birds are going to get killed
7 by a project because of the unique nature of this project
8 and it's in a habitat as several people have said that we
9 haven't ever had wind turbines in before. So Seattle
10 Audubon would suggest that there be not only the standard
11 one or two years study for the mortality but look at a
12 potentially long-term time frame for those avian studies
13 because you're in such a different habitat, as well as also
14 looking at what are the impacts, not just how many birds are
15 being killed but how many are being displaced. So that you
16 look not just for carcasses but much of the study could have
17 been done beforehand by the Applicant identifying which
18 species are using the project area, do similar studies after
19 the fact to see, okay, we're not killing them, but they're
20 not here anymore. Have they gone? Are they avoiding this
21 project because of the human activities there?

22 Then the fourth that we ask that you look at
23 carefully during this proceeding is the specific details
24 regarding the formation of the Technical Advisory Committee
25 or TAC. Again, the Wind Power Guidelines have specific

1 recommendations on who the membership is, and I don't think
2 the Applicant has fully addressed that by having all the
3 appropriate entities that would be included, including
4 tribal representation, environmental groups, or others.

5 Again, maybe it's a simple thing to address but
6 make sure that that is addressed, and also what is not
7 identified is the specific authority and responsibility that
8 the TAC would have. Make sure that they have the ability to
9 call for changes in the operation or the mitigation package
10 or whatever conditions that may be put on a site
11 certification to make sure that's fully complied with, and
12 the TAC has the ability to do that.

13 With that I'll wrap up and thank you, and I look
14 forward to the opportunity to cross-examine a few of the
15 witnesses.

16 JUDGE WALLIS: Thank you.

17 Klickitat County Public Economic Development
18 Authority and Skamania County.

19 Ms. Drummond.

20 OPENING STATEMENT

21 BY MS. DRUMMOND:

22 Thank you. Susan Drummond for Skamania County and
23 the Klickitat County Public Economic Development Authority.

24 Both Skamania County and the Klickitat County
25 Public Economic Development Authority fully support this

1 project. I'd like to follow up on Mr. Andersen's comments
2 from earlier and Mr. McMahan's. It is beautiful here. The
3 lodge, the setting is above the Columbia River and the
4 Gorge. If one stays here, looked out the windows, this is a
5 key view area. One does indeed have a picture of Skamania
6 County, but as Mr. Andersen discussed it's not the full
7 picture.

8 I drove up through Carson this morning, the
9 largest unincorporated city in the Gorge. That's where you
10 will get a glimpse of some of the economic impacts of the
11 pull out of the timber industry in the 1990s. Sixty percent
12 of the kids there are on subsidized school lunches. You
13 will see a lot of the more affordable manufactured housing
14 in that community. This area is a big reason the county's
15 unemployment stands at about 12.9 percent right now.

16 Skamania County is indeed a very unique place, but
17 its uniqueness brings with it a lot of challenges. The
18 County has about one million acres, 85 percent of that,
19 85 percent is National Forest. No other county in the state
20 is like that. Another 80,000 acres are within the Columbia
21 River Gorge. That's coupled with 60,000 acres in state
22 forest trust lands and another 40,000 in private commercial
23 forest. That leaves about three percent for commercial,
24 residential, and industrial development. So much land taken
25 out of development the revenues in the county is limited as

1 Mr. Andersen mentioned. The jobs are also limited. The
 2 lodge here is, of course, an asset, but these are mostly
 3 service jobs, not the family-wage jobs that the timber
 4 industry brought to this community.

5 Wind development helps with jobs, but it also
 6 supports the tax base which is key to providing services
 7 which forms the basis for economic development. Skamania
 8 County is on federal life support right now. If that
 9 funding were to go away, the county would have to layoff
 10 half its work force, its schools would lose 40 percent of
 11 their funding, and three-fourths of the school districts
 12 would be shuttered. That's why this project matters to
 13 Skamania County. It is the only project that has been
 14 proposed for a location within Skamania County, and it is
 15 over 35 miles from any other wind project.

16 The scenic area is not a National Park. It is a
 17 protected area, but development is allowed inside of it, and
 18 it certainly does not restrict development outside its
 19 borders. SOSA and Friends can see that by moving to strike
 20 Skamania County's and Klickitat County Public Development
 21 Economic Development Authority's testimony.

22 Skamania County asks that the deal struck in 1986
 23 when the Columbia River Gorge Scenic Area Act was passed be
 24 honored, and that buffers not be extended beyond scenic area
 25 boundaries. You know, I was thinking this morning when

1 driving through Carson that to protect the environment which
2 we are a part of for a local community to invest in that you
3 have to also invest in the local people who live there.
4 That is part of what this project is about, investing in the
5 people who live here in Skamania County. Thank you.

6 JUDGE WALLIS: Thank you very much.

7 I believe that concludes the opening statements
8 from parties who have indicated they wish to make one. I
9 see no dissent from that observation.

10 We're going to take a break now for lunch, and
11 before we do that as a result of the Council's consideration
12 on the break of the proposal to change the schedule for a
13 view, we are advised that the staff indicates that it will
14 be impossible for make any suitable arrangements on short
15 notice. Following the prior prehearing conference when it
16 appeared that the schedule would not be altered, constructed
17 or altered to allow the view tomorrow, the arrangements were
18 canceled and as I say cannot be recreated.

19 It's also true that it would be impossible to
20 access the site of the project in light of snow on the
21 ground, and the Council has indicated that it desires to
22 view the site of the project and at least a portion of the
23 key viewing areas at a later time. Looking at the calendar
24 it appears that the latter part of March would be an early
25 opportunity to proceed with the view, and as that time

1 approaches the Council will indicate a tentative schedule
2 and arrangements that will be made for participation of the
3 parties in that view and will circulate it to the parties,
4 including, if not all of the key viewing areas, those that
5 appear to be most significant or representative and again
6 viewing the circumstances on the ground at the actual site
7 of the project and whether access would be available at the
8 time. So the Council will be making a proposal and will be
9 circulating it to the parties and we will take it up at that
10 time.

11 It's time for our lunch recess at this point, and
12 we would like to go off the record for just a minute for a
13 scheduling discussion.

14 (Discussion off the record.)

15 JUDGE WALLIS: Let's be back on the record,
16 please.

17 MR. ARAMBURU: I just we have one point for the
18 afternoon session. Mr. Spadaro as I understand is going to
19 be the first witness, and he has sponsored numerous portions
20 of the application, and I for one will have a number of
21 questions for him about the application. So to the extent
22 that Council Members have that application handy I'd just
23 advise them there will be a number of questions referenced
24 to page numbers in the application. So to prevent sort of
25 shuffling papers at that time, I just wanted to point that

1 out.

2 JUDGE WALLIS: Thank you, Mr. Aramburu.

3 MR. KAHN: I also have one issue, Your Honor. We
4 have an errata sheet for Dr. Smallwood. It's been mentioned
5 a couple times this morning. We would like to pass it out
6 to all the parties but I understand Mr. McMahan has an
7 objection to it, but we will probably address that when the
8 testimony is given.

9 JUDGE WALLIS: Very well. Do the parties want
10 this on the record?

11 MR. McMAHAN: I think we do need this on the
12 record. Thank you, Your Honor. The issue is the errata
13 sheet for Mr. Smallwood. I'm happy that the parties have
14 it. I just request that the Council not have it until we're
15 able to air our objection regarding this particular exhibit.
16 Is that my understanding, Mr. Kahn?

17 MR. KAHN: I guess either way. All the other
18 exhibits were submitted earlier subject to objection, and
19 the Council had those so I don't see why this should be
20 treated any differently.

21 MR. McMAHAN: Actually I'm not aware of where
22 cross-examination exhibits are, if they're on your desk
23 prior to admission. I guess I don't know the answer to
24 that.

25 JUDGE WALLIS: They have not been distributed.

1 MR. McMAHAN: Then I would request that they not
2 be distributed to the Siting Council. We have serious
3 objections to this. This errata sheet is surrebuttal and it
4 is inappropriately offered. That's in essence my objection
5 to this errata sheet. We would like to take that up when
6 Mr. Smallwood is here.

7 JUDGE WALLIS: Very well. We will take our lunch
8 recess and will be back on the record at 1:30 p.m.

9 (Lunch recess taken from 12:00 p.m. to 1:30 p.m.)

10 JUDGE WALLIS: Let's be back on the record for the
11 afternoon session on January 3, 2011.

12 At the conclusion of the earlier session
13 Mr. McMahan asked that the council not distribute some
14 materials that were provided this morning. Over the lunch
15 hour the Council has conferred on that and has decided that
16 it would be preferable, if not necessary, if the Council is
17 called to make a decision relating to those documents that
18 the Council have them. So we are going to ask staff at the
19 conclusion today to distribute those documents to the
20 Council Members.

21 Is there any other administrative matter before we
22 now take up our first witness?

23 MR. McMAHAN: No, Your Honor, other than some
24 objections I have concerning the cross-examination exhibits
25 which I could take it prior to the testimony or I could take

1 as their offered. It's up to you, objections as to
2 cross-examination exhibits.

3 JUDGE WALLIS: Very well. Let's take those up as
4 they are proposed.

5 MR. McMAHAN: Thank you.

6 MR. KAHN: Your Honor, did I understand you to say
7 that none of the rebuttal cross-examination exhibits were
8 distributed to the Council today? Because during the
9 testimony this afternoon we intend to refer to some of them.
10 We handed them out this morning. I don't know whether you
11 handed them out this morning.

12 JUDGE WALLIS: No, we did not receive them in. We
13 would like to receive them as soon as staff is able to
14 distribute them.

15 MR. ARAMBURU: We have binders for everybody. I'm
16 going to be asking some questions of Mr. Spadaro, and I will
17 be asking Mr. Spadaro questions about three items. One was
18 the application identified this morning.

19 JUDGE WALLIS: Yes.

20 MR. ARAMBURU: Number two is his written direct
21 testimony. I don't have questions of him today about his
22 rebuttal testimony because that deals with the avian issues
23 and other issues. Then I will be asking him, referring him
24 to Exhibits 1.07, 8, 9, and 10. So those would be the
25 matters that I would be questioning him on. So if Council

1 Members have those that would be useful.

2 JUDGE WALLIS: Thank you, and I see that one of
3 those I believe is on the screen; is that correct?

4 MR. ARAMBURU: Yes.

5 JUDGE WALLIS: Very well. Are you planning to use
6 the map that is on the documents stand?

7 MR. ARAMBURU: Yes.

8 JUDGE WALLIS: Is that a map from the application
9 itself?

10 MR. BAKER: The map is not part of the application
11 itself, but it is cited and relied upon by the application
12 at page 2.1-6.

13 MR. McMAHAN: Your Honor, Tim McMahon, for the
14 record. I am objecting to that map. That map is not in the
15 application. That map has corridors from the application
16 with turbine locations placed on top of it. So that is not
17 in the record, not part of the application materials and not
18 part of Mr. Spadaro's testimony.

19 JUDGE WALLIS: Very well.

20 MR. BAKER: The application at page 2.1-6
21 specifically cites this map. It gives the name Northwest
22 Seed 2002(b). That reference is provided at page 1.5 -- or
23 I'm sorry -- Section 1.5.2 of the application.
24 Mr. Spadaro's testimony sponsors that portion of the
25 application.

1 MR. McMAHAN: I think we might be talking about
2 two different things, Your Honor. Are you talking about
3 that layout map or are ou talking about what's on the
4 screen?

5 JUDGE WALLIS: I am talking about the layout map
6 that's on the stand.

7 MR. McMAHAN: That's what I thought you were
8 talking about, and that is my objection as to that map
9 because that map is not in the application.

10 MR. BAKER: Okay. I was confused. The map on the
11 foam board, on the layout board that is a cross-rebuttal
12 exhibit. This is a map of the project site prepared by the
13 Applicant that Friends and SOSA obtained through discovery,
14 and we intend to ask questions of their witnesses based on
15 this map.

16 MR. McMAHAN: Your Honor, aside from the fact that
17 it is not what it is purported, it's not in the application,
18 and in fact we seeking a permit to corridors and not turbine
19 locations as this Council is aware. Aside from that being
20 offered as a cross-examination exhibit to rebuttal, the only
21 rebuttal testimony of Mr. Spadaro that's relevant here now
22 that we resolved issues with the tribe relates to the
23 habitat mitigation parcel. It's beyond me how that has
24 anything to do with the rebuttal testimony.

25 JUDGE WALLIS: I think this might be helpful in

1 light of this discussion if we could take up the objections
2 in advance of the testimony, and that way the Council will
3 be able to rule on them, and we will be able to proceed
4 directly through the testimony.

5 MR. McMAHAN: So would you like me to go through
6 all of the rebuttal witnesses?

7 JUDGE WALLIS: Yes.

8 MR. McMAHAN: Your Honor, to the extent that my
9 opening statement expressed some agitation with the conduct
10 of the proceedings by opposing counsel, I think this is
11 demonstrative of why we're a little on edge with some of the
12 conduct in the proceedings. First, 107.C, BPA Exhibit 29.04
13 BPA System Impact Study, and I'm referring to the draft
14 exhibit list now. I think that's probably the best way to
15 walk through these.

16 JUDGE WALLIS: Let's take a moment off the record
17 to get numerical designations on these documents, and then
18 we can proceed. So let's be off the record for that.

19 (Discussion off the record.)

20 JUDGE WALLIS: So let's go back on the record,
21 please.

22 During the brief recess we did indicate numerical
23 designations for some of the recently submitted
24 cross-rebuttal exhibits, and those were as follows: Exhibit
25 A, map of 50 turbine towers depicted. That will be 1.11C.

1 The letter designated as O, WDFW e-mail exchange will be
2 1.12. P, WDFW e-mail exchange two will be 1.13. R, Jessica
3 Davenport e-mail would be 1.14. S, Skamania County
4 Ordinance 2010-10 would be 1.15. T, Washington Department
5 of Natural Resources comments would be 1.16. W, Findings,
6 Conclusion of Decision of Skamania County Hearing Examiner
7 would be 1.17. Z, GE wind power brochure for 2.5-megawatt
8 wind turbines would be 1.18c. And, AA, GE Wind Power
9 Brochure for 1.5 megawatt wind turbines would be 1.19C.

10 (Exhibit Nos. 1.11c through 1.19c marked for
11 identification.)

12 MR. McMAHAN: All right. Your Honor, thank you.

13 So I will just walk through these chronologically.
14 1.07c is the BPA System Impact Study which was
15 unsuccessfully attached to an attorney's declaration, was
16 not offered in a timely manner. That's a cross-examination
17 exhibit to the opening testimony of Mr. Spadaro, and the
18 rebuttal testimony says nothing that relates in any way to
19 the system impact study, but alone a question on its
20 relevance for this witness what BPA may have said in 2008 to
21 Puget Sound Energy in a cover e-mail that on its face to say
22 it's no longer current or accurate.

23 JUDGE WALLIS: Which documents are you referring
24 to, counsel?

25 MR. McMAHAN: 107c. If you would like me to

1 proceed through each before responses, I'm just looking for
2 you for guidance here. It's an e-mail exchange with
3 Mr. Aramburu and BPA people with an attached out-of-date BPA
4 transmission study from 2008, and it's probably buried in
5 history because it's been considered during the prehearing
6 conference, and it's back again as a cross-examination
7 exhibit ostensibly on Jason's rebuttal testimony which was
8 about wildlife mitigation.

9 JUDGE WALLIS: Let's be off the record.

10 (Discussion off the record.)

11 JUDGE WALLIS: Very well.

12 MR. McMAHAN: We've talked about 1.11, 1.12, and
13 1.13. I think I just understood from Mr. Aramburu that your
14 aspiration is to take up wildlife issues with Mr. Spadaro as
15 a witness after the wildlife testimony; is that correct?

16 MR. ARAMBURU: I think what everyone has agreed to
17 is that we will take everything else for Mr. Spadaro today
18 except for the wildlife issues.

19 MR. McMAHAN: That's fine with me. So I want to
20 just flag that we will have a conversation about those
21 documents at that time, and I'm referring to 1.12 and 1.13
22 so let's just not worry about those now. It sounds like
23 Jason will come back during the wildlife testimony and we
24 can address those then.

25 JUDGE WALLIS: Very well. So that your objection

1 to 1.07c is?

2 MR. McMAHAN: For today.

3 JUDGE WALLIS: Right.

4 Mr. McMAHAN: The objection is that it relates to
5 the BPA system impact study that has no relevance to this
6 witness and nothing to do with his testimony and is a rather
7 historic document between BPA and Puget Sound Energy in its
8 tire kicking for this proposal some time ago, and I'm just
9 saying it has no relevance to Mr. Spadaro's testimony.

10 So 1.14 --

11 MR. ARAMBURU: Should we do these one at a time?

12 JUDGE WALLIS: Let's hear the response to that.

13 MR. ARAMBURU: Exhibit 1.07C is the system impact
14 study sponsored for this project by Puget Sound Energy in
15 2008. The preparatory documents which are e-mails is to
16 confirm with BPA that this is a document that they have in
17 their records. There is no question that this document
18 relates to this project back when it was called the
19 Saddleback Project. It talks about transmission issues
20 regarding this project which may or may not still be items
21 of concern and restriction related to this project. It also
22 relates to who the applicant is Puget Sound Energy or
23 Whistling Ridge Energy or whatever the situation might be.

24 This was originally distributed to the parties
25 with my declaration because I was seeking to bring it in.

1 So the parties have had this material I think since around
2 the 1st of November. When the Council decided that it did
3 not want to accept my declaration of this material, I
4 believe it left open the potential for reviewing exhibits of
5 this nature either by taking judicial notice of those
6 exhibits or by allowing them in at a subsequent time.

7 So what we've done is taken that exhibit and
8 included it here within the appropriate exhibits for
9 Mr. Spadaro. It is slightly out of order, but the question
10 would be is there surprise related to this exhibit, the
11 answer to that is, no, because the material has been in the
12 hands of the other side since at least November 1. And I
13 think instead of resolving it as a preliminary matter, I
14 think it might be appropriate for Council to address this
15 issue when questions are put to the witness about it.

16 So that would be my request, that it either come
17 in or that you reserve ruling pending the question that
18 would be asked of Mr. Spadaro.

19 JUDGE WALLIS: What would be the nexus between
20 this document and the witness?

21 MR. ARAMBURU: The witness talks about adequate
22 transmission capacity. The witness talks about serving
23 loads to the east of the mountains. That's all a part of
24 his testimony in Section 2.1 of the application. So this is
25 all material that's relevant to matters that Mr. Spadaro has

1 taken up.

2 JUDGE WALLIS: Very well. What was the next one
3 1.14?

4 MR. McMAHAN: Again, 1.14, again, this is offered,
5 an e-mail I believe from somebody from the county. I
6 believe offered for something to have to do with land use,
7 and it's offered as a cross-examination exhibit to the
8 rebuttal testimony which again only had to do with wildlife
9 mitigation. The point is if it were to have come in, it
10 should have come in weeks ago as a cross-examination exhibit
11 for the general testimony, not for rebuttal testimony. We
12 were served it this morning. It's inappropriate for us to
13 have to react to this and others down the list today when it
14 has nothing to do with Mr. Spadaro's rebuttal testimony.
15 The same is true with 115c and the same is true with 116c.
16 Nothing to do with that which is offered to rebut through
17 cross-examination. It is a surprise, and frankly not to be
18 negative about opposing counsel, but it's a sandbag to come
19 in today versus in a timely fashion weeks ago.

20 MR. KAHN: Your Honor, it's not a sandbag. As
21 Mr. Aramburu said, this exhibit it was attached to his
22 declaration back in November. 1.14 and 1.16 were attached
23 to an earlier declaration of Nathan Baker which the Council
24 at the last prehearing conference rejected. So Mr. McMahan
25 and all the other parties have had this for about two

1 months. These are documents that were also submitted as
2 part of the land use proceeding.

3 If you recall at the prehearing conference, not
4 the telephonic but the one before that, we addressed it and
5 we reserved the right to submit these since you rejected.
6 We reserved the right to submit them as cross-examination
7 exhibits. This is also based on an earlier order of yours
8 that required us to resubmit any evidence we wanted that was
9 submitted in the land use hearing as part of this
10 proceeding. So this is the third time we've tried to get
11 this in. One of them should work.

12 MR. McMAHAN: Your Honor, if that was the intent
13 they should have submitted them as cross-examination
14 exhibits some time ago. This is not matters that we have
15 had opportunity to -- just lunch time to discover of
16 Mr. Spadaro, and it's inappropriate for us to have to react
17 in that fashion at this point in time.

18 MR. KAHN: They've had these exhibits two months
19 ago, Your Honor. They moved against them a month ago. To
20 say that they just got them over the noon hour is completely
21 disingenuous.

22 MR. McMAHAN: We were not informed that they would
23 be cross-examination exhibits of Mr. Spadaro.

24 JUDGE WALLIS: Very well.

25 MR. McMAHAN: 1.17 same objection, same reason,

1 not related to rebuttal. 1.18 and 1.19 I have absolutely no
2 idea why those were submitted. They weren't submitted
3 previously with an attorney's affidavit. They appear to be
4 brochures from a wind turbine manufacturer GE, and I don't
5 know what they have to do with wildlife mitigation.

6 MR. ARAMBURU: Would you like to hear from us?

7 JUDGE WALLIS: Yes.

8 MR. ARAMBURU: I think we skipped Exhibit 1.11 or
9 at least I have in my responses. Exhibit 1.11 it's the map
10 and drawing that's up on the foam board. That is a document
11 that shows the turbine lines and the approximate locations
12 of the turbines. It is a document that I think the Council
13 will need as it goes through these proceedings some
14 description of where things are, where they're generally
15 located. So that's part of the point it's there. No
16 question this is prepared by SDS. No question that this was
17 a document that was in the EIS. No question about this
18 representing a set of turbine lines and the approximate
19 turbine locations. We can ask the witness who now knows all
20 the questions that's going to be asked of him anyway whether
21 or not this represents a reasonably accurate depiction of
22 the proposal. So under those circumstances I think that
23 1.11 will be useful for the Board in understanding
24 testimony, in reviewing testimony, and understanding where
25 things are as we go through this.

1 Part of the problem is there is kind of like
2 material that's found in the application so I think this
3 would be useful as a general approximation. I understand
4 Mr. McMahan's statements that he says, well, we are doing
5 turbine lines not doing individual turbines, but this is
6 their material so I think that's useful from that
7 standpoint.

8 MR. McMAHAN: Your Honor, just one quick response.
9 No, the Applicant didn't prepare this. That's not true, nor
10 have I ever seen this in the EIS which was prepared by BPA
11 and EFSEC. No, we didn't prepare that map. I think it
12 might be most useful if the Siting Council wants to refer to
13 a map for this discussion to look at, of course, I have a
14 hole punched through the last digit, but Figure 2.3-2 I
15 believe in the application materials that is the layout map
16 that was shown in the application material. It is a
17 corridor court map, and if they want to use a map let's just
18 use that map.

19 MR. ARAMBURU: What figure is that?

20 MR. McMAHAN: It's Figure 2.3.2, yes.

21 MR. KAHN: Figure 2.3.2 or page 2.3.2?

22 MR. McMAHAN: Well, it's kind of got a whole in my
23 last digit, but it would be page 2.3-2.

24 JUDGE WALLIS: All right. We have that now.

25 MR. BAKER: For the record, this is Nathan Baker.

1 I'm surprised to hear the Applicant did not prepare this
2 exhibit on the foam board. This was obtained from the
3 Applicant through discovery when we asked for the
4 coordinates of the specific turbines and that was provided
5 to us by the Applicant. The difference between this map on
6 the foam board, and the map that Mr. McMahan referred to
7 revised Figure 2-3-1 is that the foam board map shows dots
8 where specific turbines would be located. This is relevant,
9 very relevant testimony. Mr. Watson's rebuttal testimony on
10 Exhibit 8.03r at pages 16 and 17 he discusses from specific
11 viewpoints there would be two or three turbines visible. We
12 may ask questions which of the turbines are those two or
13 three turbines. It's easier to identify the turbine site
14 with this map. Frankly, I don't understand why the
15 Applicant doesn't want this in the record. Again, we
16 thought it was prepared by the Applicant. It's also
17 relevant to Mr. Spadaro's testimony. In his rebuttal
18 testimony he talks about the land that's impacted by the
19 project and how that would be converted. We would be able
20 to ask questions of Mr. Spadaro about where the habitat is
21 being converted, how did he calculate the acreage of land
22 that's being converted.

23 And then just in general it's relevant for
24 illustrative purpose for all of the witnesses because,
25 again, it's the only map that actually shows the individual

1 turbine sites. In terms of discussing alternatives
2 mitigation, the impact of individual turbines it's totally
3 relevant.

4 JUDGE WALLIS: You have a concluding comment,
5 Mr. McMahan?

6 MR. McMAHAN: Well, yes. We provided discovery in
7 the UTM coordinates. We didn't provide a map. We provided
8 coordinates and the Friends overlaid those on a map, number
9 one.

10 Number two, to tie this back to the mitigation
11 testimony is one heck of a stretch. As far as I can tell
12 that somehow this map is relevant to Mr. Spadaro's testimony
13 that he's offering 2:1 mitigation ratio based upon the
14 disturbed area is a little far fetched to me. Let me say
15 this. These are hypothetical locations, hypothetical
16 locations that were used for a worst-case overstated visual
17 assessment analysis, but we'll talk about that as the week
18 goes forward. A worst-case scenario layout used for the
19 visual assessment analysis and noise modeling. Let's just
20 understand that this map is a composite of information
21 that's been assembled by the Friends of the Gorge who has
22 represented to you as if it were in the application and it
23 is not.

24 I will say that for the purpose of ongoing
25 testimony it is useful to the Siting Council, and let me

1 just take the honorable position here and say, all right,
2 we'll stipulate to it coming in as long as everyone
3 understands we are not proposing to permit those locations.
4 Those locations have been used for a specific purpose for
5 regulatory compliance, and what is particularly
6 objectionable to us is a representation made by the Friends
7 that it is what isn't. It is not in the application
8 submittal, and it does not reflect turbine locations that
9 we're seeking to permit per se.

10 MR. KAHN: Your Honor, I have to correct a
11 profound misstatement by Mr. McMahan. That document is
12 exactly what we received on discovery. We did not add to
13 it, we did not plot anything on it, we did not alter it.
14 That is exactly the document we received. It is not an
15 amalgam of various pieces of information that we put
16 together. That's exactly what we received.

17 MR. McMAHAN: And I may be misremembering, but it
18 sure isn't from the application.

19 MR. KAHN: But we got it from you.

20 JUDGE WALLIS: Very well. Let's move on, please.

21 MR. MOSS: Judge Wallis, I wonder if we could get
22 that screen saver or whatever it is turned off. It's
23 distracting.

24 JUDGE WALLIS: We will get staff, one of the staff
25 people to please --

1 MR. MOSS: To put that on standby or whatever.

2 JUDGE WALLIS: All right. 1.12 and 1.13.

3 MR. McMAHAN: Well, Your Honor, I think we've all
4 -- 1.12 and 1.13 again relate to the testimony that I
5 believe would be delayed until the wildlife testimony
6 occurs. I don't believe, in other words, there will be any
7 testimony today regarding the -- in fact, I think this is an
8 important fact point in any case. There will be no
9 testimony today regarding Mr. Spadaro's rebuttal testimony
10 because this relates to wildlife mitigation. So if anything
11 here is offered for the first time today that's a
12 cross-examination exhibit for rebuttal testimony it
13 categorically shouldn't come in today.

14 MR. KAHN: Your Honor, one of the issues that
15 Mr. Spadaro is going to be testifying about or at least
16 asking answering questions from us is the land use. These
17 exhibits pertain to land use. We're suppose to get at the
18 truth of this matter and that's all we want to do is present
19 relevant documents.

20 MR. McMAHAN: Submitted to the party in a timely
21 fashion preferably designated as cross-examination exhibits.

22 JUDGE WALLIS: 1.18. Let's see. We've discussed
23 1.18 and 1.19. Does that conclude your objections,
24 Mr. McMahan?

25 MR. McMAHAN: Yes.

1 MR. ARAMBURU: I don't think we had a response to
2 1.17 the objection. I don't think we have at least to 1.17.
3 I will cover that briefly. Exhibit 1.17c is the findings,
4 conclusions and decision of the Skamania County Hearing
5 Examiner when she issued her decision regarding the need for
6 an environmental impact statement concerning the proposed
7 amendments to the Skamania County zoning codes.

8 This was another document that I sought to have
9 introduced through my declaration which was ruled by the
10 Council to be not an appropriate manner of introducing this
11 material; however, this material is relevant to land use.
12 This is material that we have asked that the Council take
13 judicial notice of. This is also material related to the
14 testimony of both Mr. Spadaro and Ms. Chaney who in fact
15 refer to the various proposed Skamania County zoning code
16 amendments that were in fact not adopted.

17 So we think that this is appropriate. We notice
18 that several of the rebuttal cross-examination exhibits that
19 have been presented by the Applicant actually refer to that
20 very proceeding before the Skamania County Hearing Examiner.
21 So I think this is appropriate material for questions of
22 these witnesses. It is appropriate material to take
23 judicial notice of particularly in light of the discussion
24 of this decision by the witnesses.

25 Exhibits 1.18 and 1.19 are turbine brochures

1 involving turbine manufacturers and would be principally
2 sought to allow the Council to review differences between
3 the various turbines that might be proposed. Mr. Spadaro's
4 testimony says that they are considering an alternative of
5 wind turbines that would vary in power from 1.2 megawatts to
6 2.5 megawatts. This would allow the Council to better
7 understand those differences, and we well admit that this
8 material perhaps from Mr. Spadaro should have come in
9 earlier when I look at the Nierenberg testimony which is new
10 testimony regarding wind speeds and power at the site. We
11 thought this would be a good exhibit for the Council to
12 compare these various turbine types. So we think this is
13 useful for the Council to review. We also have this as a
14 part of our cross-examination of Mr. Nierenberg who is their
15 wind guy so to speak so.

16 So we think that these are fair exhibits to be
17 asked, and again I think these should be in the context of
18 individual questions to Mr. Spadaro. We appreciate perhaps
19 he has not seen them, but we do have some individual
20 questions about those comparisons of turbines we think that
21 would be useful to the Council.

22 JUDGE WALLIS: Very well, Mr. McMahan.

23 MR. McMAHAN: Your Honor, we have been disciplined
24 in following the Council's orders in terms of the
25 cross-examination exhibits that we have put forward. We did

1 not put in new cross-examination exhibits which relate to
2 Mr. Apostol or Mr. Smallwood as to testimony that was
3 previously provided. If that were the game we're playing
4 here, I guess we should have done it; maybe we should do
5 that. But this is really making a mockery of the Council's
6 orders and process and procedures and requirements and the
7 due process for these proceedings.

8 If a rebuttal cross-examination exhibit is offered
9 to cross-examine rebuttal testimony, it needs to be about
10 that rebuttal testimony. The only rebuttal testimony
11 offered by Mr. Spadaro related to wildlife mitigation
12 period. It does not relate to the land use decision making,
13 the Hearing Examiner decision. It sure doesn't relate to
14 the turbines that potentially could be selected for the
15 project.

16 JUDGE WALLIS: Very well. Let's take a recess at
17 this point and the Council will consider the objections.

18 (Recess taken from 2:15 p.m. to 2:30 p.m.)

19 JUDGE WALLIS: Let's be back on the record,
20 please.

21 During a brief recess the Council retired and
22 deliberated the issues that were presented and the offer of
23 the discussion about these exhibits which again were
24 identified by number. The Council has decided to receive
25 these documents but subject to motion to strike in the event

1 that there are no questions about them or insufficient
2 foundation regarding the individual documents.

3 (Exhibit Nos. 1.11c through 1.19c admitted into
4 evidence.)

5 There was quite a bit of concern on the part of
6 the Council at the difficulty in following, finding the
7 documents within the material that were presented and
8 following those documents through the trail. So we're going
9 to return the books to the parties that are hoping to
10 present these documents for cross-examination and ask them
11 to number them and to organize them in a way that will allow
12 the Council to pick up the documents and put them into the
13 hearing books without having to have a great deal of staff
14 time devoted to, with our very limited staff devoted to
15 completing that organization and marking them, tabbing them,
16 so that they can be found for reference.

17 So on the break we will return these books to the
18 offering parties so that you can help us to that extent. I
19 believe that that's the essence of the result of
20 discussions. Did any Council Members have additional
21 comments to make?

22 CHAIR LUCE: You want to talk about further such
23 exhibits?

24 JUDGE WALLIS: We note that there are concerns
25 about the relevance to these exhibits to some of the

1 material. Some of them --

2 MR. BAKER: Your Honor, sorry. Your Honor, this
3 is Nathan Baker. Just for clarification on the last point.
4 When we label the exhibits, I just wanted to clarify what
5 would be the best way to do that. Some of the exhibits that
6 are A, B, C, D, E haven't been given numbers. Would it be
7 appropriate to label them with the letters for now A, B, C,
8 D, E?

9 JUDGE WALLIS: What would the purpose of that be,
10 Mr. Baker?

11 MR. BAKER: Well, in order to identify the
12 exhibits within the binder.

13 JUDGE WALLIS: I think what we're asking is that
14 you organize them within the binder according to the
15 proposed number that they would be received in evidence.

16 MR. BAKER: So we would number them ourselves?

17 JUDGE WALLIS: Yes.

18 MR. BAKER: Thank you.

19 JUDGE WALLIS: I suppose that other concerns that
20 were voiced by the Council relate to weight rather than to
21 admissibility, although it could approach the question of
22 admissibility. For example, in some supporting documents I
23 believe that the related e-mail exchange from the source
24 voices concern about the present status of the information
25 that is provided in whether it remains reliable. So as we

1 go through these individually we will be better able to
2 identify such concerns and the parties can address them. Is
3 there anything further?

4 MR. McMAHAN: Just one point, Your Honor. The
5 packet, and I think we're struggling with the same problem
6 the Council has, the packet provided to us doesn't even have
7 all these documents in it. So we don't have the ordinance
8 reference or at least a couple documents aren't even in this
9 package which I think is part of your problem finding them
10 as well. So if they're going to be offered for
11 cross-examination, it's mildly difficult for Mr. Spadaro to
12 answer questions about that which is not in front of him.

13 MR. KAHN: Can you tell us what documents you
14 don't have? Everything on this list is in your book.

15 MR. McMAHAN: The comprehensive plan and the
16 ordinance I think are two.

17 MR. KAHN: The comprehensive plan that was
18 attached to Mr. Aramburu's earlier declaration. We didn't
19 want to repeat and duplicate the massive document again.
20 The ordinance that you're referring to what's been
21 designated as 1.15c that is in there. It's the moratorium
22 that we're concerned with. It's not the entire zoning code.

23 JUDGE WALLIS: I think the net result here is that
24 there is recognition that the documents that were presented
25 this morning are very difficult for us to deal with, will be

1 difficult for the attorneys to deal with, and difficult for
2 the witnesses to deal with. So that's part of the reason
3 that we are returning them. We are disappointed by the
4 volume of material and the concerns related to the
5 individual exhibits in their presentation at this time which
6 has thus far consumed nearly an hour of the Council's time
7 for actually hearing evidence.

8 So with that, I will return these binders to the
9 offering party or parties and ask that they be organized and
10 tabbed so that the handling would be easier. And we ask
11 that it be done in a timely fashion so that the witnesses
12 and the attorneys and the Council Members all have the
13 opportunity, as much of an opportunity as possible to review
14 these documents before actually hearing them and any
15 concerns that are voiced about their admission.

16 Mr. McMahan, are you ready to call Mr. Spadaro to
17 the stand?

18 MR. McMAHAN: Yes, Your Honor, thank you. Just to
19 be clear, our intention with our witnesses is to let the
20 direct testimony speak for itself and not ask questions
21 other than simply swearing them in and verifying the
22 testimony, and I understand that will be the procedure for
23 all witnesses here.

24 JUDGE WALLIS: That's my intention, yes.

25 MR. McMAHAN: Thank you.

1 Mr. Spadaro, would you please state your name for
2 the record.

3 THE WITNESS: Jason Spadaro.

4 JUDGE WALLIS: I'm sorry. I didn't notice your
5 sudden appearance at the witness stand so I'm going to ask
6 the witness to raise his right hand, please.

7 JASON SPADARO,
8 having been first duly sworn on oath,
9 testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. McMAHAN:

13 Q. Your name for the record?

14 A. Jason Spadaro.

15 JUDGE WALLIS: Mr. Spadaro, could you rearrange
16 the microphone so that you're speaking directly into it,
17 perhaps pull it closer and a little bit to your left.

18 BY MR. McMAHAN:

19 Q. Mr. Spadaro, what's your address?

20 A. My private residence is 8 Acorn Lane, White Salmon,
21 Washington. My business address 123 Industrial Way, Bingen,
22 Washington.

23 Q. Mr. Spadaro, do you have in front of you what's
24 been marked as Exhibit No. 1.00?

25 A. Yes, I do.

1 Q. Is that testimony your complete nonrebuttal
2 testimony offered in these proceedings?

3 A. Yes, it is.

4 Q. Is there anything about that testimony that you
5 would change today?

6 A. No.

7 Q. Do you swear and affirm that that testimony is your
8 testimony and is complete for these proceedings?

9 A. Yes.

10 MR. McMAHAN: Your Honor, I believe I have nothing
11 further.

12 JUDGE WALLIS: Very well. You are moving the
13 admission as well as of Exhibits 101r?

14 MR. McMAHAN: Yes, I forgot that part. Thank you.
15 We move for admission of Exhibits -- 1.01r I think is
16 intended to be taken up later with the wildlife testimony.
17 We can move it now if you wish.

18 JUDGE WALLIS: Let's move it now, and then it will
19 still be available.

20 MR. McMAHAN: Okay. Great.

21 BY MR. McMAHAN:

22 Q. Mr. Spadaro, do you also have in front of you
23 Exhibit No. 1.01r?

24 A. Yes, I do.

25 Q. That is your rebuttal testimony; is that correct?

1 A. Yes, it is.

2 Q. Is there anything that you would change about that
3 testimony today?

4 A. No.

5 Q. Is that testimony correct and accurate testimony?

6 A. Yes.

7 Q. Do you swear and affirm that it is truthful?

8 A. Yes.

9 MR. McMAHAN: We move to admit that testimony with
10 the attachments with one stipulation, Your Honor, and that
11 is the portion of the testimony that relates to rebuttal of
12 the tribal witness should be considered stricken in
13 accordance with our understanding with the tribe.

14 (Exhibits 1.00, 1.01r through 1.05 offered.)

15 JUDGE WALLIS: Yes, and that is the document
16 marked 106r.

17 MR. McMAHAN: Correct. So the latter part of it
18 has to do with the tribal rebuttal.

19 JUDGE WALLIS: Very well. So are you planning on
20 using 106r for any purpose, any portion of it?

21 MR. McMAHAN: Yes, the first part of the testimony
22 relates to habitat mitigation, 101r. I'm sorry. I said
23 106r. Should it be that?

24 Okay. All right. Now I need to go back to this
25 list. We talked earlier about that being stricken when we

1 went through the exhibit list this morning.

2 JUDGE WALLIS: Yes.

3 MR. McMAHAN: So we are not intending to offer
4 that today. We are not intending to offer that as a
5 rebuttal exhibit for Mr. Spadaro's testimony.

6 JUDGE WALLIS: So 106r is withdrawn from all
7 purposes?

8 MR. McMAHAN: For testimonial purposes. It is in
9 the record for other portions of the proceedings. It was
10 sent in as a SEPA comment letter, as I understand a
11 SEPA/NEPA comment letter. So we have nothing to do with
12 that. It has other purposes which may or may not be
13 relevant, but certainly not for this testimony.

14 JUDGE WALLIS: Very well. I trust that the
15 discussion make things crystal clear for the record.

16 MR. McMAHAN: I have nothing further of
17 Mr. Spadaro, Your Honor.

18 JUDGE WALLIS: Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. ARAMBURU:

21 Q. Mr. Spadaro, I'm Richard Aramburu representing
22 SOSA. I have some questions for you regarding your
23 testimony.

24 MR. ARAMBURU: How am I coming through over there?
25 Good? Okay. Very good.

1 BY MR. ARAMBURU:

2 Q. I have some questions regarding your testimony and
3 about those portions of the application or what I'll just
4 refer to as the ASC in these proceedings.

5 First of all, you indicate at pages 2 and 3 of
6 your testimony that you're sponsoring certain sections of
7 the application. Does that indicate that you actually wrote
8 those or you're sponsoring them?

9 A. I am sponsoring them and I contributed. I did not
10 actually write the words.

11 Q. Who did write the words?

12 A. Katy Chaney who is the project consultant.

13 Q. So I can ask her questions about these as well?

14 A. You'll have to ask her.

15 Q. Let me understand what Whistling Ridge Energy is.
16 What kind of an organization is that?

17 A. Whistling Ridge Energy is a special purpose LLC for
18 the purposes of this energy project.

19 Q. Who are the equity owners of Whistling Ridge
20 Energy?

21 A. As the application states Whistling Ridge Energy,
22 LLC, is a wholly owned of the SDS Co. LLC who is the
23 landowner, one of the landowners.

24 Q. SDS and Broughton Timber are the landowners; is
25 that correct?

1 A. Broughton Lumber Company.

2 Q. What has been your responsibilities with respect to
3 this application?

4 A. I'm the prime applicant. I'm the applicant and the
5 prime sponsor of significant portions of it, and I
6 contributed significantly to its outcome.

7 Q. Up on the board in the distance here is a drawing
8 which has been I believe admitted or identified as
9 Exhibit 1.11c.

10 MR. ARAMBURU: I am not one wrong about that?

11 JUDGE WALLIS: Yes, the documents that have been
12 offered in support of Mr. Spadaro's testimony have been
13 received in evidence.

14 BY MR. ARAMBURU:

15 Q. Is Exhibit 1.11c, and again I'm referring to the
16 material on the board, does that depict the proposal of
17 Whistling Ridge Energy for this project?

18 A. Not exactly, and I will reiterate what my counsel
19 described to the Siting Council; that we are not seeking to
20 permit turbine locations. This was a hypothetical layout in
21 a worst-case scenario which is 50 turbines totalling
22 75 megawatts. We're seeking to permit corridors, and I think
23 this may be a very appropriate time for me to make a comment
24 to the Council and Your Honor regarding the number of
25 turbines and location of those turbines.

1 Q. That's beyond my question but go ahead.

2 A. Okay. Members of the Council, we at SDS Lumber
3 Company we're also a resident of the Gorge. We've been here
4 for a long, long time. We live here. We own land here, and
5 we appreciate this landscape as well. This project though
6 that you see in its worst case would have 50, 1.5-megawatt
7 turbines totalling 75 megawatts. Seventy-five megawatts is
8 the smallest wind energy project proposed in the state of
9 Washington other than the Community Wind Project on the Coast
10 which has only a few turbines. This project is small, but it
11 is very important to Skamania County. It's very important to
12 our company, and it's very important to our community. We
13 don't have flexibility to move it north. We don't have the
14 flexibility to move it south, east, or west.

15 When we proposed and prepared the application
16 1.5-megawatt turbines were commonplace in wind energy
17 development. Turbines range from 1.5 to 2.5 today. 1.5 and
18 1.8 are still common. They're becoming less common. Two
19 megawatt and larger machines are becoming more common.

20 I would stipulate at this point before this
21 Council that 2-megawatt machines or larger would be used for
22 this project. I think that's an important consideration to
23 show that we are aware. We've heard comments from Seattle
24 Audubon. We've heard comments from the Counsel for the
25 Environment. We've heard comments from the Yakama Nation.

1 We want to remain cooperative with all parties. We want to
2 do what we can to minimize the visual impact, but we must
3 maintain a viable project.

4 By going with 2-megawatt or larger machines we now
5 have the option of going fewer turbines with a maximum of 38
6 instead 50. The tradeoffs with fewer larger turbines they
7 have larger wake effect. There are a couple of rows that
8 are shown here, the E-row and the F-row, are only viable if
9 there are smaller turbines being used. Those two at
10 2-megawatt machines, those two rows can be dropped out, and
11 then the 38 turbines would be scattered among the remaining
12 corridors that we're seeking permitting for.

13 With regard to the A-string which we will hear a
14 lot about in the next week, week and a half, the main issue
15 here is obviously scenic resources. With regard to the
16 A-string, that reduces the number from seven 1.5 machines to
17 five machines by going to a 2-megawatt or larger machines.
18 Any further downsizing though of the project we still need
19 in order to get 38 machines, we still need to have the same
20 start point and the same end point along these ridges and
21 along the turbine corridors. Dropping or starting the start
22 point farther north or pushing the end point farther south
23 reduces the total size of the project, and we cannot accept
24 that; otherwise, it kills the project. That's the end of my
25 remarks.

1 Q. Well, let me ask you a couple questions about that.
2 When did you come up with this change in the number of
3 turbines? I came in here this morning and it was 50. So
4 when did this happen?

5 A. We have always looked at the depiction in the
6 visual simulations of the ASC as a worst-case scenario. We
7 have used 50 turbine locations. That's what's depicted on
8 this map. That is not exactly as SOSA and Friends have
9 portrayed it as my counsel said. Most of the point where we
10 have visual simulations were a worst-case scenario of 50
11 locations, also doing a worst-case scenario of the largest
12 possible machine. So it's the greatest density with the
13 largest possible machine using 2.5-megawatt machines for the
14 visual simulation. So it was a worst-case scenario.

15 We've always stated that there could be a range of
16 turbines. The application states from 1.2 to 2.5 megawatts
17 per machine. We've never been rigid as in we've not been
18 able to enter into a contract as of yet for turbine supply.
19 So we need to maintain the flexibility of having a range of
20 machines.

21 When we stipulate to 2-megawatt or larger machines
22 does drop out a number of the turbines that have a
23 significant commercial effect on the project because it
24 reduces the competitive environment of bidders on this
25 project. We're willing to do that and show a good faith

1 toward minimizing visual impacts of this project.

2 Q. So do you have, Mr. Spadaro, a drawing that would
3 show how many turbines would be in each of your strings A, B,
4 C, D, and E?

5 A. We do not.

6 Q. Again, the question I ask is when you came up with
7 this change? Was that last night? Was that a week ago?
8 When was it?

9 A. This is the first opportunity I've had to speak
10 with the Council. We have always said there could be a range
11 from 1.2 to 2.5. There was no specific moment in time, late
12 last week or any point in time that I recall where we've come
13 up with this.

14 Q. Would it be possible in these arrangements to go
15 with a turbine that would be greater than two megawatts?

16 A. That as I mentioned earlier there are commercial
17 effects to the project of limiting the turbine supply to
18 specific type of turbine, and we cannot accept that kind of
19 limitation on the commercial viability of the project.

20 Q. And why is that?

21 A. There are only a few turbine supply vendors who
22 offer 2.5 megawatt machines. We need the flexibility to have
23 a commercially viable and competitive site. We are willing
24 to offer and accept two megawatt and larger machines, but we
25 cannot accept any great restrictions beyond that.

1 Q. When you can't take any restrictions beyond that is
2 that a financial decision you're making?

3 A. Yes.

4 Q. So what's the difference between a two-megawatt
5 turbine, what's the difference in price between a 2-megawatt
6 and a 2.5-megawatt turbine?

7 A. It varies by vendor. We have not sought quotes yet
8 on turbines that are 2.5 megawatts in size nor have we sought
9 quotes yet on machines that are smaller than that.

10 Q. You're aware that -- you follow winds farm projects
11 sort of regularly?

12 A. Yes.

13 Q. Are you aware that the Windy Point, Windy Flats
14 project that has just been recently put on line used
15 2.3-megawatt turbines?

16 A. I am not aware of that.

17 Q. But as to the turbine size I understand your
18 response about finances. Is there any reason why a
19 2.5-megawatt turbine or a 3-megawatt turbine could not be
20 located on this site physically?

21 A. Yes, there could be. Depending upon the turbine
22 design specifications there could be limitations that prevent
23 larger machines from being offered by a particular vendor
24 being suitable for our site.

25 Q. What would those limitations be?

1 A. First is as you go with larger turbine output you
2 typically increase the turbine height and the blade diameter,
3 and we are under our application we are limited with 426-foot
4 tip height.

5 Q. What's the hub height and maximum height of the
6 turbine blades on the 2-megawatt turbine?

7 A. You can get 2-megawatt turbines with varying hub
8 heights and blade diameters.

9 Q. So what would that maximum height be?

10 A. The maximum height we are seeking permitting for is
11 426 feet, a tip which would be approximately 80-meter hub
12 height and 100-meter rotor diameter.

13 Q. Are there designs for 2.5-megawatt turbines that
14 have approximately that same hub height and tip of the blade?

15 A. Typically the larger machines have a higher, are
16 going more to a 100-meter hub height and the larger rotor
17 diameter.

18 Q. Have you specifically gone out and shopped these
19 around and looked at what is available in the marketplace?

20 A. As I stated earlier, no, we have not sought turbine
21 supply quotes yet.

22 Q. I'm not asking about quotes. I'm asking have you
23 gone out to look at the physical sizes of the various turbine
24 sizes, say 2, 2.3, 2.5?

25 A. Please clarify. You asked if we've shopped around

1 for larger size turbines. You're me asking what again?

2 Q. You're right. Let me change the question. Have
3 you examined in your review of available turbine sizes, the
4 size of the turbine's hub height, the maximum tip at the end
5 of the blade? Have you reviewed the various sizes that would
6 be required for those turbines?

7 A. No. We have not tried to micro-site -- if I'm
8 understanding your question, we have not tried to micro-site
9 our project and determine the most suitable wind turbine. It
10 all depends, is dependent upon what we are able to get
11 approved. So we have not attempted to micro-site, to narrow
12 down to a smaller range of turbines and hub heights and blade
13 diameters yet.

14 Q. You testified that the 75 megawatts is the minimum
15 size or the minimum total amount of nameplate rating for
16 turbines that would be appropriate here; is that correct?

17 A. That is correct.

18 Q. What goes into making that determination?

19 A. There are a number of factors that go into the
20 economic viability of a wind turbine project. I don't know
21 that the economic - I'm not sure how that relates to my
22 testimony, but I will still state that we have a 230 kV
23 interconnection with Bonneville Power. That substation cost
24 is one component. Turbine supply pricing is another
25 component. There are a number of components that go into

1 making the viability of a project, and in today's market
2 environment 75 megawatts is very, very small.

3 Q. Let me ask you this question. What's the
4 difference in construction cost of a substation between a
5 50-megawatt project and a 75-megawatt project?

6 A. The substation size is not the largest driver of
7 cost. It's the voltage that you're transforming to.
8 Transforming from 34 kV to 230 kV, whether it's 10 megawatts
9 or 100 megawatts, is not a tremendously significant
10 difference. It is a significant difference. I don't mean to
11 understate that, but the largest driver is the voltage that
12 you're transforming to.

13 Q. So you're going from 34 to 230; is that correct?

14 A. That's correct.

15 Q. But my question to you was what's the difference in
16 price between those two?

17 A. I do not know.

18 Q. Have you investigated that at all?

19 A. We have an estimate from Bonneville Power for the
20 substation design and procurement of construction cost based
21 upon the size of the project that we've submitted for and had
22 review of our interconnection and been approved for
23 interconnection.

24 Q. So they've given you an estimate of the cost?

25 A. Yes.

1 Q. What is that?

2 A. The components of our cost are proprietary to our
3 project. I do not wish to release any information about,
4 specific information about the cost of our project, the
5 capacity factor of our project, or any other specific details
6 of that nature.

7 Q. Mr. Spadaro, this is your testimony. You said you
8 can't get by with anything less than 75. You just testified
9 to that. Now I want to know what goes into that decision
10 beginning with what's the cost of building that substation
11 for your 75-megawatt project.

12 MR. McMAHAN: I'm going to object to that. We've
13 been through this with the Siting Council at length during
14 the discovery process. The information that Mr. Aramburu is
15 seeking to request has been determined to be confidential
16 and proprietary data.

17 MR. ARAMBURU: Well, hold it. This witness got up
18 here and he wanted to make a statement, and I understand
19 what the Council's ruling was. But he wanted to make a
20 statement apparently to have this Council believe that there
21 is nothing less than 75 megawatts that can be permitted for
22 this project. Now I'm prepared if he wants to make this an
23 issue, which he just has through his voluntary statement, to
24 make inquiry into the background of that statement.

25 JUDGE WALLIS: This is the very same question in a

1 practical setting that was presented earlier and the
2 Council's ruling would be the same.

3 MR. ARAMBURU: It's not the same question because
4 this witness -- that was when we were asking for this
5 information. Now this witness has decided he's going to get
6 up here and make a statement about this and saying to the
7 Council that there's no other way that we can do this other
8 than the 75 megawatts, and he says that volunteering to get
9 up here. I didn't ask him any questions about that. He
10 volunteered this information, and he presumably wants you to
11 make a finding that 75 megawatts is the minimum size that
12 can be permitted here. If he wants to make that statement,
13 then we're entitled to ask him how he got there. This is
14 his testimony. He wanted get up here and make these
15 statements. I asked him a simple question about what his
16 name was or something. I forget what the question was. But
17 he wanted to shoot off and talk about these things. We're
18 entitled if he wants to make this a big deal, then we're
19 entitled to ask him these questions, what goes into this.

20 JUDGE WALLIS: The Council has ruled in this
21 proceeding as it has in at least one prior proceeding that
22 the financial viability, which is the underlying issue to
23 which the witness made reference, is not something that the
24 Council will consider. So the Council is not bound by his
25 testimony, and the Council could approve a facility that

1 provided less capacity, and then it would be up to the
2 Applicant to determine whether or not to proceed. That is
3 my understanding of the Council's ruling, the Supreme Court
4 ruling. That's sustained because of the Council's
5 interpretation and how the Council under those circumstances
6 would address that question.

7 MR. ARAMBURU: And I don't want to engage in
8 argument with you, Mr. Wallis, but I do want to state that
9 this witness brought this up. In the KV case it was being
10 brought up by opponents of the project. This witness got up
11 and first thing wanted to tell us all of this information.
12 I think it's a different set of circumstances. I think we
13 should be entitled to inquire about this if he wants to make
14 these to the Council.

15 I understand what the apparent ruling is going to
16 be here, but I want to make very strong objection to this
17 witness making these statements and not allowing us to
18 pursue this in cross-examination.

19 MR. McMAHAN: And, Your Honor, this is déjà vu.
20 The Kittitas Valley case the Applicant stated in no
21 uncertain terms that in the then existing market conditions
22 120 megawatts was the absolute minimum that that Applicant
23 within its business judgment felt was necessary to achieve
24 economic viability. That issue was as you point out
25 litigated in the Kittitas Valley case. It was in fact the

1 exact same question.

2 JUDGE WALLIS: Very well. The matter is resolved.
3 The objection is sustained, and Mr. Aramburu the point
4 you're raising is noted for the record and let's move on,
5 please.

6 BY MR. ARAMBURU:

7 Q. I just want to make clear that you have talked to
8 BPA about the price to construct a substation; is that right?

9 A. Yes.

10 Q. Have they told you what they think it's going to
11 cost to construct?

12 A. They have provided preliminary estimates.

13 Q. What are those preliminary estimate costs?

14 MR. McMAHAN: Your Honor, same objection.

15 JUDGE WALLIS: Do you have a different
16 justification, Mr. Aramburu?

17 BY MR. ARAMBURU:

18 Q. Now, at the hearing I think we had on Tuesday we --
19 is it Tuesday? My memory is -- we learned for the first time
20 that the opposition of the Yakama Nation had been dropped.
21 Were you aware of that?

22 A. The Yakama Nation is an intervenor and a party to
23 these proceedings. They have withdrawn their testimony. We
24 have withdrawn our testimony related to cultural resources.
25 I don't know what exactly that means in terms of the Yakama

1 Nation's position with regard to the project. What was your
2 question again?

3 Q. My question is did you participate in these
4 negotiations with the Yakama Nation over their withdrawal of
5 opposition to this project?

6 A. We have engaged in a continual cooperative
7 relationship with both members of the Yakama Nation and the
8 Tribal Council Government.

9 Q. What was the nature of your agreement with the
10 Yakama Nation?

11 A. That we have agreed to -- as I stated, we've agreed
12 to withdraw our testimony with regard to cultural resources.
13 The Yakama Nation has agreed to withdraw its testimony with
14 regard to cultural resources. They are remaining an
15 intervenor and a party to these proceedings.

16 Q. Was anything of value or substance provided to the
17 Yakama Nation in return for their withdrawal of opposition?

18 A. No.

19 Q. Did you agree to make any changes in the project?

20 A. No.

21 Q. So the project -- and so as far as you're concerned
22 the Yakama's think this project is fine as it is?

23 A. We will continue, we have agreed to cooperate as we
24 have in the past. We will continue our cooperation and show
25 our respect for the Yakama Nation and involve them in this

1 process as we continue to move forward.

2 Q. We've had a lot of testimony from several people
3 here, including Ms. Chaney who is your land use consultant,
4 regarding the consistency of this project with applicable
5 land use laws in Skamania County. Do you recall that
6 testimony?

7 A. Please state again. The testimony with Ms. Chaney?

8 Q. Ms. Chaney and others have provided testimony in
9 these proceedings that indicates that in opinions of those
10 persons this project is consistent with current land use
11 ordinances in Skamania County. Are you aware of that?

12 JUDGE WALLIS: Mr. Aramburu, could you clarify for
13 me whether you're referring to prefiled testimony in the
14 adjudicative portion of the Council review or in some other
15 aspect of its review?

16 MR. ARAMBURU: In particular Ms. Chaney's Exhibit
17 No. 2.00 I believe it is.

18 A. So if I can be clear, you're asking testimony of me
19 related to Katy Chaney's exhibit?

20 BY MR. ARAMBURU:

21 Q. Is it your understanding that Ms. Katy Chaney and
22 others have taken the position that this project is
23 consistent with the land use ordinances and regulations in
24 Skamania?

25 MR. McMAHAN: Your Honor, I'm going to object to

1 this. The Chaney testimony has not been admitted into
2 evidence. It is not of record until Ms. Chaney testifies.
3 If you wanted to ask a question about what Mr. Spadaro knows
4 or does not know, although he's not a land use expert, about
5 land use consistency, fine. But as to testimony that's not
6 before the Council yet, I don't understand the nature of the
7 question.

8 MR. ARAMBURU: The question is, is he aware of
9 that testimony; nothing more, nothing less.

10 JUDGE WALLIS: The question is allowed. The
11 witness may respond.

12 A. I am aware that Skamania County has certified
13 consistency, and Ms. Chaney has opined on the Skamania County
14 certificate of land use consistency.

15 BY MR. ARAMBURU:

16 Q. Well, I guess my question to you, Mr. Spadaro, is
17 if things are fine in Skamania County, then why are we before
18 EFSEC?

19 A. Members of the Council and Your Honor, this was an
20 enjoyable experience. I don't know if -- I don't know.
21 Strike that.

22 I would have preferred having gone through
23 Skamania County. In fact, as our opening statement, written
24 opening statements describe, we did in fact attempt land use
25 approval for this project through Skamania County. It was

1 at Skamania County's suggestion that we have come to EFSEC.

2 Q. Skamania County is that Mr. Pearce?

3 A. Actually it was one of the county commissioners.
4 It was not Commissioner Paul Pearce.

5 Q. Who was it?

6 A. I believe it was Commissioner Tolfree.

7 Q. Why did she suggest that we end up here in front of
8 all these people instead of staying in Skamania County?

9 A. Well, as you well know, Mr. Aramburu, the
10 proceedings of Skamania County to allow to adopt zoning would
11 have defined the conditions under which wind energy might
12 have been allowed in Skamania County were appealed by your
13 party, you and your party, and the county foresaw that there
14 would be endless appeals. And apparently they have limited
15 resources to proceed with those appeals, and the county
16 suggested that we might consider EFSEC as an alternative.

17 Q. Have you compared the cost of the turbine that
18 would be 2 megawatts in size versus one that would be 2.5
19 megawatts in size?

20 A. I believe I answered that once already. We have
21 not received quotes for turbines for this project yet.

22 Q. Not going out asking for quotes, but were you sort
23 of curious enough about this to go look at published sources
24 to see what the retail list prices of these turbines might
25 be?

1 A. Mr. Aramburu, wind turbine pricing is not something
2 that you can look up on the internet. You ask for quotes.
3 It depends upon typically wind turbines prices are provided
4 installed. You have to ask for a quote, someone has to do an
5 evaluation of your site, and then you receive a quote. We
6 have not yet received quotes for our site and our project.

7 Q. So you can't tell me how much on a percentage basis
8 the 2.5-megawatt turbine would be as opposed to a 2-megawatt
9 turbine?

10 A. No, I cannot.

11 Q. As part of your testimony you indicated there is
12 going to be on-site monitoring of these winds turbines
13 depending on how many there are; is that correct?

14 MR. McMAHAN: Your Honor, I object to the form of
15 the question. It's not clear what on-site monitoring. Is
16 he talking about wildlife? Is he talking about -- please
17 reform the question.

18 MR. ARAMBURU: Fair objection.

19 BY MR. ARAMBURU:

20 Q. As I understand there is to be a maintenance and
21 operations facility on site to monitor and keep track of the
22 operation of the turbines; is that right? Is what you
23 propose?

24 A. Yes. To be more specific, the operations and
25 maintenance facility there are two alternative sites that are

1 proposed, but they're both in the vicinity; one on this
2 project, the other at the bottom of the access road where
3 monitoring of the wind turbines would occur, yes.

4 Q. What are those people going to do?

5 A. There are technicians that monitor the wind turbine
6 output. There are technicians that would be based from that
7 operations and maintenance that would go out to the site and
8 be performing regular maintenance on the wind turbines.

9 Q. Are you aware that a number of turbine
10 manufacturers offer remote monitoring of operations of wind
11 turbines?

12 A. If the maintenance center is at the bottom of the
13 access road that is considered remote monitoring. You could
14 place a maintenance center farther away from the project site
15 if you chose you, but it's convenient to have the operations
16 center in the same place as the maintenance center.

17 Q. Is it not the case that a number of turbine
18 manufacturers are offering monitoring in remote locations
19 like out of state or in Florida or someplace like that?

20 A. I am not aware of that.

21 Q. There's been testimony about the process by which
22 Skamania County went through developing a new draft or an
23 amendment to its zoning ordinance in about 2006 and '07. Do
24 you remember that process?

25 A. I do.

1 Q. Do you recall accurately that SOSA and Friends did
2 appeal the decision of the county not to prepare the
3 environmental impact statement for their proposed new zoning
4 ordinance?

5 A. It has been quite a while ago. I do recall an
6 appeal. I don't remember the specific -- I do recall -- I
7 don't recall the specific arguments of the appeal, but I do
8 know the outcome related to performance of an environmental
9 impact statement for the zoning update.

10 Q. And that one would be required.

11 A. Yes.

12 Q. Now, as I recall you were in attendance at all of
13 those hearings that were held before the Skamania County
14 Hearing Examiner?

15 A. Yes.

16 Q. There was an indication in LeAnna Toweill's
17 decision, T-o-w-e-i-l-l decision, that the owner of the
18 Saddleback Project had participated in preparation or
19 drafting of that proposed draft ordinance, the zoning
20 ordinance. Is that something that SDS was involved in?

21 A. No, I do not recall that. I do not recall -- we
22 commented on the comprehensive plan update and the zoning,
23 the establishment of zoning on previously unzoned lands, but
24 it was a county proposal that we commented on. I don't
25 recall a statement by the Hearings Examiner to the effect of

1 what you stated.

2 Q. We've had a lot of discussion here about
3 Exhibit 107c which is the system impact study that was
4 submitted for the Saddleback Project. Do you recall that
5 request for a system impact study and its review by BPA?

6 A. No, this is a system impact study request for a
7 transmission services request by Puget Sound Energy. I did
8 not initiate this request. I do not know about this request.
9 In fact, it states on the cover e-mail that it is out of date
10 and basically irrelevant.

11 Q. But that is for this project, isn't it?

12 A. Yes, it is.

13 Q. And you mean to tell me that Puget Sound Energy
14 submitted an application for transmission for this project
15 and you didn't know about it?

16 A. We were in negotiations. As my counsel stated
17 there was some tire kicking going on. You know well about
18 this, Mr. Aramburu. Your client sent letters to Steve
19 Reynolds of Puget Sound Energy related to this project.
20 Puget Sound Energy in their tire kicking submitted a
21 transmission request to evaluate the potential moving
22 transmission electricity from the site to another point of
23 delivery. This was a snapshot in time, at that point in time
24 with response by Bonneville Power. It was not initiated by
25 me. I really don't know anything else about it.

1 Q. But how long was Puget Sound Energy interested in
2 this project?

3 A. I'm pausing, Your Honor, Members of the Council,
4 because my discussions with Puget Sound Energy were bound by
5 confidentiality agreements. I prefer not to say anything
6 about the terms of the negotiations other than Puget Sound
7 Energy is not a party at the present time.

8 Q. I am not asking about the terms, Mr. Spadaro. What
9 I'm asking about is how long was Puget Sound Energy
10 interested in this project as a time frame?

11 A. I would consider the duration of the discussions to
12 be part of the terms.

13 Q. Was it more than a year?

14 A. It was until Save our Scenic Area sent nasty
15 letters to the CEO of Puget Sound Energy.

16 Q. Did you see those letters?

17 A. In fact, I have one right here.

18 Q. You brought it with you today?

19 A. I certainly did.

20 Q. Why did you bring it with you? Did you figure you
21 might get asked about it?

22 A. It's very threatening to Puget Sound Energy for
23 their potential evaluation and potential involvement in our
24 project, and I thought it might be relevant for everyone to
25 understand so I did bring it with me.

1 Q. But is it the case then -- well, I think all of us
2 in the room know that Puget Sound Energy is -- is it the
3 case, Mr. Spadaro, that Puget Sound Energy is the largest
4 utility in the state of Washington by customers?

5 A. I believe that is the case.

6 Q. Are you aware that Puget Sound Energy is subject to
7 this state's I-937 RPS requirements?

8 A. Yes.

9 MR. ARAMBURU: I used the word RPS. Does
10 everybody on the Council know what that is?

11 BY MR. ARAMBURU:

12 Q. And so Puget Sound Energy has dropped out of any
13 interest in this project; is that correct?

14 A. Again, I would limit my response to stating what I
15 stated earlier; that at the present time Puget Sound Energy
16 does not have any interest in this project.

17 Q. I want to go back a little bit to the question of
18 this turbine size. You indicated to us today that you're
19 intending now to build turbines on this site at a minimum of
20 two megawatts each. Am I understanding your testimony
21 correctly?

22 A. That is correct.

23 Q. I've had a chance to read Mr. Meier's testimony,
24 the geologist. Do you know Mr. Meier?

25 A. I do not know Mr. Meier. I do know that he is a

1 consultant to the project.

2 Q. Have you looked at his testimony and his geological
3 reports?

4 A. I have scanned them briefly, but I am not a
5 geologist, and I am not really the best to answer questions
6 about his testimony.

7 Q. I will represent to you that Mr. Meier has
8 conducted investigations, geologic investigations on that
9 property using as its model a 1.5-megawatt GE turbine. Do
10 you know that? Is that something you're familiar with?

11 A. Am I familiar that he modeled geologic stability
12 using a 1.5-megawatt turbine? Is that your question?

13 Q. Yes.

14 A. Yes, I saw that in scanning his report. I did see
15 that.

16 Q. Have you told Mr. Meier that you changed turbine
17 size?

18 MR. McMAHAN: Your Honor, I object to that. That
19 is not -- that's a mischaracterization of Mr. Spadaro's
20 testimony. He hasn't changed the turbine size. That
21 question has been asked and answered repeatedly. The
22 application proposes a range and a maximum. It does not --
23 Mr. Spadaro has changed nothing by coming in here today
24 other than stipulating that he won't build a project below
25 2.0 megawatts.

1 BY MR. ARAMBURU:

2 Q. Let me ask the question this way: Have you
3 informed Mr. Meier, the geologist, that his investigations
4 should center upon a 2-megawatt turbine as opposed to a
5 1.5-megawatt turbine?

6 A. We as in all of our studies have attempted to model
7 worst-case scenario. Fewer larger turbines is going to not
8 have as much impact as more numerous smaller turbines. So we
9 have -- I believe Mr. Meier the geologist's evaluation is on
10 a greater number of turbines under a worst-case scenario.

11 Q. Would it be your understanding that a 2-megawatt or
12 larger turbine would require a larger base and be heavier
13 than a 1.5-megawatt turbine?

14 A. I am not the best to answer that.

15 Q. Well, do you know the answer?

16 A. No, I believe it depends on the turbine
17 manufacturer and the specifications required for that wind
18 turbine.

19 Q. Now I had some questions -- so in the application
20 you said that the larger turbine would be 426 tall. Does
21 that still stand?

22 A. That is correct.

23 Q. So if I could find you a 2.5-megawatt turbine that
24 wouldn't be any taller than 426 feet would you put in some
25 2.5-megawatt turbines for me?

1 A. I don't -- I really can't answer that. That
2 depends on -- as I stated before, we need the operational
3 flexibility to choose and decide on final micro-siting the
4 type of turbine that is used that makes the project, allows
5 the project to maintain its economic viability.

6 Q. I guess I don't quite understand that. Is it my
7 understanding that you somehow don't want to be wedded to a
8 bigger turbine because then you're sort of captured by one of
9 these turbine manufacturers? I don't mean to be flip, but
10 I'm just trying to get what you're saying.

11 A. That is one of my many considerations.

12 Q. The others are?

13 A. The physical and operational characteristics of
14 each turbine. There is not, Your Honor, Members of the
15 Council, there is not I believe you all well know there is
16 not a one size fits all. Each site needs wind turbines and
17 wind turbine development. Each turbine needs to be selected
18 based upon how it fits the site characteristics. That
19 includes topography. It includes vegetation types. It
20 includes the wind direction, the average wind speed. There
21 are a number of factors that go into micro-siting a turbine
22 selection. When I speak about the need for flexibility, we
23 need to be able to select a turbine that fits our site and
24 allows it to be economically viable.

25 Q. So Mr. Nierenberg testified here. He's a wind

1 expert. Has he told you that you could put in a 2.5 or
2 3-megawatt turbine?

3 A. No, he has not.

4 Q. Did you ask him?

5 A. Yes, I have.

6 Q. What did he say?

7 MR. McMAHAN: Your Honor, I object to that on
8 grounds of confidentiality and we have discussed that
9 previously.

10 MR. ARAMBURU: I don't think that's a confidential
11 question at all. I'm asking whether the site is suitable
12 for a larger turbine. We're apparently in the business,
13 although we didn't start out this way, of talking about
14 reducing turbines. They have agreed to do so. I want to
15 see if there's some more room that we could reduce some more
16 turbines. And if we have a witness who says, yes, we can
17 have larger turbines on that site and reduce the number, I
18 think that's a fair question, and I don't think it has
19 anything to do with the confidentiality or anything else.

20 JUDGE WALLIS: I am going to sustain the
21 objection.

22 BY MR. ARAMBURU:

23 Q. Now, in your sort of opening statement here this
24 morning or this afternoon you describe the change from 1.5
25 to a 2-megawatt turbine and an apparent stipulation that

1 you'd only put in 38 turbines. I'm just trying to understand
2 your testimony. If I've got it wrong, tell me.

3 A. Your understanding is correct.

4 Q. Now, how far apart do those turbines to the new
5 turbines have to be in comparison to the turbines that are
6 modeled on Exhibit 1.11, the drawing on the board?

7 A. Again, this is somewhat mischaracterizing what is
8 shown in it says Figure 2.1, it's the foam board on the wall
9 there. That was a hypothetical number of turbines for a
10 visual simulation. To state that that is the distance apart
11 between turbines that would based on a 1.5-megawatt layout or
12 just for me to state, for me to be able to state that using a
13 2-megawatt layout would be Y instead of X, I cannot do that.
14 Final micro-siting of wind turbines is based -- I'll state it
15 again. It's based on a great number of factors. I cannot
16 say exactly how that visual simulation would hypothetically
17 change.

18 Q. But my question to you is how much more room is
19 required between turbines as between one -- forget the
20 drawing -- as between 1.5-megawatt turbines and 2-megawatt
21 turbines? What's that difference going to be?

22 A. Your Honor, Members of the Council, the turbine
23 spacing within a row is largely a function of rotor diameter
24 and avoidance of wake effect between turbines. So larger
25 output wind turbines if they have the same rotor diameter as

1 a smaller output turbine the distance apart within the row is
2 not going to change. It's a function of the blade diameter
3 and the wake effect and how those blades disrupt the wind
4 flow.

5 So I really cannot -- that's how you determine
6 spacing within rows and then spacing between rows going in
7 the upwind and downwind direction. I can't really state
8 what change would occur by going to 2.0 and larger megawatt
9 wind turbines.

10 Q. But, Mr. Spadaro, in your statement you made to the
11 Council you indicated that we're still going to need to have
12 these same arrays or corridors of turbines. You said we're
13 going to need the A-array up to I think it's 15 -- I'm having
14 trouble seeing the B-array. We're still going to need those
15 corridors. Right?

16 A. That's correct.

17 Q. So how did you figure out that we can go from seven
18 to five in what's shown in this area here? I recall your
19 testimony that that currently is scheduled for seven turbines
20 which are 1.5 megawatts, leaving aside where specifically
21 they're going to be. So you say that if we do the 2-megawatt
22 turbines we can only put five in there; is that right?

23 A. That is correct.

24 Q. So what's the basis for that?

25 A. Larger rotor diameter turbines.

1 Q. What's the difference in rotor diameter?

2 A. If we went -- we're still staying with 426 feet tip
3 height. So at 100-meter rotor diameter instead of whatever
4 layout worst-case hypothetical layout that's shown there
5 would be five turbines in the A-string.

6 Q. So what's the turbine diameter for the 1.5-megawatt
7 turbine?

8 A. 100-meter rotor diameter.

9 Q. For the two?

10 A. 100 meter -- oh, I'm sorry. For the 1.5 the
11 worst-case -- we modeled the worst-case for the visual
12 simulations so I believe it was that density was based upon a
13 77 meter rotor diameter.

14 Q. So the minimum rotor diameter for a 2-megawatt
15 turbine would be 100 meters?

16 A. No. There isn't any -- I'll state this again. You
17 can have larger output turbines with smaller rotor diameters,
18 shorter hub heights, larger hub heights. They come in all
19 configurations. You decide that based upon what best fits
20 your site and produces the greatest amount of energy.

21 Q. So it would be possible to have a 2-megawatt
22 turbine that wouldn't require any distance, any additional
23 distance between them than the 1.5-megawatt turbines?

24 A. No, I don't believe you can get a 2-megawatt
25 turbine with a 77-meter rotor diameter.

1 Q. How do you know that?

2 A. That's my opinion. I don't know that for a fact,
3 but that's my belief and opinion.

4 Q. So have you looked at the turbine brochures that
5 turbine manufacturers put out?

6 A. No, I rely on consultants to provide advice as to
7 what turbines might be the best suited for our project.

8 Q. Please tell me whose those consultants are.

9 A. Ron Nierenberg who is a witness to the hearings.

10 Q. So I can ask him about those things?

11 A. Yes.

12 Q. Have you told Mr. Nierenberg you're going to go
13 with the 2-megawatt turbines?

14 A. I've asked Mr. Nierenberg to evaluate alternative
15 turbines, and again we have not made a final determination
16 that we will go to two or any specific size of turbine, but
17 it is much more commonplace to have 2-megawatt or larger
18 machines.

19 Q. That wasn't my question to you, Mr. Spadaro. My
20 question to you was have you told Mr. Nierenberg, your wind
21 consultant, that you decided to go and stipulate to
22 2-megawatt turbines?

23 A. No.

24 JUDGE WALLIS: Mr. Aramburu, is this an
25 appropriate break for a recess?

1 MR. ARAMBURU: This would be just fine. Thank
2 you.

3 JUDGE WALLIS: Very well. Let's take 15 minutes
4 and be back here promptly at a quarter of 4:00 by this clock
5 which limits us to 13 minutes. Let's go for it.

6 (Recess taken from 3:32 p.m. to 3:45 p.m.)

7 JUDGE WALLIS: Let's be back on the record,
8 please.

9 Mr. Aramburu.

10 MR. ARAMBURU: Okay. I will keep my voice up.

11 BY MR. ARAMBURU:

12 Q. I'd like you to look in the application,
13 Mr. Spadaro, at page 2.1-6.

14 MR. SUTHERLAND: Say again, please.

15 MR. ARAMBURU: For Council Members the application
16 page 2.1-6 which says in sort of the lower part the land use
17 plans and zoning ordinances, 2.1-6.

18 BY MR. ARAMBURU:

19 Q. Mr. Spadaro, I want you to look at the portion of
20 that page that begins with wind power and wind speed maps.
21 Do you see that?

22 A. I do.

23 Q. I understand that this was a portion of the
24 testimony or the application that you were responsible for?

25 A. That is correct.

1 Q. This indicates that there was a review of maps done
2 by the Department of Energy National Renewable Energy
3 Laboratory. Is that right? Is that something you reviewed?

4 A. Yes, in a very general sense, yes.

5 Q. Now, and you seem to be relying here on models that
6 describe the conditions at this site and you site to the
7 Northwest Seed 2002a?

8 A. Yes.

9 Q. We're going to get that up on the screen here. For
10 Council Members there's three exhibits here, 1.08, 1.09, and
11 1.11.

12 MR. McMAHAN: I think you meant 1.10.

13 MR. ARAMBURU: 1.10, thank you.

14 BY MR. ARAMBURU:

15 Q. I see that you have those maps in front of you; is
16 that correct, Mr. Spadaro?

17 A. I do.

18 Q. Did you consult those maps in preparing that
19 testimony or this portion of the application?

20 A. Again, these maps are very general in their data,
21 their content, and their application.

22 Q. But I just want to be able to identify for the
23 Council which maps you were looking at. Have you had a
24 chance to look at our Exhibits 1.07, 1.08, 1.09, and 1.10?

25 A. Yes, I have had a chance to look at them. I

1 believe you were asking did I consult or rely on these
2 specific? I don't know the exact date of these. I have seen
3 something like this in the past.

4 Q. Okay. Now, you go on in your testimony to say that
5 the wind speeds rate this area as wind potential of good to
6 outstanding and then one concentrated area within the project
7 area was identified as outstanding Class 6 wind power
8 potential with maximum wind speeds of 17.9 to 19.7 miles per
9 hour. Can you identify where that class 6 wind is?

10 JUDGE WALLIS: My understanding is that there is a
11 problem because of the sound system that people in the back
12 of the room are having difficulty hearing so let's project.

13 MR. ARAMBURU: Okay. Here comes our foreman who
14 is going to ride the game for us.

15 Okay. So we're using electricity now.

16 BY MR. ARAMBURU:

17 Q. So my question -- I hope I can be heard now.

18 MR. ARAMBURU: How are we doing? Okay?

19 BY MR. ARAMBURU:

20 Q. Could you tell us where the area of this
21 outstanding Class 6 wind is, and you could do that either by
22 references to the various turbine lines or I have a pointer
23 or you can do it any way you like. Would it help if I
24 brought the map over to you?

25 A. No, this is fine. Again, these are very

1 generalized based on computer modeling trying to predict
2 average wind speeds. Their usefulness is very limited. In
3 looking at what we have referenced in the application there
4 are portions shown here. The project area starts somewhere
5 in this vicinity and follows up this ridge to the county
6 line.

7 JUDGE WALLIS: Mr. Spadaro, people reading the
8 record are going to have a challenge in identifying the
9 marks that you're leaving with the laser pointer. So if you
10 can be more specific in describing it that would be very
11 helpful.

12 THE WITNESS: Yes, Your Honor.

13 A. So the colored portions of the map that is colored
14 in sort of a lavender color and yellowish color, orange
15 color, different shades of color, those correspond with the
16 location of the project. The legend on these maps shows that
17 the computer model predicts average wind speeds ranging from
18 15.7 to 16.8 miles per hour or it looks to me based on the
19 way I see the colors and the legend it ranges up to 19 to
20 20.1 miles per hour.

21 BY MR. ARAMBURU:

22 Q. But my question to you, Mr. Spadaro, was where is
23 the Class 6? You're saying there is an area that has
24 outstanding Class 6 wind power potential, and I would like
25 you to tell me where that is. And it would be helpful I

1 think to the Council and to the lawyers here today if you
2 could make that in reference to our Exhibit 1.11 which is the
3 map showing the turbine corridors. Can you do that?

4 A. Your Honor, Members of the Council, I really can't.
5 These maps are as you can see -- I don't know if you have
6 them in front of you -- they are very general in nature.
7 There are as we have stated in our application there are some
8 portions that by the model are predicted to have 17.9 to
9 19.7 miles per hour of average wind speed. Where exactly
10 that is on that map and where does that overlay onto the
11 project map it is too granular for me to be able to pinpoint
12 for the record or for you as a Council.

13 This data really is again in a very general sense.
14 There is much more specific data that we relied on for
15 evaluation of our site than that computer model.

16 Q. But, Mr. Spadaro, help me out here. You're
17 responsible for this section in the application. You say
18 there is one area that's outstanding, and I just want to know
19 where that outstanding area is. You must have been meaning
20 some specific area when you said that.

21 MR. McMAHAN: Your Honor, I think this is asked
22 and answered already. This map is granular in scale. One
23 could look on the map and guess I guess. I don't know.
24 Maybe I could guess it's in a particular location, but
25 Mr. Spadaro has been very clear about the limitations of

1 this map and his inability to assign a particular wind speed
2 to any particular portion of this project based upon maps
3 generated by the Northwest Seed and not him.

4 JUDGE WALLIS: Mr. Aramburu, are you talking in
5 reference to Exhibit, what is it, 1.10?

6 MR. BAKER: It's 1.09c.

7 JUDGE WALLIS: 1.09c on the screen or the other
8 exhibit which is -- help me with the number?

9 MR. ARAMBURU: 1.11.

10 JUDGE WALLIS: 1.11. So which are you talking
11 about, either or both? What is your specific question?

12 MR. ARAMBURU: He indicates in his testimony that
13 there is a concentrated area within the project area that
14 was identified as having outstanding wind.

15 JUDGE WALLIS: So you're asking him with reference
16 to 1.11?

17 MR. ARAMBURU: I am, yes. I would like him to
18 point out where that area is on 1.11 because he says it's
19 within the project area. I think that's fair.

20 JUDGE WALLIS: Mr. McMahan, was that your
21 understanding of the question?

22 MR. McMAHAN: That is my understanding of the
23 question, but Mr. Spadaro is saying he can't do that because
24 this is granular in nature, and one can go and kind of
25 compare I think it looks like it might be here. Anybody

1 could do that. But Mr. Spadaro has stated that it's
2 granular and it wouldn't make any particular difference.

3 JUDGE WALLIS: Mr. Spadaro, was that in fact your
4 response?

5 THE WITNESS: Yes.

6 JUDGE WALLIS: Very well.

7 MR. ARAMBURU: Then I'm going to move to strike
8 for consideration by this Council that last sentence that
9 says "one concentrated area within the project site is
10 identified as having outstanding wind power" because there
11 has been no one to tell us where that area is, and therefore
12 it should be stricken from these proceedings.

13 MR. McMAHAN: Your Honor, there's nothing
14 inaccurate about that statement in the ASC. It sites the
15 Northwest Seed map. It indicates there is a concentrated
16 area within project area as identified as having outstanding
17 Class C wind potential with sustained speeds, etc. I don't
18 understand how anything that's occurred here today that
19 would in any way justify striking something from the
20 application for site certification.

21 JUDGE WALLIS: I believe that the witness has
22 explained his response to the question, and I also see no
23 reason in light of that response to strike the statement.

24 MR. KAHN: Could I ask a question, Your Honor?

25 Perhaps I'm missing this. As I understand it,

1 Mr. Spadaro in the application you said there's a spot
2 within the project that has Class 6 winds. We're asking him
3 where they are and now he's saying he can't tell us. If
4 that's correct, then how can you allow the statement in the
5 ASC to stand?

6 He says there's a spot. Now he tells us he
7 doesn't know where it is. Something's wrong with that.

8 JUDGE WALLIS: That does not by itself alone
9 indicate a lack of truth or a lack of knowledge about the
10 statement.

11 MR. KAHN: And I'm not suggesting it does, but
12 he's telling us that there's a spot within the project area
13 that has Class 6 winds. We certainly have a right to figure
14 out, find out where he's talking about. If we were to ask
15 him where the Class 4 or 5 winds are, and he gives us the
16 same answer, we have no idea of the basis for his statements
17 in the application. He sponsored those sections. He
18 indicated that he sponsored those sections, and now he can't
19 confirm what he was talking about.

20 MR. McMAHAN: Your Honor, I have a hard time
21 understanding how material this is. I think Mr. Kahn could
22 himself get up with a big red pen and guess from the
23 Northwest Seed map and layout map where it looks like there
24 might be Class 6 winds.

25 MR. KAHN: I'm not referring to that map. I'm

1 referring to a statement that says there are Class 6 winds
2 within the project area. We have a map of the project area,
3 and we're asking him to tell us where those are.

4 JUDGE WALLIS: And I do not see that that
5 necessarily implies that the statement is without support.

6 MR. KAHN: I'm not suggesting it does, but if he
7 can't tell us where they are what would be the support of
8 his statement? He's the one that sponsored this section of
9 the application.

10 All I'm trying to do is we're trying to ask him
11 about the statements in the application. That's what we're
12 doing. If he can't justify a statement in the application
13 how can it stand?

14 MR. McMAHAN: Your Honor, his answer is it's a
15 truth statement in the application. He answered it.

16 JUDGE WALLIS: The question is asked and answered,
17 and the answer does not indicate a lack of knowledge or an
18 untruth so that the question and the answer will stand.

19 BY MR. ARAMBURU:

20 Q. So, Mr. Spadaro, can you point out where the Class
21 4 and Class 5 winds are?

22 MR. McMAHAN: Same objection, Your Honor.

23 MR. KAHN: He hasn't answered the question yet.

24 JUDGE WALLIS: Mr. Spadaro, the ball is in your
25 court at this moment.

1 A. Let me see if I can help. Again, this is granular
2 data from computer modeling. There's a legend that shows red
3 colors, magenta colors, various colors that coincide with
4 shaded areas on the map, the map to the left of there. How
5 to exactly pinpoint -- they are somewhere in the vicinity of
6 the project. I cannot say whether the red area, given the
7 granularity of that map, whether that red area overlies on
8 top of the A-string or the B-string or the C-string or the
9 D-string. The same with any of the other colors. Those
10 range from what appears to be as 19 or 20 plus miles per hour
11 at average wind speed down to the yellow shade which is 15.8
12 to 17.9 miles per hour average wind speed. That is the best
13 that I can do. That was the basis of the statement that we
14 made in the ASC.

15 BY MR. ARAMBURU:

16 Q. Let me ask you in reference to exhibit --

17 MR. ARAMBURU: What's the one up there?

18 MR. BAKER: 1.09c.

19 BY MR. ARAMBURU:

20 Q. -- 1.09c. As I understand it, if we look at the
21 drawing here the very northwest corner of the site in this
22 location is right at the corner of Skamania County and
23 Klickitat County. Is that your understanding about the
24 ownership of the project, Mr. Spadaro? The point here is
25 right at the edge at the point between Klickitat and Skamania

1 County; is that right?

2 A. Yes, that's correct.

3 Q. So that we can use that as a point of reference to
4 see where this dark magenta color is in reference to the
5 project, can we not?

6 MR. McMAHAN: Your Honor, I'm going to object. I
7 honestly don't understand what we're doing here. This has
8 been asked and answered. I don't understand the materiality
9 of the issue, the relevance of it, other than maybe to do a
10 gotcha on Mr. Spadaro's statement in the application which
11 in and of itself speaks for itself. It's a general
12 statement about the fact that, well, this is a windy site
13 based upon these maps. This is not a project that will be
14 financed based upon Northwest Seed maps I would guess, but
15 this is it's immaterial. I don't understand. It's been
16 asked and answered.

17 MR. ARAMBURU: I'm trying to figure out where this
18 area is that he says is the area of outstanding wind in
19 relation to the project. That's all I'm trying to do.
20 These are their representations about the value of this
21 site. They are saying that there's outstanding wind at this
22 site, and I know that the Council will be interested in a
23 conclusion regarding that. So I think it's an area in which
24 it's fair to ask questions because this is in their
25 application.

1 JUDGE WALLIS: The question has been asked and has
2 been answered numerous times. We know the extent of the
3 witness's specific knowledge, and I think that it might be
4 appropriate to move on to another topic.

5 BY MR. ARAMBURU:

6 Q. As I understand the lay of the land in this part of
7 Skamania County, there are two lines, there are two
8 transmission lines that traverse your project. Am I right
9 about that?

10 A. That's correct.

11 Q. The southerly of those two lines is which line?

12 JUDGE WALLIS: Again, Mr. Aramburu, can you
13 describe that for the record so that when we read it we will
14 know what you're referring to.

15 MR. ARAMBURU: Thank you, Mr. Wallis.

16 BY MR. ARAMBURU:

17 Q. Looking at Exhibit 1.11 there are two straight
18 lines on that exhibit. One runs generally from left to right
19 going generally northeast. Do you see that line?

20 A. Yes, I do.

21 Q. Then above that there is another line that runs
22 this time a little bit more southeast that's plainly shown on
23 Exhibit 1.11. Do you see that?

24 A. Yes, I do.

25 Q. So to help us out here the lower line is which

1 line?

2 A. They are actually pairs of regional transmission
3 line. Each of those corridors has two distinct and separate
4 transmission lines within the Bonneville System. The
5 southern pair one of which is called -- the name escapes me
6 at the moment. One is energized at 115,000 volts. The
7 second one, the southern pair, is energized at 230,000 volts.
8 The northern pair of lines one is energized at 230,000 volts
9 and the other at 500,000 volts.

10 Q. Do you recall that the southerly line is called the
11 North Bonneville Midway Line?

12 A. That is correct.

13 Q. And do you remember the name of the other one?

14 A. One is McNary-Ross I believe; the other is
15 Hanford-Ostrander.

16 Q. Now, in looking at the layout of the corridors here
17 is it not the case that -- how many of the turbines in your
18 diagram are located north of the northerly BPA line? We'll
19 call that the Ostrander line. Is that good?

20 A. That's fine for a nomenclature.

21 Q. Okay. How many turbines would be north of that?

22 A. Again, turbines in this depiction are hypothetical.
23 I would say to attempt to answer your question I would say
24 roughly 60 percent of the project area is in the corridors
25 where we are seeking to site wind turbines. Sixty percent of

1 the area is north of that line and 40 percent south.

2 Q. Would it be possible if we used 2.5-megawatt
3 turbines to meet your criteria of 75 megawatts if we put
4 those turbines into the area north of the Ostrander line?

5 A. No.

6 Q. Why is that?

7 A. You cannot densely pack wind turbines in that small
8 of an area.

9 Q. That would be dependent on turbine size, wake,
10 those kind of things which I understand you have not studied?

11 A. There are some basic -- we have not micro-sited --
12 you mischaracterized what I have said. We have not
13 micro-sited our project to determine the exact spacing for
14 different turbine models. There are some general rules that
15 all wind development follows regarding turbine spacing within
16 rows. There's no way that we can get to an economically
17 sized project in our -- and again in our business judgment
18 75 megawatts is the smallest that is possible. There's no
19 way we can get to that number by staying north of that line,
20 that northern most pair of Bonneville lines.

21 Q. You know that because of your research?

22 A. No, because of the advice of our consultant Ron
23 Nierenberg.

24 Q. So Nierenberg has told you that you can't put
25 2.5-megawatt turbines up there and make up your 75 megawatts

1 that you require?

2 A. Mr. Nierenberg has not stated it as specifically as
3 that because he has not been asked that specifically. He has
4 using his professional judgment and expertise given us some
5 alternatives for turbine layouts. Like I had stated earlier,
6 I've asked him to look at alternative turbine layouts, and
7 all of them in order to get to a 75-megawatt size project
8 have required the use of the entire site.

9 Q. But Mr. Nierenberg's review of these alternative
10 turbine sites and locations and sizes is not a part of the
11 record here, is it?

12 A. No, it's not.

13 Q. When did you ask him to do this?

14 A. We have continually throughout our process, but
15 that is again our proprietary information. When we are
16 looking at alternative turbine layouts and how to micro-site
17 and use our site what turbine suppliers might be available to
18 us that is all our confidential and proprietary data.

19 Q. I'm going to ask you again, Mr. Spadaro. Would you
20 provide us that information? What has Mr. Nierenberg said
21 about this?

22 MR. McMAHAN: Your Honor, I object for the reasons
23 I did previously about this information is proprietary on
24 this project. We've already adjudicated this up. Wind data
25 is proprietary information.

1 MR. ARAMBURU: I guess there's nothing off limits
2 that can't be kept from the Council and us according to the
3 Applicant. So they don't want to provide any information
4 helpful to this Council or to the public or to the Governor
5 or anything else about these alternative size configurations
6 except what they're spoon feeding us. I think that's
7 completely unfair and well in excess of what this Council's
8 responsibilities are.

9 JUDGE WALLIS: My understanding of the witness's
10 response to your question are that he has answered in
11 general terms the question that you asked, and I believe
12 that more specific information begins to intrude upon the
13 area of confidentiality that has been consistent that he
14 described.

15 MR. ARAMBURU: Well, our objection is on the
16 record.

17 BY MR. ARAMBURU:

18 Q. Let me ask this question. You have located the
19 site for the substation adjacent to the southerly of the two
20 transmission lines, the North Bonneville Midway Line; is that
21 correct?

22 A. That is correct.

23 Q. And is that the place that you plan to take your
24 tap into the BPA system?

25 A. That is correct.

1 Q. Is there any reason why you could not take the tap
2 to the BPA system off the northerly transmission line,
3 Ostrander line as we've been calling it, approximately the
4 location I show here, and tap into that 230 kV line?

5 A. We explored alternative options with Bonneville
6 Power for interconnection from the project. Our original
7 application was on the 115 kV line which is one of the
8 southern pair. But we looked at interconnection on all of
9 them, but the capacity for interconnection is available on
10 the 230 kV line; that is one of the two southern pair. That
11 is the only one Bonneville has evaluated and authorized us
12 for interconnection to.

13 Q. Who is the individual that has advised you of this
14 at Bonneville?

15 A. There are a number of engineers that have evaluated
16 our interconnection request with Bonneville. We have had
17 numerous meetings with numerous individuals at Bonneville. I
18 can't say there is one person who has authorized that.

19 Q. Give us the names of several of the people you
20 talked to. I mean we would like to check this out.

21 A. Our account executive at Bonneville Power Angela
22 DeClerck, and she can give you names of the engineers within
23 Bonneville, within Bonneville Power who have been involved in
24 the evaluation of our interconnection requests.

25 Q. Thank you. Now the site application of the ASC has

1 some statements about the intention of this project. One of
2 those is that's intended to provide a new source of
3 nonpolluting renewable energy in the state of Washington. Is
4 it the case, Mr. Spadaro, that you would commit to sell this
5 power to Washington utilities and not others?

6 MR. McMAHAN: Your Honor, I think to point to the
7 specific language that's being asked about so that
8 Mr. Spadaro can read it and understand what it's asking, I
9 think it would be helpful to all of us. I would like to
10 know at this point.

11 MR. ARAMBURU: Look at page I-1 one of
12 application.

13 MR. McMAHAN: The introduction section?

14 MR. ARAMBURU: Yes.

15 MR. McMAHAN: Specifically where are you talking
16 about, Mr. Aramburu?

17 MR. ARAMBURU: Second paragraph under project
18 summary.

19 A. Second paragraph under project summary. What
20 portion of that paragraph, please?

21 BY MR. ARAMBURU:

22 Q. The first sentence of the second paragraph.

23 A. The Whistling Ridge Energy Project is designed to
24 provide low cost renewable electric energy to meet the
25 growing needs of the Pacific Northwest.

1 Q. Do you have that in mind?

2 A. What is your question?

3 Q. My question is will you commit the power of this
4 project will indeed be sold only to utilities within the
5 Pacific Northwest?

6 A. That is not what that statement says nor will we
7 indicate where we intend to or commit to any particular
8 market as to where we intend to deliver the power.

9 Q. So the statements in the application that refer to,
10 for example, in your testimony at page 8, if you would like
11 to refer to that. This is your testimony now. There we go.
12 Page 8, Mr. Spadaro.

13 A. What portion of that, please?

14 Q. The first bullet point. I want to make sure all
15 the Council Members have it. I'll read it. It says, "The
16 site is situated in proximity to the Vancouver/Portland
17 metropolitan area and can provide a source of new clean
18 energy to these markets." Do you see that?

19 A. Yes.

20 Q. So this project may not provide clean energy to the
21 Portland/Vancouver markets or any other markets in the state
22 of Washington; is that correct?

23 A. The statement is accurate. It says that it can
24 provide a source of new clean energy to those markets and it
25 certainly can.

1 Q. So is it fair to say that this project would be
2 sold to the highest bidder?

3 A. It's fair -- Your Honor, Members of the Council,
4 again we have not entered into contracts for the delivery of
5 power. We have not got to the point of securing turbines and
6 even discussing some of those arrangements. There are a
7 number of factors that go into the economic viability of a
8 project. The off-taking agreements and a price for power is
9 a compete consideration. We haven't determined where that
10 best market is. We have yet to do that so I cannot say where
11 it will go.

12 To answer your question will it go to the highest
13 available market, I think that certainly would be one of the
14 considerations. It would all depend. The highest market
15 may also be a greater distance away from the project so the
16 net available price after transmission costs also factors
17 into it. So we will seek to make an economically viable
18 project and I will end it there.

19 Q. And to maximize your investment.

20 A. We wouldn't be doing this if we were not in it to
21 maximize our investment.

22 Q. Look over please to page I-2. I am going down to
23 the fourth paragraph there that begins the site on Whistling
24 Ridge located north of the Columbia River Gorge Scenic Area.
25 Do you see that?

1 A. I'm sorry. What part of this page again?

2 Q. I-2.

3 A. I-2.

4 Q. Then its looks like the fourth paragraph on the
5 page that begins with the site on Whistling Ridge.

6 A. Yes, I see it. Thank you.

7 Q. Could you just read for us the first sentence?

8 A. The site on Whistling Ridge, located north of the
9 Columbia River Gorge National Scenic Area and
10 high above the Columbia Gorge, enjoys the same winds that
11 have made the Gorge area a national center of wind power
12 development.

13 Q. Is it your testimony that the wind speeds and wind
14 regime that occurs at the area of the river are the same as
15 they are at your site?

16 A. No.

17 Q. They're not the same?

18 A. No, that is not what that statement says.

19 Q. It says enjoys the same winds that make the gorge
20 area a national center of wind power development.

21 A. Are there any wind turbines developed down at the
22 river level, Mr. Aramburu?

23 Q. Not that I know of.

24 A. There are none.

25 Q. Is it the intention of Whistling Ridge Energy to

1 apply for an investment tax credit if this project is built?

2 A. Sorry. I thought that you were conferring with
3 your partner.

4 Q. I guess it didn't sound much like a question.

5 A. Is it the intention for us to apply for investment
6 tax credits? If investment tax credits are available for the
7 project that certainly is something that helps with the
8 economics of wind energy and we intend to apply.

9 Q. As I understand that as it currently exists would
10 be a 30 percent essentially rebate of the construction cost
11 back to the owner or developer?

12 A. There are different forms of investment tax credits
13 offered by the federal government. A grant in lieu of a tax
14 credit is one option that is currently available. It may not
15 be available by the time that we develop this project.

16 Q. Congressional authorization for that investment tax
17 credit has just been extended a year. Do I understand that
18 correctly?

19 A. No, that is not the case. Your Honor, Members of
20 the Council, it's been the placed into service date in order
21 to qualify for the investment tax credits. It did sunset in
22 December of this past year. It now has been extended for one
23 year. So the date for the product to be placed in service,
24 but the eligibility for the investment tax credits or the
25 cash grants have not been extended beyond 2012.

1 Q. Okay. Thank you, Mr. Spadaro. Those are all the
2 questions I have.

3 JUDGE WALLIS: Are there other questions for
4 Mr. Spadaro?

5 MR. KAHN: I have some questions for Mr. Spadaro.
6 Do you want me to go next?

7 CROSS-EXAMINATION

8 BY MR. KAHN:

9 Q. Mr. Spadaro, you said on several occasions today
10 that these specific locations for turbines have not been
11 selected; is that correct?

12 A. That's correct.

13 Q. If you don't know where the turbines are located is
14 it possible to evaluate how many of them might be visible
15 from various viewpoints if we don't know where they're going
16 to be?

17 A. As I stated earlier, we have assumed a worst-case,
18 worst-case scenario with the maximum density of the turbines
19 and the maximum height of turbines. That is how we have
20 arrived at the hypothetical turbine locations that we've used
21 in the simulations and are shown on that exhibit.

22 Q. With what you're calling the worst-case scenario
23 and maximum density that would be 50. Correct?

24 A. Correct.

25 Q. Was the evaluation of the scenic impacts performed

1 by your consultant as part of this application based on
2 specific locations for those 50 turbines?

3 A. Yes.

4 Q. But you don't know where those locations will be?

5 A. They are assumed based on the professional judgment
6 of our meteorologist who has as I stated earlier has used the
7 general rule of spacing in between turbines and fitting them
8 within the corridors that we're seeking permit.

9 Q. Would that be more or less what's depicted on
10 Exhibit 1.10?

11 A. Yes.

12 Q. I have to admit I'm a little bit confused by some
13 of your testimony. Near the beginning of your testimony in
14 response to Mr. Aramburu's questions you indicated that
15 Whistling Ridge will commit to a minimum of 2-megawatt
16 turbines. Did I get that correct?

17 A. Yes.

18 Q. I thought you later said that there had been no
19 formal determination as to that. Did I misunderstand that?
20 I thought I heard you later say in response to another
21 question from Mr. Aramburu that you had not made the final
22 determination as to size of the turbines; that they possibly
23 could be go below two megawatts. Did I misunderstand that?

24 A. Yes, you misunderstood that. The statement was we
25 are committing to, willing to commit to 2-megawatt or larger.

1 Whether they are 2-megawatt or 2.3-megawatt or some other
2 size larger than two megawatts has not yet been determined.

3 Q. But nothing will go lower than two megawatts; is
4 that correct?

5 A. That's what we are willing to commit to.

6 Q. So that would mean if they all are two megawatts
7 you would have a maximum 38 turbines to meet your 75
8 megawatts?

9 A. Yes.

10 Q. You indicated that the E and F arrays would go
11 away. Did I understand that correctly?

12 A. Yes.

13 Q. You indicated that two of the A-1 through A-7 array
14 would go away. Did I understand than correctly?

15 A. Again, we would need to do micro-siting to
16 determine where exactly those two megawatts or larger
17 machines would be located. Based on the general rule we are
18 willing to state that there would be no more than five in the
19 A-string. In the A-1 through A-7, sorry.

20 Q. So if you have no more than five and there's seven
21 out of there of 50, that's two from there. If you remove the
22 two turbines as I can see from here to the E-array and three
23 from the F-array, that's seven. Where might the other five
24 be taken away if you're going to end up with 38 if they're
25 two megawatts?

1 A. I can't answer that. I think I was asked that
2 earlier. I still I cannot answer that. We have not
3 micro-sited the project based on a two-megawatt or larger
4 size. What we are able and willing to commit to this Council
5 and Your Honor is that in an effort to minimize the visual
6 impacts we will stipulate to 2-megawatt or larger machines
7 and no more than five in that southern portion of the
8 A-string.

9 Q. You also testified, if I understood it correctly,
10 that despite reducing the project by at least a quarter the
11 number of turbines, 12 out of 50, roughly a quarter, you
12 would still need to use the same southern most starting point
13 and the same northern most starting point. Did I get that
14 correct?

15 A. Yes, the northern most ending point.

16 Q. Ending points. It depends on which way you start
17 from I guess. If you're reducing up to one quarter or at one
18 quarter turbines, can you tell me why you can't shrink the
19 project area? You can't move the southern most point north
20 or the northern most point south?

21 A. The wind that is available on the site follows on
22 the ridge lines. We need to be able to use -- and spacing
23 those turbines need to be able to use the same start point
24 and the same end point and space them along that ridge line,
25 the same ridge lines of the corridors that we are seeking

1 permitting.

2 Q. Mr. Aramburu asked you several questions regarding
3 Mr. Meier's testimony about the geology, and he asked you
4 specifically -- or Mr. Meier evaluated the geologic impacts
5 based on 1.5-megawatt turbines; is that correct?

6 A. Yes.

7 Q. Is it your understanding that a significant aspect
8 of what will happen geologically depends on the weight of
9 what you're adding to the land?

10 A. I'm not a geologist. You would need to ask the
11 geologist that question.

12 Q. Okay. I imagine I'm going to get an objection to
13 this question, but I'm going to ask it anyway. You said that
14 you can't specify the area where you stated in the
15 application that Class 6 winds were. You don't know where it
16 is on that map; is that correct?

17 A. That's not correct.

18 Q. Tell me what you said then.

19 A. I know where it is on -- I can see it on the
20 Northwest Seed maps. Where exactly that overlays onto the
21 proposed project map is difficult to determine. If you look
22 at the pixel sizes on the Northwest Seed map, each pixel is
23 approximately 40 acres. Trying to determine where exactly
24 that fits on the project map is impossible for anyone to do.
25 It's in the vicinity of the project area, and that's what

1 I've stated. That's what I've stated in the application and
2 that's what I testified to and that's what I remain.

3 Q. You're saying the vicinity of the project area.
4 Would that include land outside of the project area?

5 MR. McMAHAN: Your Honor, I think this has been
6 asked and answered.

7 MR. KAHN: No, Your Honor, it has not been asked
8 and answered. I'm asking him now, my line of questioning is
9 aimed at trying to determine whether his statements actually
10 apply to the project area, to the south of the Scenic area,
11 the area to the north on DNR land, or east and west of the
12 project area. It's a very legitimate question.

13 A. Again, the granularity of the data in the Northwest
14 Seed maps cannot be overlaid onto our project map. I can
15 tell you that the entire project area looks to be within the
16 area of the high wind potential but so does -- it's too
17 granular to tell. It's like drawing with a big wide tipped
18 felt marker and circling the area trying to determine what's
19 within that boundary.

20 BY MR. KAHN:

21 Q. In responses to a question from Mr. Aramburu you
22 said that you cannot say whether the Class 6 winds overlaps
23 the A, B, C, D, E, or F array. Do you recall that answer?

24 A. Yes.

25 Q. What is the distance from the bottom of the A-array

1 to the top of the B-array, the length of the project?

2 A. That's roughly three miles. I think two to three
3 miles.

4 Q. So you're saying at the very least you can't tell
5 within three miles where the Class 6 lands are because you
6 don't know if it's in the A-array or all the way up to the
7 B-array; is that correct? So you can't pinpoint the area of
8 the Class 6 winds to any closer than three miles?

9 A. Excuse me for a minute. Let me go to the exhibit.
10 If you look at this exhibit map.

11 Q. Yes.

12 A. This is exhibit I believe this is 1.08c; is that
13 correct?

14 MR. BAKER: 1.09c.

15 A. There is a large area covered by a number of
16 different colors. Each of those shades could cover three
17 square miles, five square miles. It's impossible given the
18 granularity of this data for me to state where exactly that
19 line is on our project map.

20 BY MR. KAHN:

21 Q. Therefore my question is, isn't it just as possible
22 that the area that you can't tell where it is, within three
23 miles or five miles, that the area is east, south, north or
24 west of the project site and does not include the project
25 site?

1 A. Your Honor, Members of the Council, I'm kind of
2 confused as to what the question is.

3 Q. Then let me ask it again.

4 A. I have stated, I have stated in our application let
5 me go to it and read it. I believe it's page -- what was it
6 again?

7 Q. I don't remember. 2.1-6.

8 A. Wind power and wind speed maps published by the
9 Northwestern U.S. Wind Mapping Project verified by the U.S.
10 Department of Energy National Renewable Energy Lab identified
11 the ridge line, the ridge line where Whistling Ridge Energy
12 Project will be constructed as a viable wind energy resource.
13 The models indicate that winds passing 50 meters above the
14 ground surface in the vicinity reached sustained speeds of
15 15.7 to 17.9 miles per hour depending upon location,
16 referenced site Northwest Seed 2002. Such wind speeds rate
17 this area as a power potential of good to outstanding, siting
18 reference again Northwest Seed 2002(b). One concentrated
19 area within that project area is identified as having
20 outstanding Class 6 wind power potential with sustained winds
21 speed of 17.9 to 19.7.

22 Q. And my question is if you cannot pinpoint, if you
23 cannot translate from the National Renewable Energy
24 Laboratory Maps to this map within the three to five miles, I
25 think was the answer you gave, how do you know that the Class

1 6 winds are in this project area as opposed to outside of the
2 project area boundaries?

3 A. 17.9 to 19.0 miles per hour is a salmon color shade
4 on the exhibit map.

5 Q. But you have testified that you can't translate
6 that salmon color to the project map because it's granular
7 and the distances are off. So again I'm asking you isn't it
8 just as possible that the Class 6 winds that you say are in
9 the project area, are in part within the project, are not
10 within the project because you can't specify the location
11 within three to five miles?

12 A. Mr. Kahn, I believe that's mischaracterizing what
13 my testimony was.

14 Q. Then tell me what you said.

15 MR. McMAHAN: Your Honor -- let him answer.
16 Beyond that this has been asked and answered to death.

17 JUDGE WALLIS: This area has been inquired into
18 extensively by both counsel. We will ask the witness to
19 respond to this question.

20 MR. KAHN: That's all I'm asking.

21 BY MR. KAHN:

22 Q. Let me ask it again.

23 JUDGE WALLIS: No, let's not ask it again. Let's
24 let the witness respond.

25 A. My testimony is that I can see that the high wind

1 speed area overlap with a great degree of granularity the
2 maps overlap the project area. As I stated earlier, I cannot
3 specifically say where given the granularity of that data
4 specifically say what part of the project area or what
5 strings of turbines that that high wind speed overlaps.

6 BY MR. KAHN:

7 Q. Mr. Spadaro, are you saying then on Exhibit 1.09c
8 that the lavender covered area occupies only your project
9 area?

10 JUDGE WALLIS: I think, Mr. Kahn, that the
11 witness's testimony on this topic is extensive, and I
12 believe his prior answers respond to the question that
13 you've asked.

14 MR. KAHN: Your Honor, I must respectfully
15 disagree. This is a different question and it's a
16 completely different approach. Neither Mr. Aramburu nor I
17 have got a straight answer out of him about this question.

18 JUDGE WALLIS: I think that the witness has
19 continued and I do believe that he has successfully
20 responded to your questions, to the questions that both of
21 you have asked with enough information that your questions
22 are answered.

23 MR. KAHN: No one has asked him this question. He
24 has referred to the lavender area as being overlapping the
25 project area. My last question was asking whether the

1 lavender area is completely contiguous or overlaps
2 completely the project area or extends north, south, east,
3 or west.

4 JUDGE WALLIS: The witness has in his prior
5 answers described the granularity of the map and its
6 application to the project.

7 MR. KAHN: And he said that area covers the
8 project, and I've asked him whether it's possible that area
9 extends beyond the project. He has not answered that.

10 JUDGE WALLIS: I believe that it is implicit in
11 his responses that description includes, is sufficient to
12 respond to your question.

13 MR. KAHN: Well, with all due respect I would
14 rather have something explicit than implicit if we're making
15 a record here. I'd like him to answer that question,
16 whether it's possible this lavender area goes beyond the
17 project boundaries. It's a straightforward question.

18 JUDGE WALLIS: I think the answer is contained in
19 his answers to your prior questions.

20 MR. KAHN: Well, I don't know what that was.

21 MR. McMAHAN: Your Honor, beyond that he's asking
22 the Applicant to speculate about a map that the Applicant
23 didn't author, speculate about where these colors may or may
24 not extend; meaning that the colors -- it's been asked and
25 answered, and, you know, this is going to be a really long

1 week and a half if counsel is going to argue back and forth
2 with the Hearings Officer on objections.

3 JUDGE WALLIS: So my ruling is that your question
4 is inadmissible.

5 MR. KAHN: One last comment, Your Honor. He's
6 speculating. As Mr. McMahan says I'm asking him to
7 speculate where the area of high winds are, then I'm going
8 to assume that everything in this paragraph in which he
9 talked about Class 4, 5, and 6 winds from that map must be
10 speculation as well.

11 JUDGE WALLIS: The witness has responded to your
12 question.

13 BY MR. KAHN:

14 Q. Mr. Spadaro, how many acres within the project site
15 have been clearcut in the last six years?

16 A. I do not know that number off the top of my head.

17 Q. Do you know how many forest practice applications
18 have been submitted in the last six years for harvesting in
19 this area?

20 A. I do not know that number off the top of my head.

21 Q. Have any of those forest practice applications --
22 well, let me ask this. Have there been forest practice
23 applications in this area in the last six years?

24 A. Yes, I believe so.

25 Q. More than one?

1 A. Yes, I believe so.

2 Q. Have any of those forest practice applications
3 included information indicating that there would be
4 conversion to nonforestry uses?

5 A. I do not recall.

6 MR. KAHN: Your Honor, I don't know how we're
7 working this. I want to refer him to one of our
8 cross-rebuttal exhibits that you have before but aren't
9 tagged. Can I just identify where it is and have the
10 Council look at it while I ask him questions?

11 JUDGE WALLIS: Very well.

12 BY MR. KAHN:

13 Q. Mr. Spadaro, you have -- does he have these? This
14 would be what we called item T, 1.16c. Do you have that in
15 front of you?

16 MR. MOSS: Your Honor, I wonder if Mr. Kahn can be
17 asked to describe the exhibits so the Council would have the
18 benefit of being able to identify it.

19 MR. KAHN: Fair question. It's a July 19, 2010
20 letter from Washington DNR to Mr. Posner.

21 MR. MOSS: It is a single page, nine pages?

22 MR. KAHN: It's three page. It's probably about
23 80 percent toward the end.

24 JUDGE WALLIS: How would you describe that
25 document, please?

1 MR. KAHN: It's a July 19, 2010 letter from DNR to
2 Mr. Posner at EFSEC.

3 MR. SUTHERLAND: This is the letter DNR comments
4 on Whistling Ridge EIS?

5 MR. KAHN: Yes, sir.

6 BY MR. KAHN:

7 Q. Did you have that, Mr. Spadaro?

8 A. I do.

9 Q. Could I call your attention to page 5, please.

10 A. Yes.

11 Q. The paragraph after the words 3-28, can you read
12 starting at the second sentence.

13 A. All of the forest practice applications that were
14 applied for in an area indicated the site would be counted
15 forestry, not converted to a nonforestry use.

16 Q. Keep going, please.

17 A. This appears to be in violation of the forest
18 practices rules.

19 Q. One more sentence.

20 A. Potential conversion impacts were not considered.

21 Q. Did your company take any action in response to
22 this letter?

23 A. When you have an intent to convert forestland, you
24 disclose upon a forest practice application and then the
25 application goes through a SEPA review with the local county

1 as the lead agency. We did not disclose our intent to
2 convert because some of these harvests occurred prior to our
3 knowing that we had an intention to convert to wind energy or
4 industrial use with certainty. We are now going through the
5 SEPA process for the evaluation of the impacts that would
6 occur as a result of the conversion. That's what the SEPA
7 EIS is about. One of the components of it is evaluating
8 conversion of forestland to an industrial use. So we did not
9 do anything nor did we need to do anything to address this.

10 Q. When was the first work of any type, whether it be
11 surveys or wildlife or whatever, done in connection with this
12 project?

13 A. 2002.

14 Q. Are you saying that between 2002 and 2010 that all
15 of these forest practice applications were prior to 2002
16 because you didn't know that you were going to be using the
17 project for wind?

18 A. No, I'm not saying that. We have a normal harvest
19 plan for our working forestlands, and while we have been
20 considering going forward with a wind energy project we have
21 gone about our normal business of conducting forest practices
22 and harvesting our trees. We did intend to convert land. We
23 will seek to have -- if there is any moratorium on it by the
24 county, we will to seek to have that moratorium lifted, and
25 we have to go to through the SEPA process which is what the

1 EIS process is evaluating.

2 Q. So you disagree with the DNR statement here that
3 this appears to be a violation of the forest practices rules?

4 A. It's accurate, but I disagree. I do disagree with
5 it because if we had intended to convert, we intended to
6 convert without going through the SEPA process, then you were
7 in violation of forest practices rule. If we did not know
8 the intent to convert at the time or if it's not known with
9 certainty, we went about our normal business of conducting
10 forestry and we're going through the SEPA process now as a
11 result of the application. So while the -- it may -- we're
12 going through the same process just through a different
13 vehicle so I do disagree.

14 Q. Okay. How many acres -- would you agree that this
15 project will cause a conversion of some acreage from forestry
16 to nonforestry use?

17 A. Yes.

18 Q. About how many acres?

19 A. I believe our application and the calculation is
20 about 55 acres that will be permanently converted.

21 Q. How did you arrive at that figure?

22 A. That was based on turbine footprints and cleared
23 area around each turbine. I believe it included the
24 substation and roads, new roads that would be constructed
25 minus the existing roads that would be reclaimed and restored

1 to forest.

2 Q. You said the first part of your answer there was
3 that it's dependent upon the size of the footprint of the
4 turbine; is that correct?

5 A. Yes.

6 Q. If you go to 2-megawatt turbines would they need
7 bigger footprints than 1.5-megawatt turbines?

8 A. No.

9 Q. The footprint of the turbine is the same no matter
10 what the size?

11 A. The calculation, Mr. Kahn, was based upon a 50-foot
12 cleared area around each turbine, 50-foot clear around the
13 base. So depending upon the turbine final turbine model,
14 Your Honor, that would fit within that 50-foot corridor,
15 50-foot radius area around the base of the turbine, and that
16 was the basis of the calculation for the permanent converted
17 area.

18 Q. You mentioned in answer to a previous question you
19 referred to a Skamania County moratorium, didn't you?

20 A. No, I was referring in the Forest Practices Act
21 there is mention of a moratoriums on forest conversion.
22 That's a different matter all together.

23 Q. I know what you're talking about. That's not what
24 I'm asking about. Are you familiar or are you aware that
25 recently I believe within the last week or two Skamania

1 County continued through Ordinance 2010-10 a moratorium on
2 the acceptance in processing a SEPA checklist related to
3 forest practice conversions for parcels located within
4 unincorporated Skamania County that are not currently located
5 within the zoning classifications? And I'm referring
6 specifically to Exhibit S, to 1.15c.

7 MR. KAHN: Which would be the document immediately
8 prior to the one that you were just looking at, Council
9 Members.

10 A. Okay. Your question was?

11 BY MR. KAHN:

12 Q. Are you familiar with this ordinance?

13 A. Not specifically, no. I have heard of a moratorium
14 on forestland conversion to residential use driven largely by
15 the conversion of large forestland to 20-acre parcels in the
16 Swift Reservoir area, and I think that's what this is.

17 Q. Okay. Can you look at the very last paragraph, the
18 actual resolution. Do you have that in front of you?

19 A. Yes.

20 Q. Can you read that to yourself first, and then I'll
21 ask you a question or two.

22 A. Okay.

23 MR. KAHN: Do the Council Members have it?

24 MR. SUTHERLAND: I'm still looking.

25 MR. KAHN: Okay. I'll give you a moment then.

1 Again, it's probably about 70 percent of the way through.
2 It's a two-page document. It's immediately before the DNR
3 letter that we were looking at a few minutes ago. Across
4 the top it says Ordinance 2010-10.

5 BY MR. KAHN:

6 Q. Mr. Spadaro, have you had a chance to read it?

7 A. Yes, I have.

8 Q. Wouldn't that apply to your application for a
9 forest conversion here?

10 A. I think you need to ask Commissioner Pearce that
11 question or somebody else on the land use, but I would
12 disagree that it would because the whereas at the bottom of
13 the first page states as I stated earlier since January 1,
14 2006 over 230 new parcels 20 acres or larger have been
15 created through the deed process exempt. It goes on with
16 again another whereas referencing this activity occurring in
17 the Swift Reservoir area, and that's what led to this
18 moratorium on the division of large forestland parcels in the
19 Swift area to 20-acre lots.

20 Q. Can you ignore the whereas's and look to the actual
21 resolution adopted by the Commission. Does it limit it to
22 any kind of residential use or to the Swift subarea?

23 A. Well, in the last sentence it says where the area
24 generally known as the Swift subarea of Skamania County.

25 Q. Let me read the pertinent portions. Now,

1 therefore, be it ordained and established by this Board of
2 County Commissioners as follows: The Board of County
3 Commissioners hereby adopts Ordinance 2010-10 to extend for
4 six months -- and I'm going to skip some things here -- the
5 moratorium on the acceptance and processing of SEPA checklist
6 related to forest practice conversions for any parcel located
7 within unincorporated Skamania County that is not currently
8 located within the zoning classification or the area
9 generally known as the Swift subarea of Skamania County.

10 So let me ask you this. You've indicated that
11 there's going to be a conversion here. You've indicated
12 that to do so you have to submit a SEPA application; is that
13 correct?

14 A. Yes.

15 Q. Is the parcel that you would be submitting a SEPA
16 application on located within unincorporated Skamania County?

17 A. Yes.

18 Q. And not currently located within the zoning
19 classification?

20 A. Correct.

21 Q. So how does it not fit within this?

22 A. It's not a land division.

23 Q. The acceptance processing of the State
24 Environmental Policy Act (SEPA) --

25 A. You just skipped an entire sentence that says

1 crossing of land divisions, subdivisions, and short
2 subdivisions.

3 Q. And the acceptance and processing of SEPA checklist
4 related forest practice conversions. Those were multiple
5 things that they have declared a moratorium on. One is land
6 divisions. One is application for forest practices. Do you
7 agree?

8 A. I would suggest that Skamania County officials may
9 be better answering the intent and effect of this than I
10 would.

11 MR. KAHN: I have no further questions. Thank
12 you.

13 JUDGE WALLIS: Very well. Are there further
14 questions of this witness on cross?

15 MR. MARVIN: Yes.

16 JUDGE WALLIS: Mr. Marvin, could you estimate the
17 time that you expect you might be spending on cross?

18 MR. MARVIN: I'm hoping it would be less than
19 15 minutes.

20 JUDGE WALLIS: Are there further questions of the
21 witness and about how much time are you anticipating?

22 MR. CANTRELL: Less than SOSA. Sorry. My only
23 joke made me cough. I said less than SOSA, but it will be
24 probably five or ten minutes I would think.

25 JUDGE WALLIS: Very well. Let's be off the

1 record.

2 (Discussion off the record.)

3 JUDGE WALLIS: Let's be back on the record,
4 please.

5 Mr. Marvin, please continue.

6 MR. MARVIN: Yes.

7 CROSS-EXAMINATION

8 BY MR. MARVIN:

9 Q. Mr. Spadaro, throughout the testimony you
10 particularly referred to use of micro-siting for the final
11 determination as to location of various turbines within these
12 corridors. Can you describe the micro-siting process for the
13 Council.

14 A. Certainly. Members of the Council, micro-siting
15 involves a turbine supplier evaluating with the project
16 proponent and meteorologist evaluating the best location of
17 wind turbines and best application of wind turbine technology
18 for your site.

19 Q. What types of values are plugged into that
20 equation? I think it's a given that obviously we're looking
21 for efficiency, correct, in terms of the ability to generate
22 electricity?

23 A. That's the general intent, but there are a number
24 of variables, including topography, average wind speed, wind
25 direction, the capability of the particular turbine to handle

1 the changing wind directions and the average wind speed and
2 the topography of the ground, any vegetative wind
3 interference, a whole range of factors.

4 Q. Am I to understand that within the micro-siting
5 it's not only looking on the ground circumstances, but it's
6 also addressing the type of equipment that's going to be
7 installed or is that a different process?

8 A. That's what I would consider micro-siting.

9 Q. In your judgment are environmental issues
10 appropriately addressed during the micro-siting process?

11 A. Would you please give me an example of what you
12 mean.

13 Q. Well, I think an easy example which isn't
14 applicable here, but if there were wetlands, for instance,
15 micro-siting might be used to minimize the impacts by
16 locating the turbine location where wetlands aren't located.
17 And theoretically that could result in perhaps a lowering of
18 the efficiency, lowering the return on the project; is that
19 accurate?

20 A. Yes, if there are areas of sensitivity that needs
21 to be avoided in micro-siting, we'd attempt to try to do
22 that.

23 Q. From your perspective, from the Applicant's
24 perspective does micro-siting have a role to play in regard
25 to mitigating potential environmental impacts of the project?

1 A. Yes, I believe so.

2 Q. How would you describe that?

3 A. To the extent that there are sensitive resources
4 needed to be avoided and micro-siting could address that
5 without it compromising the economic, overall economic
6 viability of the project, you would seek to try to avoid
7 those sensitive resources.

8 Q. Have you in discussions with your consultants have
9 you discussed micro-siting and environmental impacts? For
10 instance, let's focus on the visual impacts in this case.
11 Have you had a discussion with your consultant regarding
12 visual impacts and how they might be addressed through the
13 micro-siting process?

14 A. Your Honor, Members of Council, I'm pausing because
15 I want to make sure I don't release anything that may be
16 proprietary knowledge related to the project, but I think it
17 benefits the Council and benefits the discussion here. The
18 answer is yes that when I talked earlier about having no
19 greater than five turbines in the southern portion of the
20 A-string that is spacing those turbines a little farther
21 apart than one might normally do to maximize the site and
22 then more densely impact them farther up to ridge line. So
23 we've looked at all of that, and without coming to final
24 micro-siting decisions that was what led me to be able to
25 state to you that we could agree to no more than five in the

1 southern string and we sought to do that.

2 Q. Have you looked at alternatives that would allow
3 for less than five in the southern string, I mean A-1 through
4 7 string?

5 A. We can't do that without going below 75 megawatts.

6 Q. Is there something unique about that area, the A-1
7 through 7, that requires that it be developed?

8 A. It's very windy.

9 Q. Is it windier than other portions of the property?

10 A. Yes.

11 Q. If you would go to 2.5 megawatt what would be the
12 minimum number of turbines or maximum number of turbines in
13 the A-1 through 7 string?

14 A. It would still be five.

15 Q. I'm curious, but I believe you're the sponsor of
16 the analysis of the alternatives section, Section 2.19, in
17 the application?

18 A. That's correct.

19 Q. When did these alternatives with regard to
20 developing the 2-megawatt minimum power, when were those
21 first discussed with your consultants?

22 A. Again, as I had stated earlier, we have always said
23 in the application there would be a range of turbines so I
24 can't pinpoint a specific time when we started having that
25 discussion. The alternatives analysis discusses -- it

1 doesn't talk a lot about alternative turbine sizes because we
2 indicated a range from 1.2 to 2.5. Does that answer your
3 question?

4 Q. Well, yes and no. I guess, you know, I do have
5 some concerns that, you know, we now have a project with an
6 application that has, you know, 50 turbines in a worst-case
7 scenario, and that's basically what everybody has been
8 looking at, and, you know, and guess I have some questions in
9 terms of how do we go forward now that there's really I think
10 a change in circumstances?

11 A. A beneficial change in circumstances.

12 Q. A beneficial change in circumstances perhaps, but I
13 think part of the issue here, and I don't mean to get on this
14 topic here. We're trying to evaluate what the impacts are
15 and know with a clear degree of certainty what we're looking
16 at when going into this development, and I guess I'm just,
17 you know, I have some concerns about when you're talking
18 about alternatives to what degree when you did this section
19 did you think that -- you know, what did you think this
20 section was intended to address with regard to an analysis of
21 alternatives. What was your understanding in terms why this
22 information was required for the application process?

23 A. I mean I don't really think I'm the best to answer
24 why it was required in the application process itself. I
25 don't know if statutorily this is a section that's required

1 in the process. I think we wanted to show that we chose this
2 site by looking for a site that fits certain criteria. Some
3 of those criteria were the least amount of impact to the
4 environment and an industrial site that has Bonneville
5 transition corridors right through the middle of it, Williams
6 Gas Pipeline on the north end, rock pits, and existing roads,
7 harvested timber, fit a lot of the criteria of a previously
8 disturbed site for putting a wind turbine project with
9 minimal additional impact to the environment or less than
10 going into a more pristine site. That's some of what we
11 discussed in the alternatives analysis that we looked at for
12 other areas of our land that might have potential for this.
13 This is the only one that fit all of the criteria that we
14 needed, including some minimizing environmental impact.

15 I would say that this is with almost full
16 confidence this is the only site in Skamania County that can
17 be developed for wind energy. We certainly couldn't go
18 north onto DNR land, although we inquired about that and
19 were shut down pretty quickly partly by the project
20 opponents here now before the Council. So we looked at
21 alternatives, and this is the site that fit best and that is
22 what our effort was and our intention.

23 Q. You don't have any quantified analysis of other
24 sites that might have been considered in this section.

25 Correct?

1 A. As it states on 2.19-2, "While Whistling Ridge
2 Energy, LLC, is not a developer of multiple sites, and only
3 proposes a site described in this application, the selection
4 of this site conforms to accepted site selection criteria,"
5 and that lists a number of criteria. This is the only site
6 that we have to propose. So we're not a developer of
7 multiple sites. We're not seeking sites throughout the state
8 of Washington. This is our only site. That's why this is
9 the alternative that we have. Going onto public land or
10 neighboring lands is not an option for us.

11 Q. It's your testimony there was no alternative site
12 design on the project property that could be implemented?

13 A. Well, I know -- I think that would be, that would
14 be disingenuous for me to say that because I've just offered
15 an alternative site design today, alternative from the 1.2 to
16 2.5-megawatt range that we've put into the application. Now
17 I'm narrowing that. I would like to point out to Your Honor
18 and the Council that I do that with a fair degree of risk.
19 By eliminating 1.5 and 1.8 megawatt turbines from the project
20 those are the most reasonably, affordably available wind
21 turbines in the market today.

22 T. Boone Pickens plan has got a number of stuff
23 available on the market. If we wanted to try to maximize
24 the return of the project, we would try to use 1.5 or
25 1.8-megawatt machines because they are so much less costly

1 than alternatives, and that's not what we're trying to do.

2 MR. ARAMBURU: I do want to raise an objection to
3 once again this witness teeing off on a question to deliver
4 a long statement of his views on this and that. I think
5 it's inappropriate that this witness just wasn't responsive
6 to Mr. Marvin's question.

7 MR. MARVIN: I understand and I think I can handle
8 this.

9 BY MR. MARVIN:

10 Q. In terms of design issues I mean a two megawatt
11 that was always within the realm of possibility with regard
12 to the application. Correct? It could be a 1.2 to 2.5. So
13 two megawatt is really within the range of design that was
14 proposed, but I guess what I'm trying to get at is was there
15 alternative corridors? That's what we've been talking about.
16 I think Tim raised that at the beginning that we're talking
17 about corridors, not turbine locations or any specific
18 turbine. But is there alternative turbine corridors that
19 were considered?

20 A. Yes, we early on in the process we had a met tower
21 to the east of the D-string of turbines. We looked and
22 evaluated the option of going farther east. That was very,
23 very early on. In fact, that was not my doing. That was an
24 earlier partner in this project that's no longer involved
25 with it at all, but we have no flexibility to go to the east.

1 We have no flexibility to go to the north or to the south.
2 So the corridors that we have applied for are the only
3 corridors that are available to us. We can't go west because
4 it goes down the hill out of the wind. We can't go east
5 because there's no wind. We can't go to the north because
6 it's not our property. We can't go south because it's in the
7 National Scenic Area.

8 MR. ARAMBURU: Mr. Chairman, I do understand
9 Mr. Marvin's point, but I renew my objection to this witness
10 providing statements much of what we have heard today is
11 new. We do request the opportunity to cross-examine him on
12 some of these additional statements that he seems to be
13 making whenever he gets the chance. So we think that's
14 inappropriate to tee off on a question and then provide
15 whatever statements you want to make. So I move to strike
16 that testimony.

17 JUDGE WALLIS: Your concern is noted.

18 BY MR. MARVIN:

19 Q. I guess as a final wrap up here -- I'm still within
20 my time -- I understand I heard the colloquy about
21 confidentiality of that information and I appreciate that
22 seems to be convincing to EFSEC. I am left here kind of
23 scratching my head how do we aside from taking your word for
24 it, how do we establish that the information that was set
25 forth in this application with regard to wind speeds and the

1 need for siting of these corridors? How do we verify that?
2 How do we have accountability to the public that is in fact
3 the case? And I'm not saying that there's a smoking gun here
4 or anything like that. I'm just looking at this in terms of,
5 you know, a public process and how do we have a public
6 discussion about this if we don't have the baseline data that
7 is establishing the conditions on the site?

8 And I'll let you answer that, and if you want to
9 wander off a little bit, that's fine too. I'm not going to
10 object because I really want to put that out to you as an
11 honest desire to kind of get to the bottom this because I
12 don't feel like I have that information right now.

13 A. I don't know that I'm capable of answering that.
14 Your Honor, Members of the Council, I think that that
15 question is part of what the appeal in Kittitas Valley and
16 going to the Supreme Court answers; that the decision of this
17 Council is whether this is an appropriate site to place wind
18 turbines. What the economic justification is for the project
19 or getting into the nuts and bolts of the business matter
20 itself and where turbines are sited or not sited was ruled on
21 in Kittitas Valley and was upheld by the Supreme Court.
22 You're the attorney and I am not.

23 Q. I appreciate that, but I guess, you know, setting
24 that aside there are, you know, there are environmental
25 consequences with regard to the actions that we take, and

1 while I understand that there is an economic issue, and, you
2 know, we don't want to go there, we don't want to undermine
3 the proprietary question, but the question still remains, you
4 know, we are looking at environmental cost. And how do we
5 balance? We must be if having this -- we must be going there
6 because there's something of equal value on the other side.
7 You're not just, you know, sacrificing scenic values or
8 biological values simply because we think it's an interesting
9 idea. There must be some kind of counterweight to that. In
10 any event, I think I have your answer, and I would hope that
11 during the proceedings that we can get a little more
12 substance on this issue in front of the Council and have a
13 meaningful discussion about it. Thank you.

14 JUDGE WALLIS: Mr. Cantrell.

15 MR. CANTRELL: Thank you, Your Honor.

16 I guess I would just clarify since I didn't in my
17 opening statement I'm not an attorney. I'm the one person I
18 think sitting at counsel table that's not an attorney so my
19 apologies up front if I break some protocol or do something,
20 and I'm sure that the attorneys can object and correct my
21 ways. But I beg indulgence. I just have a few questions.

22 CROSS-EXAMINATION

23 BY MR. CANTRELL:

24 Q. First, if you could elaborate a bit more on why you
25 can't eliminate the most northerly turbines, the turbines

1 that would be at the end of I guess the B and C strings,
2 recognizing that is some of the best habitat that's on the
3 ground up there. The older stands of trees are plump in
4 those areas, and I guess I just still don't understand why if
5 you're eliminating 12 turbines you can't group some of them
6 further south away from that most critical habitat that's in
7 the closest proximity to the known location of an owl.

8 A. If we move farther from the south or move farther
9 down from the north, we would have to move farther down on
10 the south. Still we need the same start point and end point
11 in order to maintain a certain size of the project. We can't
12 give up on either side and maintain. As to the habitat, I'm
13 not sure you know the current habitat conditions, but I think
14 most of what was in that northern area that when we did our
15 site tour that has been harvested since we did that site
16 tour.

17 Q. Yes, I'm just looking at your stand and that's part
18 of the application and the DEIS, and it has a stand that goes
19 back as far as 1936 as the last harvest right there on the
20 border with the DNR lands and maybe those have been harvested
21 since that was produced.

22 A. Yes.

23 Q. Again, maybe I'm just not getting it but help me.
24 Why can't you? I hear you say if you move to the south away
25 from the DNR lands, you're going to have to go further south

1 and you can't because you run into the scenic area. Why
2 can't you just compress it? I understand that if you use the
3 larger turbines that eliminates F and E strings because of
4 the turbulence or other issues. But why can't you simply
5 start the northern most part, you know, 500 yards further
6 south?

7 A. Again it gets back to the distance required between
8 turbines to avoid wake effect and turbulence so that each
9 turbine is producing energy effectively.

10 Q. On the micro-siting I want to follow up a bit on
11 what Mr. Marvin was asking you about. You talked about the
12 need for some flexibility to deal with on the ground actual
13 situations. I am wondering when you ask for that flexibility
14 of that micro-siting I'm assuming that would be more moving
15 something, you know, two feet, more than two feet I would
16 assume?

17 A. I'm not sure I understand your question. Do we
18 have the capability of moving things to avoid sensitive
19 resources?

20 Q. Right, yes, or to gather better wind resources or
21 whatever. I'm trying to get a sense if it's possible you
22 mean more than two feet, less than two miles? I'm just
23 wondering there how much flexibility you're going to be
24 asking the Council for in the site certification? If you
25 say, well, turbine string A is from this point to that point,

1 but with micro-siting it may be adjusted, you know, 500 feet
2 this way or that, or 200 feet. How much flexibility are you
3 looking for?

4 A. So to be clear we are not seeking for individual
5 turbine locations. We're seeking corridors and if in
6 micro-siting we want to find that ideal spot for a turbine it
7 has to be within those corridors where we have the site
8 certificate approval to do so.

9 Q. So micro-siting would not make any adjustments to
10 the corridor itself?

11 A. No.

12 Q. Just a couple other quick questions. In his
13 opening statement Mr. Andersen who I don't think is in the
14 audience anymore, but he referenced the removal of Condit Dam
15 and the Whistling Ridge Project could provide power in an
16 emergency. Are you aware of any such capability that this
17 project would provide?

18 A. There will be -- I am somewhat aware. That is not
19 my expertise, but there is a witness Bob Wittenberg who is
20 the Skamania County PUD General Manager who I believe is
21 going to testify on that very issue of why this project is
22 important to the citizens of Skamania County and energy
23 reliability.

24 Q. Then the last question that I have for you is in
25 regard to the distribution of power, and I heard you say that

1 there will be a number of factors as you consider signing
2 contracts with the utility whether it would be local or in
3 California or any other place that you would look at, and I'm
4 wondering if you would be willing to stipulate your company
5 would have a local utility customer preference, at least one
6 of those criteria. You said you wouldn't lock into say we're
7 doing and we're going to a Washington utility come hell or
8 high water. You want the flexibility. But is it even a
9 factor that you will consider that you'll give a preference
10 if Utility A who is in Southern California and you've got
11 Utility B who's in Clark County, and your return for you once
12 you factor in transmission cost and everything is roughly
13 equal, would you give preference to the local utility?

14 A. No, we cannot commit the project in one form or
15 another as to the destination for the power, but in an
16 integrated energized system what's important is that these
17 are electrons going into the grid in the local area, and that
18 is just as important to Washington residents as whatever
19 utility is the ultimate destination of the power. But to
20 answer your question, no, we cannot.

21 Q. Why not?

22 A. It would compromise the project viability to be
23 committed to one destination or another for the power, not
24 only in economic terms but also in marketability terms. And
25 to be honest as I said earlier as soon as we start to narrow

1 down the options, I would expect as they have done in the
2 past for opponents to try to threaten and intimidate
3 Northwest purchasers of the power for their involvement in
4 the project.

5 Q. Again, my question wasn't whether or not you would
6 commit to making a sale to a local utility, but I'm asking
7 you if you would be willing to make a commitment to having it
8 be a consideration, to be one of the factors, and I heard you
9 say, no, and I want to make sure that's really what you're
10 saying that you won't.

11 A. I am really saying no.

12 MR. CANTRELL: Okay. Unfortunate but okay. I
13 guess that's all the questions I have then, Your Honor.

14 JUDGE WALLIS: Very well. Are there any questions
15 on cross-examination from other parties?

16 Let the record show that there is no response.

17 Is there redirect?

18 MR. McMAHAN: There's no redirect, Your Honor.

19 JUDGE WALLIS: Very well. Are there Council
20 questions?

21 Let the record show that there were no questions
22 from Council Members, and Mr. Aramburu you indicated earlier
23 that you thought some of the responses warranted additional
24 cross. Are you still of that mind?

25 MR. ARAMBURU: I am but I think there's a point I

1 want to make clear, and this is further to Mr. Marvin's
2 point. When we came in here today, and we've been working
3 with the testimony for a lengthy period of time, and we come
4 in today with no announcement until the witness gets on the
5 stand there's been a change in the proposal. And then that
6 makes on all of us a lot of difference for questions to be
7 answered to several witnesses, including the geologist,
8 including Mr. Nierenberg who apparently knows something or
9 maybe nothing about this, these issues. I'm not quite sure
10 how to resolve that at this point, but I may ask the Council
11 tomorrow once I think about it for some consideration
12 because this is a complete surprise to us. We didn't have
13 even the courtesy of counsel telling us even in the 10:15 at
14 night e-mail that this individual is going to come in and
15 tell us now they decide to do this change to the project.

16 It makes a whole lot of difference. I think it's
17 unfair to have a project change at this stage of the
18 proceeding when we're all sitting here even indeed after
19 opening statements were made. And blatantly I admit I don't
20 have an answer to that, but I may come back tomorrow morning
21 and request some opportunity, some special consideration
22 from the Council regarding this issue. But it is of concern
23 to me that we're now having to change that very much, and I
24 do want to think about that and would like to ask the
25 Council for the possibility of some cross-examination of

1 this witness tomorrow morning.

2 JUDGE WALLIS: Very well. Because it is somewhat
3 speculative at the moment whether you will decide to pursue
4 this, I don't think we need to take a response and I think
5 we can conclude today's session with the exception of
6 possible recall to the stand in the event that Mr. Aramburu
7 seeks the opportunity for additional examination and in the
8 event the Council approves that, and, Mr. Spadaro, you're
9 excused from the stand.

10 We will be in recess now until 8:30 tomorrow
11 morning, and at that time we will take up again. Depending
12 on possible issues we will take up with Ms. Chaney.

13 * * * * *

14 (Whereupon, the hearing was adjourned at 5:30
15 p.m.)

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E X H I B I T S

NO.	DESCRIPTION	ID	OF	AD	REJ
1.00	Spadaro Testimony		69		
1.01r	Spadaro rebuttal testimony		69		
1.02r	WDFW Letter 9/17/10		69		
1.03r	7/14/10 letter; 5/24/10 memo		69		
1.04r	Letter from WDFW, 11/24/10		69		
1.05r	11/9/10 letter		69		
1.11c	Map of 50 turbines	48		63	
1.12c	WDFW e-mail exchange #1	48		63	
1.13c	WDFW e-mail exchange #2	48		63	
1.14c	Davenport e-mail	48		63	
1.15c	Skamania County Ord. 2010-10	48		63	
1.16c	DNR Comment	48		63	
1.17c	Hearing Examiner's findings	48		63	
1.18c	GE Wind Power Brochure 2.5	48		63	
1.19c	GE Wind Power Brochure 1.5	48		63	

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In re: Whistling Ridge Energy Project
Application 2009-01

A F F I D A V I T

I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on January 3, 2011, in Stevenson, Washington.

Shaun Linse, CCR 2029