

1 Appearances (cont'd):

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

5 F. STEVEN LATHROP, Jeff Slothower, Attorney at
6 Law; and F. Steven Lathrop, Attorney at Law, Lathrop,
7 Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh
8 Avenue, Ellensburg, Washington 98926.

9 ECONOMIC DEVELOPMENT GROUP, Debbie Strand,
10 Executive Director, 1000 Prospect Street, P.O. Box 598,
11 Ellensburg, Washington 98926.

12 * * * * *

13 JUDGE TOREM: Good morning. We're going to
14 open the record now at 8:35 for the adjudication in the
15 Kittitas Valley Wind Power Project. My name is Adam
16 Torem. I've been the Administrative Law Judge on this
17 case for it seems like going on eternity, but it's
18 probably three years.

19 This week, September 18, 2006, we're going
20 to initiate the adjudication, and it appears from the
21 scheduling of parties we will be able to complete this
22 matter by Thursday evening.

23 I want to go down the Council list and take
24 appearances. I want to note the presence of the following
25 folks: Chair, Mr. Jim Luce. Councilmembers will

1 acknowledge themselves to be present at the hearing today.
2 For the Kittitas County, Patti Johnson; for the Utilities
3 and Transportation Commission we have Tim Sweeney, for
4 Community, Trade, and Economic Development we have Dick
5 Fryhling. Seated to my right is Judy Wilson for the
6 Department of Natural Resources; Hedia Adelsman,
7 Department of Ecology; Chris Smith Towne for the
8 Department of Fish and Wildlife, and sitting immediately
9 to my right is Mary Ellen Combo. She's our Attorney
10 General. We have a new Attorney General who's working
11 with us today and that is Kyle Crews. He's seated behind
12 the court reporter there. He will be taking over primary
13 EFSEC duties following this adjudication.

14 For the parties I want to see who's here
15 today. For the Applicant?

16 MR. PEEPLES: Darrel Peeples.

17 MS. ANDERSON: Erin Anderson.

18 MR. McMAHAN: Tim McMahan.

19 JUDGE TOREM: For Kittitas County?

20 MR. HURSON: James Hurson.

21 JUDGE TOREM: Renewable Northwest Project?

22 Okay. They don't appear to be with us today yet.

23 Steven Lathrop?

24 MR. SLOTHOWER: Jeff Slothower.

25 JUDGE TOREM: I see Mr. Lathrop is with you

1 as well.

2 MR. LATHROP: That's correct.

3 JUDGE TOREM: Counsel for the Environment?

4 MR. TRIBBLE: Mike Tribble.

5 JUDGE TOREM: Thank you, sir.

6 Residents Opposed to Kittitas Turbines or
7 ROKT?

8 MR. CARMODY: James Carmody and Ed Garrett
9 is here as well.

10 JUDGE TOREM: The Economic Development
11 Group?

12 MS. STRAND: Debbie Strand.

13 JUDGE TOREM: Thank you, ma'am.

14 Community Trade & Economic Development?

15 Mr. Usibelli doesn't appear be with us yet today.

16 Any other parties that I inadvertently left
17 out?

18 Seeing none, we'll proceed without Renewable
19 Northwest's presence nor Community Trade and Economic
20 Development at this time.

21 Today's schedule we have planned three
22 witnesses in the morning. That's Chris Taylor, Andrew
23 Young, and Dana Peck; and then we're scheduled to take a
24 lunch break approximately from noon to one o'clock and
25 then we're going to have a telephone witness. I believe

1 Mr. Thomas Tebb is going to appear and, Mr. Tribble,
2 that's your witness?

3 MR. TRIBBLE: Correct.

4 JUDGE TOREM: So hopefully we'll be able to
5 get all the technology working at one o'clock and have him
6 on fairly quickly and then everybody come back and we'll
7 take Mr. Priestley's testimony for the balance of the
8 afternoon. We will close either at the end of
9 Mr. Priestley's testimony or shortly after five o'clock to
10 see how things are doing at that point.

11 Later in the week we're planning to do a
12 site visit to the proposed areas and take in various views
13 that the parties think the Council should see as part of
14 the adjudication. Council is going to be thinking after
15 today's testimony as well as to what they think they need
16 to see in order to take in the appropriate context for
17 some of the testimony they're going to hear.

18 So this afternoon I understand that Irina
19 Makarow and Allen Fiksdal for EFSEC staff are going to ask
20 those that are interested from the parties to make
21 recommendations for the agenda for the site visit to meet
22 with them after the close of hearing today. I will be
23 staying to discuss that as well, and the Councilmembers
24 will have given their input hopefully before they depart
25 for the evening and we'll be planning on an agenda for the

1 site visit.

2 The reason we want to get this done is so
3 that before we get together for the site visit on Thursday
4 we want all the parties to know where they're going and
5 have a set of ground rules so that we can be sure that
6 there's not any ex-parte communications or contacts
7 inadvertently during the site visit and that each
8 Councilmember will know essentially from a narrated script
9 what it is the explanation is for where they're standing.
10 They'll take in their own views. There won't be any
11 discussion out there.

12 That way if there items that you think need
13 to be said at Site Visit A, B, or C those things can be
14 read and made part of the record without any need to have
15 a court reporter traipsing around in all-wheel-drive
16 equipment to figure out what's going on at the site. So
17 we'll avoid that.

18 We'll work carefully with staff this
19 afternoon to get the planning started and by Thursday have
20 everybody a sheet of the items that will be read and help
21 you draw straws to see who reads these items out there at
22 the site.

23 This morning I understand we're going to
24 seek out if any of the parties have any issues
25 preliminarily, and then we'll swear in Chris Taylor and

1 start with him as the first witness as soon as we're done
2 with any preliminaries.

3 Let me start with the Applicant and
4 determine, Mr. Peeples, did you have any preliminary
5 motions or other issues?

6 MR. PEEPLES: I have a preliminary issue,
7 and to a certain extent I think I'm speaking for all the
8 attorneys involved in here. I believe the parties would
9 have a preference with regard to especially the witnesses
10 that will be on the telephone to see if we can really cut
11 down and see if a determination if they really are going
12 to be cross-examined or questioned from the Council. If
13 not, I believe it would be all our preferences that rather
14 than having those witnesses hang around for the telephone
15 conference that we do it by declaration the way Mr. Hurson
16 will be doing it for Clay White. Our preference is if
17 there's going to be no questions let's just handle it by
18 declaration so we can take them off the list and get those
19 declarations in before the close of the record.

20 JUDGE TOREM: So you're suggesting,
21 Mr. Peeples, that the afternoon witnesses on Wednesday
22 that are scheduled by telephone may be further cut down to
23 allow affidavit.

24 MR. PEEPLES: Yes. Further, I've heard Jeff
25 Slothower I believe maybe would want to do the same thing

1 with Mr. Weaver. Mr. Weaver is not available at the point
2 in time and I don't think anybody is going to ask him any
3 questions.

4 MR. SLOTHOWER: That's correct. I learned
5 on Friday afternoon, Judge Torem, Mr. Weaver would not be
6 available on Wednesday morning. I spoke with Mr. Peeples
7 and he indicated that he would check. I had a chance to
8 talk with him again this morning. They have no questions
9 for Mr. Weaver. I talked to Mr. Carmody who also had an
10 indication he was going to be cross-examining Mr. Weaver.
11 He had no questions for Mr. Weaver. I see Mr. Tribble
12 shaking his head and I talked to Mr. Hurson and he had no
13 questions for Mr. Weaver. So if it's possible, I would
14 like to do him by affidavit. I've got to get the
15 affidavit signed this morning, but I can get it done.

16 MR. PEEPLES: I think if we have the
17 declaration by the end of--no reason to hurry it today.
18 If we're going to do it then just by the close of record.

19 JUDGE TOREM: The record is formally closing
20 next Friday, the 29th, the written public comment, and I
21 don't see a reason to close the adjudication hearing
22 sooner than that. So the affidavits can certainly come in
23 as of or before the 29th.

24 Let me go down the list with you and make
25 sure who you're asking the Councilmembers to perhaps

1 review their notes tonight, find out if they are willing
2 to waive any cross-examination. I don't want to put them
3 on the spot this morning but certainly allow them to take
4 this question home with them tonight and then tomorrow
5 morning in preliminaries we'll report back as to who on
6 Wednesday, whether it be Mr. Weaver or anybody else in the
7 afternoon, submit their testimony by affidavit by the
8 agreement of the parties and the agreement of the
9 Councilmembers.

10 So, Mr. Peebles, is it the entire list in
11 the afternoon?

12 MR. PEEPLES: Let me go through the ones I
13 feel that we might be able to do with them and have the
14 parties speak. I think the ones to me that's fairly clear
15 is Jeff Flenniken. ROKT has indicated they were not going
16 to cross Jeff Flenniken so there's not anybody who's going
17 to cross him. He's the cultural. Les Polisky,
18 telecommunications. We have no one my understanding is
19 going to cross Les Polisky. Dan Pitzler it is my
20 understanding that no one is going to cross Dan Pitzler.
21 Jeanne Acutanza it is my understanding that no one is
22 going to cross her. So those four I think are pretty
23 decent candidates for it, and I've got kind of a sheet
24 here that we took off that Mike Tribble and I came up
25 with. So I've got scratches. I'm not too sure if they're

1 totally accurate. I believe Tom Tebb is one that no one
2 is going to cross, and that's Mike's witness, and unless
3 the Council has questions of him I don't think we need to
4 do that. Clay White we've already decided that was the
5 case. Josh Butler no one is going to cross him to my
6 understanding and Ken Bevis it is my understanding no one
7 is going to cross.

8 The other I guess comment I would like to
9 make is that as we go forward with this some people are
10 still reserving, including us, reserving cross on people
11 that we may not cross on people so that we may have
12 further people added to this list as we go forward. And
13 the other thing is I believe everybody who's--if any
14 parties are dropping their designated cross, I believe
15 they will all state we want to reserve in case the Council
16 asks questions. No cross but they would want--others can
17 speak up, but I'm pretty sure that's what everybody wants
18 to do.

19 JUDGE TOREM: Any other parties have
20 questions about the suggestion that Mr. Weaver, Bevis,
21 Flenniken, Polisky, Butler, and Ms. Acutanza and
22 Mr. Pitzler be submitted as names for the Council that if
23 they don't have any questions, then the Council tomorrow
24 will report that back in the morning session and from
25 there all of that prefiled testimony would be allowed to

1 be submitted simply by affidavit? Any concerns,
2 Mr. Slothower?

3 MR. SLOTHOWER: Yes. With respect to
4 Mr. Weaver, his schedule was tight this week in any event,
5 and if he is going to have to appear in person I would
6 like to potentially do that this afternoon. It does not
7 sound like Mr. Tebb will actually testify this afternoon.
8 So if Mr. Weaver if he needs to be here if he could be
9 here this afternoon. I understand wanting time to hold
10 over a decision, but if I don't get him done today, then I
11 don't have him back until Friday sometime.

12 JUDGE TOREM: Would he be available by
13 telephone in between?

14 MR. SLOTHOWER: I could probably make him
15 available by telephone in between, yes.

16 JUDGE TOREM: I think that would be
17 preferable than trying to have the Councilmembers take a
18 witness they may not be fully prepared for today and
19 rather than put that burden on them. I know the
20 Councilmembers are prepared for the witnesses this morning
21 and this afternoon, but if the style of these hearings of
22 getting prepared the night before for the next day holds,
23 it may not be fair for the parties to move him up. If we
24 need to switch him by telephone, I can entertain that
25 later, but let's see what comes back from the

1 Councilmembers tomorrow. He may just simply need to come
2 in by affidavit.

3 Any other party concerns with submitting
4 these names for consideration to take their testimony by
5 affidavit? Seeing none, Councilmembers, are there any
6 questions about what the parties are asking you to do with
7 these half dozen witnesses?

8 So I'm asking you to look at this testimony
9 for Mr. Weaver, Mr. Bevis, Mr. Flenniken, Mr. Polisky,
10 Mr. Butler, Ms. Acutanza, and Mr. Pitzler. Look at those
11 tonight in addition to what your preparation for Tuesday
12 will be and determine if you have any areas of
13 cross-examination. If you do, then we'll still have those
14 witnesses appear by telephone. Mr. Bevis is scheduled to
15 be here in person, but aside from that they will appear by
16 telephone at the appointed time and for Mr. Weaver at a to
17 be determined time and you'll ask your questions. And I
18 don't want any Councilmember to think that is discouraging
19 to ask questions, but if there are none, it works better
20 for all the parties. So we'll find out tomorrow morning.
21 I'll either hear from you individually if you have
22 questions or we'll just poll the Councilmembers on the
23 record tomorrow morning.

24 Mr. Peebles.

25 MR. PEEPLES: Your Honor, I also want to say

1 we're having a very difficult time getting Peggy O'Neill
2 either available by telephone this week or clearly we
3 can't get her in person. She's way out in the field and
4 the CFE wished to ask her questions. I just want to let
5 everybody know we've got a problem even getting her to a
6 telephone this week and I don't know. If nobody else has
7 any questions of her, we could do something exotic like do
8 it in writing if CFE has questions on that or something of
9 that nature. But we really have a problem with her. We
10 can't reach her this week. We originally knew that. We
11 thought we would have her come up next week, but we're
12 going to be done this week. So that's where we are and I
13 apologize for that.

14 JUDGE TOREM: Why don't you and I speak at
15 one of the breaks with Mr. Tribble to see what suggestions
16 we can come up with, including perhaps a specific
17 continuance of this matter for one witness adjudication
18 next week if we need to by phone.

19 MR. PEEPLES: Okay.

20 JUDGE TOREM: So we'll work something to
21 make any cross-examination Mr. Tribble has get into the
22 record in a manner acceptable to all parties and the
23 Council.

24 MR. TRIBBLE: I'll make it easier for you,
25 Judge Torem. If none of the Councilmembers have any

1 questions for Ms. O'Neill, I will waive cross.

2 JUDGE TOREM: All right. So we'll add her
3 to the list for folks to look at. So that's an eighth
4 witness, Peggy O'Neill, to look at and see if the
5 Councilmembers have any questions. I won't hold you to
6 that, Mr. Tribble, but tomorrow we'll go through that and
7 see where we stand.

8 Any other preliminary matters?

9 Seeing none from parties, one item that we
10 brought up last Tuesday at the prehearing conference on
11 the 12th was the question of taking official notice of
12 certain ordinances that parties might be able to offer
13 into the record, and in my own brief skimming of what
14 might be available out there to help the Council with
15 setback issues, I'm looking for specifically any party
16 that wants as a proponent of setbacks at a certain level
17 or opponents of setbacks at a certain level show the
18 Council what other municipal bodies siting these source of
19 wind power platforms have done so that there's an
20 objective item the Council can at least evaluate what they
21 might be thinking in deliberations next month or in
22 November. And I wanted to know if anybody has found any
23 since last Tuesday or in preparation for hearing has been
24 so busy that they haven't been able to bring this morning
25 be ready to offer them.

1 I have a two-fold concern. One, I want them
2 to come in if at all possible, during the record while
3 it's open so that parties have an opportunity if they see
4 something they don't like to respond to it and object. I
5 would rather not see these come in post-hearing briefs,
6 and I'm not certain there are rules to allow for that
7 because I don't want it to become new substantive evidence
8 in post-hearing briefing and argument and not introduction
9 of a backer in the testimony of new evidence.

10 Second, I want to make sure that there's an
11 opportunity for both sides, all seven sides depending on
12 how you count this, to get the proposed ordinances and
13 determine, yes, these are actually adopted by the
14 jurisdiction for which they're being offered. I know that
15 Michigan, Pennsylvania, New York, Wisconsin have dealt
16 with the siting of wind farms and that there may be
17 proposed guidelines from those states, but I haven't
18 gotten down far enough into the weeds to know if there are
19 actual ordinances that have been adopted by a town or a
20 county to guide this particular item particularly as to
21 setbacks.

22 So if you have anything from the state,
23 county, or city level today, this would be a good time to
24 bring it up. If you don't, then take a look at the APA
25 provisions on evidence. Council, take a look at the

1 administrative code provisions on official notice.
2 They're I believe in WAC 463-30-230 that allow the Council
3 to do that. It fits firmly with anything in Subparagraph
4 1(c). That's the type of evidence that we were soliciting
5 last Tuesday so that we would have some objective
6 measuring stick. What we choose to do with that objective
7 measuring stick who knows. This is a situation especially
8 after the site visit maybe a little different than what's
9 gone on in other states and towns. At least we'll have a
10 reference to know and give all the parties an opportunity
11 to argue for or against why these may or may not be good
12 measuring sticks. So I don't think the parties have
13 anything else today on that, but I want to invite them
14 that sometime by the end of the week it may simply be
15 bringing in reference to it in summary of what it is and
16 one printout and then submitting those later before we
17 close the record. But I wanted you to at least be on
18 notice before we close testimony Thursday if any of that
19 evidence will come in.

20 Second, we were asking about demonstrative
21 exhibits that might be present today for large scale maps.
22 I see that in front of Mr. Hurson there's a larger map of
23 the proposed layout of the turbines. I'm not sure the
24 date of that, but it looks like the 63 or 64 turbine
25 version.

1 Mr. Peeples, did you bring any larger scale
2 demonstrative?

3 MR. PEEPLES: Probably. I don't know
4 exactly what Mr. Hurson exactly brought. We probably have
5 duplicated large scale exhibits. I think, Mr. Hurson, you
6 had the one that we were going to do here also which
7 showed the old layout with the turbines X'd out. Did I
8 see that? Which one? And I think I recognized it.

9 MR. HURSON: Well, I'll just state for the
10 record is what these are is these were exhibits that the
11 Applicant submitted during the County process. One is
12 Exhibit No. 23 submitted on January 12 of '06, and the
13 other one is No. 24 submitted on January 12 of '06.
14 Exhibit 23 was basically as I understood the 2003 map
15 application with X's over some of the turbines, and
16 Exhibit 24 is the January 4, 2006 which I believe is the
17 one that's part of the EFSEC application.

18 MR. PEEPLES: I believe this exhibit is the
19 one that is with regard to Chris Taylor's supplemental
20 testimony I believe is the No. 1 for the first map in
21 there, and then the No. 2 one is this one we first
22 submitted in No. 2 in Chris Taylor's testimony was
23 bringing turbines back in a bit from 1320. So those are
24 those two. We have no objection to using this at all.
25 It's a good demonstrative one that both sides can use.

1 JUDGE TOREM: Were there any other large
2 scale exhibits?

3 MR. PEEPLES: Yes. We did at the request of
4 the Chairman bring one large exhibit showing with regard
5 to where the Vis Sims were in the two. You can see it in
6 a little more detail. I mean the evidence is in the
7 record. I get real concerned about trying to bring in new
8 exhibits at this time, but we're doing it at the request
9 of the Council, and that's what Mr. Hurson did too. So we
10 have everything in there is really in the record. Quite
11 frankly, everything that Mr. Hurson said on this map is
12 also in the record. It just it's two exhibits put
13 together with Xs on it. So I think everything in here is
14 in the record and that's the same. We have full ones of
15 these Vis Sims.

16 JUDGE TOREM: I think it's not new evidence,
17 but it's just a different format.

18 MR. PEEPLES: That's right. That's right.

19 JUDGE TOREM: Parties, any other questions
20 or concerns about these larger demonstrative exhibits?

21 Mr. Peeples, I take it we will see the
22 visual simulation large ones later this afternoon at the
23 appropriate time.

24 MR. PEEPLES: Unless somebody wants to look
25 at them now, we'll bring them in with Mr. Priestley.

1 JUDGE TOREM: All right. That's fine.
2 Council, anything else before we get started
3 with Mr. Taylor's testimony?

4 Parties anything else before Mr. Taylor's
5 tomorrow?

6 All right. Then it's about five minutes to
7 9:00, and, Mr. Chris Taylor, if you come and take a seat
8 here at the witness table.

9 Mr. Peeples, the logistics?

10 MR. PEEPLES: Logistics. That's what my
11 question was. How do you want this kind of done?

12 JUDGE TOREM: My thinking the best way would
13 be for Mr. Fiksdal to give you the microphone here that
14 he's working on and have you at least stand perhaps Phil
15 Donahue style.

16 MR. PEEPLES: Can I stand over here so I can
17 see people? Is that okay?

18 JUDGE TOREM: So long as, Mr. Taylor, you
19 will move your chair to see where Mr. Peeples is standing,
20 and then we'll have this table in the front where
21 Mr. Hurson is seated as the cross-examination table.

22 My understanding is that for this witness
23 cross-examination is going to come from the County,
24 Counsel for the Environment, from Mr. Lathrop, and
25 Mr. Slothower and then finally Mr. Carmody on behalf of

1 Residents Opposed to Kittitas Turbines. I'm going to ask
2 those parties that are listed as potential cross-examiners
3 to make sure that if your issues are addressed at the
4 prior cross-examiner that you just identify the issue has
5 been addressed to the Council and not reask the same
6 questions.

7 But if there are further follow-ups to open
8 your cross for setting the scene what's already been done,
9 pick up from there so the Council will know and the
10 witness will know where you're coming from.

11 Mr. Taylor, I'm going to swear you in.
12 Raise your right hand.

13 CHRIS TAYLOR,
14 being first duly sworn on oath,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. PEEPLES:

18 Q. Mr. Taylor, you have prepared certain
19 prefiled testimony for this case that has been filed; is
20 that correct?

21 A. Yes.

22 Q. And you have that prefiled testimony with you
23 I understand.

24 A. I do.

25 Q. Just for the record, I just want to state

1 Exhibits. 20-D, 20-SUP, and 20-SUP-R so there's
2 additional rebuttal testimony.

3 MR. PEEPLES: And along with the referenced
4 exhibits that are in the application I believe they're
5 also in the record.

6 JUDGE TOREM: Yes, and I understand that
7 because Mr. Linehan is no longer available that maybe
8 Mr. Taylor is now supporting those documents.

9 MR. PEEPLES: Yes.

10 JUDGE TOREM: Was there any need to have
11 Mr. Taylor adopt the testimony of Mr. Linehan as well?

12 MR. PEEPLES: We tried to do it separately
13 so we didn't have to refer back.

14 JUDGE TOREM: So Exhibit 21 is being left
15 out and not submitted for the record.

16 MR. PEEPLES: That's correct. That's
17 correct.

18 JUDGE TOREM: We will strike that at this
19 point to avoid the confusion.

20 Councilmembers, you understand that it's all
21 of those items you should have marked beginning with
22 Exhibit 20, which go back to the original 2004 testimony,
23 all of that supplemental testimony filed here in 2006, all
24 the supporting exhibits, including those referred to that
25 are in the application?

1 Parties, any objection to those items being
2 moved into the record at this time?

3 Seeing none, Councilmembers, there's a
4 motion for you to move those into the record. All in
5 favor?

6 COUNCILMEMBERS: Aye.

7 JUDGE TOREM: And opposed?

8 Then, Mr, Taylor, all of your Exhibits and
9 direct testimony associated therewith are moved into the
10 record.

11 (Exhibit Nos. 20-D, 20.0, 20.1, 20.2, 20-R
12 20.1.-R, 20.2-R, 20-SUP, 20-SUP-R admitted into evidence.)

13 JUDGE TOREM: Cross-examination, Mr. Hurson.

14 MR. HURSON: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. HURSON:

17 Q. Mr. Taylor, do I understand you're also
18 sponsoring the second request for preemption application?

19 A. Yes.

20 Q. That was included. I just want to start with
21 some basics. As I understand it what you're asking the
22 Council to approve is the preemption for a 120-megawatt
23 wind farm. Correct?

24 A. No.

25 Q. It's not. Can I refer you to page 1 of your

1 second request for preemption.

2 A. I'll get that up to him.

3 Q. That would be Exhibit 1 to your preemption
4 request.

5 A. Okay.

6 Q. Drawing your attention to--

7 MR. HURSON: Is the Council ready?

8 BY MR. HURSON:

9 Q. Drawing your attention to line 14 of page 1,
10 Exhibit 1, that does indicate a project of approximately
11 120-megawatts. Correct?

12 A. Yes, that's correct. That's what it says on
13 line 14 of page 1.

14 Q. But you're saying that's not what the
15 preemption request is.

16 A. I'm not sure the nature of your question. If
17 your question is are we seeking specifically to have EFSEC
18 preempt permission to construct precisely 120 megawatts,
19 the answer to your question is no.

20 Q. How many megawatts of power are you asking
21 EFSEC to preempt the local county on?

22 A. As we have all--if you will, perhaps it would
23 be useful to walk through the current layout what it is
24 we're asking for permission. As has been our--

25 MR. HURSON: Objection. I believe I asked

1 him a rather specific question, and this is part of our
2 discussion the other day about cross-examination could
3 take a very short period of time or it can take a very
4 lengthy period of time. I'm asking the Applicant because
5 I can't tell right now, and I trust then the Council can't
6 either, how many megawatts of power are you asking in this
7 application for a preemption request. And if your answer
8 is you don't know, just let us know.

9 MR. PEEPLES: Your Honor, I really don't
10 like counsel trying to put words in my witness's mouth.
11 He's trying to explain to the Council so the Council
12 understands that it's not a directly yes or no answer. So
13 he's going to explain by showing you on the map what we're
14 asking for.

15 JUDGE TOREM: Mr. Taylor, if you can answer
16 the question as to the number of megawatts and structure
17 your answer there. I understand that there's a range of
18 number of turbines and with that range of choices of how
19 many megawatts you would generate, but perhaps if you
20 could explain best in terms of just the range of megawatts
21 available and make that as brief an answer as possible.

22 That would satisfy where Mr. Hurson is
23 coming from; is that correct, sir?

24 MR. HURSON: I'm simply trying to figure out
25 what the preemption request was. I assume that the

1 maximum number of megawatts what they're asking you to
2 preempt one could find in the preemption request. That's
3 why I'm asking him to confirm what the maximum number of
4 megawatts they're asking to preempt, and then once he
5 establishes the number, if he can show me in the
6 preemption request where that number is found.

7 JUDGE TOREM: Mr. Taylor, can you do that?

8 THE WITNESS: Sure.

9 A. We're asking for permission to construct up
10 to 65 wind turbine generators within the defined corridors
11 as indicated on the map that Mr. Hurson has in front of
12 him. If you're facing Mr. Hurson, it would be the map to
13 your right indicating the proposed layout as was the case
14 with the Wild Horse Project, which the County did approve
15 and find acceptable in this method and EFSEC approved.

16 We have always asked for permission to build
17 within a defined range of physical turbine dimensions.
18 That means how tall are they, how wide are the blades,
19 those physical dimensions that have a bearing on the
20 environmental impact up to a defined maximum range and
21 within the defined studied corridors that have been
22 analyzed under SEPA, and the megawatt nameplate capacity
23 of those individual turbines is not something that we can
24 do. That's relevant to the environmental impacts, the
25 size of the turbines, and where they're located. I would

1 be happy to explain that in great detail.

2 JUDGE TOREM: But the question before you is
3 with that range, and I understand how the Council went
4 through this previously in the Wild Horse Project.
5 There's a range of a number of megawatts for each
6 available turbine and the Council did not require the
7 Applicant in the Wild Horse case to choose the type of
8 turbine in advance out of deference to the business nature
9 of that decision.

10 Here today I think the question is what is
11 the range of megawatts, and Mr. Hurson clarified that
12 further by saying what's the maximum megawatts that you're
13 seeking for this project and asking that the Council
14 preempt the County board's planning. So if you can now
15 with that 65 number tell me what the greatest nameplate
16 megawatt generating capacity is the math should be fairly
17 simple.

18 A. I certainly understand the question. I'm not
19 trying to be difficult here, but the fact is that the
20 technology is evolving; and at the time that we applied
21 for this project the turbines that are available today
22 were not on the market then, and given how long this
23 process has taken I don't know what a turbine with a tip
24 of 410 feet might look like by the time we actually get
25 the permit to be quite frank.

1 I can answer your question in today's
2 technology what's commercially available on the market
3 today. The largest turbines that are in commercial
4 deployment in large numbers in the United States are in
5 the range of 2 to 2.3 megawatts, and I would say the 2.3
6 is coming on the market now. They're not already deployed
7 in large numbers across the country. There are other
8 turbines of 2.5 megawatts. There is a three-megawatt
9 turbine that's out there. Again, these are in still
10 fairly early stages of commercial deployment throughout
11 the United States. There are one or two operating sort of
12 prototypes, and what those turbines would be available on
13 a commercial basis or this use is really difficult for me
14 to say as of today. But there are turbine manufacturers
15 that are building proposing turbines in that size range
16 and none of the turbines that we are currently procuring
17 as Horizon Energy are in that upper limit size. The
18 largest turbines that we have today are 2 megawatts.

19 So 65 turbines times 2 megawatts which is the
20 turbines that we now have contracts to purchase would deal
21 at a total nameplate capacity of about 130 megawatts.

22 Again, I do want to emphasize for the Council
23 that, especially for the new members that weren't here for
24 the Wild Horse Project, at this stage of the project is
25 before we've gone out and done a detailed geotechnical

1 analysis of each and every proposed turbine location and a
2 turbine suitability analysis on exactly how a specific
3 turbine. There are slight changes that will come about in
4 the field. As was in this case of Wild Horse, the layout
5 that was approved was a schematic level like this as a
6 proposed primary layout. For Wild Horse it was approved
7 by both the County and EFSEC. It had changed somewhat by
8 the time that it was finally built. If you go out there
9 today, you will see some slight modifications from that
10 layout because it's necessary to do it at another level in
11 the field to establish those final locations with a
12 specific turbine.

13 JUDGE TOREM: Mr. Hurson, as far as the
14 number 130 did that answer your question?

15 BY MR. HURSON:

16 Q. Is 130 then the maximum you're asking to be
17 approved?

18 A. No.

19 Q. What's the maximum you're asking to be
20 approved then?

21 JUDGE TOREM: Mr. Hurson, I think the
22 question was answered that depending upon the technology
23 that could be generated out of a certain fixed number of
24 turbines. That's how I understood it. If a better
25 technology comes available, they'll take advantage of what

1 generating capacity they can with the site that's been
2 approved. Am I correct?

3 A. That's correct. We're asking for permission
4 to build up to 65 turbines in the defined corridors and up
5 to the maximum size as set forth in the application which
6 has not changed.

7 BY MR. HURSON:

8 Q. So the introductory comment of 120 megawatts
9 in your preemption request was an inaccurate
10 representation of what you're asking the counsel to
11 approve.

12 A. No, it's not inaccurate.

13 Q. You're not limiting to 120 though.

14 A. No, I think I've already answered that
15 question.

16 Q. Currently you're saying you're looking at
17 two-megawatt turbines. Correct?

18 A. Yes. Those are the size of the turbines that
19 we currently have available to us.

20 Q. Then you mention 65 for a total of 130
21 megawatts. Correct?

22 A. That's correct.

23 Q. When the County process you were asking for
24 three megawatt turbines. Correct? Up to three megawatt
25 turbines. Correct?

1 A. We were asking for permission to build the
2 same size and range of turbines that I just described. As
3 I just answered three megawatts is currently the upper
4 limit turbines that are being designed and manufactured
5 today.

6 Q. In the County process you asked for approval
7 of up to 65 three megawatt turbines. Correct?

8 A. I believe our position has always been
9 consistent; that we are asking for permission to build up
10 around the physical dimensions. I believe in Mr. Piercy's
11 testimony at some point he alludes to the fact that the
12 nameplate on the turbine was not a material issue for the
13 County.

14 Q. I am asking you what I think is a relatively
15 simple question. You originally asked for 80 turbines of
16 up to three megawatts; then you changed to 65 turbines up
17 to three megawatts. Correct? You need to look at
18 Mr. Peeples to figure out the answer?

19 A. I'm not sure. I've answered the question I
20 think several times, Mr. Hurson. What I've said is it has
21 always been our position as it was during the Wild Horse--

22 MR. HURSON: Objection. I asked him a
23 relatively simple question.

24 MR. PEEPLES: He's answering the question.
25 He's already answered the question in a range.

1 MR. HURSON: I'm asking a very simple
2 question of what his top end request was. As I understood
3 the application for the County, you asked for approval of
4 up to 65 three-megawatt turbines. Yes or no?

5 JUDGE TOREM: Mr. Hurson, it may be helpful
6 and it may be helpful to Mr. Taylor to take a moment to
7 look at your records, look at your notes, and if you have
8 something, Mr. Hurson, that specifically says that to
9 point it out to Mr. Taylor as you've done before already
10 this morning, and just as it was correct at the time, is
11 it still correct now, something along those lines and for
12 Mr. Taylor to refresh his memory what may have been going
13 on before the County. So if you need to take a two-minute
14 break to do that, we'll just stay in place and I'll let
15 you do that. But back and forth over words like
16 approximately 120 megawatts is not getting anywhere with
17 me.

18 I don't know if it is for the Councilmembers
19 or other parties but approximately means that. It's an
20 estimate. So I don't think there's any gotcha moments
21 going on here as far as 120 versus 130. If you're raising
22 a point that this morning it's a two-megawatt tower as the
23 max not a three-megawatt tower, that I think there's
24 something to be explored in the record. If you have a
25 specific spot you can point to this morning, it would help

1 move things along.

2 MR. HURSON: I'm sorry. I frankly thought I
3 was asking some very preliminary basic questions here and
4 didn't realize we would be running into this.

5 BY MR. HURSON:

6 Q. Your application for the County presented in
7 2005 asks for turbines up to three megawatts in capacity.
8 Correct?

9 A. If you're pointing to--as Judge Torem said,
10 if you're pointing to something in the record that you
11 would like to point out, I would be happy to look at that.
12 This is a pretty voluminous record.

13 Q. You have no idea what your actual megawatt
14 capacity was for the County?

15 A. That's not what I said. If you'd like to ask
16 me to respond to something specific, I would be happy to.

17 Q. I asked if the maximum megawatt size of the
18 turbine you were asking the County to approve was a three
19 megawatt turbine? Yes?

20 A. I don't know how else to answer this
21 question.

22 Q. Let me reference you to Exhibit 20 of your
23 preemption request, page 9, project description.

24 MR. PEEPLES: What volume is that in,
25 Mr. Hurson? Is that in Volume 1?

1 MR. HURSON: Yes.

2 JUDGE TOREM: This should be in the first
3 volume.

4 MR. PEEPLES: What page?

5 MR. HURSON: It's page 9. It's the project
6 description of their initial draft development agreement.

7 MS. TOWNE: Applicant's second request for
8 preemption.

9 MR. HURSON: Correct.

10 MS. WILSON: Exhibit 20, page 9.

11 BY MR. HURSON:

12 Q. Look at No. 3 there.

13 A. The project description, yes.

14 Q. Does that help refresh your recollection as
15 to the maximum size of the megawatt turbine you were
16 asking for?

17 A. It does seem to say on this page that we were
18 requesting permission each with a nameplate capacity of up
19 to three megawatts is correct.

20 Q. Is that accurate?

21 A. Yes.

22 Q. Okay. So you're asking up to three
23 megawatts. Thank you. Now, so you were asking the County
24 to approve up to 65 turbines of three-megawatt capacity.
25 Correct?

1 A. Again, as I've said several times, we have
2 tried to put forth these questions come up from the
3 public, from other decision makers that have asked us to
4 be specific, to give some indication what the capacity is.
5 As I've stated, it has been our intention all along and we
6 understood that that was not objectionable to the County
7 nor to EFSEC to permit for a specific physical dimension
8 and number of turbines and the use of three megawatts as
9 an example was intended to be illustrative of what current
10 technology today might produce at the upper end.

11 Q. Okay. Project description capacity at three
12 megawatts we already agreed that that was what you asked
13 for, correct, based upon your draft development agreement
14 your people put together? Correct?

15 A. That is indeed what it says on page 9 of our
16 draft development agreement.

17 Q. You agree that your staff properly
18 characterized in asking for up to three megawatt turbine
19 size, up to three megawatts maximum. Right?

20 A. We were not seeking that, no. As I've said
21 several times--I hope I'm boring people--we have never
22 proposed--we did not--we are not requesting that that be
23 set as a permit condition. We are providing that as
24 descriptive information what the project looks like. No,
25 we did not propose that either EFSEC or the County set a

1 limit on the project based on megawatts nameplate because
2 it doesn't have any bearing on environmental impact. We
3 asked for a limit on the size and the number of turbines
4 within defined corridors.

5 Q. So now you're saying that you weren't asking
6 for up to three megawatts in turbine size? I am getting
7 confused here.

8 A. I really don't know what else I can say,
9 Mr. Hurson. If I understood what you were trying to
10 accomplish, maybe I could be more helpful.

11 Q. Simply asking the question. It sounds like
12 we're just going around and around, but I'm feeling like I
13 have to ask it because you can't just answer what I think
14 is an obvious easy question which is: You asked for
15 turbines up to three megawatt capacity. Correct? Yes or
16 no. Those would be 410 feet tall, up to the three
17 megawatt turbines. Correct?

18 A. I've answered the question, Mr. Hurson. I
19 don't know what else I can add to that. I've been very
20 specific on what we're asking for permission for.

21 JUDGE TOREM: Mr. Taylor, I think the issue
22 here is simply we're getting stuck on what should be a
23 real simple problem. The application speaks for itself,
24 and, Mr. Hurson, simply wants you to say, yes, it asked
25 for three megawatts, and then it could if you multiply the

1 65 times three come out to be about 190 megawatts, and
2 that's what we're going to see what it is.

3 I feel the Council is probably up here
4 collectively shaking their heads saying, "Why do we care
5 about the number of megawatts generated up to know what
6 capacity nameplate is going to be"? So the line of
7 questioning for both the questions and the answers is if
8 you're intentionally being elusive this morning, there's
9 no reason. The Council when it looks at the size of these
10 towers is going to determine the environmental impact
11 mainly by how big they are. The interest of the state may
12 be determined a little bit by the ultimate output of this
13 and whether it's worth building from the Council's
14 perspective.

15 So if you want to stop beating around the
16 bush and get through this in the four days that the
17 optimistic attorneys in the room said last week we could,
18 we're not helping ourselves by spending 20 minutes on two
19 megawatt, three megawatt, and the Council is going to
20 quickly make sure they still have the rooms booked for
21 next week and I hope you will too. You might still be
22 here if we stay at this rate.

23 So let's ask the questions and make sure if
24 that's what he was asking for, the Council's got the
25 demonstrated track record and so does the County in

1 understanding ranges. I don't think anybody is trying to
2 nail you down to say we asked for three before, we're
3 asking for two today, that the Council can't approve three
4 and a half if the technology came long. The Council in
5 its draft site certification agreement to the Governor on
6 Wild Horse set forth a range and at the request of the
7 Applicant never nailed down the Wild Horse project to an
8 exact number of megawatts that had to be generated per
9 turbine. That's not what the Council intends to do in
10 this case if it recommends for preemption and thereafter
11 in the building of this site. But we want to know the
12 physical dimensions and the physical impacts and how much
13 power gets to the grid. Give us an approximate and let's
14 move on.

15 Mr. Hurson, do you want to start from there?

16 MR. CARMODY: Judge Torem, could I make a
17 comment on this series of questions why Mr. Hurson's
18 questions are appropriate?

19 JUDGE TOREM: Let me have Mr. Hurson address
20 his own questions first, Mr, Carmody. I know you're in
21 line to get in on this. If it's appropriate after I hear
22 from Mr. Hurson, we'll press on.

23 MR. CARMODY: I'm more interested in the
24 evidentiary point.

25 JUDGE TOREM: Okay. Mr. Hurson first. Am I

1 misunderstanding the need for the explanation of the
2 evidence, Mr. Hurson, or do you want me to defer to
3 Mr. Carmody for his interpretation?

4 MR. PEEPLES: And I'm going to object at
5 this point. Mr. Carmody has a chance to cross-examine if
6 you want to get into--

7 JUDGE TOREM: I understand:

8 MR. PEEPLES: Do you want me to respond now
9 too?

10 JUDGE TOREM: Not yet, Mr. Peeples.

11 MR. PEEPLES: Okay.

12 JUDGE TOREM: Mr. Hurson, did you want to
13 respond to why this particular line of questioning is so
14 important this morning?

15 MR. HURSON: The reason I--frankly, I
16 thought I was asking some, just confirming some very basic
17 facts, and, frankly, it's relevant because it has to do
18 with spacing and turbine alignment and arrangements, but
19 as long you're asking, frankly, it's illustrative of the
20 lack of clarity we're getting from the Applicant
21 throughout.

22 I'm trying to nail down what I thought were
23 very, very, very, very, simple basic questions, and I
24 can't get a straight yes or no.

25 JUDGE TOREM: Mr. Carmody, did you want to

1 comment further on that?

2 MR. CARMODY: I think the appropriateness of
3 the question and the distinction that you drew was missing
4 one of the points which is within a physical dimension
5 framework which is what Mr. Taylor has been testifying to
6 the difference between a two-megawatt turbine and
7 three-megawatt turbine may have consequences in terms of
8 impacts on properties and the environment. For example,
9 the same size package to generate three megawatts versus
10 two megawatts would require a bigger turbine, a bigger
11 generator, more noise, higher velocity. Each of those
12 items then play into the impacts that you are going to be
13 evaluating this. So I don't think the assumption of just
14 the package, physical size of the package leads to the
15 same impacts is a correct assumption.

16 MR. PEEPLES: Mr. Torem, may I come in?

17 JUDGE TOREM: Yes.

18 MR. PEEPLES: Okay. My client has testified
19 that the upper range based on a three-megawatt machine
20 those physical dimensions would be the biggest case what
21 he has said consistently all the way through. Say, for
22 instance, five years you can get 400 megawatts off of the
23 size, dimension, sound of a two-megawatt size, they'll go
24 for that.

25 MR. HURSON: Objection. I'm getting closing

1 arguments here and I haven't heard his client testify to
2 this.

3 MR. PEEPLES: But what did we get from
4 Mr. Carmody? So that's basically consistently said; that
5 it was based on the spacing for that size machine. Now if
6 that spacing changes in the future, they get better
7 technology where you could put 400 megawatts where you
8 used to get two, we don't want to be kept from doing it.
9 Neither would the state. Public policy would say you
10 would want that, and that's all my client has been saying
11 based on the dimensions and criteria of a bigger machine.

12 JUDGE TOREM: Well, I do want to say,
13 Mr. Hurson, the line of questioning is fine for clarifying
14 what's before the Council and what they're asking in
15 preemption for. I don't want to have Mr. Taylor go back
16 and forth and feel as though if he says we were asking for
17 three megawatts, we're asking for two. The Council also
18 wants to know what's the range and it's a simple math
19 equation. So I think starting with megawatts may put it
20 backward for the Council's perspective because they want
21 to know how many sites, how many turbines, and from there
22 what's the largest number.

23 So if we could start your questions,
24 gentlemen, of how many turbines are you asking for and
25 from that what is the largest size turbine and its

1 nameplate capacity, I think all the Councilmembers and I
2 hope Mr. Taylor will be able to follow that, do the math.
3 Once you know the number of turbines and the upper
4 nameplate available on today's market, we can go from
5 there. And if the dimensions of that are not somewhere
6 else at issue, those are the things that I concur with
7 Mr. Peebles are the most important and what Mr. Carmody
8 says as well to determine what's their largest size that's
9 there. So what I will be calling worst-case scenario
10 alternative so there is an end in an upper range that the
11 Council knows that limit and the maximum impact of what
12 they're being asked to permit so we can follow along with
13 those and pick up your questioning and move it along with
14 Mr. Taylor.

15 MR. HURSON: Okay.

16 BY MR. HURSON:

17 Q. What's the maximum number of turbines you're
18 asking to be approved?

19 A. Sixty-five.

20 Q. What's the maximum height of those turbines
21 you're asking to be approved?

22 A. 410 feet.

23 Q. Based upon current technology the 410 foot
24 turbines are three-megawatt turbines. Correct?

25 A. There are turbines of 410 foot tip height

1 that range in output quite considerably is the answer to
2 that question. There are 2-megawatt machines, 2.3- 2.5-,
3 3-megawatt machines that can all conceivably reach that
4 tip height depending on the configuration of the rotor
5 diameter and tower size. I would be happy to explain in
6 greater detail why that's the case, if that would be
7 helpful for either you or the Council.

8 Q. With current technology a two-megawatt
9 turbine is shorter than a three-megawatt turbine.

10 Correct?

11 A. Not necessarily.

12 Q. Is it typically?

13 A. Well, given to my knowledge there's only one
14 three-megawatt turbine available for sale in the United
15 States, it's hard to say what's typical for three-megawatt
16 turbines. The three-megawatt turbine I'm aware of is a
17 Vestas V-90 which has a 90-meter rotor diameter. Vestas
18 doesn't happen to make a two-megawatt turbine. They make
19 those same turbines that are at Wild Horse. That's a 1.8
20 with an 80 meter rotor diameter. Again, the tip height
21 can vary depending on the tower size that you prepare with
22 any given generator and rotor diameter.

23 Q. So how much is the rotor diameter in Wild
24 Horse?

25 A. Those are 80 meters.

1 Q. And then the three megawatt that you talked
2 about is a 90 meter.

3 A. Ninety. But, for instance, as another
4 example that might help understand what I'm trying to say,
5 the same manufacturer Vestas makes two machines today.
6 They make the Vestas V-80 which is a 1.8-megawatt machine
7 that's a 80 meter rotor diameter that comes on a variety
8 of tower sizes, and that's what's being deployed at Wild
9 Horse. That same company makes a V-82 which has a
10 82-meter rotor diameter. It's a larger rotor diameter,
11 but it's only 1.65 megawatts nameplate capacity.

12 So that's the point I'm trying to illustrate
13 is that the rotor diameter and the total height of a
14 machine are not strictly linearly related to the output
15 capacity of a given turbine. They're generally related
16 and generally bigger turbines have bigger nameplate
17 capacity, but it is not the case that they're linearly and
18 strictly related. That's the only point I'm trying to
19 make.

20 Q. I guess the point is in general the lower
21 megawatt turbines are smaller than the higher megawatt
22 turbines. Correct?

23 A. In general.

24 Q. For instance, you're familiar with the State
25 Line Project.

1 A. Yes, I am.

2 Q. That's like, what, about a 600, 660 kilowatt?

3 A. That's correct. That's V-47, 660.

4 Q. Those are approximately 240 feet tall from
5 front base to tip.

6 A. They're 47 meters of rotor diameter. I don't
7 know the height of the tower at State Line off the top of
8 my head, but that's probably true.

9 Q. And then the ones in Kennewick--Is that Nine
10 Mile?--those are, what, about one megawatts and those are
11 about 300 feet tall?

12 A. To my knowledge the turbines that are
13 installed at the Energy Northwest Nine Canyon Project
14 outside of Kennewick are 1.3 megawatt turbines. I believe
15 it's a 62 or 63 rotor diameter. I don't know for sure.

16 Q. So knowing the rotor diameter, in general,
17 the higher megawatt turbines are a wider rotor diameter,
18 correct, in general?

19 A. In general. I would offer, for instance,
20 another example that I'll illustrate is that both G.E. and
21 Gamesa make the same output capacity. Gamesa makes a
22 two-megawatt turbine that comes in three different rotor
23 diameter sizes, the exact tower, the exact same nacelle,
24 three different blade sizes depending on the wind
25 conditions at the site. G.E. does the same thing. They

1 make a 72 and 70 and 77 all from the same gear box
2 generator, etc.

3 Q. The smaller turbines--let's use State Line as
4 an example because it's just so much smaller and it's
5 easier for me to understand for comparison because I've
6 seen State Line. I've been out on the one near Kennewick
7 and I've been on Wild Horse, and my observation is that
8 the turbines at State Line are much closer together to
9 each other than they are at Wild Horse. That would be an
10 accurate assessment, would it not?

11 A. That is my qualitative assessment from having
12 visited them, but I haven't measured them.

13 Q. But when you have smaller turbines, you can
14 space them closer together and as they get bigger you have
15 to have the turbines actually further apart so that the
16 blades don't hit each other and so you don't have any of
17 the weight turbulence or anything like that. Right?

18 A. I believe if you're asking does the layout
19 and separation between turbines is that driven by the size
20 of the rotor, the answer is yes. The spacing for a wind
21 project is typically defined in rotor diameters. So you
22 talk about a certain number of rotor diameters cross wind
23 and then downwind, and typically the downwind spacing is
24 quite a bit greater than the cross-wind spacing. So, yes,
25 the larger the rotor diameter typically the greater space

1 in between turbines, that's correct.

2 Q. As you have smaller turbines then you can
3 space them closer together.

4 A. Generally speaking, yes, that's correct.

5 Q. Well, in the amended application or the
6 application you had in the County in 2005 that provided
7 for up to 80 three-megawatt turbines. Correct?

8 A. I believe that's correct, yes.

9 Q. And the original application you had with
10 EFSEC back in 2003 provided up to 82 three-megawatt
11 turbines.

12 A. I believe that's correct. I'd want to double
13 check the ASC, but I suspect you have.

14 Q. So the shrinkage or reduction for the maximum
15 three-megawatt turbine from the 2003 EFSEC application to
16 the application you had before the County initially was a
17 reduction of two turbines of three-megawatt capacity size.
18 Correct?

19 A. I can't answer that with a straight yes or no
20 question. The number, the stated maximum number under
21 that scenario, as you recall in the original ASC which we
22 filed quite some time ago, we went through a process with
23 EFSEC staff of agreeing on how to describe this issue
24 because EFSEC had never grappled with wind turbines before
25 and how do you manage this issue of various sizes, and we

1 came in with an initial application that defined a middle
2 scenario. So what was on the market that day which was a
3 1.5 megawatt turbine scenario and then we further defined
4 through the environmental review process to include an
5 upper and lower range; so, yes, on the upper, the large
6 turbine scenario from 82 to 80 represents a reduction of
7 two turbines, but I think it's important to point out that
8 as the map in front of you shows that we also eliminated
9 areas from our specific portions of study corridors from
10 further consideration during the County process, and that
11 does represent more than two turbines worth of production.

12 Q. Well, but your original EFSEC application was
13 for 82 and if you need something to refresh your
14 recollection it's on your testimony page 24. It was 82.
15 Correct?

16 A. Yes.

17 Q. And the one with the County was for 80.

18 A. That's correct.

19 Q. I assume, correct me if I'm wrong, when you
20 proposed an application to the County for up to 80
21 three-megawatt turbines someone in your organization did
22 an analysis to say why you needed 80 or why 80 would be
23 something you would ask for. Correct?

24 A. That's correct.

25 Q. So somebody in your organization decided you

1 could fit 80 three-megawatt turbines within this
2 geographic boundary to operate a wind farm.

3 A. No. No.

4 Q. No one did that analysis?

5 A. No, we did that analysis, but you're not
6 accurately stating what our analysis showed. Our analysis
7 showed that there were perhaps 80 turbine locations, but I
8 don't believe that we ever stated that there were 80
9 three-megawatt turbine locations. Those are two different
10 accurate statements; that the three megawatts we stated as
11 you correctly pointed on page 9 of the application was the
12 upper end of what we thought was commercially available
13 and we asked for up to 80 turbines. But if you were to
14 combine those two, as I think you were trying to point to
15 earlier, you would find that you can't fit 80
16 three-megawatt turbines within those defined corridors.
17 So those are two upper limits that necessarily don't work
18 together. So if you were to do smaller turbines, you
19 might be able to put 80 there. If you would do larger
20 turbines, there's not room for 80 in those corridors as
21 combined.

22 Q. So you never had anybody who did an analysis
23 if this could support 80 turbines of three megawatt
24 turbine size?

25 A. Not with the reductions in the layout area

1 that we proposed, that's correct.

2 Q. Drawing your attention back in your project
3 description in the draft development agreement, Exhibit
4 20, page 9 again, 80 turbines capacity up to three
5 megawatt, total project nameplate capacity of 246
6 megawatts.

7 I'm just curious why your folks would be
8 asking for something to approve that there's no basis to
9 ask for. I'm confused. You're saying you asked for up to
10 80 three-megawatts. Here's what your folks put together
11 for a draft, but no engineering was done to justify asking
12 for 80 three-megawatt turbines.

13 A. I think we're kind of splitting hairs here.
14 What it says is each with a nameplate capacity of up to.
15 So as I've tried to describe and I apologize if it's not
16 clear, but what I'm trying to say very clearly is we asked
17 for that as an upper limit. There are two separate
18 limits. There's one of physical dimensions of 410 feet
19 tip height. That's been a consistent request from us for
20 the largest size that would be limited to building.
21 Eighty was the number that we were capping that at. It
22 doesn't mean that we thought you could actually put 80
23 machines of 410 feet high each. Those are the two hard
24 and fast limits that we were asking approval from the
25 County and what we've been asking EFSEC for since we've

1 reduced that to 65.

2 Q. So then this description here didn't match
3 anything that you were really proposing. You weren't
4 really going to go up to 246 megawatts approval. Right?

5 JUDGE TOREM: Mr. Hurson, it's been asked
6 answered. Let's move along.

7 BY MR. HURSON:

8 Q. So how many turbines on the layout that you
9 had--so you did have somebody do some engineering though
10 at some point to figure out how many turbines you could
11 ask for.

12 A. If you could be a little more specific what
13 we've had somebody do. I guess the answer is, yes, I'm
14 not sure exactly what you're asking.

15 Q. You didn't come up with 65 turbines by just
16 drawing a number out of a hat.

17 A. No, that's correct.

18 Q. Somebody did an analysis.

19 A. That's correct.

20 Q. Something did an analysis that said we could
21 put 65 three-megawatt turbines in here, 65, 410-foot tall
22 turbines in there. Correct?

23 A. No, that's not correct. That's not correct.
24 As I have said, we have proposed a maximum number of
25 turbines in response to a request from the County to be

1 specific about the exact number despite the fact that was
2 allowed for Wild Horse. We were trying to accommodate the
3 County request and say, "Okay. If you'd like a fixed
4 number, here's the fixed number. It's 65."

5 As I've said, no, that--we're not designing
6 this project today. I want to be very clear about that so
7 there's no confusion in the Council's mind. We don't have
8 a final design layout because we don't know what year
9 we're going to get to build this project or what turbines
10 we'll have available to us at that time. We're asking for
11 permission to build in defined corridors with a maximum
12 number of turbines and a maximum size. If that's not
13 clear, I would be happy to clarify that. But I feel we
14 just keep going back over that point. I don't have
15 anything else to say besides that.

16 Q. The turbine layout that you have here which
17 is that map of January 4.

18 A. Yes.

19 Q. Was this based upon a three-megawatt turbine?

20 A. No.

21 Q. What kind of turbine was it based on?

22 A. That's a nominal two-megawatt turbine in the
23 70- to 75-rotor diameter range.

24 Q. When was that ever discussed with the--

25 A. Excuse me. I said 70 to 75. That's a

1 misstatement. That's in the 80-meter rotor diameter
2 range.

3 Q. So it was based on a two megawatt size?

4 A. It was based on, again as I've said I think
5 about seven times this morning, the size of the rotor
6 diameter is not directly linearly related to the nameplate
7 capacity. It's based on a rotor diameter of approximately
8 80 meters, and I've said already today, there are 80-meter
9 turbines on the market today that range from 1.65- to
10 2-megawatt output capacity that I can think of off the top
11 of my head.

12 Q. So that's what size of turbines?

13 A. That being those dots on the map?

14 Q. Yes.

15 A. As I just stated, I think that's a 80-meter
16 rotor diameter turbine which could be 1.65. It could be
17 1.8. It could be 2 depending on what manufacturer.

18 Q. So you're not really sure.

19 A. I'm quite sure what's on that map.

20 Q. Okay. Now, are these spaced as close
21 together as engineering possible?

22 A. No.

23 Q. For that size?

24 A. I can't answer that question because that
25 wasn't the task that we gave to our internal team.

1 Q. What task did you give to your internal team?

2 A. Could you please within they--by eliminating
3 the areas from consideration which I think I guess I have
4 to--can I stand up--

5 JUDGE TOREM: Please.

6 A. --and point to this map?

7 JUDGE TOREM: For the record, you're handing
8 him a map that has the crossed-out turbine locations.

9 THE WITNESS: Correct.

10 A. And this was an exhibit from our County
11 hearings. I can't remember which dates it was used on
12 but--

13 BY MR. HURSON:

14 Q. It's on the bottom marked.

15 A. 1/12/06. So what this map attempts to do is
16 to show to the County and to EFSEC what are the areas that
17 we have removed from consideration for the location of
18 turbines and to show roughly where we've eliminated
19 turbines to come up with a revised layout. Now, this is a
20 somewhat crude attempt because you're taking this layout,
21 the original layout you're looking at here is the middle
22 scenario that was in our application for site
23 certification which was based on roughly 70 meter rotor
24 diameter, 1.5-megawatt machine which was industry standard
25 back when we applied for the project in January of 2003.

1 So what we've attempted to depict geographically is where
2 we are removing, definitively removing turbines.

3 So we removed this whole area from the
4 northern portion of the string and immediately east of
5 Highway 97 up to this point. We removed that area. That
6 we're no longer seeking permission to put turbines there.
7 We're no longer seeking permission to put turbines here,
8 the next turbine string over. We've also eliminated these
9 turbines here between Bettas Road and Highway 97. We've
10 eliminated these turbines in this area. We've eliminated
11 turbines at the north end of the A-String, and at the
12 southern end down here as well as over here.

13 Now what we asked, to respond to Mr. Hurson's
14 question, the question that was asked was to our design
15 and meteorological folks was given these new areas that
16 we're now removing, we're committing to remove turbines
17 from those areas in response to comments from the County
18 and from the public about particular visual sensitivity in
19 certain areas, that was what drove this redesign. This
20 was an area that was identified in the DEIS as having high
21 visual sensitivity. I'm pointing to the area of the
22 northern most portion of the project as you crest the hill
23 by gravel pit, top of 97. The DEIS, our own analysis,
24 EFSEC's analysis found that that was a more highly
25 visually sensitive area.

1 We've also heard quite a bit of testimony
2 from members of Mr. Garrett's group, ROKT, who reside at
3 their property in Section 35 at the north end of the
4 project. So we eliminated the turbines that were closest
5 to that area because of the concentration of concerns in
6 that area, and we've also seen fairly aggressive
7 subdivision development at the northern end of Bettas Road
8 which led us to our proposed elimination of those turbines
9 that were closest to that area where the development was
10 accelerating.

11 In so doing, we also eliminated other
12 turbines around the periphery of the project that were
13 closer to adjacent property owners' property line.

14 So then we went back. After doing all that
15 we went based on what was in the record, based on the
16 DEIS, based on the comments that we heard, then we went
17 back to our design folks and asked them to put together a
18 preliminary layout using a nominal two-megawatt turbine
19 size because that's roughly the size of the turbines that
20 we're currently installing this year throughout the United
21 States. Horizon is installing three different size of
22 turbines: the one that you see at Wild Horse, a
23 two-megawatt machine from Gamesa, another Vestas machine
24 at 1.65 megawatts. All of those have rotor diameters in
25 the 80- to 87-meter range. So we asked them to design a

1 project that eliminated those areas and used that size
2 turbine since that's what we're building today, and that's
3 the product that you have in front of you.

4 Q. What your folks came up with on this other
5 diagram, you don't know if they--so your task didn't
6 include a suggestion that they make the turbines be as
7 close together as possible. It was just come up with a
8 layout.

9 A. Well, just to clarify the question, to put
10 them as close as possible I'm not sure how you're defining
11 possible. Physically speaking you can put turbines--but
12 one of the things when you cited the example of State
13 Line, while State Line is a good example, that project
14 some of those turbines were so closely spaced in the
15 original design that they actually had, the owner had to
16 go back and pull turbines out and move them because the
17 wake effects were very significant and greater than that
18 anticipated. So there's been learning in the industry
19 about what the appropriate spacing between turbines is
20 from the construction and operation of multiple projects,
21 and our understanding of what the records of setback is
22 between turbines is an evolving science. So the layout
23 that you see and what we tasked our folks to do was to try
24 to optimize the layout. Could you place any given turbine
25 there closer together without them hitting each other?

1 Certainly. Would that be efficient or cost effective?

2 No. Does that answer your question?

3 Q. No, my question was assuming that they were
4 trying to look for wake effect. From what I understood
5 you saying, you didn't say put them as close together as
6 possible so you don't have to worry about negative wake
7 effect. You just said put a layout out there.

8 A. No, we asked them to develop an optimized
9 layout given the topography, given the setbacks that we
10 propose, given the elimination of those areas that I just
11 described on the map, and by optimizing I mean to produce
12 power at the lowest possible cost.

13 Q. So you're saying this is based on a
14 two-megawatt size.

15 A. Yes, roughly.

16 Q. You asked for up to 80 two-megawatt turbines
17 or 80 turbines. Where are the other 16 going to go? I'm
18 sorry. The other 16 from on this map. If these are as
19 close together as they could work for two megawatt but you
20 asked for up to 80, where were the other 16 going to fit?

21 A. The reason for asking for up to 80 is that,
22 again as I've said several times, we don't know what size
23 turbines we'll ultimately use. Again, going back to State
24 Line is an excellent example. At the time State Line was
25 built in 2001 those 660 kW V-47s were not the state of the

1 art. In that same year at Klondike down in Oregon they
2 put in GE 1.5 megawatt turbines with 72-meter rotor
3 diameter, and the reason that I understand State Line was
4 built with smaller turbines is because they were able to
5 get a very low cost on those turbines and that made that
6 power very inexpensive.

7 So it's sort of like when you go to the store
8 and buy last year's skis or last year's computer, they
9 might be less expensive; and if that delivers the best
10 value for our customers, then we might end up going with
11 80 smaller machines, if at the time of actual construction
12 that was the most cost effective method of building this
13 project that would yield the lowest energy cost to our
14 customers.

15 Q. Well, as I understand your earlier testimony,
16 when you were saying up to 80, you were talking about the
17 turbines that are the size of 1.8- to 2-megawatt, 80
18 meters. So and then your later testimony was that this
19 spacing was based upon that same size. So you asked for
20 up to 80, this map shows 64, and supposedly they're as
21 close together as they can reasonably be. So where was
22 the other 16? I'm confused.

23 A. I believe I just answered that question.
24 I'll try one more time.

25 MR. PEEPLES: I would object at this point.

1 That question has been asked; it's been answered. He
2 stated in the case we're going to use the smaller machines
3 if they came on the market and it was economical, we would
4 put in a different configuration up to 80. That's been
5 asked and answered; asked and answered. Repetitive
6 questioning is the basis of the objection.

7 JUDGE TOREM: I concur. I'll sustain that
8 objection. Mr. Hurson, I don't think you're not done with
9 this line of questioning, but that question has been asked
10 several times in different formats. Let's move along and
11 let's cut to the chase.

12 BY MR. HURSON:

13 Q. I'm trying to get keep this simple, but it's
14 getting more complicated. The point I'm trying to make,
15 this layout here that showed with the X's on it, from like
16 this point to this point, there's one, two, three, four,
17 five, six, seven, eight, nine, ten, eleven, twelve,
18 thirteen, fourteen, fifteen, sixteen turbines. Correct?

19 A. I believe that's correct.

20 Q. And this same area here in the new one, one,
21 two, three, four, five, six, seven, eight, nine, ten
22 turbines. Right?

23 A. That's correct.

24 Q. So knowing the exact turbine size is
25 important to figure out how many turbines you can get in

1 the string.

2 A. Absolutely.

3 Q. Now, you had--

4 CHAIR LUCE: We'll just a have brief moment
5 here.

6 JUDGE TOREM: We can listen and talk at the
7 same time. It's all right.

8 BY MR. HURSON:

9 Q. So depending on the turbine size its spacing
10 would be closer together.

11 A. As I've said, the spacing between turbines is
12 driven by rotor diameter not by nameplate capacity.

13 Q. But if you have a smaller rotor diameter, you
14 can put them closer together.

15 A. That's correct.

16 Q. At this point in time you have no idea what
17 size turbines you're going to use.

18 A. I know what size turbines we have available
19 to us for 2007, and I know some of the turbines that we'll
20 have available to us for 2008. So if we were to build
21 this project next year, I could tell you what the options
22 would be, and for 2009 I know at least what one of those
23 are. We're currently in the process of negotiating longer
24 term turbine supply agreements for 2008 and beyond with a
25 variety of manufacturers. So if it were to be built in

1 2008, I wouldn't know all the turbines that would be
2 available for us.

3 The turbine market has shifted quite
4 considerably. Since the time we originally applied to
5 EFSEC in January of 2003 at that time one didn't have to
6 place massive multimillion dollar down payments years in
7 advance to secure a turbine supply. The market has
8 shifted such that for 2006 and 2007 those developers,
9 owners, such as our company who didn't put money down in
10 advance find it difficult to obtain the turbines now. So
11 that's our practice to make those arrangements on a fairly
12 longer term basis, but unless I know what year we're
13 talking about it's a little difficult for me to say.

14 Q. Why is this spacing different on those two?
15 One has, what, 17 and the other one had one 10? Why is
16 that spacing different?

17 A. Because it assumes a larger rotor diameter on
18 the example, the more recent example. As I described
19 before, the original layout that has the Xs on it to the
20 left here that was designed in 2003 around a 1.5-megawatt
21 turbine with a 70-meter rotor diameter. That one to the
22 right is based on a nominal two-megawatt turbine with a
23 80- to 85-meter rotor diameter so it's an approximation.
24 With an increase in rotor size the spacing has to
25 increase.

1 Q. None of these actually represent what you
2 would anticipate the wind farm to look like.

3 A. Correct. I'm not sure the nature of what it
4 is you're trying to get into.

5 Q. Neither of these diagrams show where the
6 turbines will actually be sited.

7 A. They represent accurately the corridors in
8 which the turbines will be sited. The precise location of
9 individual dots along the defining corridor is a final
10 decision that we're asking EFSEC and we asked the County
11 to reserve that final placement of a dot within a corridor
12 to the final design and engineering as the County and
13 EFSEC approved for the Wild Horse, and I might add is the
14 case in every other jurisdiction that I'm aware of allows
15 for wind farm development because it's a necessity to
16 build and operate an efficient project to do so.

17 Q. This diagram shows 64 turbines. Correct?

18 A. I believe that's correct.

19 Q. And the County has asked you for a 65-turbine
20 layout. Correct? We asked you during the hearing
21 process. Correct?

22 A. That's correct.

23 Q. And we also asked you in informal discovery.
24 Correct?

25 A. I believe that is correct.

1 Q. And the response was is you have none.
2 You've never mapped out a 65-turbine layout. Correct?

3 A. That's correct.

4 Q. So at no time have you taken the time to even
5 create a representation to reflect the number of turbines
6 you're asking to be approved.

7 A. I think it's a very slanted way of making
8 that statement. It is accurate that we have not provided
9 a map that shows one more dot. If you'd like to color one
10 in within the existing strings, then you can have a
11 65-turbine layout. I think that's a fairly demanding
12 question.

13 Q. Well, I thought you said that you spaced them
14 basically as close together without interference. So
15 where's the 65th turbine going to go?

16 A. It may never go. That's the upper limit of
17 what we're seeking approval for as I've stated a few times
18 before.

19 Q. You were asking for 65, but at no point in
20 time has your company ever, even though the County asked
21 for it and you have an application for EFSEC, you've never
22 actually presented a 65-turbine layout for the public to
23 comment on, for EFSEC to see, or for the County to look at
24 and review. Correct?

25 A. It's correct that we have not submitted a map

1 with 65 dots on it.

2 Q. Well, it would also be correct that your
3 company has never even created a map of 65.

4 A. I couldn't say for sure. We generated a lot
5 of maps. I would be reluctant to make that statement.

6 Q. Well, in the informal request we asked for
7 any mapping that showed a 65-turbine layout, all the
8 variations that you may have looked at depending upon
9 turbine size and numbers and locations, and the response
10 was to not provide any maps. Correct?

11 MR. PEEPLES: Your Honor, I think the
12 request for information will speak for itself, and if he's
13 going to refer to that request, I would like to at least
14 lease have my client--because I can't remember exactly
15 what was in there. He's asking questions about a request
16 for information. If you have it there, would you please,
17 I would request Mr. Hurson to cite and read from it. It
18 might be there. I just can't recall it.

19 BY MR. HURSON:

20 Q. Mr. Taylor, drawing your attention to your
21 2006 rebuttal testimony exhibit--

22 JUDGE TOREM: It should be 20-SUP-R. Do you
23 have the page number?

24 MR. HURSON: He has Exhibit 3 and Exhibit 4
25 attached. Exhibit 3 was our letter and Exhibit 4 was the

1 response.

2 A. Are you looking at the response to your
3 Request No. 6 on page 3?

4 BY MR. HURSON:

5 Q. Well, what I'm asking you to confirm is, is
6 that the response to the County when we asked for all the
7 mapping did not include any mapping. It included a
8 commentary, but it didn't actual include any mapping.

9 A. That's correct.

10 Q. So we asked you for copies of all the mapping
11 that shows it. If you're acting in good faith with us, I
12 assume you would then have given us copies of maps if you
13 had them but you didn't supply them. So is it fair to say
14 if you didn't include them, you never had a map with 65
15 turbines?

16 A. I don't believe that we did.

17 Q. You never did.

18 JUDGE TOREM: Mr. Hurson, it's coming up on
19 ten o'clock. Let's take a ten-minute break. We'll come
20 back at ten minutes after 10:00 and pick up from there
21 with your continued cross-examination and see where we can
22 get. I don't want to even ask you how much more time you
23 estimate, but hopefully eleven o'clock we can get to the
24 other parties on Mr. Taylor's cross examination. We'll
25 take a recess for ten minutes.

1 (Recess taken.)

2 JUDGE TOREM: It's now approximately 10:15.

3 We are ready to go back on the record.

4 Mr. Hurson, are you ready to resume?

5 MR. HURSON: Yes, I am.

6 JUDGE TOREM: If I can get quiet in the
7 room, we'll resume our cross-examination. It's a little
8 after 10:15.

9 MR. HURSON: Are we ready? Okay. Thank
10 you.

11 BY MR. HURSON:

12 Q. Let's shift gears a little bit. Some of your
13 testimony relates to the County process--

14 A. Yes.

15 Q. --and how it relates. Just for some
16 background for the Council, you were a participant in the
17 process the County developed for siting wind farms in
18 Kittitas County. Correct?

19 A. Yes.

20 Q. I mean that was back when it was Zilkha?

21 A. Correct.

22 Q. You participated in the public hearing
23 process.

24 A. I would like to clarify. We participated in
25 the process that led to the adoption of the current rules.

1 We did not participate in the adoption of the previous
2 method of the CUP Ordinance that was passed in 2001.
3 Neither I nor anyone else from Zilkha participated in
4 that.

5 Q. But the one we're working under now you
6 participated in.

7 A. Yes.

8 Q. You and your company had some sort of your
9 input and your views on what the County process should
10 look like.

11 A. We offered written testimony on that
12 proposal. That's correct.

13 Q. And the process that was in place at that
14 time was one where the Board of Adjusters which was an
15 appointed, nonelected body was the one that did condition
16 uses for wind farms. Correct?

17 A. That's correct.

18 Q. And then there was public hearings to
19 readdress how the County would look at potential siting
20 for wind farms. Correct.

21 A. Yes. There were quite a few proposals I
22 recall. There was a proposal for a moratorium by
23 Mr. Lathrop. There was several back and forths on that.
24 There was a variety of proposals, but we did participate
25 in the process that led to the adoption that led to the

1 current code.

2 Q. In some of the proposals like I think
3 Mr. Lathrop he proposed that the County just adopt an
4 ordinance and a comprehensive plan that just prohibited
5 wind farms. Correct?

6 A. Essentially that was my understanding of his
7 proposal, yes.

8 Q. And you basically wanted one that continued
9 with the condition and use process.

10 A. Yes, we submitted testimony that advocated
11 leaving the process as it was as opposed to adopting what
12 is now currently in place.

13 Q. And then the process that the County did
14 adopt was I guess you could characterize it as it gave
15 neither you nor Mr. Lathrop what they were asking for.

16 A. I can't speak for Mr. Lathrop, but it was not
17 something that we were in favor of.

18 Q. And Mr. Lathrop asked for an outright
19 prohibition and basically just a policy you can't put them
20 here. Correct?

21 A. Again, I think Mr. Lathrop is a party. He
22 can speak for himself. I just don't want to--I believe
23 that's correct, but I would rather not put words in
24 Mr. Lathrop's mouth.

25 Q. Okay. What our process that we have

1 currently what it did is it shifted the decision making on
2 wind farms from a volunteer appointed body to the elected
3 County Commissioners. Correct?

4 A. Among other things, that's correct.

5 Q. That was one of the things. And do you
6 disagree that something like siting of large wind
7 farms--well, you don't disagree that it's appropriate that
8 the elected commissioners are the ones that make those
9 sort of land use decisions, do you?

10 A. As I believe I stated in my written comments
11 at the time that it was proposed, we actually hopefully
12 opened that comment letter--I'm trying to find it among
13 this mass of stuff. I can't put my hands on it at the
14 moment, but it's in the record, our comment letter that
15 was submitted to the Board of County Commissioners at the
16 time that that ordinance was being considered.

17 One of the things that we stated right up
18 front in the letter I do remember this from memory, we
19 said we understand that the goal of the County
20 Commissioners to elevate the decision making on such a
21 significant issue to the elected official rather appointed
22 official level, and then we went on to offer some thoughts
23 about how that could be accomplished without what we felt
24 were some of the defects of the ordinance that it was
25 modeled after a master planned resort was ultimately

1 adopted.

2 Q. So you didn't disagree with the fact that it
3 switched the decision making to the Commissioners.

4 A. That's correct.

5 Q. And we adopted an ordinance. You were as a
6 participant, of course, had the right, you and your
7 company, to appeal that ordinance if you felt that it was
8 legally defective. Correct?

9 A. I believe that's correct. I'm not an
10 attorney but that sounds right.

11 Q. But neither you nor your company appealed the
12 ordinance that the County adopted for reviewing and siting
13 of wind farms. Correct?

14 A. That's correct.

15 Q. As far as you know no one ever appealed it.

16 A. To my knowledge.

17 Q. So that's the ordinance put in place.

18 A. Yes.

19 Q. Now, the process that the County has in place
20 that's the process that Wild Horse went through. Correct?

21 A. That's correct.

22 Q. And was your company--I don't remember if it
23 was Zilkha or--was it Zilkha back then?

24 A. I think the name change occurred during the
25 process.

1 Q. But that was the process you went through.

2 A. Yes.

3 Q. And your company was able to successfully
4 obtain approval from Kittitas County for the Wild Horse
5 Wind Power Project.

6 A. We did obtain land use consistency. That's
7 correct.

8 Q. The land use consistency included the
9 approval of the amendment to our comprehensive plan, a
10 rezone to property; adopted, agreed to development
11 agreements and a permit. Correct?

12 A. Yes.

13 Q. Now, before you applied for Wild Horse the
14 comprehensive plan it wasn't designated as a comprehensive
15 plan as a wind farm area, was it?

16 A. No, I don't believe there were any existing
17 designations for wind farms other than Wild Horse.

18 Q. It wasn't zoned as a wind farm overlay area
19 before you applied.

20 A. No.

21 Q. And even though it lacked those things you
22 were able to have that area approved as a wind farm in
23 Kittitas County.

24 A. Yes.

25 Q. So the fact that an area of land in the

1 County is not currently designated under the comp. plan or
2 zoned as a wind farm does not preclude that land from
3 being approved as a wind farm. Correct?

4 A. Yes. That's correct.

5 Q. So, for example, Invenergy you're aware is
6 asking for a wind farm.

7 A. I wasn't aware that they filed an application
8 so I haven't seen them.

9 Q. You're aware that they're looking at going
10 forward with a wind farm in the county. Correct?

11 A. I'm aware that they have sought land
12 agreements with I'm aware of two or three landowners, and
13 I've seen some Met towers that aren't mine when I was
14 driving east of Kittitas, but that's about the level of my
15 knowledge besides what I read of Mr. Piercy's testimony in
16 the paper.

17 Q. But the fact that the area where Invenergy is
18 going to propose their wind farm is not currently
19 designated as a wind farm area in the comprehensive plan
20 or the zoning does not mean that Invenergy cannot put one
21 there. Correct? If they get approval, they can put one
22 there. Correct?

23 A. I believe that's correct.

24 Q. So that does not then preclude the Invenergy
25 proposal from being another wind farm in Kittitas County.

1 Torem, last Thursday we received from DNR the
2 environmental checklist related to Invenergy has already
3 post briefing and it sets forth some analysis or a little
4 more explanation as to what the project might look like.

5 MR. PEEPLES: This is not in the record.

6 JUDGE TOREM: I want to hear him out and
7 then I can make a ruling.

8 MR. HURSON: That's what I'm pointing out.
9 What I'm basically trying to do is figure out how the
10 Council would like us to be able to get it in. I'm sure
11 Mr. Taylor hasn't seen it. I don't even plan on
12 cross-examining him on it because I'm sure he hasn't. But
13 it's something that we just received last Thursday or
14 Mr. Piercy did regarding the Invenergy Project, and part
15 of the criteria is alternative sites. And so I guess I'm
16 asking for direction from EFSEC on how we would get that
17 more detailed information. It could be that if we're
18 allowed I could ask Mr. Piercy tomorrow in addition to his
19 prefiled to add to that. If that's fine, that's fine.

20 JUDGE TOREM: Let me suggest I understand
21 the line of questioning relevant to preemption being the
22 third prong of the administrative code addressing the
23 factors is alternate locations in the county, and I
24 understand that's where this is going and why you believe
25 it's relevant. But Mr. Taylor doesn't have that knowledge

1 or notice about it and it's certainly not in the record
2 yet; then it's not appropriate to deal with it with this
3 witness.

4 You anticipate what I would suggest is the
5 best way to deal with it is to indicate if Mr. Piercy has
6 anything to add to his testimony. That would be an
7 appropriate time; however, in the interest of giving
8 notice to the rest of the parties if you have full copies
9 of that or maybe make Mr. Piercy available for discussion
10 chiefly with the Applicant, Counsel for the Environment,
11 and other interested parties that approach you today, so
12 that Mr. Piercy can be available either at lunch time or
13 right after the hearing today to discuss what Invenergy
14 may or may not put before the County. If this is an
15 application or if it's simply a request from DNR then all
16 the other parties can be aware of it and determine what
17 objections there might be and whether it should or
18 shouldn't become part of the record. It can be a motion
19 that you make at a later time. Let's deal with that
20 tomorrow and have the parties take as much of that off the
21 record as they can.

22 MR. HURSON: All right. That's fine. I
23 hadn't planned on cross-examining Mr. Taylor. Frankly,
24 what was going on is I was going through my notes on
25 Invenergy and this happened to be between the sheets of

1 paper so I'm bringing it up.

2 JUDGE TOREM: Let's get back to the
3 cross-examination.

4 MR. HURSON: Okay.

5 BY MR. HURSON:

6 Q. Now, the Wild Horse Project is one that the
7 Council is familiar with and you're familiar with. Right?

8 A. Yes.

9 Q. Were there any significant differences
10 between the Wild Horse Project versus the Kittitas Valley
11 Project as far as you could perceive?

12 A. They're in different places. They involve
13 different sizes and numbers, different sizes and numbers
14 of turbines. I'm not sure what differences you're wanting
15 me to comment on.

16 Q. Well, there were differences in setbacks from
17 adjoining property owners and residences. Correct?

18 A. I believe I would have to look back at my
19 notes. For Wild Horse the adopted setback was 541 feet
20 from property lines, and that I do recall turbines that
21 were closer than 541 feet to the outside boundary of the
22 project that we had to seek and attain some sort of
23 covenant from the neighboring landowners to build those
24 structures within that area that would place that
25 structure less than 541 feet from the turbine on our side

1 of the fence. So I believe that 541 feet was the setback
2 unless you could obtain that sort of covenant from the
3 neighbor. I don't remember the exact wording, but I'm
4 sure somebody here has that to present.

5 Q. The nearest home in Wild Horse is a mile and
6 a half away from the nearest turbine, wasn't it?

7 A. I believe it was around a mile and a quarter.
8 I could be wrong about that.

9 Q. It's over a mile. Okay. In fact, the Wild
10 Horse Project all the property around Wild Horse was owned
11 by the same people who owned the property within Wild
12 Horse. There were no nonparticipating property owners
13 adjacent to Wild Horse.

14 A. I believe that's correct.

15 Q. Maybe we'll try to stretch your recollection
16 even further is in fact, there was not a--the
17 participating property owners in fact owned property
18 within a mile of the outer boundary of Wild Horse.

19 A. I believe that those property owners in the
20 case of Wild Horse just to be specific were the Department
21 of Natural Resources, the Department of Fish and Wildlife,
22 and American AMLC Corporation. The American AMLC land was
23 actually purchased outright so I don't know. Do you
24 characterize them as participating? I just want to point
25 out that once they sold the land to Puget I don't know if

1 you're still calling them a participating landowner
2 because they do own the adjacent land, but they are no
3 longer owners of the land upon which the Wild Horse
4 Project was built.

5 Q. But at the time that was the case.

6 A. Correct.

7 Q. So Wild Horse was a success for your company.

8 A. Yes.

9 Q. Did you have any difficulty getting through
10 the Country process?

11 A. Yes.

12 Q. You did. You successfully were able to get
13 through the process, weren't you?

14 A. We were.

15 Q. Now, you heard about the Desert Claim
16 proposal.

17 A. Yes.

18 Q. They weren't so successful, were they?

19 A. They have not yet obtained a permit. So I
20 guess by that definition, no.

21 Q. The County turned them down.

22 A. That's correct.

23 Q. And basically the Desert Claim and the Wild
24 Horse process was going on around the same time.

25 A. I don't remember the exact chronology, but,

1 yes, I think Desert Claim applied for their permit
2 sometime before Wild Horse.

3 Q. But the hearings were in early 2005 for both
4 of them.

5 A. I believe that's correct.

6 Q. So Wild Horse you were able to successfully
7 get approved and Desert Claim wasn't able to.

8 A. Yes.

9 Q. So the County has had two different
10 applications. One they approved; one they didn't approve.
11 I assume that a reasonably prudent business person would
12 then try to take those two and say, "Okay. Why was Wild
13 Horse a success and why was Desert Claim not a success?"
14 and then try to use that to assist them in working that
15 way through the County process.

16 A. Yes.

17 Q. And that's what you did I assume.

18 A. Yes.

19 Q. So you looked at what Desert Claim had, what
20 the public hearings were. In fact, you were or your
21 representatives sat in during the course of the Desert
22 Claim process much like the Desert Claim representatives
23 are sitting in this room.

24 A. I believe that we had a representative at
25 most, if not all, of the Desert Claim proceedings. That's

1 correct.

2 Q. And when Desert Claim was turned down did you
3 use that as part of your business, your tool of business
4 information to help you figure out what they did wrong so
5 you could avoid those pitfalls?

6 A. We looked at the two examples that were out
7 there and tried to discern what guidance that might offer
8 us and how to get through the County process, yes, that's
9 true. And, for example, that's why when we came back to
10 the County with our revised application, we came back for
11 our second application for the County we significantly
12 reconfigured the project up front rather than coming back
13 in with the same proposal that had met with resistance
14 from the County the first time. We came back with what we
15 felt was a significant revised project that represented
16 significant concessions on our part and on the part of the
17 landowners who were participating in the project.

18 Q. Part of the information which you had
19 available to you to help you sort through the County
20 process would have been the resolution that denied Desert
21 Claim's project. Correct?

22 A. Sure.

23 Q. And you had that.

24 A. Yes.

25 Q. Handing you--

1 JUDGE TOREM: Mr. Hurson, is that already in
2 the record?

3 MR. HURSON: I don't believe it is.

4 MR. PEEPLES: Well, Your Honor, I need to
5 object to presenting anything that's not in the record.
6 Our procedure rules says it must be filed seven days
7 before and copies made available, and I don't even know
8 what it is. But that's the rules. That's the way we've
9 been operating, and I think all the parties are bound by
10 those rules. I felt I was bound by them.

11 JUDGE TOREM: Mr. Hurson, what's the purpose
12 for showing this to Mr. Taylor at this stage?

13 MR. HURSON: To simply have him confirm that
14 this was part of the information they had as they were
15 formulating their process for going through the County
16 process.

17 MR. PEEPLES: Your Honor, if he's going to
18 submit, that's the rules.

19 A. I already said, yes, that we knew this
20 existed. I don't have it memorized, but certainly it's a
21 public document. We knew it existed, yes.

22 JUDGE TOREM: So, Mr. Hurson, there's two
23 parts to the objection. One, if you intend to mark it as
24 a cross-examination support exhibit and make it part of
25 the record, then we'll go back and look at the rules that

1 were set out for notice. And if Mr. Peeples has stated
2 those accurately, I may have limited discretion to even
3 consider allowing it. If it's just a question of
4 Mr. Taylor knowing what it is you're referring to it and
5 there's to be more general questions, I think it can serve
6 that limited basis at this time. So if you want to offer
7 the Council's review, then I have to do more further
8 analysis on the prior and main objection.

9 MR. PEEPLES: Your Honor, I think the rule
10 says any documents that will be used for
11 cross-examination, and he is using this for
12 cross-examination. It must be submitted to the Council
13 seven days before the testimony and with copies supplied.
14 That's the way we've always operated.

15 JUDGE TOREM: Mr. Taylor, already
16 acknowledged he knew it existed prior to it being offered
17 as a document so it can simply be handed back and press on
18 with the question.

19 Is that going to be sufficient at this
20 point, Mr. Hurson, or do you need him to read or is there
21 something else that needs to be done here?

22 MR. HURSON: Well, I guess where we are if
23 he doesn't need the document to answer the question that's
24 okay. I didn't know if he had it memorized or not.

25 MR. PEEPLES: Again, Your Honor, he's saying

1 he's going to cross off it.

2 JUDGE TOREM: Let me have him ask the
3 question and then we'll see if there's an objection to the
4 question. At this point the question was did he know it
5 was available and that was handed over before the
6 objection and any other ruling. So hold the objection.
7 Let's hand the document back, Mr. Taylor, and stay with
8 the rules that we have set up and now determine,
9 Mr. Hurson, what's the question you're going to go on as
10 to this Desert Claim resolution that suggests the project
11 was denied.

12 BY MR. HURSON:

13 Q. You were aware of the Desert Claim resolution
14 and you had that as far as your information. Correct?

15 A. Yes.

16 Q. Do you recall that one of the findings of the
17 Board of County Commissioners was that the FEIS identified
18 adverse impacts that could not be mitigated either on site
19 or off site due to the proximity of the proposed facility
20 to nearby residents? The FEIS was clear in indicating--

21 MR. PEEPLES: I'm going to object. If he's
22 reading, he's doing the same thing. He's cross-examining
23 from the document.

24 MR. HURSON: I'm asking if he recalls this
25 language.

1 JUDGE TOREM: Overruled to the question.

2 BY MR. HURSON:

3 Q. The FEIS was clear in indicating a minimum of
4 one-half mile separation from wind turbine and residences
5 would be necessary to reduce significant adverse impacts
6 to moderate adverse impacts. Do you recall perhaps not
7 those precise words but that basic underpinning was part
8 of the rationale for the Board of County Commissioners
9 denying Desert Claim?

10 A. In a general sense, yes. I don't recall
11 those specifics, but I'm certainly aware the document
12 exists in its general crux.

13 Q. Okay. So you do recall that part of the
14 reason the Commissioners turned down the Desert Claim
15 Project was based upon proximity of turbines to the
16 residences. It's that the Desert Claim FEIS indicated
17 that minimum half-mile separation. Correct?

18 A. I believe proximity was an issue and that the
19 findings of the Commissioners were based on the FEIS for
20 the Desert Claim Project not for the Kittitas Valley and
21 Wild Horse Project.

22 Q. In the Desert Claim Project, Desert Claim has
23 asked for 1,000-foot setbacks from the residences as far
24 as you can recall?

25 A. I think that's correct.

1 Q. So taking what you had from the background
2 when you submitted to the County in 2005, you asked for
3 1,000-foot setback for residences. Correct?

4 A. That's correct.

5 Q. So your request from the County was for a
6 setback that you already knew the Commissioners had turned
7 down.

8 A. They turned it down allegedly based on the
9 site-specific circumstances at the Desert Claim site which
10 I would note for the Council's since they haven't
11 necessarily reviewed that site that site is a much flatter
12 site. It's not characterized by the sharp steep ridge
13 lines that the Kittitas Valley Project is, and it is the
14 testimony from Thomas Priestley which you've seen and will
15 hear more of that later indicates that that does create
16 different circumstances if you have different topography.

17 And as I understand the County's process is
18 that as represented by yourself and the County
19 Commissioners is a site-specific project. You were very
20 adamant in the adoption of the Wild Horse approval that
21 that wasn't precedent for anything else. So I'm not sure
22 what the point is. It's either precedential--

23 Q. I'm just asking you for factual questions
24 not--okay. So, in other words, so but you asked for the
25 same setback that the County turned down in Desert Claim.

1 Correct?

2 A. At a different site, correct.

3 Q. You were aware that part of the rationale was
4 because and the Commissioners' interpretation was that the
5 FEIS indicated a half-mile separation from wind turbines
6 and residence was necessary to reduce the impacts for that
7 site.

8 A. For that site, yes.

9 Q. Correct. So you though in the KV project
10 suggested a 1,000-foot setback from residences. Correct?

11 A. Correct, based upon the EIS for this project.

12 Q. But with this information in hand that had
13 already been turned down because a half mile was a
14 problem, correct me if I'm wrong, but at no point did your
15 analysis that you presented didn't do any visual impact
16 analysis from any residences within 1,000 feet of a
17 turbine.

18 A. I'm sorry. Could you repeat. We didn't do
19 any visual analysis from where?

20 JUDGE TOREM: Pardon me one second.

21 Go ahead, Mr. Hurson.

22 MR. HURSON: Thank you.

23 BY MR. HURSON:

24 Q. So recognizing at a different site about two
25 miles away those had been issues, your presentation to the

1 County on the Kittitas Valley Project did not include any
2 specific visual analysis from the residences within 1,000
3 feet?

4 A. I don't believe that this presentation did.

5 Q. Your presentation didn't include any visual
6 analysis at 1,320 feet.

7 A. I don't believe that it did.

8 Q. And those were the setbacks you were asking
9 us to approve. Correct?

10 A. Correct. We were basing that on the EIS that
11 had been issued by EFSEC and the visual analysis that's
12 contained in that document.

13 Q. Does the EIS issued by EFSEC have any visual
14 analysis at 1,320 feet?

15 A. I don't believe that it does, but I know Tom
16 Priestley is going to be up later, and he's probably more
17 able to respond to that than I am.

18 Q. Does it have any visual analysis taken with
19 1,000 feet?

20 A. I don't believe that it does. I believe
21 we've since submitted supplemental testimony that provides
22 that 1,000 and 2,000 other distances.

23 Q. You for the County phase you submitted no
24 testimony to justify a 1,320-foot setback. There were no
25 visual assessments done or presented to the County to

1 support that setback. Correct?

2 A. The latter part of your question, yes. The
3 former part of your question, no. There was analysis to
4 support because the EIS that was done by EFSEC has been
5 issued with an addendum and supplement of all--

6 MR HURSON: Objection. His answer speaks
7 for itself.

8 MR. PEEPLES: Your Honor, he's answering the
9 question on what he based his decision on.

10 A. And I'm trying to answer the parts
11 accurately.

12 JUDGE TOREM: I'm going to let him finish
13 his answer. He gave what I thought could have been a
14 confusing short answer. Part one, no; part two, yes.
15 He's now explaining. So, Mr. Taylor, continue.

16 A. So you're correct that, no, we did not
17 provide new visual analysis during the County process from
18 the distances that you proposed, 1,000 and 1,320, but I
19 don't think it's accurate to say that we didn't provide
20 any analysis for the setbacks we proposed because the
21 project that we originally proposed and all the SEPA
22 analysis that's been done to date was based on 1,000-foot
23 setbacks. So the EIS, the supplement, and the addendum
24 are all analyzing that distance and that is the setback
25 that we proposed since the very beginning, 1,000 feet. So

1 I think that we have provided lots of detailed
2 environmental information that assumes that and noise,
3 shadow flicker, and other issues.

4 BY MR. HURSON:

5 Q. But none of the visual assessments were
6 actually done at 1,000 feet in the EIS. Correct?

7 A. I don't believe that they were, and that I
8 would note that was a decision that was not just the
9 Applicant's decision, but EFSEC's independent consultant
10 that actually prepared the document actually pared back
11 all the visual work that we had originally--our ASC
12 actually, our application for site certification actually
13 contains quite a bit more visual analysis than what made
14 it into the Final EIS, and I'm not criticizing that. I'm
15 just observing that the Applicant has tried throughout
16 this process to make as much visual simulation information
17 available as is necessary and reasonable. I don't recall
18 the County asking for that either.

19 MR. HURSON: I'm sure others have questions
20 so I will be done for now.

21 JUDGE TOREM: All right. Thank you.

22 Mr. Tribble, are you prepared to ask your questions in
23 cross-examination at this time?

24 MR. TRIBBLE: I have no questions for this
25 witness.

1 JUDGE TOREM: All right. Mr. Slothower.

2 MR. SLOTHOWER: Yes.

3 JUDGE TOREM: Mr. Hurson, if you could put
4 those demonstrative exhibits up by the wall, that would be
5 helpful.

6 MR. PEEPLES: Can we kind of--

7 JUDGE TOREM: We'll get to that in just a
8 minute.

9 MR. PEEPLES: Okay.

10 JUDGE TOREM: There's one of those that's
11 not yet part of the record, and when we're done with all
12 cross-examination for this witness, Mr. Hurson, those with
13 the Xs on it will probably need to be moved into the
14 record. I know it was in front of the County and I know
15 that there have been some basic staff calculations done as
16 to which turbines were crossed, but that piece of
17 information I think mistakenly we thought it was in the
18 record earlier. Only one of those maps from what I've
19 been able to determine is actually in. The other one
20 we'll have to move in and make sure it's part of the
21 record for the basis of the decision today.

22 MR. HURSON: If I might, I trust that the
23 Applicant can supply that. That was the Applicant's
24 document. Maybe we have a reduced scale back at the
25 County. If we do, we will. And if we don't, I'll ask the

1 Applicant to maybe get us a copy.

2 MR. PEEPLES: Sure. Sure. That's no
3 problem. The exhibit we're talking about is the
4 combination of two exhibits. We have both of those
5 exhibits in the record, but it's good for illustrative
6 purposes that we bring them both together.

7 JUDGE TOREM: We'll clean that up.

8 MR. PEEPLES: Jim, you asked for a copy for
9 yourself?

10 MR. HURSON: No, just if we can get it to
11 the Council.

12 MR. PEEPLES: Okay.

13 JUDGE TOREM: All right. Mr. Slothower.

14 MR. SLOTHOWER: Thank you.

15 CROSS-EXAMINATION

16 BY MR. SLOTHOWER:

17 Q. Mr. Taylor, I wanted to follow up on a couple
18 things that Mr. Hurson asked you about. So as I
19 understand it there's 65 turbines; is that correct?

20 A. That's correct, the maximum.

21 Q. And the maximum tip height is 410 feet; is
22 that correct?

23 A. That's correct.

24 Q. The variables are the locations of those
25 turbines within the project boundaries; is that correct?

1 A. More specifically within the defined
2 corridors that have been studied through the SEPA process.

3 Q. The other variable is the maximum amount of
4 electricity that will ultimately be produced; is that
5 correct?

6 A. Yes.

7 Q. Doesn't that then mean that the analysis,
8 particularly the visual impact analysis that you have
9 provided, is tentative?

10 A. Well, the visual impact analysis that's
11 presented in the DEIS looked at the full range of
12 potential turbines. It shows down to a small 1.0-megawatt
13 turbine, 1-1/2-megawatt turbines, and then turbines at the
14 upper end of the size range; so I believe that analysis
15 addresses the full range of turbines which we've sought
16 approval.

17 Q. I understand that, but, again, if we don't
18 know exactly where the turbines are going to be or exactly
19 how tall they are going to be, then your project analysis
20 of the visual impacts is tentative. It's not final.

21 A. I would say it's not--it may not--the final
22 layout may differ from that which has been presented, but
23 the worst what we would deem or what the experts would
24 deem a worst-case scenario has been presented which is the
25 maximum number of turbines at the maximum height, and that

1 was in the DEIS.

2 Q. But, again, the site-specific analysis that
3 you provided and will provide later in testimony is
4 tentative because the location of the turbines may vary.

5 A. Location of the turbines may vary. I would
6 defer to the visual experts as to whether that constitutes
7 tentative or not, but the locations can vary.

8 Q. Thank you. You mentioned in your response to
9 Mr. Hurson's questions that you eliminated some turbines
10 on the north end of the project boundary because it was
11 pushing against an area that was being developed for
12 residential use; is that correct?

13 A. Because there were quite a few which area are
14 you referring to?

15 Q. You mentioned on the north end. I think it's
16 near the Bettas Road area.

17 A. I pointed to three different areas. Just to
18 be clear, the area on the north end of Bettas road was in
19 response to additional development in the area. Just
20 south of Section 35 was in response to existing
21 developments rather than planned.

22 Q. But with respect to the area where there
23 is land development and also with respect to the area
24 where there is existing development, when you move away or
25 you redefine the project around those areas, that leads me

1 to conclude that the project is incompatible to a certain
2 extent with residential land uses. Am I incorrect in
3 that?

4 A. Well, I can't say what you think, but I don't
5 think that.

6 Q. That's my point exactly. The impact of this
7 project and the specific turbines on residents and thus
8 the citizens who live there means different things to
9 different people; is that correct?

10 A. I think that the public hearing process would
11 suggest that that's the case.

12 Q. Okay. If you didn't believe that it didn't
13 have an impact why did you then agree to move the
14 turbines?

15 A. Because, well, as Mr. Hurson alluded to we
16 watched what happened to the Desert Claim process, we
17 watched what happened in the Wild Horse process, and we
18 came to the conclusion that it's ultimately a very
19 political process here in Kittitas County; and the County
20 probably and it was deemed from what we received from many
21 of the locals who were in support of the project that the
22 County was looking to see some sort of concession on the
23 part of the Applicant. And rather than making a
24 concession that was not based on anything, we looked at
25 the record and we looked where we heard the most concerns.

1 I think we were careful and we've always been very clear.
2 We said at the time we're moving these based on what we
3 heard from the public not based upon what the SEPA
4 analysis showed, but based on what we heard from public
5 comment, and that's important to the local government.

6 Q. The issue of setbacks you also testified a
7 minute ago that the issue of setbacks is an evolving
8 science. I think that was your phrase.

9 A. Wake effects between turbines, yes. Setbacks
10 from the residences I wouldn't characterize as an evolving
11 science.

12 Q. Setbacks from residences vary depending upon
13 the location. Correct?

14 A. Sure.

15 Q. It wasn't an issue with Wild Horse.

16 A. No.

17 Q. It's an issue here.

18 A. Yes.

19 Q. In your supplemental testimony I think it's
20 at page 17, I read it as you acknowledging that turbines
21 generate shadow flicker and also have visual impacts; is
22 that correct?

23 A. At a certain distance, yes.

24 Q. And you testified and I think the specific
25 language is that when you compare, you look at the photos

1 of Dr. Priestley's testimony that compares the view of a
2 turbine from a quarter mile with that from 2,500 feet, I
3 see a subtle difference, hardly one that merits the huge,
4 obvious negative impacts.

5 A. That's my testimony.

6 Q. So what you're really saying is that looking
7 at the turbines from a quarter mile away and from 2,500
8 feet away you see no difference.

9 A. I said a subtle difference. It's discernible
10 but not dramatic the way I describe it.

11 Q. Again, that's your--

12 A. That's my opinion.

13 Q. Your opinion, right. Someone who resides
14 2,500 feet away may have a different perception; is that
15 correct?

16 A. Certainly.

17 Q. Doesn't that suggest then that a setback of
18 2,500 feet is not enough of a change from your proposed
19 setback to really make a difference?

20 A. I wouldn't characterize it that way. I think
21 if you're trying to say is this somewhat of a matter of
22 personal subjective judgment, I think clearly as all
23 aesthetic issues are on some level subject to people's
24 individual preferences.

25 Q. But that certainly goes to whether one site

1 is more appropriate than another site; is that correct?

2 A. With respect to the visual issue explicitly,
3 yes, but I think there's a lot of other issues that are
4 important in siting a wind farm.

5 Q. I grant you that. But with respect to the
6 impact on citizens and the residences, resident people who
7 reside in the area visual impact is a large impact, is it
8 not?

9 A. Quite a few people have spoken about visual
10 impacts, but I would point out that they started with a
11 much longer list and as we provided overwhelming
12 scientific evidence to refute all those, they have kind of
13 been left with visual impacts as the sole line of
14 argument. So it's hard for me to know if that's the most
15 important issue.

16 Q. But, Mr. Taylor, it does impact, visual
17 impact is a significant impact for people who live in the
18 area; is that correct?

19 A. For some of them, yes.

20 Q. Following up on again your statement in your
21 testimony, what distance do you believe it does make a
22 difference?

23 A. I would say that the difference between a
24 quarter mile and a mile is quite from my subjective point
25 of view quite noticeable.

1 Q. In your testimony you indicated that this was
2 a superior site, and one of the reasons--you gave I
3 believe four reasons, primary reasons why you felt this
4 was a superior site. Correct?

5 A. Yes.

6 Q. One of the reasons was that this was a site
7 where you had a significant amount of wind data generated.
8 Correct?

9 A. Yes.

10 Q. In fact, you can generate wind data anyplace,
11 can't you?

12 A. Assuming the underlying landowner grants you
13 permission and you have money, yes.

14 Q. Certainly. But just because the data is
15 available for this site doesn't mean you can't go generate
16 the data for some other site. Correct?

17 A. With the consent of the landowner, yes.

18 Q. Sure. Who owns the project at this point in
19 time?

20 A. The assets that makeup the permits, the land
21 rights, etc?

22 Q. Yes.

23 A. Sagebrush Power Partners which is the wholly
24 owned subsidiary for Horizon.

25 Q. Who owns Horizon?

1 A. Goldman Sachs.

2 Q. Are there any other individuals who own
3 interest in Horizon?

4 A. Not to my knowledge, no.

5 Q. At page 20 of your supplemental testimony you
6 indicate another reason why this is a superior site is
7 that and this is the term, "We have already secured
8 advantageous transmission queue positions with both BPA
9 and PSE due to the fact that those requests were
10 originally filed several years ago"; is that correct?

11 A. That's correct.

12 Q. So as I understand it you have to apply to
13 BPA and PSE to get a place in line on their transmission
14 facility. Is that basically what that says?

15 A. That's what the transmission queue
16 represents. It's a series of studies that go on to
17 determine. Just because you apply doesn't mean you will
18 ever get the right. It depends on the physical capacity
19 of the line and the results of the study, yes.

20 Q. Sure. But the point is there's a line.

21 A. Correct.

22 Q. And where exactly is this project in the
23 line?

24 A. It could have changed. It's an electronic
25 system. It's posted daily. I haven't looked it up

1 recently, but within Puget Sound Energy queue I believe we
2 are at or very near the front of that queue. For
3 Bonneville there's a lot of projects ahead of us that have
4 slowly been dropping out of the queue. We are pretty far
5 towards the head. I don't have the exact numbers in front
6 of me.

7 Q. As I prepared for this I looked in the record
8 for that queue, that printout. I didn't see it. Is that
9 not in the record?

10 A. I don't believe that it is. It's public
11 information though. Anyone can look it up.

12 Q. Where would one go to look that up?

13 A. The OASIS.

14 Q. Say that again?

15 A. OASIS.

16 Q. OASIS?

17 A. Yes.

18 Q. When was the last time you looked at that
19 queue?

20 A. I haven't looked at the BPA queue in several
21 months. Puget I've spoken with them, their transmission
22 group within the last six weeks.

23 Q. What exactly does the queue mean?

24 A. Well, under the rules that are promulgated by
25 FERC, which is Federal Energy Regulatory Commission, which

1 overseas the regulation of transmission functions of all
2 regulated utilities which does not include Bonneville, it
3 includes the investor-owned utilities, they have
4 established rules to ensure orderly and fair access to the
5 transmission assets that are built with ratepayer money
6 and to try to make sure that that transmission access is
7 allocated fair and first come, first serve basis.

8 So in order--if you are a potential generator
9 such as Horizon, you have to submit initially the first
10 thing you have to submit there's two different processes.
11 There's an interconnection process and there's a
12 transmission process. Interconnection just simply gives
13 you the right to connect to the line. It doesn't give you
14 the right to move your power from Point A, for example, if
15 this project is Point B wherever your potential customer
16 wants to receive it. So there's two separate queues.
17 There's the transmission queue and the interconnection
18 queue.

19 You have to apply, and in the interconnection
20 process you start with initial feasibility study. You pay
21 the money for that. The utility does the analysis. They
22 give you a very high level summary sort of like scoping
23 for SEPA.

24 Q. Sure.

25 A. And they come back and do a system impact

1 study and then a facility study.

2 Q. Sure. All right. So do you know how many
3 people or how many entities are in the line?

4 JUDGE TOREM: Mr. Slothower, I'm thinking
5 that these are good questions for economic why they want
6 to build it, but EFSEC doesn't have any jurisdiction over
7 that interconnection or with the transmission.

8 MR. SLOTHOWER: I understand that and these
9 are questions I'm leading into something that I think I
10 only have a couple more in this area. So if I could have
11 a little latitude.

12 JUDGE TOREM: All right.

13 MR. SLOTHOWER: Thank you.

14 MR. PEEPLES: I just want to say I think that
15 question has been asked and answered. I think he said he
16 hasn't looked at it in the last couple of days.

17 BY MR. SLOTHOWER:

18 Q. Fair enough. I listened to his last answers.
19 It's right. I have to pick it up right where I intended
20 to be. If for some reason this project would not be
21 permitted, then it would fall out of the queue so to
22 speak; is that right?

23 A. I believe that's correct. I'm not an expert
24 on FERC rules and they're rather archaic. Maybe we can
25 keep that right. I really don't know to be honest with

1 you.

2 Q. But some of the other people, the other
3 entities in line are undoubtedly wind power projects; is
4 that right?

5 A. Some of them are, yes.

6 Q. So if this project is not permitted and it
7 falls out of the queue that doesn't not necessarily mean
8 that this potential wind power electricity that would be
9 generated by this project will not be generated; is that
10 correct?

11 A. Could you restate the question. I'm not sure
12 I follow you.

13 Q. Sure. If this project doesn't get permitted,
14 it falls out of queue. That means that another wind power
15 project behind it will move up in the queue; is that
16 correct?

17 A. I can't without looking at who's in the queue
18 behind us I can't state that. I believe the only other
19 wind project I've ever heard of that would connect to that
20 same transmission line, the Puget line specifically, would
21 be Rocky Reach to White River 230 kV line to be specific
22 which I believe proposed to interconnect to. I believe at
23 one time enXco Desert Claim had applied for
24 interconnection for that project. I don't know the status
25 of their queue position. So that's the only other wind

1 project that I know of to answer your question that may be
2 behind us in the queue. I don't know the status of their
3 application.

4 Q. The point is if there are other wind power
5 projects behind you in the queue, this not being permitted
6 will not deprive the region of wind power.

7 A. From the perspective of that one transmission
8 perhaps.

9 Q. Thank you. You also go into great detail
10 about the alternative sites for wind energy in Kittitas
11 County, and again, I read your testimony, and maybe it's
12 me. Correct me if I'm wrong, but I read your testimony
13 that this is the best site; is that correct?

14 A. From our perspective as Horizon Wind Energy,
15 yes, that's correct.

16 Q. Your testimony is not that it is the only
17 site; is that correct?

18 A. That's correct.

19 Q. In fact, there may be other sites that are
20 economically viable that don't have the problems that this
21 site has; is that correct?

22 A. If you're defining problems as the fact that
23 it's not in the extreme eastern end of the county which--

24 Q. No, that's not how I'm defining problems, but
25 fair enough. I will elaborate on what I meant by defining

1 problems. With this site you have a clash, if you will,
2 for lack of a better word between the project and existing
3 residences in the area and to use your term progressive
4 anticipated future development in the area. So my point
5 is there's a clash between this site, the towers of the
6 this site, and the residences in the area and future
7 residences. Correct?

8 A. Yes, I would say that's the main issue we're
9 here to discuss today.

10 Q. Okay. My point is that there are a number of
11 other sites in Kittitas Valley and in fact the region that
12 don't have that type of a clash; is that correct? It's
13 really a yes or no answer.

14 A. Within Kittitas County I think there are as
15 we and EFSEC's analysis laid out criteria and I referred
16 to those in my testimony absence of a potential conflict
17 between residential development and a wind farm is not the
18 only or even necessarily the most pressing criteria. In
19 the eastern part of the county that's what Mr. Hurson was
20 alluding to and I think your client, Mr. Lathrop, proposed
21 that area county as sort of the only acceptable area.

22 There are very significant transmission
23 limitations in that part of the county. The 230, 115 to
24 230 kV Intermountain Power Line owned by Puget Sound
25 Energy to which the Wild Horse Project interconnects given

1 the large size of that project in the old vintage
2 transmission line has consumed the vast majority of
3 available transmission capacity on that line. The only
4 other lines that exist in that part of the county are the
5 Bonneville 500,000 volt lines that Schultz and Wautoma the
6 other line parallels it. A 500,000 volt line is not a
7 very practical alternative for a wind project to
8 interconnect to unless that wind project were 500
9 megawatts or so.

10 Q. But--

11 A. So that's a real constraint.

12 Q. You identified what you believe is one
13 constraint. That's just one of the factors that goes into
14 siting a wind farm is the availability of transmission; is
15 that correct?

16 A. But it is make or break, yes. It's only one.
17 It's only one criteria, but it's a criteria if it's not
18 met it's fatal.

19 JUDGE HURSON: Mr. Taylor, his original
20 question though is around all the other sites looking at
21 one factor, the residential clash--correct me if I'm
22 characterizing this wrong, Mr. Slothower--are you aware of
23 other sites around the region, particularly within the
24 County, where you would with that one factor, the
25 residential clash, would drop out?

1 A. Well, the only ones I'm aware of what little
2 I know about the Invenergy site and I don't know whether
3 that presents conflicts or has viable transmission but
4 perhaps it does. But really I can't comment on whether it
5 meets all the other criteria. I don't know if it's windy,
6 etc.

7 BY MR. SLOTHOWER:

8 Q. Well, correct me if I'm wrong, your company
9 has an option on additional energy at Wild Horse; is that
10 correct?

11 A. We do. Approximately 1,400 acres as stated
12 in my testimony.

13 Q. So if you proposed a wind farm in that
14 location the residential clash would not exist; is that
15 correct?

16 A. I would assume not.

17 Q. Are you aware of all the new--I characterize
18 it as new because I've only become aware of it in the last
19 few days, if not a week. The fact that DNR is proposing
20 to lease some additional acres they own in the valley to
21 another wind project are you aware of that?

22 A. Which one are you--I'm sorry. Which one are
23 you talking about?

24 Q. There's an e-mail I believe or a DEIS
25 document out by DNR that they're required to issue when

1 they lease or propose to lease property. Have you seen
2 that?

3 A. No, I haven't.

4 JUDGE TOREM: Mr. Slothower, I want to be
5 sensitive to the rules when we're introducing these
6 documents. I know it's a fluid situation and if something
7 occurs that's less than seven days before the start of the
8 adjudication and it's outside any party's power to deal
9 with that, we just need to make sure that the purpose of
10 those rules is that nobody is prejudiced. And the fact
11 that Mr. Taylor was aware of the prior document I don't
12 see that as a problem, but I want to make sure that this
13 Invenergy issue doesn't distract from the main analysis
14 before us as an alternate site.

15 MR. SLOTHOWER: I understand that, and I
16 based on his indication that he's not familiar with it, I
17 don't intend to go any further with it.

18 JUDGE TOREM: Thank you.

19 BY MR. SLOTHOWER:

20 Q. You're familiar with your real estate expert,
21 evaluation expert, Mr. DeLacy; is that correct?

22 A. Yes.

23 MR. SLOTHOWER: Your Honor, I've listened to
24 Mr. DeLacy testify before Kittitas County, and I've also
25 read what he has submitted to this body.

1 BY MR. SLOTHOWER:

2 Q. One of the things that comes up is that he
3 candidly admits that the impact on property values will
4 not really be known until the project is built; is that
5 correct?

6 A. I believe that's what it says in his
7 testimony, yes. He'll be available.

8 Q. I realize he'll be available and I appreciate
9 that, but I wanted to get your response to that. Because
10 what that tells me is that when we're done, if this
11 project is permitted and if it is built, there's going to
12 be an impact on property values that right now we can't
13 put our finger on; is that correct?

14 A. I think his conclusion is there could be and
15 that the definitive conclusive evidence is only after
16 something is built and we see the true reaction, and the
17 best you can do like any other environmental impact is to
18 predict it using best available science.

19 Q. Sure. So assume that it's a negative impact.
20 What do we do then?

21 A. Well, what does who do then?

22 Q. Well, the property owners. What we as
23 citizens in this county do if you build a project and
24 there's a negative impact on our property values?

25 A. Well, I don't think that's probably something

1 that would be my decision as a project applicant to make.
2 I'm not a government authority.

3 Q. Well, is Goldman Sachs ready to step in and
4 make it whole, make us whole?

5 A. Never asked the question, but they haven't
6 offered. I don't think that--I'm not aware of any
7 precedent that says that--I mean there's all kind of
8 development being approved in Kittitas County everyday
9 that may result in increases or decreases in value, and
10 I'm not aware of any precedent that says the Applicant,
11 whether private or public, shall be responsible for any
12 future change in value.

13 Q. So the answer to the question, no, they
14 won't.

15 A. Just like any other project.

16 Q. But they would have to abide by the city
17 rules in the other project; is that correct?

18 A. Correct.

19 MR. SLOTHOWER: We're done. Thank you. All
20 right. Thank you.

21 Mr. Carmody.

22 CROSS-EXAMINATION

23 BY MR. CARMODY:

24 Q. Thank you, Mr. Taylor. I'll just have to try
25 to be brief and I want to clarify a few things that I

1 don't understand to this point so and hopefully it will
2 clarify for the Council as well.

3 I want to begin with your testimony on the
4 permissible number of machines or turbines that will be
5 placed on the site. I heard you testify that the maximum
6 number of turbines will be 65 turbines on this site; is
7 that correct?

8 A. Yes, that's correct.

9 Q. And I thought you also testified that if you
10 got a year-end bargain sale, ski purchase, that you could
11 place as many as 85 turbines on the site; is that correct?

12 A. No, that's not correct. What I said was that
13 in our original application to the County I was asked by
14 Mr. Hurson why we proposed 80, and the reasoning for that
15 was that that opportunity might arise. We have since
16 taken that opportunity off the table by limiting ourselves
17 to 65 turbines. So we are no longer seeking approval to
18 do that.

19 Q. You described modifications to the project
20 and indicated that you had eliminated property on the
21 north end of the site, but is it not correct that you
22 added property on the south end of the site?

23 A. The tax parcels in question have never
24 changed throughout the process. They're all exactly the
25 same landowners, the same pieces of properties since 2003.

1 Q. Did you increase the turbine strings or
2 turbine density on the south end of the project?

3 A. I don't believe that we did, no.

4 Q. Are you sure about that?

5 A. The corridors are in the same--in fact,
6 they're shorter on the southern end. If you look at the
7 map back there and back here, we actually moved the most
8 southerly turbines further north away from the southerly
9 project boundary.

10 Do you have a specific question you're trying
11 to point out? I would be happy to respond to that.

12 Q. No, I think you have answered the question to
13 your ability. So that I understand, your project and
14 analysis was based upon what the EIS described as the
15 middle scenario; is that correct?

16 A. When you say your project, at what stage in
17 time are you referring?

18 Q. The current stage and the current
19 environmental review.

20 A. The middle scenario as described in the DEIS
21 to my recollection assumes a turbine nominally of 1.5
22 megawatts and roughly 70 meters rotor diameter. As I
23 explained those possible questions for Mr. Hurson, the
24 current proposal that we placed in front of the County
25 through their process was for a turbine configuration that

1 was in between the middle and the upper, and we in fact
2 eliminated the small turbine scenario from what we're
3 seeking EFSEC approval for.

4 So we originally asked for a range of sizes.
5 We have now restricted that to the middle and upper end of
6 that range. We have eliminated some of our flexibility by
7 ruling out the small turbine, more small turbines
8 scenario.

9 Q. The small turbine scenario was what size of
10 turbine?

11 A. A one-megawatt turbine which would have been
12 the most number of turbines of the smallest size spread
13 out across the project site.

14 Q. Does your environmental review include any
15 analysis of a 2.0-megawatt turbine?

16 A. The environmental analysis was based on
17 dimensions of turbines, and I think from your earlier
18 question perhaps I need to clarify a few facts about
19 turbine technology.

20 Again, you can take a given generator size
21 1.5 megawatts, 2 megawatts, 2.3 megawatts, and you can put
22 any variety of rotor diameters on that given generator
23 within reason, and some manufacturers I'll give you two
24 specific examples make one generator that looks exactly
25 the same but has different blade lengths on it depending

1 on the wind resource at the site.

2 So at a low wind site you would put the
3 largest possible blades on that to capture the most energy
4 and produce the most cost effective energy for your
5 customer. If you were at a high wind site, you put a
6 smaller blade on it because it wouldn't be able to
7 withstand the force of those high winds. So there isn't
8 this--I don't know how much--those are the only questions
9 that I can answer to explain that, but there's not a fixed
10 linear relationship there.

11 Q. How does rotor diameter affect the noise
12 analysis?

13 A. I don't believe that the rotor--I would
14 prefer to defer that to Mark Bastasch because he is the
15 noise expert, but each turbine has with a given
16 configuration is required to produce an IEC validated
17 noise profile, and that's what the analysis that was done
18 for this project by Mark Bastasch and validated by EFSEC's
19 expert independent consultant was based upon was using one
20 of those IEC validated noise models.

21 So any turbine that we would purchase would
22 have to be tested against that, and as we have proposed
23 permit conditions we have to live with the WAC standard
24 what it is with whatever turbine we use. That does mean
25 we have to meet the law and the regulation for what the

1 noise levels can be.

2 JUDGE TOREM: Mr. Taylor, do you have a
3 general understanding of noise impacts and rotor diameter?
4 Is there a linear relationship between say the larger
5 rotors and larger noise or any such thing? I think that's
6 what Mr. Carmody was asking.

7 A. Really can't answer that level of detail with
8 confidence.

9 JUDGE TOREM: Mr. Carmody, we do have
10 another noise witness scheduled for later in the week.

11 MR. CARMODY: I understand. I was just
12 trying to ask a quick question and got a long answer.

13 BY MR. CARMODY:

14 Q. Is there a relationship between rotor
15 diameter and shadow flicker?

16 A. As I understand it the relationship is the
17 factors that affect shadow flicker is not strictly
18 speaking rotor diameter or total tip height. So the
19 height of any object depending on how tall it is can cast
20 a different shadow. So it's the combination of the rotor
21 diameter and the tower height. It's the total height of
22 the object that's going to dictate how far that shadow is
23 cast, and the rotational speed that goes to the other
24 point you made earlier where you came up to the table,
25 rotational speed tends to be slower actually for larger

1 machines not faster.

2 Q. How about tip speed?

3 A. Tip speed, well, as a function of the rotor
4 diameter and the revolutions per minute.

5 Q. It's faster, isn't it?

6 A. Faster on what?

7 Q. On a larger. The larger the rotor diameter
8 the greater the tip speed.

9 A. Assuming a constant rpm, yes, but I don't
10 know that that's an accurate assumption.

11 Q. Do you know for yourself whether it is or it
12 isn't?

13 A. Well, there's a lot--you're asking me to
14 characterize a whole industry with lots of different
15 machines. There are turbines out there right now that
16 have a variety of different revolutions per minute.
17 There's variable speed machines. There's constant speed
18 machines. It's hard to--do all the cars have cruise
19 control? No.

20 Q. How were those variables studied in the
21 materials that you provided to the Council?

22 A. The worst case was always analyzed.

23 Q. The worst case where result in tip speed
24 increase with a large rotor diameter; is that correct?

25 A. Assuming that it was the same rpms as the

1 smaller rotor diameter machine, yes.

2 Q. I'm not trying to ask any difficult
3 questions, and I thought most of these are yes or no, and
4 I don't want to disrupt your answers but, on the other
5 hand, each time you vary off in other areas. And I guess
6 I'd ask you to listen to the question and answer as
7 precisely as you could.

8 MR. PEEPLES: Your Honor, my client is
9 trying to answer the question. He's asking some
10 complicated questions. A simple answer on these things is
11 not the right answer, and my client is trying the best he
12 can to let the Council know what the situation is and so I
13 want to make sure my client will respond appropriately.

14 JUDGE TOREM: Point's taken.

15 Mr. Carmody, next question.

16 BY MR. CARMODY:

17 Q. Earlier in your testimony you talked about
18 wave effect and its impact on locational choices for a
19 turbine string. How does rotor diameter affect the wave
20 effect?

21 A. It's actually wake effect, w-a-k-e. It's a
22 wake effect. It's just like a boat or to give an analogy
23 if you're driving down the highway and you get behind a
24 semi and you get close enough to it all of a sudden you're
25 in the wind shadow of the semi, and you have to let your

1 foot off the gas or you'll slam into the back of the semi.
2 The same thing happens if you're bicycling behind
3 somebody.

4 So the turbines, when turbines are arrayed in
5 succession downwind of each other, the downwind turbines
6 are in the wind shadow of upwind turbines. So if this is
7 a wind turbine, this body of water, and this microphone is
8 another, and the wind is coming from this direction, then
9 this turbine is going to be in the wake of this turbine
10 and the wake propagates at a certain defined angle. And
11 I'm not the expert to explain that, but it's more or less
12 at a 90-degree angle and back from the center of the
13 turbine, and the center of that 90 degrees is where the
14 wind is coming from. So the rotor diameter of this
15 machine dictates how many rotor diameters downwind this
16 one needs to be.

17 And as you'll see on all of the layouts in
18 any wind farm if you have very unidirectional wind
19 mechanisms where wind is always going from the direction,
20 well, in this case you can see it in the lower corner of
21 this map you can see that's called the wind rows.

22 That shows the percent of time and percent of
23 energy that's coming from that direction. So you can see
24 wind blown is always coming from this way, and that's why
25 on this site the turbines can be spaced more closely

1 together north to south than they can east to west because
2 there's not much of a wake effect going north to south.

3 Q. The chart that you just referred to, if I
4 remember your testimony correctly, is that this was a
5 conceptual layout for 2.0-megawatt turbines.

6 A. That's correct.

7 Q. We don't know what this would look like with
8 3.0 megawatt turbines, do we?

9 A. No. It would be less machines in each string
10 and they would be within the same limits north and south
11 and east and west that have already been defined as
12 corridors.

13 Q. But we don't know what that would look like
14 right now.

15 A. The specific location of each dot within the
16 string has not been determined. That's correct.

17 Q. We don't know conceptually where they would
18 be either at this time.

19 A. Well, we know they would be defined by
20 studied corridors which is at east, west and north, south.
21 So it's within a pretty narrow band, Mr. Carmody, and also
22 the topography on this site makes it pretty limited where
23 you can put turbines. I mean you're not going to put
24 turbines off of the ridge top down in the draw. They're
25 always to be on top of the ridge and they're going to be

1 within north to south, the ones that have been studied and
2 defined.

3 Q. I understand within the string, but as we sit
4 here today we don't know conceptually what that plan would
5 look like.

6 A. I would say that based on my previous answer
7 that we do have a pretty good idea conceptually. We don't
8 have a specific location of every individual turbine along
9 those corridors as we did in the case of Wild Horse or to
10 my knowledge almost any other wind farm permitted in the
11 Northwest.

12 Q. In your materials you indicated that your
13 turbine strings remain the same irrespective of density;
14 is that correct?

15 A. Yes.

16 Q. So within any one of those I through J
17 turbine strings you could have a density change from
18 what's depicted on this diagram. Correct?

19 A. Yes, depending on the size of the turbine
20 that was ultimately used.

21 Q. And you could have a significant number of
22 additional turbines within any string based upon
23 technology or the size of the machine.

24 A. Sorry. Could you repeat your last question.

25 JUDGE TOREM: Mr. Carmody, I think you're

1 asking, at least acknowledging the upper limit of 65
2 conceptually if it could be done technically all 65 could
3 be put into one string.

4 MR. CARMODY: That would be the hypothetical
5 extreme, yes.

6 A. I think the answer to that is no. That
7 extreme, no, you couldn't put 65 turbines on a string.

8 BY MR. CARMODY:

9 Q. The point Judge Torem was making, the point
10 that I was asking you which is there can be density
11 increases within each turbine string depending upon the
12 size or the technology of turbines.

13 A. That's correct. Maybe it would be helpful to
14 understand the situation, but the general variant sort of
15 rule of thumb, and I'm not a meteorologist, but the sort
16 of rule of thumb for turbine spacing is somewhere between
17 1.5 and 3 rotor diameters cross-wind spacing. So that
18 would be a limiting factor on increasing density in any of
19 those. When I say cross-wind, that means north and south
20 on this site. So you would need at least 1-1/2 to 3.
21 1-1/2 is quite aggressive and not very typical these days.

22 Q. You talked about circumstances and factors
23 that are significant in siting of turbines or wind farms
24 more generally. You indicated that one factor was
25 residential impact and interplay; is that correct?

1 A. I would characterize this point--the way I
2 would characterize it is environmental constraints which
3 would include the issue of proximity of residents as well
4 as the traditional SEPA subjects like wildlife, habitat,
5 water, those kinds of things.

6 Q. So each of those factors are part of the
7 locational decision making that's undertaken with respect
8 to a wind farm; is that correct?

9 A. There's basically five things that you need
10 to build a wind farm. You need to have wind,
11 transmission, land agreements. You need to have permits
12 which can consume, includes all of these environmental
13 issues, including residences and a lot of other things and
14 a power purchaser.

15 Q. In Kittitas County you've testified that wind
16 is available in a variety of locations. Correct?

17 A. I can only testify and I believe I only
18 testified to the sites where I have direct knowledge of
19 the wind resource. The only places where I have knowledge
20 of the wind resource is the Kittitas Valley site and the
21 Wild Horse site.

22 Q. On the Wild Horse site you could
23 increase--well, let me start again.

24 What size machines do you have on the Wild
25 Horse Project?

1 A. Those are Vestas V-80, 1.8 megawatts. 80 is
2 the rotor diameter, 80 meters.

3 Q. So within that project at those locations you
4 could increase it to 3.0-megawatt turbines, if you chose
5 to.

6 A. Well, we're no longer the owner of that
7 project so that would be a decision for Puget Sound
8 Energy. As I understand their permit conditions, if they
9 were to change the dimensions of those turbines they would
10 have to seek permit approval.

11 Are you asking from a technical perspective
12 or a legal perspective? I'm not sure I understand your
13 question.

14 Q. Technical.

15 A. Technical. Okay. I'm sorry. From a
16 technical perspective, no, you couldn't simply--well,
17 assuming that three-megawatt machines had larger rotor
18 diameters as they do today, any three-megawatt machine
19 that's available now has bigger rotor diameters, you would
20 have to decrease the number of turbines at that site.

21 You have to get what's called a suitability
22 analysis from any turbine manufacturer. So even though we
23 have a contract to buy turbines from Vestas, before we can
24 stick those turbines in the ground we want our warranty to
25 be valid which is a critical issue for financing a wind

1 project. We have to get Vestas' approval for each and
2 every individual location down to, you know, the very
3 nano-detail within a couple of meters with the exact GPS
4 coordinates on every single location, and they have their
5 engineers double check our work to confirm that's
6 basically suitable for that turbine.

7 So, no, I think it's extremely unlikely you
8 could go and put 127 three-megawatt turbines at Wild
9 Horse.

10 Q. Does this same analysis apply to the Kittitas
11 Valley location then; that is, with larger machines that
12 you have to downsize and get the technical advice to
13 support that?

14 A. That's correct, yes.

15 Q. So this would be a more intensive use than a
16 three-megawatt facility most likely.

17 A. Assuming a larger rotor diameter you would
18 end up with I believe fewer turbines. That's correct.

19 Q. And you have an additional 1,400 acres of
20 land at Wild Horse for expansion; is that correct?

21 A. A purchase option for approximately 1,400
22 acres of the land as I detailed in my testimony to the
23 northwest corner. It's adjacent to the Wild Horse
24 existing project site. It's the same private landowner
25 that owned land in the primary site. We believe as I

1 indicated in my testimony that area could support
2 approximately 20 turbines of the same size that are at
3 Wild Horse today, the 1.8 megawatts. That's a very
4 preliminary estimate, but that's our best information as
5 of today.

6 Q. Do you have any other properties on which you
7 have options or purchase arrangements?

8 A. In the United States or in Kittitas County?

9 Q. Kittitas County.

10 A. No.

11 Q. How about the State of Washington?

12 A. Yes.

13 Q. Where are those?

14 A. It's confidential.

15 MR. PEEPLES: I'm going to object at this
16 time.

17 A. They're not publicly announced. They're not
18 in Kittitas County. I could tell you that.

19 JUDGE TOREM: Mr. Carmody, is it relevant
20 outside of Kittitas County?

21 MR. CARMODY: I think your task, the
22 Council's task is to evaluate resource energy needs on a
23 state-wide basis, not on a county-by-county basis. And if
24 there are adequate and alternative sites off or outside of
25 Kittitas County, I think that's an appropriate and

1 important consideration for the Council.

2 JUDGE TOREM: It may be on a policy level,
3 but I think for the issue before the Council as to this
4 witness's testimony as regard to preemption and as regard
5 to this application, the WAC under 463-28-040 only
6 specifies looking at other items within the county. So I
7 think Mr. Taylor has been candid with you in saying that,
8 yes, they do have this other option, land option in the
9 county and no other. Beyond that I'm not certain there's
10 any relevant questions other than for the perhaps policy
11 level interest. But nothing that can go to our
12 determination under the regulation. So I'm going to
13 essentially sustain the objection for a different reason,
14 but we're not going to go any further outside Kittitas
15 County.

16 MR. CARMODY: Okay.

17 BY MR. CARMODY:

18 Q. Within Kittitas County is the primary
19 constraint in your mind access to the power lines?

20 A. The primary constraint in developing other
21 areas for wind in Kittitas County?

22 Q. Yes.

23 A. I would say that's one constraint, but not
24 necessarily the primary constraint, no. I would say the
25 fact that there's no area in Kittitas County that is zoned

1 as acceptable for wind farms as permitted use is the
2 number one constraint. The lack of any clear standards of
3 where as the Applicant we can have chances of success
4 other than sort of reading the tea leaves of what the
5 commissioners have done on a couple sites. There's no
6 clear objective standards as there are in some other
7 locations. So I would say that the permitting, the
8 instability of the permitting regime is a very significant
9 constraint, and I don't have on-the-ground wind data from
10 other locations. So I can only speculate as to what the
11 wind resource is in other areas. We obviously picked the
12 areas that we thought were the most promising and that's
13 why we're proposing them.

14 Q. So is it your testimony that access to power
15 lines is not a serious constraint in the siting of a wind
16 farm in Kittitas County?

17 A. No, it's my position that it's a significant
18 constraint, but I was just elaborating that there are many
19 others. I think you were asking if that was the primary
20 constraint if I'm not mistaken.

21 Q. Isn't it the most significant factor in
22 selecting this site to you?

23 A. No, I wouldn't say it's the most significant.
24 As I mentioned, there are five things that one needs. In
25 the absence of any one of those five things--wind, land

1 control, transmission, permitting, customer--all five of
2 those are necessary. You can't make a project with two
3 out of five or a full house doesn't get you there. You
4 need to have all five. So the absence of any one of those
5 is a fatal flaw for any proposal of a power project.

6 Q. And it's your judgment that there aren't
7 fatal flaws in this project at least as to a couple of
8 those?

9 A. No, I wouldn't be sitting here today if that
10 was our judgment.

11 Q. I thought your testimony was that one of five
12 was interplay with residential and property development
13 and then your testimony was any one of them was a fatal.
14 I'm trying to reconcile your testimony.

15 A. Sure. I believe you proposed that and what I
16 said was in response that, no, when I counted up the five
17 things that I believe any other wind developer that you
18 put on the stand is going to tell you the same five
19 things. It's not Horizon's special view of the world.
20 It's a pretty common perception in our industry and how
21 everybody does business.

22 One of those things is permitting or lack of
23 environmental constraints and that's a broad subject. It
24 doesn't just include potential visual impacts and
25 neighbors. One of the things that this project does boast

1 is the approval and consent and lack of objection from the
2 Department of Fish and Wildlife. That's a very
3 significant factor, and the absence of those type of what
4 I would call traditional environmental constraints with
5 respect to habitat impacts, wildlife impacts, the fact
6 that the only real issue that this boils down to is
7 potential subjective visual issues. In the grand scheme
8 of permitting issues every project has something that's
9 difficult to get there on, whether it's transmission
10 permits or somewhere else. This is a particularly
11 challenging project to permit for the reason that you
12 articulated that has a lot of environmental pluses. Most
13 projects don't have the Sierra Club testify for them.

14 Q. Would you not agree this project is also
15 unique in the number of properties, nonparticipating
16 properties that are impacted by the project?

17 A. I would say that the size of the adjacent
18 parcels is smaller than most places, yes.

19 Q. Can you think of any other wind farm project
20 that has been sited in the State of Washington or anywhere
21 with this degree of residential conflict?

22 A. In the State of Washington I don't know. I
23 think most of--there's only a handful of projects that
24 have been sited. There have been visual-type objections
25 at other projects. This is a very at best pretty

1 subjective judgment. We have projects in the eastern
2 United States that where the land is similarly subdivided.
3 So I would say in the eastern United States you don't
4 typically find landowners that control whole sections of
5 640-acre parcels as you do in the west.

6 So our typical landowner in New York has a
7 20- or 40-acre parcel. We've assembled a 250-megawatt
8 project there without a lot of residential objections even
9 though they are smaller parcels and lots of adjacent
10 landowners. So I don't think it's particularly unique in
11 that sense.

12 Q. Nationally. But in the State of Washington
13 you're not aware of a single wind farm project that has
14 been sited in proximity to property divisions similar to
15 what we're facing here.

16 A. No, none of the four operating wind projects
17 in this state share that characteristic.

18 Q. Are you aware of any permitted projects that
19 share that characteristic?

20 A. To be quite frank I don't have the
21 level--I've never seen the surrounding property wind map
22 for every other wind farm that's been permitted in the
23 State of Washington. I know I can't provide you with an
24 example that is different from what you're saying, but I
25 can't say categorically I think that's an accurate

1 statement.

2 Q. How about wind farms sited in scenic
3 corridors? Are there any projects in the State of
4 Washington where it's sited on a scenic corridor?

5 A. How are you defining a scenic corridor?

6 Q. The scenic corridor designation for SR-97.

7 A. I don't know the answer to that question.

8 Q. Is that a factor to you?

9 A. No, because we contacted the State of
10 Washington. In fact, we contacted the woman who's
11 responsible for administering the scenic corridor program,
12 and she actually was really adamant that your client had
13 misconstrued that designation and argued that that was a
14 reason for denying this project. I believe her words was
15 that was a gross misrepresentation of what that
16 designation is and that it explicitly in the statutory
17 language says that those corridors are not to be used as
18 an impediment to the development.

19 She was concerned frankly that might lead to
20 the overturning of the scenic corridor designation in the
21 legislature because the legislature when they voted for it
22 was told that wasn't going to be used in that way. So,
23 no, I don't feel that's a valid criticism at all.

24 Q. So you don't think the existence of a scenic
25 corridor, those factors are relevant to this Council's

1 consideration of the project proposed.

2 A. Given the legislative intent of that scenic
3 corridor could--

4 Q. Yes or no.

5 A. The Washington Department of Transportation
6 Scenic Corridor Program, no, for the reason I just gave
7 you.

8 Q. And your view is the same that the local
9 jurisdiction's determinations with respect to impacts on
10 scenic corridors are likewise irrelevant; is that correct?

11 A. I didn't say that, no.

12 Q. Would you agree with that or not agree with
13 that?

14 A. I don't believe that Kittitas County has ever
15 taken a position about a scenic corridor issue related to
16 this project so I'm not sure what the question is.

17 Q. Doesn't the EIS indicate that there's
18 significant unavoidable adverse impacts to the visual
19 environment, including the scenic area?

20 A. I don't believe that is the case, no. If you
21 would like to point me to where that is in the DEIS, I
22 would be happy to respond to that.

23 Q. I'll let you look for it.

24 A. If your question to me is do we think that
25 the County's input matters, I would certainly say, yes. I

1 mean the reason that we spent years and millions of
2 dollars seeking the approval of Kittitas County is because
3 we genuinely wanted to have their approval and that's why
4 we went back and filed again. And quite frankly we
5 wouldn't have spent all this time and money and effort to
6 do this if we weren't sincere in our desire to get
7 approval, including downsizing the project, if we weren't.

8 Q. At the outset of the project didn't you make
9 a statement in the newspapers that you would abide and
10 respect that County process?

11 A. If you can point me to the specific--I mean
12 I've been interviewed by the press several hundreds times
13 since this project started so I don't recall saying that.
14 But if you can point that out, I would be happy to comment
15 on it.

16 Q. Do you recall ever making that statement?

17 A. I don't, no. I recall stating that we
18 intended to seek approval from the County which I think we
19 certainly have done twice. I believe that you may be
20 confusing me with another applicant, Mr. Carmody.

21 Q. I don't think so.

22 A. If you can find it, I would be happy to look
23 at it.

24 JUDGE TOREM: Mr. Carmody, how many more
25 questions?

1 MR. CARMODY: One or two more questions is
2 all.

3 BY MR. CARMODY:

4 Q. In your prefiled supplemental testimony you
5 indicated that you approached both the County and EFSEC on
6 this matter and it was agreed to suspend the EFSEC process
7 pending a new application with the County; is that
8 correct?

9 A. That's correct.

10 Q. And you initiated that dialogue or was it
11 initiated by someone else?

12 A. Are you talking with EFSEC or the County?

13 Q. With the County in particular.

14 A. We initiated the dialogue with the County and
15 then we jointly approached EFSEC with the County with a
16 request that it was supported by both parties.

17 Q. Didn't you also initiate that request in
18 conjunction with Puget Sound Energy?

19 A. At the time they were participating in the
20 Wild Horse Project, and I don't know that they had any
21 formal--they were certainly consulted about it. I don't
22 recall that they took any formal action on that.

23 Q. Wasn't it their requirement that you withdraw
24 this application in order for them to proceed with the
25 Wild Horse Project?

1 A. No.

2 Q. Were you aware of any conversations or
3 meetings between Puget Sound Energy and the ROKT group
4 with respect to the Wild Horse Project?

5 A. I believe that in the course of Puget Sound
6 Energy due diligence they contacted all of the parties
7 that were apprised to the case. I didn't participate in
8 those meetings so I don't have any first-hand knowledge of
9 them.

10 Q. Were you aware that Puget Sound Energy
11 indicated that they would, if ROKT would support the Wild
12 Horse Project, that they would withdraw and not
13 participate in the Kittitas Valley Project?

14 A. Well, I don't know what they would have had
15 to withdraw from because they weren't a party to the
16 Kittitas Valley case at that point in time; so I'm not
17 sure I understand your question.

18 Q. Did they not tell you that they would not be
19 a participant in a power purchase or purchase of the
20 Kittitas Valley Project if ROKT agreed to support the Wild
21 Horse Project?

22 A. I'm sorry. There's a lot thrown out there.
23 You're asking me did Puget Sound Energy tell Horizon or
24 to my knowledge was Horizon ever told by Puget Sound
25 Energy that if ROKT agreed to drop its intervention to

1 Wild Horse that Puget Sound Energy would never agree to
2 purchase electronic power from the Kittitas Valley
3 Project? No. The answer is no.

4 Q. You didn't have any conversations to that
5 effect with Puget Sound Energy?

6 A. The statement, the question you asked the
7 answer is no. There was lots of conversations when we
8 negotiated a power purchase agreement that took many, many
9 months and dozens of meetings.

10 Q. Your withdrawal of the EFSEC preemption
11 request was concurrent with the process of the Wild Horse
12 Project, wasn't it?

13 A. Yes, it was a decision. If what you're
14 asking is did we impute, did we consult Puget and did they
15 agree it was a good idea to suspend Kittitas Valley to
16 allow the Wild Horse Project to move forward
17 expeditiously, absolutely. The answer is yes. I think
18 that was a consensus from everyone involved.

19 MR. CARMODY: Those are all my questions.

20 JUDGE TOREM: Thank you. It's now about a
21 quarter to 12:00. Mr. goal is Mr. Taylor won't come back
22 after lunch, but I want to see now and I understand
23 various Councilmembers who are nodding their heads and the
24 rest of you are at various stages of discomfort since we
25 haven't taken a break since ten o'clock.

1 So we're going to sacrifice comfort for
2 efficiency here and see if I poll the Councilmembers on
3 cross-examination questions they have for Mr. Taylor who
4 shares in this discomfort and go around the table and see
5 what we have and then ask if there is any need for very,
6 very limited redirect. I personally don't see a need for
7 it at this point, but, Mr. Peeples, it's your client. You
8 may disagree. We'll poll the Councilmembers in order and
9 then get back to Mr. Peeples and see how quickly we can do
10 this.

11 Councilmember Johnson, any questions for
12 Mr. Taylor?

13 MS. JOHNSON: None.

14 JUDGE TOREM: Councilmember Fryhling?

15 MR. FRYHLING: Not at this time.

16 JUDGE TOREM: Mr. Sweeney none.

17 CHAIR LUCE: No.

18 JUDGE TOREM: Chair Luce none.

19 Councilmember Towne?

20 MS. TOWNE: No.

21 JUDGE TOREM: Councilmember Adelsman?

22 MS. ADELSMAN: Okay. None.

23 JUDGE TOREM: Councilmember Wilson will be
24 back and we will defer. At this point are there any other
25 redirect questions?

1 MR. PEEPLES: We're done.

2 JUDGE TOREM: We're going to hold in place
3 for a moment until Councilmember Wilson comes back. Let
4 me just poll quickly the other parties and see if you have
5 any recross that they want to propose.

6 Mr. Hurson, given the rest of the
7 cross-examination you heard were there any other questions
8 you still needed to ask before 12:00? Mr. Hurson?

9 MR. HURSON: I'm trying to consult here.

10 No.

11 JUDGE TOREM: Mr. Slothower?

12 MR. SLOTHOWER: I have two.

13 JUDGE TOREM: Two. Why don't you come up
14 now.

15 Mr. Tribble, do you have anything that came
16 up?

17 MR. TRIBBLE: No.

18 JUDGE TOREM: Mr. Slothower, I'm going to
19 have you pose your additional questions now and then I'll
20 give Councilmember Wilson the last word if she has any
21 cross from there.

22 MR. SLOTHOWER: Thank you. I see she's
23 coming back if would rather I wait.

24 JUDGE TOREM: You go right ahead, sir.

25 ///

1 CONTINUED CROSS-EXAMINATION

2 BY MR. SLOTHOWER:

3 Q. Mr. Taylor, there was a development agreement
4 that was proposed as part of your permitting process with
5 the County; is that correct?

6 A. Yes, for both KV and Wild Horse.

7 Q. Is that development agreement that you
8 proposed something that you're willing to abide by with
9 EFSEC if you were to permit the project?

10 A. I haven't read it in great detail. I would
11 suspect that in most material aspects, yes. But without
12 looking at it again, I'm a little reluctant to give you an
13 answer on that. But it was a proposal that we made to the
14 County so I presume at most if not all of it that we would
15 want to abide, yes.

16 Q. One follow-up question on setbacks. I
17 understand you're proposing a 1,350 foot setback.

18 A. 1,320.

19 Q. 1,320, excuse me. The objection to 2,500
20 feet that Kittitas appeared to be proposing was based upon
21 economics. Is that a fair representation of your
22 testimony?

23 A. Well, we felt that rendered the project
24 unviable, yes.

25 Q. In response to questions this morning I

1 understood that in your opinion the visual impacts are
2 significantly reduced if you go from 1,350 feet to one
3 mile. How then is a 2,500-foot setback to deal with the
4 visual impacts unreasonable?

5 A. Because I think that EFSEC and the County's
6 job is to balance the cost and the benefits of any
7 proposal, and I'm not aware of any type of energy
8 generating technology that exists in the world today that
9 has no detrimental impacts. And we've been very up front
10 since day one that wind turbines their main impact is that
11 improperly sited you can have wildlife impacts. We've
12 addressed that here, and the other issue is that you have
13 to look at them. They are visible. You can't hide them,
14 and I think in general the overall weighing of pros and
15 cons that the subjective visual impacts to a relatively
16 small number of people are vastly outweighed by the
17 benefits the project brings to the city, to the county, to
18 the region.

19 Q. Even when there are other sites within
20 Kittitas County where you could build the project?

21 A. Well, there are not sites in Kittitas County
22 that are approved for wind farms.

23 Q. That wasn't my question. You've got an
24 option on more property at Wild horse so there are other
25 sites where you could eliminate that conflict; is that

1 correct?

2 A. That site represents approximately 20
3 turbines of about 40 megawatts so that's no way a
4 substitute for this project.

5 Q. For your company.

6 A. Or for the region's need for power.

7 Q. Well, there are other wind power producers.

8 A. Or the County's need for tax revenue or those
9 landowners who desire to receive the revenue they would
10 suffer greatly under that proposal.

11 Q. But there are other wind power producers,
12 wind power companies looking at sites in the valley.

13 A. Yes.

14 MR. SLOTHOWER: Thank you.

15 JUDGE TOREM: Thank you, Mr. Slothower.

16 Councilmembers, did that raise any
17 additional questions?

18 MS. WILSON: I had one question. I'm sorry.

19 JUDGE TOREM: That's okay.

20 MS. WILSON: Early this morning you
21 commented on the evolving technology in building the
22 towers, and I just wanted to confirm that the 410-foot
23 tower is the tallest in this application regardless of
24 what is developed in the industry.

25 THE WITNESS: Yes, that's correct.

1 MS. WILSON: Thank you.

2 JUDGE TOREM: Councilmembers, any other
3 questions?

4 Mr. Peeples, any follow up that you have of
5 this witness?

6 MR. PEEPLES: No.

7 JUDGE TOREM: All right. Any other
8 questions for Mr. Taylor?

9 Seeing none, thank you, Mr. Taylor, for your
10 testimony this morning. It's now about 8 or 9 minutes to
11 noon. What I think we need to do is make sure when we
12 come back as to what time Mr. Tebb will be available by
13 telephone.

14 Mr. Tribble, do you have any input on that?

15 MR. TRIBBLE: Mr. Tebb has indicated that he
16 will be available for a large part of the afternoon, and I
17 know that there were two other witnesses scheduled to
18 testify before him and their testimony is greatly related
19 to Mr. Taylor's. I think that's why they were blocked
20 that way. I can confer with Mr. Tebb and make sure he's
21 going to be available later on if the Council still wants
22 to have the order as for his, but I also would like to
23 raise the issue that there is no scheduled
24 cross-examination by any of the parties for Mr. Tebb.

25 JUDGE TOREM: What I think the right thing

1 to do, Mr. Tribble, is just ask our staff given the
2 logistics if it's easier for them to set up the phone over
3 the lunch hour than it is to set up the phone in the
4 hearing, allow Mr. Tebb to get on the telephone at one
5 o'clock. If there are questions we move on and then get
6 back to not having a telephone as a distraction.

7 Mr. Fiksdal, Ms. Makarow.

8 MR. FIKSDAL: That would be good over lunch
9 if we could test the phone. We know we can get a dial
10 tone, but I'm assuming that we were suppose to dial out on
11 that phone. I don't know. We haven't tested it for the
12 long distance aspect of whether we can or not.

13 JUDGE TOREM: Mr. Tribble, we'll try to take
14 Mr. Tebb at one o'clock, get him so he's not left hanging.
15 I understand Mr. Young and Mr. Peck are here, so maybe it
16 would be easier to have that quick portion of testimony
17 done and move on to the other two and then see where we
18 are with Mr. Priestley's testimony as the afternoon moves
19 on.

20 So when we come back, we'll come back at one
21 o'clock. Please be in your seats ready to go. We'll
22 hopefully have a dial tone and we'll have Mr. Tebb ready
23 to go. We'll come back at that point at one o'clock. See
24 you in one hour and five minutes.

25 (Lunch recess taken from 11:55 a.m. to 1:00

1 p.m.)

2 JUDGE TOREM: All right. It's about three
3 minutes after one o'clock. We are back on record. I
4 understand we have Mr. Tom Tebb on the line.

5 Mr. Tebb, can you hear me?

6 MR. TEBB: Yes, I can. It's a little
7 difficult. I'll try my best.

8 JUDGE TOREM: All right. I note that
9 Counsel for the Environment, Mike Tribble, is seated at
10 the table best suited to ask you questions so I will swear
11 you in, have you go through the proceeding of adopting the
12 testimony, and then I'll see if there are any
13 cross-examination questions. I know we are over the phone
14 and I'm going to have many more of these on Wednesday. If
15 you'll raise your right hand.

16 (G. Thomas Tebb sworn on oath.)

17 JUDGE TOREM: Mr. Tribble, go ahead.

18 G. THOMAS TEBB,
19 being first duly sworn on oath,
20 testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. TRIBBLE:

24 Q. Mr. Tebb, can you state your full name and
25 spell your last name for the record.

1 move for admission of those exhibits?

2 MR. TRIBBLE: Yes, so moved.

3 JUDGE TOREM: All those in favor?

4 COUNCILMEMBERS: Aye.

5 Opposed?

6 Hearing none, Exhibit 90 and its supporting
7 exhibits are admitted to the record.

8 (Exhibit Nos. 90 and 90.1 admitted into
9 evidence.)

10 JUDGE TOREM: According to my schedule for
11 this there are potentially no scheduled cross-examination
12 from the parties. Has that changed whatsoever?

13 Seeing none, Councilmembers, I know we had at
14 least one question. Councilmember Adelsman.

15 MS. ADELSMAN: Yes. This is Hedia Adelsman,
16 Mr. Tebb. I have a question for you. In your testimony
17 2004 you were asked the question relating to cementing the
18 trenches and you were asked whether you had any concern
19 about miles of cement trench that would be added to the
20 lands, and I'm reading the question on line 23, page 3.

21 And your answer to that which is starting on
22 line 1, page 4, it says that the proposed use of cement
23 would be in the underground electrical trenches for the
24 project is of limited scope. Then you go on to line 4 to
25 say it may be prudent to leave some amount of space (six

1 inches minimum) for natural fill material to be placed
2 over the cement such that after the project is
3 decommissioned the electrical trench excavation would
4 better blend with surrounding landscape.

5 The question I have is in Mr. Young's
6 testimony, which we are going to be hearing quite soon he
7 on Exhibit 22 the supplement on page 2 in line 20 talks
8 about the changes, some changes in the scope beginning
9 with the width and also the distance between the trenches
10 talking about it would have to be approximately three feet
11 wide and then due to the anticipated low thermal
12 resistivity levels of the soils in areas where multiple
13 circuit trenches of the collector system converge each of
14 the trenches will have to be approximately seven feet.

15 The question that I have is would your
16 testimony change or remain the same now that you know
17 about some of these changes in the scope both in the width
18 and the distance apart for the trenches?

19 THE WITNESS: No, my testimony would not
20 change. The clarification that I made was just more of an
21 advice in the context of leaving some space between the
22 top of the trench and the ground surface such that where
23 it was prudent natural fill materials could be used to
24 again better blend with the surrounding landscape. It was
25 more of a cosmetic issue more than anything else.

1 MS. ADELSMAN: I have a follow-up question
2 to that. Do you know why you would want to cement the
3 underground electrical trenches in this case and not maybe
4 do it in, you know, other material besides cement?

5 THE WITNESS: My understanding is that areas
6 where there's high erosion or high activity associated
7 with either stream crossings or some other kinds of very
8 high activity areas it is prudent to embed electrical
9 conduit cable in a hardened material, in this case cement,
10 to protect those conduit as well as the general public
11 and/or wildlife

12 MS. ADELSMAN: Okay.

13 JUDGE TOREM: Councilmembers, any other
14 questions for Mr. Tebb?

15 Mr. Tribble, did that raise any follow up
16 that you need to do with Mr. Tebb at this time?

17 MR. TRIBBLE: It did not.

18 JUDGE TOREM: Let me ask the other parties
19 then.

20 MR. PEEPLES: No questions.

21 JUDGE TOREM: Any others questions?

22 MR. CARMODY: No questions.

23 MR. SLOTHOWER: No questions.

24 JUDGE TOREM: With that limited amount of
25 cross-examination I think we're ready to, Mr. Tebb, thank

1 you for your time and move on to our next witness.

2 THE WITNESS: Thank you.

3 JUDGE TOREM: Thank you, sir.

4 Our next witness is Andrew Young and the
5 scheduled cross-examiners are Counsel for the Environment,
6 Residents Opposed to Kittitas Turbines, and Kittitas
7 County.

8 Mr. Hurson, do you want to start us off
9 again or you want to defer to one of the other attorneys?

10 MR. HURSON: However you would like to
11 proceed is fine. I have very few questions.

12 JUDGE TOREM: All right. Mr. Carmody, how
13 about I give you first crack at this next witness and then
14 have Mr. Hurson have the follow up and then Counsel for
15 the Environment.

16 While you're coming up to the podium we'll
17 ask folks to get Exhibit 22 in front of them and most of
18 those are the relevant distribution documents.

19 Mr. Young, if you will raise your right
20 hand, I'll swear you in and have Mr. Peeples ask you the
21 preliminary questions.

22 (Andrew Young sworn on oath.)

23 JUDGE TOREM: Mr. Peeples.

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ANDREW YOUNG,

being first duly sworn on oath,

Testified as follows:

DIRECT EXAMINATION

BY MR. PEEPLES:

Q. Mr. Young, you have with you I believe which is marked as the Exhibit No. 22 and Exhibit No. 22-SUP; is that correct?

A. Yes, I do.

Q. And attached to these are some various exhibits; is that correct?

A. Yes.

Q. And your testimony especially to your original direct refers to certain portions of the application; is that correct?

A. That's correct.

(Exhibit Nos. 22.0, 22.1, 22.2 and 22-SUP identified for the record.)

MR. PEEPLES: I move for the entry of that testimony and the later exhibits to that testimony.

JUDGE TOREM: Council, there's a motion to admit 22 and 22-SUP.

CHAIR LUCE: So moved.

MS. ADELSMAN: Second.

1 JUDGE TOREM: All those in favor?

2 COUNCILMEMBERS. Aye.

3 JUDGE TOREM: Any opposed?

4 All right. Mr. Young's testimony and all
5 his supporting exhibits are now in the record.

6 Ready for cross-examination, Mr. Carmody?

7 (Exhibit Nos. 22.0, 22.1, 22.2 and 22-SUP
8 admitted into the record.)

9 MR. CARMODY: Thank you, Mr. Torem.

10 CROSS-EXAMINATION

11 BY MR. CARMODY:

12 Q. Good afternoon, Mr. Young. Can you describe
13 specifically what your areas of responsibility were with
14 respect to the Kittitas Valley Project, and then in order
15 to facilitate it, are those responsibilities different
16 than your role with respect to the Wild Horse Project?

17 A. Yes. My role with the Kittitas Valley
18 Project and actually during the Wild Horse Project were
19 somewhat different. During the process with the Kittitas
20 Project I was development director for the Northwest
21 Region for Zilkha Renewable Energy. When we went through
22 the permitting process and we were developing the Wild
23 Horse Project, I was more involved in the County
24 permitting process than on the Kittitas Valley Wind Power
25 Project.

1 Q. Was your counterpart with respect to the
2 Kittitas Valley Project Mr. Taylor?

3 A. Yes, he was the project manager at the time
4 of the Kittitas Valley Wind Power Project and also for the
5 Wild Horse Wind Power Project.

6 Q. Have you been project manager for any other
7 wind power projects in the Pacific Northwest?

8 A. I guess way back, yes. I was a project
9 engineer for Vestas on the State Line Wind Power Project.
10 Actually not on the State Line. Excuse me, the Vancycle
11 Ridge Wind Power Project and numerous other wind power
12 projects around the U.S. I've been project manager,
13 construction manager, and development manager for various
14 projects.

15 Q. Are those three categories separate
16 responsibilities for a wind project? That is project
17 manager, construction manager, and I can't remember what
18 the third one was are they separate roles?

19 A. They can be. It depends on the company
20 organizational chart and there's many overlapping
21 responsibilities.

22 Q. In your company organization chart were there
23 differences between those three roles?

24 A. Yes, there are differences.

25 Q. Have you been the construction manager for

1 the Wild Horse Project?

2 A. No, I was not.

3 Q. In your supplemental prefiled testimony you
4 had made comments regarding trenching problems which the
5 Council just referred to. Can you describe those
6 particular issues that presented themselves in Wild Horse.

7 A. Yes, certainly. On the Wild Horse Project
8 the trenching configuration had to be somewhat wider
9 because of the unanticipated low soil resistivities that
10 were experienced on site during that. So in order to
11 comply with prudent electrical code the trenches need to
12 be standard somewhat further apart than originally
13 anticipated. However, the impacts known to the surface,
14 you know, temporary impacts is basically you're digging up
15 and then you're reburying something and the temporary
16 impacts are still within the scope contemplated and
17 anticipated and analyzed in the EIS work.

18 Q. Are those concerns equally palpable to the
19 Kittitas Valley Project?

20 A. Yes.

21 Q. What is it that you would have to look at or
22 evaluate further in order to ascertain the nature and
23 extent of changes in trenching that would be associated
24 with this Kittitas Valley Project?

25 A. Probably wouldn't have to study much more.

1 In fact, I don't think you have to study anything more.
2 It's still within the scope of the EIS where we anticipate
3 putting in cables. It's just that the exact detail design
4 configuration is, you know, slightly different but still
5 within the scope and range of the EIS.

6 Q. What project design did you anticipate for
7 the Kittitas Valley Project?

8 A. For the electrical trenching?

9 Q. Electrical trenching and how does that relate
10 to the turbine placement?

11 A. Electrical trenching does not affect the
12 turbine placement. We don't move turbines around based on
13 electrical trenches. I hope that answers the question.

14 Q. Is a trenching feature the same whether you
15 have 80 turbines or 65 turbines? Does the number of
16 turbines affect the trenching analysis?

17 A. No, the number the turbines does not affect
18 that. The trench design is largely based on the types of
19 conductor, the size of conductor, the number of amps going
20 through the conductor, and soil conditions at the site.

21 Q. Were you here when Councilmembers asked
22 Mr. Tebb questions about concrete encasement for
23 trenching?

24 A. Yes, I heard that.

25 Q. Is that consistent with your understanding of

1 the purpose for concrete encasement?

2 A. There's one other exception that he pointed
3 that in cases where you have sort of high erosion or high
4 water flow through potential or stream beds that you can
5 potentially use that to keep the cables covered and safe.
6 And I guess I would point out that if you're in high
7 erosion or steep slopes, you might also do that not just
8 for stream beds where it's very prone to erosion basically
9 for the same reasons, to keep the cables covered and safe.

10 Q. Do you have high erosion areas within the
11 Kittitas Valley Project?

12 A. No.

13 Q. Do you have any water crossings within the
14 this project?

15 A. Yes. We had to go through a special
16 Department of Ecology process and filed a JARPA, what's
17 called a JARPA permit application for that. There are not
18 full year around springs or streams or rivers. We're not
19 doing any kind of crossings like that but rather ephemeral
20 streams that basically come from spring runoff and snow
21 melt.

22 Q. Did you complete the JARPA process?

23 A. Yes.

24 Q. You in your testimony or prefiled testimony
25 also spoke about the functioning of a wind farm and its

1 relationship to electric transmission. Can you describe
2 for the Council, for us how electricity is generated and
3 how it feeds into a system.

4 A. Electricity is generated through the--well, I
5 guess it starts from kinetic energy and the wind that's
6 captured by the blades turned into rotational energy, a
7 generator makes electricity. Then it goes through the
8 collection system and stepped up in voltage typically at a
9 substation and then fed into the local grid.

10 Q. What happens when the turbines stop spinning?
11 If you have a quiet day or a calm day, what happens to
12 electrical generation with respect to the system from the
13 project site?

14 A. What happens to the system? Which system are
15 we talking about, Mr. Carmody?

16 Q. The overall grid system.

17 A. Overall grid system. If the wind power
18 project is not generating electricity, it achieves
19 equilibrium, in other words, the power generation from the
20 other sources are feeding load. So, you know, if it's
21 not, the wind plant isn't there, then the wind generation
22 has to come from other sources to keep the system in
23 balance.

24 Q. What other sources will provide that power as
25 it relates to the Kittitas Valley Project?

1 A. Hydro power probably predominantly and, you
2 know, there's other sources where the Northwest gets
3 energy. Some gas power from California, coal power from a
4 coal strip in Montana basically transmitted all across to
5 keep the lights on.

6 Q. Are you familiar with a concept of spinning
7 reserve?

8 A. Yes.

9 Q. What is that term?

10 A. Spinning reserve is typically used for
11 control area reliability. It keeps a certain amount of
12 generation on tap, if you will, so that if there's an
13 outage condition or a failure of some power lines, that
14 spinning reserve needs to be available to utilities so
15 that they can bring that power on line in the event of an
16 outage of a transmission line or one of their other
17 generating units.

18 Q. Is that spinning reserve available for this
19 project at this time?

20 A. That is something that we don't go out and
21 contract for. Spinning reserve it's typically a utility
22 thing or control area or responsibility. One might pay
23 for spinning reserve, but spinning reserve is typically
24 not used for wind power projects.

25 Q. Will Horizon be the project operator for this

1 wind farm?

2 A. That's anticipated.

3 Q. And to whom will the electric supply be sold?

4 A. That's not been yet determined who that would
5 be sold to.

6 Q. Your testimony is as it relates to spinning
7 reserve that the utility provider is the one responsible
8 for finding the alternative or supplemental electricity to
9 maintain the grid system; is that correct?

10 A. They have to do that in any case. So
11 sometimes they put it on. You know, it's typically done
12 by the utility, yes, or a utility or maybe one of their
13 other clients that provided such services.

14 Q. Do you have any current contracts for a
15 purchaser of this power?

16 A. I presume you're talking about power from
17 this project?

18 Q. Yes.

19 A. No, we do not have any purchasers; however, I
20 do believe that we were short listed and have been in
21 multiple discussions with various parties.

22 Q. Who have you been short listed with?

23 A. I think it was publicly announced that we
24 were short listed by Puget Sound Energy.

25 Q. On this project?

1 A. Yes, I believe so.

2 Q. Any others?

3 A. Not at this time.

4 Q. What percentage of the time do you believe
5 that this project would be producing energy?

6 A. The project based on looking at the wind
7 analyses for the area and the operational characteristics
8 of the machine, the turbines would be producing energy
9 somewhere between 70 and 80 percent of the time on an
10 annual basis or I think it's on an overall basis.

11 Q. Have you done a study on that?

12 A. Yes, we have.

13 Q. Is that study contained in the record?

14 A. I believe it's mentioned in some of the
15 proceedings. I'm not sure if it was in the application or
16 where that might be.

17 Q. Do you know what the nationwide average is
18 for production percentage on wind farms?

19 A. I do not, no.

20 Q. Would you disagree with me that the national
21 average is about 30 percent of the time a farm is
22 operating over its electricity?

23 A. Yes, I would disagree.

24 Q. On what do you base that disagreement?

25 A. The turbines actually generate power, you

1 know, depending where you are located. The 30 percent I
2 think maybe that you're referring to is what's called the
3 capacity factor, and capacity factor is defined as the
4 total maximum amount of energy a generating plant could
5 generate potentially over the span of an entire year
6 divided by the--or excuse me--the total amount of energy
7 that the generating plant indeed generates over the course
8 of a year divided by maximum amount you could generate
9 based on its nameplate capacity.

10 For instance, the Grand Coulee Dam is
11 probably a great example. You know, several thousand
12 megawatts of installed capacity when it has a capacity
13 factor of both 32 to 34 percent depending on the year and
14 the overall Columbia hydro system, depending on the dam,
15 is somewhere in the high 40s. So on a wind power project
16 capacity factors by the same definition are in the 30 to
17 35 percent range depending on the type of turbine used for
18 the project.

19 And your question was, just for
20 clarification, was what percentage of the time would it be
21 generating. It could be generating at a lower level. For
22 example, so many times it's operating; so, you know, based
23 for this project the wind data demonstrates and
24 illustrates it would be operating 70 to 85 percent of the
25 time similarly on Wild Horse.

1 Q. That 70 to 80 percent of the time is that
2 some capacity?

3 A. It's generating correct and that was your
4 question.

5 Q. The nationwide average for capacity factors
6 is 30 to 35 percent.

7 A. I don't know what the nationwide capacity
8 factor is, and I don't understand its pertinence here at
9 all frankly.

10 Q. I thought you just testified and told us
11 about it.

12 A. A national average I don't understand.

13 Q. Is there any reason to think that the
14 national average is different than what you would expect
15 here?

16 A. I think it's perhaps slightly higher in this
17 project depending on the equipment used, yes.

18 MR. CARMODY: I have no other questions.

19 JUDGE TOREM: Thank you, Mr. Carmody.

20 Mr. Hurson, I'll have you come up next.

21 CROSS-EXAMINATION

22 BY MR. HURSON:

23 Q. Good afternoon. Probably just going to be a
24 few questions here. One thing as far as the short list
25 thing you seem a little uncertain. Would Mr. Taylor be in

1 a better position to know if you're no longer on the PSE
2 short list?

3 A. Yes, he would be able to articulate more
4 accurately than I.

5 Q. If his prefiled testimony indicated that
6 you're no longer on the short list, you wouldn't have any
7 reason to disagree with that.

8 A. I wouldn't have any reason to disagree.

9 MR. HURSON: And for reference for the
10 record that's page 14 Mr. Taylor's rebuttal testimony.

11 JUDGE TOREM: On the supplemental?

12 MR. HURSON: Yes, the supplemental.

13 BY MR. HURSON:

14 Q. The other thing, just trying to figure out
15 the relationship because your role in this, in the KV
16 project is substantially different than that of the Wild
17 Horse Project as far as particularly dealing with the
18 staff. Like in the KV project you weren't really the
19 face-to-face lead man with County staff. Correct?

20 A. That's correct.

21 Q. If I'm understanding basically the role is
22 that essentially Mr. Peck had the role in the KV project
23 that you had in the Wild Horse Project.

24 A. I would say initially it kind of changed but
25 initially I think Chris was the primary point of contact

1 person at Zilkha or Horizon Wind Energy for both Wild
2 Horse and Kittitas. And then, you know, as we put all
3 hands on deck as it were for Wild Horse, I think we all
4 assumed slightly different roles to push that project
5 forward. Today Dana Peck is the project manager for the
6 Kittitas Valley Wind Power Project and the primary contact
7 for the County on that project, yes.

8 Q. So Dana Peck was the point of contact for the
9 County when we're working through the process, and the
10 Wild Horse you were the point of contact with the County
11 staff as we were working through the Wild Horse Project.

12 A. Yes.

13 Q. You had was it Jennifer Diaz was also a staff
14 person?

15 A. On our side, yes. Jennifer Diaz was working
16 there at that time, yes.

17 Q. So basically Jennifer Diaz was replaced by
18 Joy Potter on the KV project.

19 A. Yes.

20 Q. Now, were you able to successfully make it
21 through the county process in the Wild Horse Project?

22 A. Yes, the outcome was successful.

23 Q. Were you able to achieve that without having
24 private, closed-door meetings with the Commissioners?

25 A. Yes, we never had any private, closed-door

1 meetings with the Board of County Commissioners.

2 Q. Nor was it your expectation you would be
3 having private, closed-door meetings with the
4 Commissioners or officials.

5 A. I don't believe it is our--I think it was our
6 expectation to be able to negotiate an agreement if it
7 required in the County's guidelines or allowances or its
8 interpretation of those guidelines to allow us to meet and
9 negotiate the set terms of let's say the development
10 agreement; for example, we would have, you know, obviously
11 taken the opportunity to meet with them and discuss those
12 terms. But, no, I don't think--you know, we were
13 following your process.

14 Q. You think you were--

15 A. Yes.

16 Q. --following the process.

17 A. Yes.

18 Q. During the process through testimony the
19 Commissioners gave basically County staff and Horizon
20 staff directions on the types of things they wanted to do
21 in the development agreement and then we were able to work
22 that language out.

23 A. Yes, we met multiple times with both yourself
24 and Mr. Piercy on working through the development
25 agreement. In fact, I went through the said testimony and

1 when we stood before the Board of County Commissioners a
2 number of times, you know, we talked about how we worked
3 together to develop the latest draft of the development
4 agreement and present that before the County
5 Commissioners, for example.

6 Q. And those drafts were worked on after the
7 Commissioners directed us to work on those.

8 A. Yes, and oftentimes with support of County
9 staff.

10 Q. In fact, after the process was done you
11 worked on with the County in Wild Horse, you probably
12 thanked the County staff and the Board for a job well done
13 and good people to work with and great to know in essence.

14 A. Yes, I think that we were excited about the
15 outcome of getting the permits. The process was tough
16 and, you know, I guess in many respects it's not perfect
17 and some areas are duplicative, etc., and we had many
18 discussions on that before the outcome was a success.

19 MR. HURSON: Thank you. Nothing else.

20 JUDGE TOREM: Mr. Tribble, any questions?

21 CROSS-EXAMINATION

22 BY MR. TRIBBLE:

23 Q. I'm going to refer to your testimony
24 specifically beginning with Exhibit 22, page 11.

25 A. Can you tell me if it's the supplemental or

1 the--

2 Q. No, it's the prefiled direct.

3 A. Which page? Sorry.

4 Q. Page 11. You were asked questions about air
5 emissions and dust control that will occur during
6 construction of the project, if the construction occurs.
7 And partially in your answer you said the only emissions
8 are those from the construction vehicles and equipment and
9 the operations vehicles.

10 Later down you discussed during road
11 construction roads are wetted to achieve the required soil
12 compaction. This also acts as dust suppression.
13 Additionally a dust control program of wetting roads and
14 potential problems areas will be implemented to keep dust
15 levels down so as to avoid creating a nuisance. I have a
16 number of questions relating to this particular area.

17 First, can you describe for the record for
18 the Council what are the products that you would be using
19 to wet down the roads.

20 A. I'm not sure what the products there that are
21 used. I think that the product is typically one that's
22 approved by the County that's in common use in the County
23 and that would be a substance that might be mixed in with
24 the water to allow dust suppression actually to last
25 longer as opposed to straight water on the roads.

1 Q. So you then would not be qualified to talk
2 about any environmental impacts that that product would
3 have on the environment.

4 A. No, I'm not a qualified chemical engineer or
5 chemical biologist.

6 Q. When you discussed to avoid creating a
7 nuisance at the end, implemented to keep dust levels down
8 so as to avoid creating a nuisance, what is the nuisance
9 that you're speaking of?

10 A. I guess a nuisance would be actually to
11 workers that are working on the project site digging holes
12 for the foundations, excavator equipment, people doing
13 work, lots of trucks going by them and then blowing dust
14 in their faces is an example of a nuisance and the road's
15 visibility. Those would be some of the more common direct
16 impact nuisances that one would try to keep down if
17 there's heavy traffic on specific legs of the roads.

18 Q. I'm going to skip forward to a question and
19 answer that begins on page 13, discussion of hazardous
20 materials.

21 JUDGE TOREM: Is this page 13 of the
22 supplement?

23 MR. TRIBBLE: No, this is still the direct
24 testimony. None of my questions I don't think are going
25 to relate to supplemental.

1 BY MR. TRIBBLE:

2 Q. As your answer proceeds onto page 14
3 regarding the issue of hazardous materials, you discuss
4 installing a special oil containment system around the
5 substation transformers, and all the wind turbines are
6 equipped with a retention system to contain potential
7 spills inside the turbines. Can you discuss in more
8 detail or describe for the record what this special oil
9 containment system is.

10 A. Yes. On a substation--we'll start with
11 substation and then I can talk about the turbine after
12 that. The substation there's a number of different
13 designs that are acceptable by good utility practice and
14 accepted depending on the area and the conditions. Here
15 we have a very dry area, rocky type soils, and in the
16 Midwest, for example, you have different soil conditions
17 and different concerns. But typically an oil retention
18 system would involve a liner sort of like a heavy
19 polyurethane or a heavy rubber-type fabric combined with a
20 trench that goes around the transformer. The transformer
21 is also equipped with a shutoff switch if the level gets
22 down. Like if there's a leak in the tank, for example,
23 the equipment would shut down. If the oil level goes
24 below a several certain level preventing power from going
25 through the system, the oil retention system would also

1 have a sump in there to prevent, you know, water getting
2 mixed in with the oil as well and try to keep what's below
3 the transformer as dry as possible. And there's also a
4 sensor on the sump to keep the oil from going through and
5 getting pulled out through the discharge.

6 Q. To the best of your knowledge is this, and
7 this question is based on the fact this testimony was
8 filed some time ago, is this the current up-to-date
9 industry standard?

10 A. Like I said, it depends on the site location.
11 Like there's three or four accepted designs in compliance
12 with the sort of good utility practice pass, you know,
13 what's to prevent oil from leaking out of a transformer.
14 In terms of the containment system there's a few different
15 designs that are certainly all acceptable.

16 The second question was about the turbine
17 containment system, and normally there's enough spill pan,
18 if you will, underneath the gear box in case there's ever
19 a leak in the gear box in the turbine.

20 Q. My next set of questions relate to the same
21 exhibit, page 19. You were asked the question: Please
22 summarize and briefly describe the measures to mitigate
23 the risk of potential ice throws from wind turbines.

24 In part your answer you begin, "In order to
25 mitigate potential risk of having ice thrown from a wind

1 turbine, we will maintain a setback from all public,
2 roadways of at least 100 meters or a tip height whichever
3 is greatest. The setback of 100 meters is based on a
4 study performed by a leading wind engineering firm, Garrad
5 Hasson, that was included as part of the clarification
6 documentation provided to EFSEC on June 25, 2003 and
7 represents the furthest distance of a known ice throw by a
8 wind turbine."

9 Since June 25, 2003 have there been any
10 documented ice throws beyond 100 meters to your knowledge?

11 A. Not to my knowledge.

12 Q. Is the setback distance from public roads
13 still to be 100 meters?

14 A. I think that, and I'm not sure, if you allow
15 my colleagues to elaborate on that. But I think what we
16 agreed to was 541 feet, which is more than a tip height,
17 which the maximum was 410 feet. So it's a little bit more
18 than--it's quite a bit more actually, more than a tip
19 height away that we've agreed to keep the turbines away.

20 Q. You mentioned in your testimony that this was
21 the setback from public roads. What about from private
22 roadways? Are there any private roadways that would cross
23 closer than the agreed distance?

24 A. I'm not sure on the layout setbacks from the
25 private roads. I would have to defer to my colleagues and

1 what the setback is on any private roads. I do know that
2 typically we sign with the landowner if they have a road
3 that goes closer to a turbine; then they've signed off on
4 that turbine on their property. And, you know, if they
5 need their road relocated for safety purposes, then if
6 they have made that request, we can do that.

7 Q. When you just now mentioned signed landowners
8 who are you talking about?

9 A. Landowners that are participants to the
10 project.

11 Q. What about adjacent or nearby landowners
12 whose access roads might go through or close to some of
13 these?

14 A. Again, I'd have to defer to my colleagues and
15 ask them what the setback is from private roads.

16 MR. TRIBBLE: Thank you.

17 JUDGE TOREM: Any other cross-examination
18 from the parties?

19 Let me poll the Councilmembers again.

20 I'll start with Councilmember Wilson at this
21 time. Any questions?

22 MS. WILSON: No.

23 JUDGE TOREM: Councilmember Adelsman?

24 MS. ADELSMAN: Just the tip height. What
25 would it be in this case? Is that 410?

1 THE WITNESS: That would be 410 feet, yes.

2 JUDGE TOREM: And that's for the largest.

3 THE WITNESS: For the largest turbine.

4 MS. ADELSMAN: For the largest.

5 THE WITNESS: Yes.

6 JUDGE TOREM: Councilmember Towne?

7 MS. TOWNE: Yes. When Mr. Tribble read your
8 statement about containment he spoke to the substation,
9 but the same statement contained mention of the turbine
10 itself and containment and you didn't speak to that.

11 THE WITNESS: Oh, I thought I did. I'm
12 sorry.

13 MS. TOWNE: Well--

14 THE WITNESS: Let me elaborate then. What
15 typically you have in a wind turbine is a large pan
16 underneath the gear box because that's where any oil leak
17 might occur that can pull more on the capacity of the gear
18 box. So that's very a common design element in the wind
19 turbines.

20 MS. TOWNE: Would that vary with
21 manufacturer?

22 THE WITNESS: Size, shape, and design of the
23 oil pan would vary, yes, or catch pan, yes.

24 JUDGE TOREM: Anybody else?

25 Councilmember Johnson?

1 MS. JOHNSON: Not at this time.

2 JUDGE TOREM: Mr. Fryhling?

3 MR. FRYHLING: No.

4 JUDGE TOREM: Mr. Sweeney?

5 MR. SWEENEY: Yes. I apologize, Mr Young,
6 perhaps I should have asked this of your predecessor,
7 Mr. Taylor. But the question is about how well the Wild
8 Horse Project went would cause me to think--actually it
9 would be nice if you could answer what specifically caused
10 the breakdown. Why couldn't you pull together a deal for
11 this one? Was there a specific issue that kept you from
12 getting to a development agreement on this project?

13 THE WITNESS: I really can't articulate. As
14 Mr. Hurson pointed out I was not involved in the face to
15 face very much. I was involved in the early stages with
16 the Kittitas Project with the County and some of those
17 meetings with them, but I would have to defer to my
18 colleagues again on that one. I'm not trying to be
19 evasive. I was just simply not the front-face person for
20 the Kittitas Valley Wind Project to the County. And I
21 don't know if there is a single, you know, what's the
22 single point of failure. My understanding is that there
23 were multiple issues to work through on the project of
24 this scope and complexity.

25 MR. SWEENEY: It seems like by reading the

1 testimony that setback was a big deal. Had you come back
2 with a proposal that you had a 2,500-foot setback that
3 dealt with the property owners' issue, the property owners
4 that were within 2,500 feet and satisfy them would that
5 have been satisfactory to the County?

6 THE WITNESS: I don't know what would have
7 been satisfactory to the County.

8 MR. SWEENEY: That's all.

9 CHAIR LUCE: I have a couple follow-up
10 questions sort of along the same lines, Mr. Young. Your
11 testimony, your supplemental testimony on page 4 if you
12 could turn to that for a moment. It talks about, first of
13 all, it really focuses on shadow flicker, and if I read
14 your testimony correctly, it says as the distance from the
15 turbines increases the shadow flicker intensity also
16 diminishes. So earlier there's been discussion about
17 compressing or putting the project closer together, the
18 turbines closer together. So if you did that, shadow
19 flicker would not diminish. It would increase; is that
20 correct? Your statement is as the distance of turbines
21 increases, that is further apart, shadow flicker intensity
22 also diminishes; is that correct?

23 THE WITNESS: Yes.

24 CHAIR LUCE: So if you put the turbines
25 closer together, the shadow flicker would increase.

1 THE WITNESS: Let me provide clarification.

2 There's another factor that is not included in the
3 analysis is the fact that as the distance from the
4 turbines to the receptors, not between the turbines.

5 CHAIR LUCE: All right.

6 THE WITNESS: If you change the distance
7 between the turbines or the spacing between the turbines
8 the shape of, you know, the shape of the affected area
9 from shadow casting would alter.

10 CHAIR LUCE: Okay. Now, after you talked
11 about shadow flicker, I just want to clarify the last
12 sentence of your supplemental testimony states that we are
13 willing and able to mitigate by programming the turbines
14 to shut down during those specific times when significant
15 shadow flicker exists. What do you mean by significant
16 shadow flicker?

17 THE WITNESS: I think we were looking for
18 someone to point out what the criteria of the limit would
19 be. We find that with the setbacks that we proposed for
20 the multiple turbine layout variations that we tried to
21 propose in both our application before yourselves and to
22 the County is to try to provide maximum mitigation as part
23 of the effort to provide larger setbacks that we could
24 still make a viable project and allow the large setback.

25 So I think that, you know, we feel that

1 we've sufficiently mitigated, and I mean we don't have any
2 nonparticipating landowners with what we would consider
3 significant impacts, and I guess I would defer to the EIS
4 to tell us what's significant or insignificant. I mean
5 some landowners have, you know, two hours a year or two
6 minutes a day. And some other landowners have some higher
7 numbers than that, but we don't have any landowners with
8 more than 100 and I think we maybe have two landowners
9 that are more than 50. I think I provided some references
10 to that in earlier testimony.

11 CHAIR LUCE: So you would leave it to the
12 Council to determine what the word significant means?

13 THE WITNESS: Yes.

14 CHAIR LUCE: You don't have any specific
15 definition or criteria in mind yourself?

16 THE WITNESS: I don't have any. We have not
17 set a specific number on that, but I can say that, you
18 know, if it's so required, we can definitely look at the
19 possibility of--

20 CHAIR LUCE: Shutting them down.

21 THE WITNESS: Mitigating shadow flicker all
22 together.

23 CHAIR LUCE: Eliminating shadow flicker all
24 together?

25 THE WITNESS: Right. Shutting the turbines

1 off. What I was pointing out is that we do have the
2 operational technology to shut down specific individual
3 turbines. That might be what we might call the violating
4 turbines that are, you know, the ones closest to the
5 residences or causing the impacts. We can shut those down
6 on a temporary basis during the highly sensitive time
7 limit, for example, at sunrise or sunset or summer days
8 and clear days, for example. That is something that we
9 could look at. We do feel that the impacts with the
10 proposed site layout are, you know, no greater than what's
11 been accepted in other projects of similar size and scope
12 in other parts of the country.

13 CHAIR LUCE: Thank you. I guess, again, I
14 think I'm picking on words, but the word is generally
15 1,000-foot setback has been used. That's on line 14 and
16 15 of your testimony. Now, I recognize that's with
17 respect to shadow flicker and then you agree to increase
18 this setback from existing residences to 1,320 feet, and I
19 assume that's also for shadow flicker.

20 THE WITNESS: Yes.

21 CHAIR LUCE: I guess what I'm trying to get
22 at what is the standard in the industry for setbacks or is
23 there a standard in the industry? And let me restate by
24 industry, I do not mean what does Vestas say. But do you
25 have examples of other instances where projects have been

1 setback at varying amounts, distance? And it gets back to
2 what Judge Torem asked earlier. Do you have any guidance
3 to offer? Are there any standards from other states or
4 municipalities that have adopted with respect to setbacks
5 in turbines?

6 THE WITNESS: Setbacks there's multiple
7 types of setbacks. Are you talking setbacks from
8 residences, setbacks from roads?

9 CHAIR LUCE: Right, there's multiple. One
10 is shadow flicker and one is visual impact.

11 THE WITNESS: Yes, I'm not aware of any
12 standard or other standards that have ever been adopted
13 for any other wind power project in this country for
14 setbacks for visual impact.

15 CHAIR LUCE: Standards for safety?

16 THE WITNESS: No, for visual impact as a
17 mitigating effort.

18 CHAIR LUCE: I'm asking you a second
19 question. Are there standards for safety?

20 THE WITNESS: A widely accepted one is tip
21 height so that the turbine tip height which in this case
22 the maximum will be 410 feet. I think there's a number of
23 examples of facilities and wind power projects where they
24 keep things back at least to tip height.

25 CHAIR LUCE: So if I understand you

1 correctly, what you're saying is view scape or visual
2 impact is not a standard. It's on a case-by-case basis.

3 THE WITNESS: Yes, it's case by case and
4 it's somewhat subjective. And the other setback that is
5 used commonly for keeping turbines back from residence is
6 around 1,000 feet. That one is somewhat common. I think
7 they we can provide some more detailed elaboration on
8 that, if the Council so requires, that some of our staff
9 have looked at, you know, what has been adopted in other
10 areas.

11 CHAIR LUCE: That would be helpful. That
12 would be help.

13 THE WITNESS: I think if there's questions
14 of my other colleagues that they can properly provide that
15 information.

16 CHAIR LUCE: Thank you.

17 JUDGE TOREM: Andrew, are you able to
18 provide that background as to where that statement that
19 Mr. Luce referred to it says generally 1,000-foot setback
20 has been used with regard to shadow flicker? Do you know
21 where that general standard came from for shadow flicker?

22 THE WITNESS: No, I don't know whether it's
23 a general standard. I think we adopted 1,000 feet and
24 chose a setback of 1,000 feet generally. I think that
25 there may be some landowners who wanted turbines closer to

1 their house because actually the turbine that was on their
2 property would produce more energy if it was somewhat
3 closer to their house and they were willing to accept
4 that. So I think there may be, if I'm not mistaken, now
5 there is a new turbine layout with the 65 turbines. I'm
6 not as intimate with that as my colleagues, but there
7 could be some turbines on that one which are closer than
8 1,000 feet and it was at the request and in the agreement
9 with the landowner whose property the turbines sat.

10 So I think that's why the word generally
11 1,000 feet was used, and for nonparticipating landowners
12 we agreed and we went to a lot of measures to try to
13 configure a layout which kept the turbines at what the
14 maximum distance that we could live with and still have an
15 economically viable project, and we came up with 1,320 I
16 believe was the number.

17 JUDGE TOREM: Councilmembers, any other
18 questions?

19 Mr. Peeples, any redirect?

20 MR. PEEPLES: Yes, thank you.

21 REDIRECT EXAMINATION

22 BY MR. PEEPLES:

23 Q. Just turning to the shadow flicker issues
24 pointed out by the Chairman, could you explain what the
25 effect is on attenuation of shadow flicker versus

1 distance.

2 A. Yes. The further you are away from the wind
3 turbine or the receptor is from the wind turbine shadow
4 flicker diminishes quite rapidly. So the further you are
5 away the less noticeable it is and the intensity or the
6 contrast between the bright and the dark of the shadow
7 also becomes more diminished; and the blade that's
8 sweeping through the sun's disk or the line of sight, if
9 you will, from the sun's rays and the receptor the further
10 away you are the intensity or the discernible contrast
11 between light and dark is identified as a shadow intensity
12 also becomes much less. The blade appears very thin and
13 it's far less distinct.

14 Q. Relate that to the distance from 1,000 and
15 out.

16 A. I'm not sure I understand.

17 Q. At 1,000 feet how bright is or how intense is
18 that shadow flicker? Is it attenuated pretty much at
19 1,000 feet?

20 A. Yes, at 1,000 feet it's difficult to discern.
21 I mean, you know, we can look at it, but the intensity is
22 such that it's not a stark contrast between the light and
23 dark. So the intensity definitely at 1,000 feet is quite
24 low.

25 Q. Now, you have reviewed the shadow flicker

1 studies and analyses and computer models. Correct?

2 A. Yes, I have.

3 Q. Would you please explain to the Chairman the
4 factors that went in there, the conservative factors that
5 went in there.

6 A. There are a number of factors that go in
7 there. I think that, for example, we looked at the
8 turbine layout in the worst-case scenario, and in the
9 worse-case scenario we took the tallest turbines. The
10 tallest turbine is going to cast the longest shadow.

11 So that was definitely for starters we took
12 the worst-case scenario with the tallest turbines, and for
13 the residence it assumes that the residence had windows on
14 or could receive shadow flicker from all directions. And
15 we all know that there's not too many people that live in
16 round, glass houses, but that would be another
17 conservative, very conservative assumption is that the
18 shadow flicker didn't take into consideration which sides
19 of the various receptors or houses had windows or tree
20 cover surrounding or other obstructions or other
21 obstructions on the windows.

22 But to be conservative, you know, to estimate
23 the number of hours per year, minutes per year that a
24 receptor would be having some potential impact from the
25 shadow flicker what we assumed was that they could receive

1 shadow flicker from all directions which we all know in
2 houses it's not commonplace that you would receive shadow
3 from all directions. It also didn't take into account any
4 assumptions that if there were trees or other obstructions
5 in the way.

6 Q. On that study would you describe to the
7 Council how accurate projections would be as to when a
8 certain receptor would receive shadow flicker, if at all.

9 A. Yes, I think the analysis is quite accurate.
10 It takes a number of factors into consideration. You
11 know, where the turbines are located, where the houses are
12 located, the general topography has an effect, houses in
13 the valley and the turbines on the hill which is many,
14 many times the case here. But, you know, I would say that
15 it's pretty darn accurate, and I think it's a prudent and
16 conservative estimate that's set by industry standards
17 that are used by a software that I think more than 300
18 companies license out, and it's a standard approach of
19 methodology.

20 Q. You could always run those again, could you
21 not, for the final actual locations of the turbines?

22 A. Yes, you could run it again for the final and
23 actual design; however, I would note that I do believe
24 that the analysis provided represents a worst-case
25 scenario, and the real project, you know, when designed it

1 will be within the limits and amounts of potential shadow
2 flicker that we've indicated in our analysis.

3 Q. Okay. Now, you were asked some questions
4 about the trenching by Mr. Carmody. Were you aware of
5 what the concerns were that were addressed at Wild Horse
6 about the trenching?

7 A. Yes, I was aware of the concerns and went on
8 the site visit with some of the site staff to actually
9 look at what the concerns were in person.

10 Q. What agency had concern?

11 A. I believe it was the Department of Ecology at
12 the time that had the concern with the Department of Fish
13 and Wildlife.

14 Q. Can you acknowledge those issues have been
15 resolved by protocols?

16 A. Yes, I believe they've been resolved through
17 working with those agencies.

18 Q. Would your company agree to put those
19 protocols as agreed to by WDFW and make that a part of the
20 site certificate signed?

21 A. Yes, we would be willing to accept those
22 protocols in our site certificate, absolutely.

23 Q. Mr. Hurson made an inference that with regard
24 when you were working on the Wild Horse Project and your
25 connection with the staff that essentially staff provided

1 no leadership about direction from the BOCC. Have you
2 reviewed the transcripts from the Wild Horse BOCC
3 hearings?

4 A. Yes, I have.

5 Q. Did staff and your counterparts offer
6 together prior to any input from BOCC a coordinated
7 proposed development agreement?

8 A. I think throughout the process of working on
9 a development agreement that would work for the project we
10 met with County staff a number of times and in reading the
11 transcript there's a number of occasions where Mr. Hurson
12 and Mr. Piercy would refer to working with the Applicant
13 in the preparation of the development agreement, that stip
14 before the BOCC that was discussed through those hearings.

15 Q. That was prior to ever meeting in front of
16 the BOCC. Correct?

17 A. Yes, on a number of occasions.

18 MR. PEEPLES: I don't have anything further.

19 JUDGE TOREM: Mr. Carmody, any limited
20 recross?

21 MR. CARMODY: Very limited.

22 RE-CROSS-EXAMINATION

23 BY MR. CARMODY:

24 Q. Mr. Young, you were asked about the
25 background in developing a proposal to have a setback of

1 1,320 feet from residences. My question to you is do you
2 know how many nonparticipating properties and property
3 boundaries are within that 1,320-foot setback distance?

4 A. No, I don't have that number off the top of
5 my head.

6 Q. The impacts associated with shadow flicker
7 would equally apply to any construction on a residence or
8 on a piece of property within 1,320 feet; is that correct?

9 A. Could you repeat the question. My apologies.

10 Q. Yes. My question--let me give some
11 background and maybe it will make it clearer. Property
12 owners are entitled to build homes or build structures
13 within the parameters of the zoning ordinance in this
14 county. Would you agree with that?

15 A. I presume so, yes.

16 Q. If someone owned a piece of property where
17 its property perimeter was within 1,320 feet of the
18 turbine, the construction of a new home would be impacted
19 by shadow flicker.

20 A. It could be and it would depend if there's
21 windows pointing at the wind turbine and in the line of
22 sight with the sun. So I wouldn't say, yes, that every
23 house built on a nonparticipating or an adjacent landowner
24 or someone close would have any impacts. There's several
25 houses on projects that I've built in the past that don't

1 have shadow flicker impacts despite being closer than
2 1,000 feet from the wind turbines.

3 Q. Would you agree with me that the more
4 appropriate point for reference for a setback would be the
5 property line as opposed to existing house?

6 A. I'm not at liberty to say what's an
7 appropriate setback for whether it's a property line or
8 for a house. I think that's a decision that the County
9 would and EFSEC will render.

10 MR. CARMODY: No questions.

11 JUDGE TOREM: Mr. Hurson.

12 RECROSS-EXAMINATION

13 BY MR. HURSON:

14 Q. Yes, I have a couple questions actually
15 related to the shadow flicker issue. You talked about
16 worst-case scenario, describing the tallest would be the
17 worst-case scenario.

18 A. Yes.

19 Q. Now, but also to figure out the impacts you
20 have to know the spacing.

21 A. You do it for a specific layout.

22 Q. Just so we know where I'm talking about, it's
23 the Draft Environmental Impact Statement, December of '03,
24 page 3.4-11. I don't know if you have that with you.

25 A. I do not have that with me, but we can

1 proceed. I'm somewhat familiar with it.

2 Q. I just wanted to because there's an analysis
3 that shows shadow flicker analysis and as an example
4 there's a 235-foot rotor for L. Gerean indicates there
5 would be 171 days shadow flicker with the 235-foot rotor,
6 but if you went out 290-foot rotor L. Gerean would get
7 zero days of Shadow Flicker.

8 A. I think it's because of the turbine spacing
9 eliminated some of those turbines in his house because of
10 the turbine spacing.

11 Q. So you could have an environmental analysis
12 that shows this particular home or this particular
13 location as no shadow flicker impact based upon turbines
14 being in a certain location, but if you move them up or
15 down the string line, you could then have a home that had
16 no indication of shadow flicker under one assumption could
17 now be subject to shadow flicker; and you wouldn't be able
18 to know that until you actually figure out where the
19 turbines are going. Correct?

20 A. I don't think so. I think that you're not
21 going to go from--I don't think that you're going to have
22 outside of the scope of what's been studied. I mean we've
23 studied the tallest turbine scenario which would have
24 fewer turbines and the shorter turbine scenario which has
25 more turbines, and we looked at those differences, and,

1 yes, there are differences. I think we ran another
2 specific example for the 65-turbine scenario through
3 supplement.

4 JUDGE TOREM: Mr. Young, I think the question
5 that Mr. Hurson is getting at, for each residence was the
6 analysis done for all the potential lines of site to all
7 the potential turbine string sites for that? Because as
8 Mr. Hurson points in that example, given one scenario had
9 a turbine clearly within the line of site for that number
10 of days, changing the type of turbine in the layout
11 apparently meant there was nothing within this person's
12 line of site so therefore no shadow flicker.

13 THE WITNESS: I'm going to have to pull the
14 page from the document.

15 BY MR. HURSON:

16 Q. Would you like to do that?

17 A. Yes.

18 JUDGE TOREM: Mr. Young, I think it's more
19 of a conceptual question as to how far the analysis went
20 and if the ultimate placement of each turbine which is
21 unknown in today's date will be analyzed to minimize that
22 shadow flicker. Can you say with any confidence that the
23 worst-case scenario you did was the most visual point for
24 each home with the biggest tower and the biggest shadow
25 and those things you went through or was the placement the

1 worst possible placement for the individual resident?

2 Is that a fair characterization, Mr. Hurson?

3 MR. HURSON: Yes.

4 BY MR. HURSON:

5 Q. My understanding is that they did the shadow
6 flicker analysis based upon a specific turbine layout; is
7 that correct?

8 A. Yes, it is.

9 Q. So if you move, if the layout that was put
10 out for the shadow flicker the turbines in fact moved, you
11 could get a different answer to the time you will get
12 shadow flicker at the house.

13 A. Yes, it will change, and I do think that the
14 EIS does cover the broad range of number of hours per year
15 or minutes per year for the various receptors what they
16 would experience, and it does change. And I do think,
17 however, that Mr. Gerean, for example, would be somewhere
18 between zero and the upper number depending on which
19 turbine case is done. But within the project parameters
20 we expect that the EIS covers that full range and
21 demonstrates I guess the least-case scenario in the
22 example for Mr. Gerean and the worst-case scenario.

23 Q. At this point it goes to Mr. Gerean if you
24 get bigger ones it's goes down and Mr. Genson's impact
25 goes up.

1 A. That's why we study all the scenarios
2 contemplated under the application for just those reasons
3 because those impacts can change depending on the turbine
4 size, but since we're talking about turbines that are
5 within the size range of what's been studied we'll be at
6 those shadow flicker points within that range.

7 Q. But it will depend upon where the towers are.

8 A. Right.

9 Q. And right now we don't have a definitive
10 location of where towers are going to be.

11 A. Now, but we have studied the full range.

12 JUDGE TOREM: Would it be fair to say,
13 Mr. Young, that the statement at the end of your
14 supplemental testimony would apply to the final placement
15 of those towers? Essentially then if your modeling
16 results are later shown to be inaccurate, in this case
17 inapplicable to the final placement, some residences might
18 be significantly adversely impacted, and you stated you're
19 willing and able to mitigate by using that technology
20 program to shut down at those morning or evening hours as
21 the case may be.

22 THE WITNESS: Yes, we're willing to do that
23 and I'd also point out just for a sense, we essentially
24 one of the worst-case impact of a landowner is something
25 like 84 hours. It's a participating landowner. And

1 nonparticipating is somewhere within 30 or 40 hours. It
2 essentially would be comparable to shutting the turbine
3 down for a day and a half. That's what we're talking
4 about. Maybe two days or three days.

5 JUDGE TOREM: But in small increments at the
6 begin or end of each day.

7 THE WITNESS: There we go. Yes, exactly.
8 So we can program so that the shadow flicker impacts
9 become effectively de minimus at receptors.

10 JUDGE TOREM: And that would be something
11 later for a permit manager or compliance manager to deal
12 with.

13 THE WITNESS: We would be happy to review
14 that with EFSEC and look at implementing such a program
15 for mitigation, yes.

16 JUDGE TOREM: Councilmembers, any other
17 cross-examination questions raised by the recross?

18 Mr. Tribble, I didn't ask you, but you seem
19 to be shaking your head. So none from CFE.

20 Mr. Peeples, anything further on redirect?

21 MR. PEEPLES: Yes, just a little bit on the
22 dust suppression thing.

23 RE-REDIRECT EXAMINATION

24 BY MR. PEEPLES:

25 Q. We will be using dust suppression. Correct?

1 A. Yes, we have to use dust suppression.

2 Q. That will be for everybody in the
3 neighborhood not just our employees.

4 A. That's correct.

5 MR. PEEPLES: Let me see. I guess that's
6 all.

7 JUDGE TOREM: All right. It's now ten
8 minutes after 2:00. We will take a quick break. I think
9 next it will be Mr. Peck.

10 (Recess taken.)

11 JUDGE TOREM: All right. We're ready to go
12 back on record with the testimony of Dana Peck. I believe
13 it's our Exhibits Nos. 42 and 42-SUP with rebuttal and the
14 supporting exhibits. So I'm going to swear in Mr. Peck
15 and ask Ms. Anderson to take him through the
16 preliminaries.

17 (Dana Peck sworn on oath.)

18 JUDGE TOREM: All right. Ms. Anderson.

19 MS. ANDERSON: Thank you, Your Honor. Erin
20 Anderson on behalf of the Applicant, Sagebrush Power
21 Partners.

22 DANA PECK,
23 being first duly sworn on oath,
24 testified as follows:

25

1 DIRECT EXAMINATION

2 BY MS. ANDERSON:

3 Q. Mr. Peck, you've heard Judge Torem identify
4 for you DRP-T applicant's prefiled, and I know he said
5 supplemental, but it was present in the 2004 so it's
6 direct testimony. That's DRP-T. You also heard him
7 reference the DRP supplemental rebuttal testimony and the
8 exhibit of DRP-1 Dana Peck resume. Are you familiar with
9 those?

10 (Exhibit Nos. 42, 42-1 and 42-SUP-R
11 identified for the record.)

12 A. Yes, I am.

13 BY MS. ANDERSON:

14 Q. Are they your testimony at the time you made
15 them?

16 A. Yes, they are.

17 Q. If you were asked those direct questions
18 today, would those be your answers to those questions
19 today?

20 A. Yes, they would.

21 Q. Thank you Mr. Peck.

22 MS. ANDERSON: Your Honor, I would move for
23 the admission of those items identified currently as
24 DRP-T, DRP-SUP-R, rebuttal, and DRP-1 which is Mr. Peck's
25 resume.

1 JUDGE TOREM: All right. That motion is
2 before the Council. All those in favor?

3 COUNCILMEMBERS: Aye.

4 JUDGE TOREM: Any opposed?

5 Then those exhibits and supporting exhibits
6 with Mr. Peck's testimony are now admitted to the record.

7 (Exhibit Nos. 42, 42-1 and 42-SUP-R admitted
8 into evidence.)

9 JUDGE TOREM: Scheduled cross-examination
10 the lengthiest appears to be that that's proposed by
11 Kittitas County and then Mr. Carmody on behalf of ROKT and
12 Mr. Tribble for Counsel for the Environment. I think the
13 order this time will be the County first and Mr. Tribble
14 then he will go second and then finally Mr. Carmody will
15 have to take up the tail on this one.

16 MS. ANDERSON: Your Honor, if I may by way
17 of suggestion, the Applicant has received and reviewed the
18 questions from the Council regarding the existence of
19 other model ordinances out there. I believe that's an
20 issue that has repeatedly come up today. Mr. Peck would
21 be the appropriate witness to answer those questions, and
22 if the Council has pointed questions about that this might
23 be the time to ask that to get that out there so that they
24 may prepare additional questions they have.

25 JUDGE TOREM: All right. Mr. Hurson, would

1 you object to me having the Council's general questions
2 put to Mr. Peck ahead of yours?

3 MR. HURSON: I don't have an objection to
4 asking questions but if it's going to talk about a model
5 ordinance, I would appreciate seeing a copy of it before
6 he starts talking about it.

7 JUDGE TOREM: Let me see if he has anything
8 else to offer. So I'll ask on behalf of the
9 Councilmembers. Are you aware of other specific
10 ordinances that have been adopted by either states,
11 counties, or cities regarding the placement of wind farms?

12 THE WITNESS: Yes, I am.

13 JUDGE TOREM: Are those model ordinances or
14 are those actual ordinances that have been adopted?

15 THE WITNESS: Both.

16 JUDGE TOREM: Which jurisdictions are you
17 familiar that have done some?

18 THE WITNESS: The jurisdiction with which I
19 am most familiar is Klickitat County, Washington where I
20 was in fact part of a legislative and ultimately more a
21 change of the county comprehensive plan and zoning
22 structure; and I'm also aware of the Benton County
23 ordinance which was reviewed in the course of the
24 Klickitat County ordinance, and I have what you could
25 probably characterize as a passing familiarity with the

1 Oregon EFSEC ordinance, although I don't have a copy of it
2 with me.

3 JUDGE TOREM: So you're intimately familiar
4 with the Klickitat County procedures from your time of
5 employment there?

6 THE WITNESS: Yes, I am.

7 JUDGE TOREM: And Benton County have
8 actually read that ordinance as well?

9 THE WITNESS: Yes, I have it with me.

10 JUDGE TOREM: And you have copies of both
11 the Klickitat and Benton County ordinances?

12 THE WITNESS: Single copies unfortunately.
13 I wasn't sure what the procedure would be, but I'm more
14 than happy to pass them along here for review.

15 JUDGE TOREM: All right. I guess we have
16 two choices it's being told me. We can have you testify
17 about them now or we can have copies made and have you
18 recalled for that purpose to testify about those and then
19 give the parties a chance to review those and have their
20 cross-examination prepared as well. Are you available to
21 come back on that particular topic?

22 THE WITNESS: Yes, I am.

23 JUDGE TOREM: Mr. Hurson, do you prefer to
24 proceed that way having seen the ordinance and digesting
25 it for a day or two?

1 MR. HURSON: I'm not quite sure what to say.
2 I know we brought this up this morning and there was no
3 indication this morning that anyone had one. Now here we
4 are 2:30 in the afternoon that now they're here. I know
5 that Mr. Peeples objected vigorously to cross-examination
6 on a document that wasn't supplied at least a week in
7 advance and so I don't know how we proceed. Mr. Peck is
8 going to have apparently some ordinances. I have no idea
9 how they interrelate to the comprehensive plan.

10 JUDGE TOREM: So what you're telling me is
11 that you're not ready to proceed today because you haven't
12 seen them and aside from that there's the other question
13 of additional evidence coming in early.

14 Now, I want to draw the distinction between
15 this additional evidence that might be offered that's not
16 in the record and something that the Council is not
17 limited on. But you can take official notice of and this
18 is the Council's initiative to ask for this material and
19 any responses to it. That could also come from Mr. Piercy
20 as your witness would be treated similarly; that if there
21 are other ordinances that you're aware of that perhaps you
22 find more favorable than what perhaps Mr. Peck might
23 present today and you have a chance for cross-examination
24 later in the week.

25 The Council has asked for this as the best

1 possible record we can create so the Council can see what
2 other jurisdictions have done. They know what they've
3 done in the Wild Horse, and clearly I think it's agreed
4 Wild Horse is a different project than that before us in
5 the Kittitas Valley. If these projects are set up with
6 their areas they deal with are dissimilar, I want you to
7 have a chance to tell us that if Mr. Peck's going to tell
8 us that we should follow the guides of the Klickitat or
9 Benton or whether that's the reason here.

10 So we asked for it last Tuesday. Everybody
11 has been on notice. I agree with you we might have been
12 told immediately this morning that when Mr. Peck came on
13 he might have some, but I don't think between 2:30 this
14 afternoon and 8:30 this morning any undue prejudice was
15 set that wouldn't have been there six hours ago so I'm not
16 going to worry about today. If that becomes an issue on
17 appeal, the record is now made as on the part of where the
18 ALJ was coming from.

19 Let's take those ordinances and give a copy
20 of the Klickitat County and the Benton County ordinance to
21 our staff, and it may be helpful if only a portion of them
22 is relevant to determine what gets copied and get those to
23 staff. We'll discuss them again and mark them at a later
24 time in the week and we'll coordinate your additional
25 testimony later this afternoon, Mr. Peck.

1 Ms. Anderson, do you have any additional
2 direct?

3 MS. ANDERSON: I do not.

4 JUDGE TOREM: So, Mr. Hurson, let's start
5 and ignore the potential of what ordinances might come in
6 and saving that for a later date. Let's go ahead and
7 start with your prepared cross-examination.

8 CROSS-EXAMINATION

9 BY MR. HURSON:

10 Q. Mr. Peck, you recognize that Kittitas County
11 in handling land use actions are bound to comply with the
12 Open Public Meetings Act in the appearance of fairness
13 document. Correct?

14 A. I certainly do.

15 Q. And County staff repeatedly told you that
16 that was what we were bound by, and that limited our
17 ability to discuss issues with the Board of County
18 Commissioners. Correct?

19 A. That was presented to me, yes.

20 Q. And we told you that--and you kept wanting us
21 to have some sort of where's the policy, what's the board
22 going to do, and we continually told you that that would
23 be something the Board has to decide and we can't speak
24 for them. Correct?

25 A. I'd characterize it as a certain surprise and

1 distinction between my understanding of the Wild Horse
2 process which allowed for what appeared to be fairly
3 substantive conversations at the staff level and the
4 process that I was going through with Kittitas County.

5 Q. You were not involved in the Wild Horse
6 process, were you?

7 A. No, but I was quite familiar with the record
8 and the participants.

9 Q. You were not involved in any staff level
10 discussions of Wild Horse with County staff, were you?

11 A. That's correct.

12 Q. So you have absolutely no first-hand
13 knowledge of what the scope of those discussions were.
14 Correct?

15 A. I'm familiar with the record.

16 Q. You have no personal first-hand knowledge of
17 what the scope of those discussions were. Correct?

18 A. That would be an accurate statement.

19 Q. We told you from a County staff level that
20 policy decisions would be made by the Board of County
21 Commissioners and did not speak for the Board of County
22 Commissioners. Correct?

23 A. That's correct.

24 Q. You disagreed with that though. Correct?
25 You wanted us to get policy direction from the Board of

1 County Commissioners.

2 A. No, I didn't disagree with what was clearly a
3 direction. Well, I shouldn't say clearly, but what
4 appeared to be direction between you and the Board of
5 County Commissioners. I did express repeatedly that I
6 felt it was a missed opportunity to explore some of the
7 technical questions related to the project at a staff
8 level and thereby through staff inform the Board of County
9 Commissioners.

10 Q. I'm sorry. Through the staff do what?

11 A. Assist in the information to the Board of
12 County Commissioners.

13 Q. Do you recognize we could not get direction
14 from the Board of County Commissioners without violating
15 the law?

16 A. That was my understanding from you guys.

17 Q. You believe that's a proper characterization
18 of the law. Correct?

19 A. To the best of my ability to understand it.
20 I'm not an attorney.

21 Q. All right. Now, there seemed to be some
22 frustration that you were not allowed to directly or
23 indirectly contact the Board of County Commissioners
24 regarding the application outside of the public hearing
25 process.

1 A. I wouldn't characterize it either as
2 frustration or surprise not being able to contact the
3 Board of County Commissioners. Once I was informed of the
4 ground rules with respect to the Board of County
5 Commissioners we certainly followed that.

6 Q. The ground rules were that because you had a
7 development agreement and a comprehensive plan together
8 you weren't to contact the Board directly for concerns of
9 violating the appearance of fairness.

10 A. That was my understanding, and, again, it
11 surprised me because of the linkage of the comprehensive
12 plan which is quite a different process, at least from my
13 experience from a development agreement. It seemed to be
14 a combining of two things which made it very difficult to
15 convey the information.

16 Q. What was it that you could only say to the
17 Board of County Commissioners in a private session outside
18 of the public that you could not say to the Board of
19 County Commissioners in the public setting?

20 A. There was nothing that I would anticipate
21 saying to the Board of County Commissioners in a private
22 setting that I couldn't say in public.

23 Q. So the lack of access to the Board of County
24 Commissioners didn't impair your ability to process,
25 proceed with this application.

1 A. There were several occasions where it
2 certainly made it more difficult. There were occasions
3 where as you go through the transcript you will find that
4 there were ambiguities in the direction that we received
5 from the County Commissioners. Most clearly early on when
6 we were informed that this was going to be dealt with as a
7 site-specific process and subsequently we had examples
8 from other projects brought to bear on the Kittitas Valley
9 project.

10 Perhaps most specifically, and this is
11 reflected in both the transcript record as well as the
12 letters that we exchanged, where we prepared for what we
13 thought was a follow-up hearing where we were putting
14 forth some of the negotiating positions for consideration
15 by the Board of County Commissioners. It turns out in
16 retrospect that in fact what we were asked for was that
17 same material but prepared as a new development agreement.
18 Clearly not something that was conveyed to us in the way
19 that we understood it and a follow-up conversation that we
20 had at the staff level also that clarity did not come
21 through.

22 And we were I guess I'd say chastised widely
23 when we returned with something that was not what the one
24 County Commissioner particularly expected us to arrive
25 with, although we very much thought we were producing what

1 we were asked to produce.

2 Q. If you felt there was an ambiguity of what
3 the Board said in public, you could have asked for
4 clarification. Correct?

5 A. The ambiguity was not clear until we arrived
6 with the product, a week, ten days, two weeks later, and
7 were informed that we had guessed wrong.

8 Q. So it wasn't ambiguous, but you felt you had
9 to guess.

10 A. Well, we felt we were responding to what we
11 had heard in the prior hearing. No guidance, of course,
12 was forthcoming from the staff level. When we produced
13 the materials in the form of a letter we were informed
14 that that's not in fact what the Commissioner in
15 particular who expressed that interest had wanted.

16 Q. Of course, you understand that since staff
17 wasn't discussing the substance with the Commissioners all
18 we could relate to you is that you need to read the
19 transcript and that's the direction you go by. Correct?

20 A. That was in fact the crux of the problem we
21 found ourselves on which, again, from what I've heard
22 contrasts considerably with the Wild Horse process.

23 Q. But, again, you were not involved in the Wild
24 Horse process.

25 A. Right.

1 Q. So there wasn't any expectation of yours that
2 you could have a direct meeting with the board.

3 A. Not after I'd come on the job in early
4 December, no.

5 Q. So you understood that was off limits.

6 A. Yes.

7 Q. One of the concerns you seem to have was a
8 lack of standards and that was frustration here.

9 A. Yes, that's correct.

10 Q. County had a lack of standards and you knew
11 that was an issue regarding setbacks.

12 A. It certainly developed into one.

13 Q. You worked in Klickitat County on a wind farm
14 ordinance. Right?

15 A. What we referred to as an energy overlay
16 ordinance, yes.

17 Q. And you never submitted that into the
18 County's record as a means of providing information to
19 help the County Commissioners and guide them on what may
20 or may not be an appropriate standard to use, did you?

21 A. Well, the Klickitat County Energy Overlay
22 Ordinance began with what's called a Programmatic
23 Environmental Impact Statement which provided for
24 extensive public input on the technical aspects of energy
25 facility siting in Klickitat County and it went through

1 the full EIS process of scoping, draft review, final
2 review; and it was that document which then went to the
3 planning commission which adopted it into proposed changes
4 in the county. It was subsequently looked at again at
5 public hearings both at the planning commission level and
6 the county commission level, but what I would characterize
7 is the legislative portion of that.

8 Subsequent to that there would have been
9 several wind power projects that have taken advantage of
10 that process, but they've taken advantage of that process
11 with the full recognition of what the standards involved
12 for both the Programmatic Environmental Impact Statement
13 and the larger legislative process with the planning
14 commission and the county commission to guide. And it was
15 the absence of those sorts of predefined and if I might
16 say objective standards that certainly have given us
17 interesting challenges when it comes to addressing some of
18 the issues at hand in this project.

19 Q. But nonetheless--

20 JUDGE TOREM: The question was had you taken
21 any of that information and put it before the Board of
22 County Commissioners to show how another county in
23 Washington took care of this issue?

24 THE WITNESS: Yes, excuse me for missing
25 that. I was so focused on how we do these in the

1 Klickitat process that I tended to go right into the
2 explanation.

3 A. We not only had done that, but the process
4 that was underdeveloped in Kittitas County is one that we
5 watched closely. As a matter of fact, it was the Kittitas
6 County comprehensive plan which I have refamiliarized
7 myself with that was brought before the attention of the
8 Klickitat County Commissioners and convinced them that if
9 we wanted to attract these sorts of facilities we had
10 changes we had to make because other counties seem to be
11 very favorable and disposed to work.

12 BY MR. HURSON:

13 Q. Okay. So the County ordinance, the Kittitas
14 County ordinance was adopted before the Klickitat County
15 ordinance. Correct?

16 A. I'm not sure what the sequence on that to
17 tell you the truth.

18 Q. But I guess so then back to our earlier
19 question, you didn't submit the Klickitat ordinance into
20 the Kittitas County record as some sort of example of what
21 your setbacks should be. Correct?

22 A. Could you say that again.

23 Q. You didn't submit the Klickitat County Wind
24 Farm Ordinance into the Kittitas County record as an
25 example of what the setbacks should be. Correct?

1 A. That's correct.

2 Q. Nor did you do that for the Benton County
3 ordinance. You didn't submit that into the Kittitas
4 County record as an example of what a setback should or
5 shouldn't be. Correct?

6 A. No, they weren't requested and they
7 weren't--the context was--

8 Q. You didn't submit the Oregon EFSEC Ordinance
9 into the County record or point to that in going through
10 the County process as an example of standards that you
11 would suggest the County use. Correct?

12 A. That's correct. But I would like to provide
13 a context with it, if I might. We were informed very,
14 very early on in the process here in Kittitas County that
15 the submission of any new information what was in fact an
16 opener to the extent that those issues weren't addressed
17 at the beginning of the process, setbacks being a very,
18 very late topic of conversation, and that the record
19 closed for all practicable purposes meant that to
20 introduce new information like that would have led to
21 uncertain to--well, would have led to uncertainties in the
22 process that we weren't fully prepared to pursue.

23 Q. You inserting the Klickitat and Oregon
24 ordinances into the EFSEC record after prefiled is already
25 done could create some uncertainties in the process also.

1 Correct?

2 MS. ANDERSON: Your Honor, I'm going to
3 object to that. I think this was a procedure point that
4 emerged after we were all advised that we had to have
5 materials submitted seven days prior. This is a response
6 to a question from the Council itself, and, frankly, I
7 believe, Your Honor, has reserved, has explained how he
8 intends to treat this and it shouldn't be characterized as
9 an attempt to sandbag. It's responsive to Council
10 questions that emerged at the prehearing conference.

11 JUDGE TOREM: Yes, a reasonable
12 characterization, but I think Mr. Hurson's question is a
13 little bit different. I believe he's going to the road
14 that now it's responsive to EFSEC's question, but in the
15 past was there a reason that it wasn't submitted. And
16 Mr. Peck just had an explanation as to the perceived and
17 perhaps correctly perceived warning from the Board of
18 County Commissioners that there was a point at which the
19 factual record had closed and introducing new evidence
20 would require further public hearings.

21 Now Mr. Hurson was going to ask another
22 question and I want to be sure your objection is
23 essentially noted and I think is correct in its basis.

24 MR. HURSON: I was in no way trying to say
25 that there was any sandbagging on this issue. My point

1 was, and I'll let the transcript speak for itself, and I
2 know that the Commissioners indicated in multiple
3 different times that we may very well need to reopen the
4 record. If we do, that's fine. We'll just go from there.
5 Mr. Peck has indicated he wouldn't put anything else in
6 our County record for fear that would cause some sort of a
7 procedural issue, and I just asked him, well, we've
8 already discussed in putting these things in might create
9 a procedural issue too. I'm not saying it's wrong. I'm
10 just saying it creates a procedural issue.

11 JUDGE TOREM: Perhaps, Mr. Peck, the fair
12 way for you to answer the question would be identify any
13 procedural issue you thought would occur in the County
14 Commissioners hearings and process and the difference
15 between that and this and then we can move on.

16 A. Certainly. And I think perhaps the best way
17 to address that would be to give a concrete example.
18 After the passage of a state law it was our perception
19 that some of the benefits of the project had changed
20 because now the way property taxes were addressed had
21 changed with that state law. When we brought that
22 information back into the record, we were again chastised
23 at quite great length for bringing in new information and
24 that's available in the transcript.

25 I believe after a letter we put in on I think

1 April 25--which is I think Exhibit 3 but it might be
2 Exhibit 7, and I'm not exactly sure what the date on the
3 transcript would be on there but probably in early
4 May--and all that did to us on we thought was a very minor
5 point was drive home the difficulties and, if you will,
6 risk of attempting to bring in even fairly benign new
7 information into this process. It was quite a hammer that
8 was brought down and it reinforced our perception that new
9 information was not of interest.

10 BY MR. HURSON:

11 Q. The new tax information you submitted in the
12 County record was not information the County Commissioners
13 asked for, was it?

14 A. No, it was not specifically requested,
15 although it was a refinement of previous information in
16 the record.

17 Q. They asked you for specific information on a
18 particular topic and you submitted the information
19 relating to potential tax consequences. Correct?

20 A. Well, we felt that we were--

21 Q. I'd ask you to respond. They did not ask you
22 for information on tax impact. Correct?

23 A. That's correct and they didn't ask us for
24 information on ordinances on setbacks from other counties.

25 Q. I understand that. So the information your

1 example that you just gave us was of you submitting
2 information into the record that the presiding officers
3 did not ask to have submitted into the record. You would
4 agree that that is distinctly different than what EFSEC is
5 asking for. Correct? They asked you for certain
6 information. You were responding to that request.

7 A. Oh, it's certainly distinctly different from
8 where the EFSEC Council has asked us for specific
9 information about ordinances related to setbacks, yes.

10 Q. Back in the record what the Commissioners
11 were asking about was near the end of the record you had
12 said it makes it economically not viable and the
13 Commissioners asked how so and then your response was to
14 submit information on tax implications.

15 A. As well as a considerable amount of other
16 information related to changes, proposed changes in the
17 development agreement.

18 Q. But nothing to do with viability questions
19 the Commissioners asked you to supplement.

20 A. Subsequently asked us I think.

21 Q. If I understand your testimony correctly,
22 it's not your testimony or position that the County staff
23 did not work with the Applicant.

24 A. No, we I think on several occasions in the
25 record complimented staff at their ability to keep up with

1 materials and the assistance that they were able to
2 provide in the limited context that they had.

3 Q. So you agree that the County staff was
4 working with the Applicant and with you and answered your
5 questions and supplied what information and feedback we
6 could in our scope. Correct?

7 A. That you were allowed to, yes.

8 Q. And the County ultimately denied the K Valley
9 proposal. Correct?

10 A. That's correct.

11 Q. And basically it got high centered on setback
12 issues. Correct?

13 A. I think that would be the principal reason.
14 There were certainly other things on the table that were
15 awaiting further discussion, but setbacks were the
16 principal topic of the evening that the preliminary no
17 vote was cast.

18 Q. As you go through the transcripts what it was
19 is that was a key issue that the County and the Applicant
20 could not agree to and so we never got to discuss the
21 other issues.

22 A. The way I would put it was we had
23 established, again, I believe after it became apparent
24 that the setback was a real concern for the County
25 Commissioners we had proposed to them that there was a

1 real problem with the number that was being bantered about
2 2,500 feet or half mile, take your pick. And at that
3 point we had hoped there would be a response of some sort
4 of that, well, should we try to split the difference, some
5 sort of classic legislative environment. Well, let's have
6 further conversations on that.

7 And at the point which we said 2,500 feet is
8 more than we're able to incorporate into our design and so
9 an uneconomically viable project that was pretty much
10 where it stopped, and after several efforts to reengage
11 both in a formal meeting before the EFSEC Council in
12 Olympia and the exchange of letters the next number that
13 we heard from the County Commissioner which was I believe
14 on May 3 was 2,500 feet.

15 And I thought we had been relatively
16 straightforward that there is a difference here, and when
17 you're in a negotiation and the person comes back with the
18 same number twice, it seemed a whole lot like more of a
19 regulatory rule making than it did a negotiated process.
20 That was the perception on the receiving end of that
21 sequence of events anyway.

22 Q. Well, you had indicated that you couldn't
23 have any greater setbacks than 1,320 or it made it
24 economically not viable. Correct?

25 A. I believe on the evening that, you know, what

1 is characterized as an impasse or however you want to
2 characterize it, the statement was made that the 2,500
3 feet was something that was not something we could live
4 with or that would make it an economically unviable
5 project to be more accurate.

6 Q. But your testimony, page 18, do you have that
7 with you?

8 MS. TOWNE: Supplemental or direct?

9 MR. HURSON: His original. They're called
10 supplemental. I think it would be supplement not
11 rebuttal.

12 JUDGE TOREM: Mr. Hurson, this is the last
13 page of his testimony?

14 MR. HURSON: Yes.

15 BY MR. HURSON:

16 Q. On line 5, you said, having been--talking
17 about the County--"having been informed by Horizon through
18 correspondence and through County staff that anything
19 beyond a 1,320-foot setback renders the project unviable."
20 So you would agree that's what you told the County is that
21 anything beyond 1,320 feet renders the project unviable.

22 A. Well, again the initial statement to the
23 County was 2,500 was too much and then we had several
24 efforts at your personal request as a matter of fact, you
25 know, we entered the negotiation phase, and at no time did

1 we hear any other number than 2,500 feet from the County.

2 Q. You in your testimony say you informed the
3 County through correspondence and through the County staff
4 that anything beyond a 1,320 foot setback renders the
5 project unviable. Correct? That's what the testimony
6 says here. Right?

7 A. That's my statement, yes.

8 Q. So how can you--well, it sounds like you're
9 saying, well, gee, if only the County had come back to
10 2,000 or 1,500 feet we could have had a deal. The only
11 way that could be true is if this statement is false; that
12 the 1,320 foot setback and anything beyond that renders it
13 unviable. Which is it? Is it that renders it unviable or
14 that that's an inaccurate statement?

15 A. Well, I have to re-create that moment in my
16 mind if you will give me just a second. You know, the
17 assertion of the 1,320 feet was after starting with 1,000
18 feet and then as the record reflects and I think it's in
19 Mr. Piercy's filing but I don't have the exact, we went to
20 1,250 and we subsequently went to 1,320; and at that point
21 it went into a let's hear what they say mode. And when it
22 became apparent on the night that you actually I might say
23 took the vote, the preliminary vote, there was not an
24 opportunity to go beyond that 1,320 feet. Again, there
25 was no response from the County side.

1 Q. Again, here you're saying you told the County
2 that anything beyond a 1,320-foot setback renders the
3 project unviable. Is that an accurate or inaccurate
4 statement?

5 A. Well, it was certainly an accurate statement
6 based on the analytical work we had up to the point.

7 Q. So there was no room for compromise or
8 negotiation because anything beyond 1,320 makes it so you
9 can't make a project go out. Right?

10 A. Well, that was certainly the way the analysis
11 went up to that point in time, yes.

12 Q. So you are stuck at 1,320, couldn't go to
13 1,350.

14 A. That was never a topic of conversation that
15 was raised by the County.

16 Q. And the Commissioners asked for some
17 explanation as to how that was, how it was that that was
18 not a viable number, and your folks didn't want to
19 respond. You just thought it was outrageous that the
20 Commissioners could ask. Right?

21 A. I wouldn't characterize it that way, no. The
22 analytical work that went into the process--and I was more
23 or less the liaison person. That analytical work was
24 being done by the technical people in our Portland and
25 Houston offices. I just managed to lose my chain of

1 thought there for a second. I mean the--

2 Q. But having been told by you--had the
3 Commissioners been told by you that anything beyond 1,320
4 feet will not work because it's not economically viable
5 and you won't supply any information to support the
6 assertion of noneconomic viability, why would you think
7 that the Commissioners would propose any other setback,
8 middle ground setback? You already told us that's the
9 thing that will work.

10 A. Well, with the initial statement and the vote
11 that took place was on the 2,500 not the 1,320, and,
12 again, the opportunity to renegotiate had been raised and
13 nothing was forthcoming after that.

14 JUDGE TOREM: Mr. Peck, it seems to me that
15 the disagreement is as to who spoke last as to which
16 number. The record will speak for itself. So rather than
17 belabor this any further are there any other lines of
18 questioning?

19 MR. HURSON: I was done for that one.

20 BY MR. HURSON:

21 Q. Just one more thing for clarification is the
22 County when we denied that project Horizon has not
23 appealed that denial, has it?

24 A. No.

25 Q. It did not appeal to the Growth Management

1 Hearings Board to challenge the correctness of our
2 following the growth management laws or any other laws.
3 No challenge was filed with the hearings board. Correct?

4 A. No.

5 Q. No challenge has been filed in Superior Court
6 on the land use petition act challenge that somehow the
7 County violated the process, rules, procedures,
8 regulations, or statutes of the state. Correct?

9 A. That's correct.

10 MR. HURSON: Nothing else.

11 JUDGE TOREM: Mr. Tribble, as far as
12 questions for Mr. Peck do you have any?

13 MR. TRIBBLE: No.

14 JUDGE TOREM: Mr. Carmody?

15 MR. CARMODY: Yes.

16 JUDGE TOREM: I'd just remind you,
17 Mr. Carmody, if you could use the microphone that would be
18 helpful for all of us.

19 MR. CARMODY: I will do better.

20 CROSS-EXAMINATION

21 BY MR. CARMODY:

22 Q. Good afternoon, Mr. Peck. I would like to
23 follow up on the line of questioning that was just being
24 pursued. In your declaration you indicated that the
25 proposed setbacks set forth by the Board of County

1 Commissioners rendered the project nonviable. My question
2 to you is what do you mean by a nonviable project?

3 A. When you say that, do you mean in the context
4 of the--well, I can address that. Yes, I can address
5 that.

6 The scale of projects that's undertaken is
7 partially the function of, you know, just the fixed cost
8 of developing a project. There's certain fixed costs and
9 certain customer bases at this stage of the wind industry
10 development, and it's a relatively recent development I
11 will have to say.

12 There was a time when a smaller project was
13 an attractive commodity in this industry. With the level
14 of interest from the utility customer right now being for
15 larger projects it's driving our industry that way quite
16 strongly. And what we find is that when we were all
17 taking high school economics who would have thought the
18 economy scale of doing any of these sorts of things, and I
19 think your own experience Klickitat County is probably
20 showing the same thing; that the kinds of things that I
21 have for neighbors today are very different from the sorts
22 of things that people were discussing even five years ago
23 in terms of scale, and they're larger by an order of
24 magnitude.

25 Q. So what size of project is economically

1 viable in this situation?

2 A. I think for the kind of first tier developers
3 such as Horizon some of our counterparts in the first tier
4 that you would be hard pressed to find anything, oh, 70,
5 80 megawatts maybe at the transmission environment and
6 somehow highly favorable to moving into a target market
7 typically well over 100 megawatts would be the norm for
8 those sorts of things.

9 Q. So in the context of a three-megawatt turbine
10 that would mean a project of 33 turbines or more would be
11 economically viable.

12 A. Well, I'm not sure this is a--yes, that's not
13 something that I get into. I'm the permitting guy. You
14 know, there's other people that evaluate those sorts of
15 things and I'm not one of them. I don't get into how many
16 turbines on what sort of--you know, what's coming down the
17 road that much.

18 Q. Well, your declaration you expressed an
19 opinion that taking it beyond a 1,320-foot setback
20 rendered the project nonviable, and I'm interested in what
21 your basis for that statement is.

22 A. Well, again the basis for the statement is
23 looking at the 6,000-acre site. We've got a topography of
24 that site, the land ownership patterns of that site, and
25 figuring out what the construction on that site is going

1 to cost you and then looking again at how many turbines
2 you have to shed as you get over a certain setback amount.

3 Q. And a project would be viable if it produced
4 70 to 100 megawatts is your testimony.

5 A. Possibly. Possibly. In our calculation this
6 site would not be optimum at that scale.

7 Q. What calculation did you do to set forth that
8 level?

9 A. Well, there was a considerable amount I know
10 mapping work done or I'm sure our meteorological and
11 financial people worked on it. I know the outcome. I
12 don't know the process.

13 Q. Well, I'm interested. This is your
14 declaration and your statement. I want to know what your
15 specific knowledge was and basis for the statement in your
16 materials that says for setbacks in excess of 1,320 feet
17 that the project was nonviable. And if you don't have a
18 basis for that, that's fine. Just say that.

19 A. In my own personal experience I don't.
20 That's more of a Chris Taylor type answer. He was more
21 involved in the management in that process.

22 Q. Do you have any idea how many turbines would
23 be potentially developable with a 1,320-foot setback?

24 A. Well, that's where we were being able to do
25 the 65-turbine layout.

1 Q. Do you have any idea how many turbines would
2 be available if the setback were 1,750 feet?

3 A. No, I don't.

4 Q. 2,000 feet?

5 A. No, I don't.

6 Q. 2,500 feet?

7 A. No, I wasn't involved in that, any interim
8 analysis. I just got the product.

9 Q. Another way to address a turbine setback
10 would be acquire additional property or securities through
11 its adjoining property owners, wouldn't it?

12 A. I guess you could enter into that sort of
13 hypothetical. We have our land under control.

14 Q. Well, it's not hypothetical. You
15 specifically intended to secure those approvals, didn't
16 you, from the nonparticipating property owners?

17 A. Possibly before I arrived, but not since I've
18 been here in December.

19 Q. So to the best of your knowledge no effort
20 was made by Horizon to secure additional lands or
21 easements that would allow a 2,500-foot setback.

22 MS. ANDERSON: Your Honor, I would object to
23 Mr. Carmody's characterization. Mr. Peck has already said
24 he doesn't have any information. There may have been
25 other information from Horizon. Mr. Carmody is now asking

1 him to confirm that Horizon lacked that information. I
2 believe the question has been asked and answered.

3 JUDGE TOREM: I think with that all accurate
4 explanation sustained. If you want to ask that of a
5 different Horizon witness that may be appropriate,
6 Mr. Carmody, but that has been asked and answered.

7 BY MR. CARMODY:

8 Q. Are there any other factors that make the
9 project not viable with a 2,500-foot setback other than
10 the economic references that you've made?

11 A. Not to my knowledge, but I don't know.
12 That's not an area of expertise for me.

13 Q. To the best of your knowledge then the sole
14 basis on which Horizon chose not to proceed was that in
15 their judgment it was not an economically viable package.

16 A. As I said, I was not part of the analytical
17 work. I just know the product.

18 Q. But that has been your testimony in the
19 declaration; is that correct?

20 A. Because it reflects the product of the work.

21 Q. I'm going to talk a little bit about
22 Klickitat County. When did you come to work for Horizon
23 on this project?

24 A. Early December 2005.

25 Q. Prior to that time what was your employment?

1 A. I was the director of economic development
2 for Klickitat County which is in that particular county a
3 county department head.

4 Q. Did you work prior to that with any wind
5 developer?

6 A. Yes, I was the project manager in the early
7 '90s for what was called the Columbia Hills Project for a
8 company called Kenetech. Before that it was--when I first
9 went to work for them, it was called U.S. Wind Power.

10 Q. And that project utilized a county procedure
11 of a conditional use permit process; is that correct?

12 A. That's correct.

13 Q. And the county didn't have any development
14 standards or regulations at that time with respect to wind
15 farms projects, did it?

16 A. That's correct.

17 Q. You proceeded through that project and
18 prepared an environmental impact statement.

19 A. Yes.

20 Q. And ultimately through that process
21 identified mitigation measures for the project.

22 A. That's correct.

23 Q. And that process really wasn't different than
24 the environmental review mitigation process was in this
25 case, was it?

1 A. I'd characterize it as dramatically
2 different. I had a very similar role to the one that I
3 have today. It was the traditional conditional use
4 permits board adjustment process. There was extensive and
5 substantive conversations with staff in the form of
6 planning director. There were numerous opportunities to
7 clarify technical issues and what I would characterize as
8 an informal setting which was then publicly conveyed there
9 with both the board of adjustment and the county
10 commissioner.

11 Q. Is it your experience that a quasi-judicial
12 process involves negotiations with the decision maker or
13 is it a public process?

14 A. In my experience in both sides of the
15 quasi-judicial process that it's the legislative aspect,
16 if you will, the standards and objective setting aspect
17 where there's what you might call informality that doesn't
18 exist in the quasi-judicial process.

19 Q. There were no legislative processes apart
20 from the conditional use permitting process in Klickitat
21 County, were there?

22 A. No.

23 Q. So it was a purely quasi-judicial process
24 that didn't involve negotiations; is that correct?

25 A. Boy, that was 13 years ago. The negotiations

1 that took place on things like mitigation measures
2 occurred at the staff level and were conveyed to the board
3 of adjustment for their consideration and action.

4 Q. That was the same process that occurred in
5 this case, wasn't it?

6 A. I wouldn't characterize this process that way
7 at all.

8 Q. Why?

9 A. In this case there were discussions of
10 procedural matters to a limited extent. There were
11 discussions of when things were due. There were
12 discussions in some cases what the staff thought the board
13 had asked us to provide, but there were no substantive
14 discussions of things going back to your example, you
15 know, how would you mitigate that or what do you think an
16 adequate mitigation measure would be. There was nothing
17 that took that form in the case of the Kittitas Valley
18 Project.

19 Q. What was the purpose of the environmental
20 impact statement?

21 A. I don't understand your question.

22 Q. Wasn't the environmental impact statement
23 developed to identify impacts and potential mitigation
24 measures for the project proposal?

25 A. For the Kittitas Valley Project?

1 Q. Yes.

2 A. That's my understanding.

3 Q. Wasn't that exactly the purpose that the EIS
4 served in your Klickitat proposal?

5 A. Very much so.

6 Q. What was your role in the development of the
7 energy overlay zone in Klickitat County?

8 A. I guess you could call me the architect of
9 it.

10 Q. What were you designing?

11 A. I was designing a process that would take the
12 best examples of the environmental impact statement and to
13 contrast that that would carry forth, for instance, a
14 setback standard; you know, that we evaluate an
15 alternative setback standard much the way the Kittitas
16 Valley Environmental Impact Statement does and would bring
17 forth an objective measure to the developer, if you want
18 to use that term of art locally, the Applicant could apply
19 for the project design.

20 Q. Was there a public process involved in the
21 development of that ordinance?

22 A. Extensive.

23 Q. Did the public provide input on the location
24 and propriety of wind farms in the various areas of the
25 county?

1 power development part of the county where you see the
2 most wind power development occurring right now did in
3 fact have some local residents who were adamantly opposed
4 to those sorts of developments taking place in their view
5 shed, and in the course of weighing that the planning
6 commission and the board of county commissioners both
7 chose not to exclude that area from future development but
8 did in fact exclude other areas where there was a
9 preponderance, a clear preponderance of opposition to it.

10 Q. There are no areas with development densities
11 in Klickitat County that interface with the overlay area
12 that are anywhere near the density of the development in
13 this situation with the Kittitas Valley project, are
14 there?

15 A. I've never run that analysis and I can't
16 really answer the question.

17 Q. But you're familiar with it. Would you be
18 surprised if there was that sort of interfacing?

19 A. The best I could do is just offer an
20 on-the-fly opinion and say that several of the areas that
21 are very actively developed for wind power in my
22 neighborhood in Klickitat County are very, very similar to
23 what I would characterize as the Kittitas Valley Project.

24 Q. What neighborhoods are those?

25 A. Columbia Hills Project, the electricity

1 project that you're involved with.

2 Q. And your testimony is it has the same
3 character of residential development and lot division as
4 the Kittitas Valley Project?

5 A. Let me separate those two points. I would
6 say that the Hoctor Road area where Deb Ross has a large
7 project proposed has a very similar pattern of development
8 to the one that's occurring in Kittitas Valley. It has,
9 you know, people with isolated roads to ranch houses. It
10 has one area of absentee owners who upon occasion raised
11 questions about the development. I can't remember what
12 the name of that road is, but in some respects it's very
13 similar to things that are just off 97 in the Kittitas
14 Valley Project.

15 And in some respects the Bickleton Community
16 is probably a higher density than the Kittitas Valley
17 area, and, you know, there's 90, 100 people out there, but
18 they're all among the strongest supporters of wind power
19 development because they're all local residents and
20 ranchers.

21 The area that chose to exclude itself
22 certainly has a higher density than anything that's found
23 around the Kittitas Valley project.

24 And going back to the other side of that, you
25 used the word parcel. The parcelization of the area

1 around Roosevelt where the White Creek Project and the Big
2 Horn Project by PPM, White Creek's Public Utility District
3 Project, that's a heavily parcelized area reflecting the
4 likely development of a nuclear power plant by my old
5 employer, Pacific Power in the 1970s. So I drew that
6 distinction is there are areas which I think have very
7 similar patterns of residents, and I think there's an area
8 that has a much more intense parcelization than you find
9 in Kittitas Valley.

10 Q. Where is the Big Horn Project?

11 A. Big Horn Project is north of Roosevelt which
12 is on the--well, I'm not going to describe Roosevelt. You
13 either know where it is or you don't.

14 JUDGE TOREM: Let me interject. Some of the
15 discussions probably you're getting into that clearly
16 you're familiar with including Mr. Peck but the Council
17 does not have a clue what you're talking about. No
18 offense to any members of the Council or the two of you,
19 but without supporting maps and exhibits this testimony is
20 useless.

21 So I would like get to the end of this line
22 of testimony and I want to know in advance of what I
23 anticipate you're going to say, Mr. Carmody, that
24 comparing the Klickitat ordinance or the Benton County
25 ordinance that we've asked for specifically is to see what

1 the other specific guidelines not what's the aerial, these
2 other things that are going to be subjective, but simply
3 put what have other counties done. We're going to get
4 that answer eventually apparently later in the week and
5 that will be the time to go into this when we actually
6 have something to compare it to. Right now this is
7 speculative.

8 If the parties wanted to go this way, we
9 asked for what are the numbers they used and we'll get
10 some limited cross because we're not going to let in a
11 whole bunch of other information as to maps and densities.
12 I don't want to see the Klickitat comprehensive plan be
13 offered as an exhibit. It won't be accepted. That's not
14 what we're doing here. I just want to know what numbers
15 other county people have done, and then we're going to
16 draw our own conclusions and see does it fit out there.

17 Some limited testimony is it urban, is it
18 rural, is it ag, that will be helpful. But all the
19 specifics as to the old-time remembering where Mr. Peck
20 lives and worked before it's just not helpful today. We
21 know that what we're asking for is late in the process.
22 We know it's going to have limited usefulness, but it will
23 give us some context. This is way more context than we
24 can put in context than possibly can be helpful.

25 So if there's further questions in this

1 regard, I'd ask you to withdraw them. If there are other
2 lines of questioning you want to do with Mr. Peck, we've
3 already gone past the 15 minutes you thought you were
4 going to use and I want to try to get Mr. Priestley's
5 testimony in. So let's cut to whatever might still be
6 useful to the Council.

7 MR. CARMODY: I just might comment for the
8 record the reason those questions were asked is because of
9 Mr. Peck's and Horizon's introduction to Klickitat County
10 Energy Overlay Zone Ordinance. If you want to handle that
11 or discuss that at a later point in time, that would be
12 fine. But one of the important things I think for the
13 Council to realize about that ordinance is that setbacks
14 and development standards were in the context of a
15 site-specific mapping, and that site-specific mapping
16 excluded areas such as the Kittitas Valley area and the
17 densities there and that's why that's important and that's
18 why that's important in our judgment for your
19 understanding.

20 JUDGE TOREM: Again, I recognize that's the
21 context we want, but don't won't have that ordinance in
22 front of us yet. I don't have any idea nor has it been
23 mentioned yet what those setbacks are, and the argument on
24 those can come in the cross-examination as to why 1,000
25 and 1,320 or 2,500 is chosen, but we don't have it. So

1 we're premature.

2 When we get it, I'm telling everybody in
3 advance we don't want piles of additional documents. Just
4 very quick descriptions as to what area that's in. If you
5 can tell me what the zoning is, what the comprehensive
6 plan descriptions of those areas are, and there may be
7 competing descriptions as to is that area urban,
8 semi-urban, rural, a rural and growing place. We're going
9 to have to deal with that evidence and sift it out in
10 deliberations as to what is appropriate and then apply
11 those numbers accordingly and see if they fit.

12 Surprisingly none of this came up in the
13 discussion apparently in front of the Kittitas County
14 Board of County Commissioners and it's coming up here for
15 the first time. So with those limitations we'll have to
16 live with that later in the week, but save those questions
17 and if you can boil them down to a smaller set that would
18 be helpful too.

19 Do you have any other questions that you
20 wanted to cross, other areas?

21 BY MR. CARMODY:

22 Q. The only other area I wanted to ask
23 questions, quick questions on has to do with your
24 criticism of the County process that combines the
25 comprehensive plan present with rezone. Are you familiar

1 or did you participate in the development of that
2 ordinance and understand the model upon which it was
3 based?

4 A. The Kittitas County ordinance?

5 Q. Yes.

6 A. No, I'm just a participant of its outcome.

7 Q. Are you familiar with the Trend West Project?

8 A. I'm aware of the Trend West Project. I'm
9 certainly not familiar with it.

10 Q. Were you familiar with any of the processes
11 that led to that combined processing?

12 MS. ANDERSON: Your Honor, I'm going to
13 object to the relevancy at this point to the Trend West
14 Process. That's not before the Council. It's not before
15 Your Honor. It's not in the record and it's not clear to
16 me where Mr. Carmody is going. That process was a
17 year-long process that did result in appeals to the GMHB,
18 as well as Superior Court. I don't think it's appropriate
19 for us to go there today.

20 JUDGE TOREM: I understand, Ms. Anderson. I
21 don't think that's where Mr. Carmody is going but for
22 background context. So Mr. Carmody assuming he's not
23 familiar with that is there a question about how the
24 ordinance developed that you want to address to Mr. Peck?
25 Clearly he said he's not been around for the development

1 process. He just came into it late in the game.

2 BY MR. CARMODY:

3 Q. To your knowledge were participants of
4 Horizon involved in the development of the wind farm
5 ordinance that's governing this project?

6 A. I only know to the extent that it was present
7 in Mr. Taylor's testimony.

8 Q. Is there any appeals of that to your
9 knowledge by Horizon?

10 A. I don't have any information about that
11 beyond what Mr. Taylor has testified to.

12 Q. You have filed no appeals of the County
13 decision making process in this proceeding.

14 A. No, we have not appealed the County decision
15 making process in this proceeding.

16 Q. You raised a question about submission of
17 some legislation to the Board of County Commissioners.
18 They allowed that evidence in, didn't they?

19 A. In fact, we were informed as Mr. Hurson said
20 earlier that the submission of that new information had
21 not been requested and submitting it was I don't think
22 they ever used the word out of order. They certainly made
23 us pay quite a price for it if you read through the
24 transcript on that particular day.

25 Again, the experience of that is what very

1 much shaped our thoughts when we were told that, you know,
2 especially after their site visit that 2,500 to 3,000 feet
3 was what they were viewing as an acceptable setback, and
4 it very much stifled our own ability or our own
5 inclinations, perhaps a better way to phrase it, to come
6 back with greatly detailed new information on why our
7 alternatives were worth considering.

8 JUDGE TOREM: Mr. Peck, I think the question
9 was did they allow you to put that information into the
10 record? Yes or no.

11 THE WITNESS: Yes, it is in the record, but
12 it was painfully inserted there.

13 JUDGE TOREM: Okay. Thank you. Anything
14 else, Mr. Carmody?

15 BY MR. CARMODY:

16 Q. Isn't the only response the Commissioners
17 made was to allow the public who had not seen that
18 information an opportunity to respond to that information?

19 A. I don't believe there was any provision for
20 public response. I don't believe there was. Besides
21 incorporating it in the record I don't believe there was
22 public response, but that just may be faulty memory from
23 that evening.

24 MR. CARMODY: Okay. I have no further
25 questions.

1 JUDGE TOREM: Councilmembers, let me ask one
2 question first and then I'll go around the table.

3 Mr. Peck, has Horizon prior to EFSEC
4 requesting this on Tuesday has Horizon gone out and
5 reviewed any other setbacks that are established elsewhere
6 since the County process ended in June to the best of your
7 knowledge?

8 THE WITNESS: No. This reflects my own
9 library more than anything else that had been brought to
10 bear.

11 JUDGE TOREM: So to your knowledge there
12 wasn't between June and last Tuesday any comparative
13 jurisdiction searching?

14 THE WITNESS: No.

15 JUDGE TOREM: Councilmember Johnson, any
16 additional questions?

17 MS. JOHNSON: No.

18 JUDGE TOREM: Councilmember Fryhling?

19 MR. FRYHLING: No.

20 JUDGE TOREM: Mr. Sweeney?

21 MR. SWEENEY: Just some clarification so I
22 get it clear in my head. The 1,320 setback that the
23 Applicant suggests that is from the structures, existing
24 structures to turbines?

25 THE WITNESS: Yes.

1 MR. SWEENEY: The setbacks that were
2 suggested by the Council or the Commissioners rather two
3 to three thousand feet what is your understanding that is
4 between?

5 THE WITNESS: From a turbine to a
6 nonparticipating landowner's residence.

7 MR. SWEENEY: So their residence, to their
8 structure?

9 THE WITNESS: Right, and then I believe
10 there was 2,000-foot setback to the property line.

11 MR. SWEENEY: I'm asking your opinion. Had
12 you developed a setback that would have met the
13 Commissioners satisfaction would we be here today?

14 THE WITNESS: I don't know is the honest
15 answer. I don't know.

16 MR. SWEENEY: All right. That's good enough
17 for me. Thank you.

18 THE WITNESS: Would you mind if I expand on
19 this? Again, I recognize that it's quite a problematic
20 question for us because it incorporated at the time the
21 incorporation of new information and from the County's
22 side our perception, my perception in particular was very
23 much that we were being delivered a regulatory mandate of
24 a 2,500-foot setback. In the absence of a process of any
25 kind of just before they voted to deny the project that we

1 were being told what the standard was and between the
2 prior couple hearings and that moment there hadn't been an
3 opportunity to negotiate or to further pursue it; and it
4 really, really stymied us as to how to proceed and that's
5 reflected I think in the letters that we sent to the
6 County Commissioners.

7 MR. SWEENEY: Since you added, clarified, I
8 appreciate it. That was good. So in your understanding
9 the development of 2,500 is between the structure and the
10 turbine.

11 THE WITNESS: Yes.

12 MR. SWEENEY: And since that day when that
13 standard when you became aware of that has the company,
14 Applicant had any additional ideas as to how to resolve
15 this impasse?

16 THE WITNESS: No, because we don't know what
17 the standard is based on. We just know that it's a number
18 that was arrived after a site visit by three County
19 Commissioners.

20 MR. SWEENEY: Okay.

21 JUDGE TOREM: Councilmember Wilson?

22 MS. WILSON: Yes. I would like to follow up
23 on the question Mr. Sweeney stated about would that fix
24 it. It's been a few weeks since I read the testimony of
25 the transcripts but the planning commission denied the

1 application.

2 THE WITNESS: Yes.

3 MS. WILSON: Based on zoning. When I read
4 the transcript of the County Commissioner's meetings I
5 didn't see a lot of discussion about the planning
6 commissioners recommendation. It went basically to this
7 2,500 feet.

8 THE WITNESS: Yes.

9 MS. WILSON: So wasn't that left to be
10 discussed: the planning commissioner's recommendation? I
11 mean didn't that need to be addressed by the County
12 Commissioners as well?

13 THE WITNESS: Once the planning commission
14 action was taken that was the last time there was any
15 discussion on the record that occurred on the planning
16 commission side up to that point.

17 MS. WILSON: Thank you.

18 JUDGE TOREM: Councilmember Adelsman?

19 MS. ADELSMAN: Just a follow up to both Tim
20 and Judy. Hypothetically if the County came back and
21 said, "You know, we could negotiate. Have you guys
22 thought about would be a setback that would be
23 acceptable?" You must have had some conversation. It's
24 not 1,320; it's not 2,500. So if the door was open for
25 negotiation what would that have been?

1 THE WITNESS: I feel a laser beam on my back
2 at this moment.

3 MS. ADELSMAN: Is there somebody else that
4 could answer this?

5 THE WITNESS: Well, the most direct response
6 I'd like to make is that's exactly what we were hoping was
7 going to happen. We were hoping that Mr. Hurson appeared
8 in Olympia at your prehearing meeting, and I think we
9 followed it up either that night or the next day with a
10 letter saying to the County Board saying, "Boy, let's sit
11 down and go over this again." We were hoping that a forum
12 would be created where that conversation could take place.

13 As I said earlier, the next time we were in
14 a forum where a conversation like that was going to take
15 place, the both parties having said here's where we were
16 right now, the next party to speak was the County and they
17 were still where they said, and that's when we interpreted
18 it as really a regulatory action, not a negotiation.

19 MS. ADELSMAN: Just another quick question
20 and I think this was asked before. With the 1,200 feet
21 have you evaluated how many turbines would have to be cut
22 from the 65 to get to 12?

23 THE WITNESS: We have that number, but I
24 can't put it off the top of my head. It's I believe--

25 MS. ADELSMAN: Is it half?

1 THE WITNESS: No, it's not half. It's a
2 relatively--it seems to me that it's--I'm sorry. If I try
3 to do it, I'm going to give you a wrong number. I would
4 much rather provide that in some fashion for the record.

5 MS. ADELSMAN: Did I say 2,005?

6 THE WITNESS: You said 1,200.

7 MS. ADELSMAN: No, I'm sorry. I meant the
8 2,005. With the 2,005 how many turbines would have been?

9 THE WITNESS: I believe we get down to the
10 15 to 20 turbine range which on this side with the
11 construction costs associated with the site, you know,
12 really pretty much blows it as an attractive site to the
13 market.

14 JUDGE TOREM: I believe, Councilmember
15 Adelsman, there was a table in Mr. Taylor's supplemental
16 and maybe his supplemental rebuttal testimony that showed
17 various numbers and cuts in those and I'd refer you to
18 that.

19 MS. ADELSMAN: The question was asked before
20 I think. I wanted just to make sure.

21 THE WITNESS: I believe it even shows it at
22 the landowner level, if I remember correctly.

23 MS. ADELSMAN: Okay.

24 JUDGE TOREM: Ms. Towne.

25 MS. TOWNE: Quick follow up to Mr. Sweeney's

1 initial question asking about the 1,320-foot setback. I
2 want to make sure I am clear. Your answer when you
3 reiterated was it was 1,320 from structures. Are we
4 talking structures or residences?

5 THE WITNESS: Residences.

6 MS. TOWNE: In all cases we're talking
7 dwellings?

8 THE WITNESS: Residences. And to be even
9 more precise nonparticipating landowner residences.

10 MS. TOWNE: Residences. Thank you.

11 CHAIR LUCE: Okay. I heard 1,320, I heard
12 2,000, I heard 2,500, and I think I've heard that maybe
13 the County Commissioners in reading the transcript for
14 2,000 and one of them was 2,500, and 1,000 and 1,320 have
15 been mentioned by the Applicant. I guess I'm not going to
16 say anything more than that except to say that I wish that
17 prehearing conference had been followed through with
18 something in addition, and that's my way of comment from
19 the Chair, and I'll just leave it at that.

20 JUDGE TOREM: Councilmembers, anything else?

21 Councilmember Johnson.

22 MS. JOHNSON: I guess my question is you
23 talked about the County not giving reasons on how they
24 came up with the 2,500. How did you come up with the
25 1,320?

1 THE WITNESS: Well, I suffer from being the
2 messenger not the analyst when it comes to answering that
3 question. I was basically the person that went back to
4 the company and said 1,250 is not doing it. What's the
5 next increment that the analysis suggests we can go out
6 and still not be, you know, crossing lines that we don't
7 want to cross, and that's where that number came from. I
8 was not part of the analytical team that put it together.

9 They're well aware of my liberal arts major
10 and good standing criteria. They ultimately are around
11 those sorts of things.

12 And I'm sorry to have to be punting on that
13 question but that's the reason. I know it's the number
14 that was developed, and I was not part of the team who
15 developed it.

16 JUDGE TOREM: Councilmembers, any other
17 questions?

18 Ms. Anderson, anything you want to do on
19 redirect?

20 MS. ANDERSON: Yes, thank you. Your Honor,
21 first of all, I would like to reserve my redirect insofar
22 as it pertains to the Klickitat County ordinance. I too
23 don't have that in front of me and notwithstanding
24 Mr. Carmody's delving into some substantive issues, it's
25 impossible for me to redirect.

1 JUDGE TOREM: Enough said. That's reserved.

2 REDIRECT EXAMINATION

3 BY MS. ANDERSON:

4 Q. Very briefly, Mr. Peck, following the
5 prehearing conference at which Mr. Hurson appeared and
6 indicated the parties had arrived an at impasse is there
7 anything you could add to this conversation that would I
8 think address Chairman Luce regarding additional efforts
9 made to talk to the County?

10 A. Internally we were very excited at the
11 opportunity that was presented by Mr. Hurson's statement
12 at your prehearing meeting. We very quickly followed it
13 up. I don't remember the exact sequence. We either had a
14 meeting at the staff level or we sent them a letter. We
15 tried to move forward very aggressively and say we're
16 interested in talking if you are, and that's just about
17 how far it went.

18 JUDGE TOREM: Was this the May 30 prehearing
19 conference?

20 THE WITNESS: No, I believe it is before
21 that.

22 JUDGE TOREM: April 20 something?

23 THE WITNESS: I want to say that it was one
24 that was mid April because, you know, it was--maybe was it
25 early--

1 JUDGE TOREM: I think there was one in mid
2 April as well.

3 THE WITNESS: I want to say that our
4 exchange of correspondence took place--come to think of
5 it, I think it was our May 25 letter that outlined our
6 interest in reopening the negotiations which I would have
7 put it in one of those exhibits I mentioned, either three
8 or seven.

9 JUDGE TOREM: Again to clarify, those are
10 exhibits to your request for preemption.

11 THE WITNESS: Yes. We have formal
12 correspondence related to the transcript under Exhibit 3
13 and then we also have some miscellaneous correspondence
14 under Exhibit 7, but it didn't seem quite directly to fit
15 in but helped explain some of the staffable context that
16 we had.

17 BY MS. ANDERSON:

18 Q. Mr. Peck, in addition to exchanging letters
19 did you in fact meet with Kittitas County staff to try and
20 overcome the hurdle?

21 A. Yes, we had a history of meeting with the
22 staff to try and hammer out what we heard or what we
23 thought they were talking about at the meetings. We
24 certainly had a hearing with them shortly after the
25 Olympia meeting.

1 Q. Mr. Peck, you heard Mr. Taylor's testimony
2 earlier today regarding multiple facts that go into wind
3 farm siting, and at the risk of misquoting him I would
4 like you to tell me which function you perform for
5 Horizon. There are negotiations of landowner agreements
6 that are necessary for the project to be sited. Were you
7 responsible for negotiating the underlying landowner
8 agreements?

9 A. I was not responsible for negotiating
10 landowner agreements, although I do interact regularly
11 with the landowners themselves.

12 Q. Were you responsible for evaluating the
13 transmission data necessary to ascertain whether this was
14 an appropriate location?

15 A. No, I wasn't involved in that at all.

16 Q. Were you responsible for evaluating the wind
17 data that goes into determining whether a site is
18 appropriate?

19 A. Sort of a two-part answer to that. To the
20 extent that we were up here in the '90s from Klickitat
21 looking at sites in the Kittitas Valley I was involved in
22 siting some Met towers. I was not involved in analysis of
23 that data and I've not been involved in the analysis of
24 that meteorological data at all with this site and
25 Horizon.

1 Q. Are you responsible for negotiating directly
2 with a potential power purchaser for this project?

3 A. No, that's not handled out of our office at
4 this time.

5 Q. Is it fair to say your only responsibility in
6 this project is the procurement of permits?

7 A. I extend it a little bit beyond that. To the
8 extent that landowner relations and to a certain extent
9 community relations aren't directly permit related, but
10 certainly the principal reason for hiring someone with my
11 background both at the county government and the wind
12 power was the permitting side.

13 Q. Is it fair to say you weren't responsible for
14 the establishment of the initial 1,000 foot setback that
15 preceded your hiring?

16 A. No, I believe that was the draft
17 environmental impact statement's prohibition, but I'm not
18 entirely sure about that.

19 Q. Did you ever have the authority with bearing
20 in mind all the factors that go into a siting decision,
21 did you have authority to extend the setback beyond 1,320?

22 A. No, I was part of the process of raising the
23 need to go beyond what was imposed up to that point, but
24 it was not my decision to come to that number.

25 Q. Who does have that responsibility at Horizon?

1 A. That would be Chris Taylor, the director.

2 Q. Nothing more.

3 A. And people who he reports to, of course.

4 MS. ANDERSON: I have nothing further, Your
5 Honor.

6 JUDGE TOREM: Mr. Hurson, I'm looking at
7 your cross and the other questions that came up. Is there
8 anything we can get from additional cross that's part of
9 recross? Do you need anymore?

10 RE-CROSS-EXAMINATION

11 BY MR. HURSON:

12 Q. Just to clarify a few things. If I
13 understand you correctly, the 1,320 is not based upon any
14 sort of environmental analysis whatsoever as far as it
15 being a reasonable setback. Correct?

16 A. No, that's not what I think I said. What I
17 said was I wasn't part of the analytical team that
18 development that number.

19 Q. But you're not aware of an environmental
20 analysis done at the 1,320 setback. Correct?

21 A. But--

22 Q. You personally are not aware of it.

23 A. No, I'm not personally aware of it.

24 Q. Now, when you came back and met with the
25 County after I went to EFSEC and said can you get these

1 guys to come back to the table, during the course of the
2 meeting you didn't say, for instance, Jim, when we told
3 you that 1,320 feet anything beyond this makes it no
4 longer economically viable, you didn't tell us we were
5 just kidding. That isn't true, did you?

6 A. Well, I mean the dilemma was that at that
7 stage of the process we were well educated on the fact
8 that we couldn't have substantive conversations with
9 County staff. You know, we had to get it back to the
10 Board of County Commissioners. I mean we tried to open
11 through County staff and let County staff--the
12 Commissioners know through County staff that we would like
13 to reengage. So the specifics of that you guys made it
14 real clear to us that just wasn't something we could do.

15 Q. So when you came back to talk to the County
16 staff your plan wasn't to talk substantively with the
17 County about setbacks or you saying, "Well, actually we
18 could do an economically viable project with a greater
19 setback. Let's talk."

20 A. It was our hope that by taking you up on your
21 offer to reengage that we could enter into conversations
22 with the Board of County Commissioners in a public setting
23 with them understanding that, well, we thought it was a
24 heck of a good offer; that we would like to engage in
25 negotiations with the County.

1 JUDGE TOREM: Mr. Peck, I think the question
2 was, was the County expected to understand or perceive
3 that Horizon was willing to make further compromises
4 beyond what they thought was your best and final offer of
5 1,320 feet?

6 THE WITNESS: I certainly hope that I
7 conveyed the impression that we were willing to go beyond
8 that; that the opportunity, that we understood the
9 opportunity to negotiate was going to take some
10 flexibility on both parties' side and perhaps I didn't
11 fully convey that, but I was trying to.

12 JUDGE TOREM: Let me just ask this and,
13 again, you may want to punt on this. If this Council
14 decides to preempt the County, and this Council decides to
15 recommend to the Governor a draft site certification
16 agreement and this Council comes up with something greater
17 than 1,320 feet are we then going to see a request for
18 reconsideration from you saying don't even bother to send
19 it to the Governor, it's not economically viable at 1,500
20 or 1,750 or whatever number the Council might choose?

21 THE WITNESS: Your Honor, for the first time
22 in a civilian environment I have to say that's above my
23 pay grade.

24 JUDGE TOREM: Okay.

25 THE WITNESS: I can't answer that question

1 myself.

2 JUDGE TOREM: Do you have anything,
3 Mr. Hurson, that you want to follow up on?

4 MR. HURSON: No, thank you.

5 JUDGE TOREM: Mr. Carmody, anything briefly
6 in recross?

7 MR. CARMODY: Very, very briefly.

8 REXCROSS-EXAMINATION

9 BY MR. CARMODY:

10 Q. Mr. Peck, which turbines strings are
11 eliminated by the 2,000-foot setback?

12 A. I believe we have maps to that effect. I'm
13 not able to do it off the top of my head.

14 Q. Is this central string here impacted by a
15 2,000-foot setback?

16 A. I'm sorry. I'm just not able to do that off
17 the top of my head.

18 Q. I suggest the Council maybe looks at this and
19 rods the distance. Because would you agree with me that
20 the core of this property on all aspects is not impacted
21 by a 2,000-foot setback, only these peripheral sites?

22 A. I'm unable to comment on it one way or the
23 other because when you start siting turbines you have to
24 have a place to plan them and I'm not--

25 JUDGE TOREM: I think his point though is

1 that the yellow shaded portion of that, if you hold it up
2 again Mr. Carmody, those portions are probably not in
3 Mr. Carmody's opinion or suggestion where the setback
4 issue lies, but only where they're closer to the
5 boundaries of the project.

6 THE WITNESS: Correct.

7 JUDGE TOREM: Was that a reasonable
8 understanding, Mr. Peck, of the setback issue of where the
9 likely turbines would be affected?

10 THE WITNESS: I think it's a reasonable
11 thing to look at, but, again, it's the kind of thing where
12 you have to look at a variety of factors all together.

13 JUDGE TOREM: Are we understanding as a
14 Council as a whole directly that the yellow shaded area is
15 participating landowners?

16 THE WITNESS: Yes.

17 JUDGE TOREM: So the setbacks again are to
18 nonparticipating. So that would be Mr. Carmody's
19 suggestion here that only those white areas and moving the
20 lines from the white area into where the first red dots
21 are that's where we would be talking about in this debate.

22 THE WITNESS: Well, I--

23 JUDGE TOREM: I certainly recognize some of
24 these entire strings may be within 2,000 feet and they may
25 be wiped out entirely. That may be the answer. But he's

1 asking a more general question as to the string he pointed
2 to appears to be well within the yellow shaded area. Does
3 it appear reasonable?

4 THE WITNESS: Yes, you know, if I could
5 stipulate that I need to have somebody technical sitting
6 next to me to answer questions like that. It appears that
7 way to me as well, but I would be reluctant to have that
8 be the final word on the subject.

9 JUDGE TOREM: Understood.

10 Mr. Carmody, anything else?

11 BY MR. CARMODY:

12 Q. There are also substantial portions of the
13 turbines appearing on the interior portion in which you
14 have not located turbines under this proposal.

15 A. Well, I think until we're really looking at a
16 more detailed map that's designed for the purpose of
17 siting turbines, it's difficult to get into this can we
18 put a hotel on Park Place kind of question when you don't
19 really have those sorts of details in front of you.

20 Q. My last question is in modifying and reducing
21 your project proposal you indicated the reasoning for that
22 was to avoid impacts to adjoining properties. Is that a
23 correct statement?

24 A. Visual impacts.

25 Q. Visual impact. Yet you have Xs through quite

1 a number of turbines on the interior portion of this
2 property that have been in the original proposal that
3 would not be impacted by a 2,000 foot setback.

4 A. Well, I hate to be boring and repetitious but
5 that predates. That map was put in place long before I
6 was a part of the company.

7 JUDGE TOREM: Mr. Carmody, that question
8 might be best posed to Mr. Priestley whom I presume helped
9 the Applicant decide which of the visual simulations
10 caused the most pain and suffering via the testimony given
11 to the Board of County Commissioner process. And I
12 understood all the testimony this morning that those X's
13 represent the best attempt to address perceptions that
14 were expressed throughout that process, not just for
15 setbacks but also for visual impacts and all the other
16 factors.

17 MS. ANDERSON: Your Honor, if I may also
18 add, Mr. Carmody is mischaracterizing the testimony as
19 Mr. Peck's. It's not Mr. Peck who testified to that. I
20 believe it was Mr. Taylor.

21 JUDGE TOREM: I referred to it just as
22 earlier today because I'm not sure who it was.

23 Councilmembers, any other further
24 cross-examination for this witness?

25 Okay. Mr. Fiksdal.

1 MR. FIKSDAL: We now have copies of those
2 documents that Mr. Peck referenced.

3 JUDGE TOREM: Let me suggest that at the
4 next break that Mr. Fiksdal provides any of the parties
5 that are interested copies of the Benton County and the
6 Klickitat County ordinances. Those will be distributed,
7 and at some later time I'll get with Mr. Peeples and
8 Mr. Peck to see when to have you back on for discussion of
9 that limited topic. We'll have some direct examination to
10 get you to introduce that and then I anticipate the
11 parties that had cross-examination today will have another
12 shot at that particular topic.

13 At this point it is now ten minutes to 4:00.
14 I want to take a ten-minute break and come back with
15 Mr. Priestley. He's scheduled for 1-3/4 hours of
16 cross-examination and even if we started at four o'clock
17 we can't fit that much time in before five o'clock. My
18 knowledge of time space continuum is at least that
19 extensive.

20 But I do want see if I can start with
21 Mr. Slothower as the first cross-examiner and see I trust,
22 Jeff, you will be able to focus your questions and
23 hopefully that will dovetail and boil down from 1.75 to be
24 an optimistic 1-1/4. I'm going to see how much farther
25 past five o'clock we go today. But I want to start

1 immediately at four o'clock.

2 So if you're ready and Mr. Priestley are
3 ready, during the break if you will get those copies and
4 put up the other visual simulations, we may end up going
5 past five to six o'clock. We will see how long people's
6 stamina goes today. Come back in ten minutes.

7 (Recess taken.)

8 JUDGE TOREM. It's now four minutes after
9 four o'clock. We're ready to resume, and at this time we
10 have the testimony of Thomas Priestly. Before we get to
11 Mr. Priestley I want to remind the questioning
12 cross-examiners to please use the microphone for this
13 portion. The Councilmembers have moved around a little
14 bit and there are issues with the acoustics and we have
15 some new exhibits up. So let's stick to using and
16 speaking into the microphone and that will help this last
17 couple hours of today's proceeding go quicker.

18 The first issue to take up before we get to
19 Mr. Priestley is the exhibit which we've been referring to
20 throughout the day that's not yet part of the record. I
21 understand that this was in the record before in the
22 County or perhaps came up somewhere in that process.
23 We're going to make it part of this discussion today
24 officially.

25 Mr. Peebles, did you come up with a proposed

1 exhibit number?

2 MR. PEEPLES: I didn't. I was trying to
3 catch Irina and I didn't. I believe let's make it--we'll
4 put it on Chris Taylor's supplemental testimony, and it
5 would be my suggestion--

6 JUDGE TOREM: Chris Taylor's supplemental
7 testimony.

8 MR. PEEPLES: Let me look at it.

9 Irina, do you have which one it would be?

10 JUDGE TOREM: 20.3 is the suggestion.

11 MR. PEEPLES: It would be .3, and that's
12 fine.

13 (Exhibit No. 20.3 marked for
14 identification.)

15 JUDGE TOREM: So there's a motion before the
16 Council to admit to the record the chart. Let me be clear
17 this is the one where the original up to 80-turbine
18 layout, has variety of Xs through sites and strings that
19 are not going to be suggested further by Horizon. And I
20 understand from Mr. Taylor's testimony this was in
21 response to the public comments and other items that came
22 up during the County process.

23 Mr. Peeples, is that the correct
24 description?

25 MR. PEEPLES: Correct.

1 JUDGE TOREM: So this shows a variety of
2 turbine strings that eventually became the 63 or 64
3 turbine layout maps, but it shows the original. It kind
4 of shows your work version with the Xs.

5 Councilmembers, that's a motion before you.
6 Are there any objections from the other
7 parties?

8 Seeing none, Councilmembers all in favor?

9 COUNCILMEMBERS: Aye.

10 JUDGE TOREM: Any opposed?

11 All right. Then the CT-SUP No. 20.3 is now
12 part of the record and we'll hopefully be able to get
13 later in the week some reduced-to-size version of that so
14 the Councilmembers can include that in their personal
15 copies, and I'll leave that for the Applicant to get those
16 back to us.

17 (Exhibit No. 20.3 admitted into evidence.)

18 JUDGE TOREM: At this time let me swear in
19 Mr. Priestley.

20 (Thomas Priestley sworn on oath.)

21 JUDGE TOREM: Mr. Peeples, if you will have
22 him go through the normal questions and then address any
23 changes to any exhibits that are to my left.

24 ///

25 ///

1 THOMAS PRIESTLEY, Ph.D.,
2 being first duly sworn on oath,
3 testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. PEEPLES:

7 Q. Do you have before you right now Exhibits I
8 believe 34 TP-T and Exhibit 34-SUP? And that is all the
9 prefiled testimony you provided to the Council; is that
10 correct?

11 A. That is correct.

12 Q. If all the questions were asked to you in
13 this testimony, would those be your answers?

14 A. Yes, they would be.

15 MR. PEEPLES: I would like to move for the
16 entry of those two exhibits together with the exhibits
17 referenced within that testimony.

18 (Exhibit Nos. 34, 34.1 through 34.14, and
19 34-SUP identified for the record.)

20 JUDGE TOREM: Council, there's a motion
21 before you for Exhibits 34 and Exhibit 34-SUP and also the
22 coordinating exhibits to be moved into the record. All
23 those in favor?

24 COUNCILMEMBERS: Aye.

25 JUDGE TOREM: Any opposed?

1 Hearing none, those are part of the record.

2 (Exhibit Nos. 34, 34.1 through 34.14, and
3 34-SUP admitted into evidence.)

4 MR. PEEPLES: Your Honor, we had a request
5 for some enlargements and had clarification questions
6 asked by Council so I have prepared that. I think I
7 reviewed this, at least I reviewed it with counsel I think
8 that would be cross-examining, at least a couple, and I
9 would like to review that with my client for the Council
10 in the same fashion.

11 JUDGE TOREM: Certainly. And if you'll use
12 the microphone for all purposes that would be great. My
13 understanding, Mr. Peeples, is that these new diagrams
14 that are up there are re-creations and slight enlargements
15 of Vis-1 which is attached to Mr. Priestley's supplemental
16 testimony; is that correct?

17 MR. PEEPLES: Yes.

18 BY MR. PEEPLES:

19 Q. Mr. Priestley, we have two maps up there and
20 would you please describe what they are and where they
21 came from.

22 A. Okay. And let me say something very, very
23 briefly about the question of a viewpoint. In the initial
24 analysis that was prepared for the ASC, I used a total of
25 16 viewpoints in and around the project area. In response

1 to a request for additional information from EFSEC staff
2 and consultants, I prepared views from two additional
3 viewpoints, as well as views from two viewpoints that were
4 used in the cumulative impacts analysis.

5 So for the main analysis initially there were
6 18 viewpoints. Then when the EFSEC consultant prepared
7 the DEIS they chose to use a subset of those 18 viewpoints
8 that I had used. They decided not to use 7 of the
9 viewpoints where the levels of impact were very low.
10 Instead they focused on 11. Then when it came time for me
11 to do the analysis of the revised project, I ended up
12 focusing on 5 out of those 11 viewpoints. From 7 of the
13 viewpoints both my analysis and the analysis prepared by
14 the EFSEC consultant found that the level of impact would
15 have been low to moderate, and it was a very fair
16 assumption to assume that with this project with the fewer
17 turbines that the impact for those viewpoints would
18 certainly be no higher than they had found to be before.
19 So those were eliminated from further detailed analysis.
20 So instead I looked at five and perhaps I could point to
21 this.

22 JUDGE TOREM: Mr. Priestley, when you say
23 you did the revised selection, was that at the original
24 recommendation or at the original suggestion of the
25 Applicant to the County down to 80 turbines or the one

1 that's before us now of 65.

2 THE WITNESS: You know, I would have to
3 think for a minute about that.

4 MR. PEEPLES: We've used the 65 turbines
5 layout on the more recent one.

6 THE WITNESS: If you look at the technical
7 memo, I think you will see it's the 65 map because this
8 map is from my technical memo and there were 65.

9 A. So just to make it very, very clear what's
10 happening with these viewpoints we color coded them. This
11 map shows the project. It's kind of a close-up view, and
12 I've used the red on the box for the viewpoints for which
13 we have prepared new revised simulations. There's one
14 here and at Highway 97 at Eburg Ranches Estates, one here
15 at the top of the slope by the gravel pit looking north on
16 97, one-quarter of Bettas Road on 97 where you're looking
17 south, and one up here from a residence in Section 35. We
18 didn't redo the simulations for Bettas Road. Here you can
19 see there are no more turbines in this view, and we didn't
20 redo the one down here on Highway 10 which is No. 6.

21 This map then shows the locations of
22 viewpoints that were further out from the project. On
23 this map we show the general locations of the strings,
24 locations of the viewpoints. Now, the further out
25 viewpoints the only one that we did was Viewpoint No. 11,

1 which is on Forest Road 35 which provides access up to
2 Table Mountain and recreational activities up there.

3 JUDGE TOREM: Again, for clarification, the
4 first map you referred to was Vis-1 Revised Part A at the
5 five viewpoints. Vis-1 Revised Part B is another
6 enlargement but at a greater scale and it shows just the
7 one from Forest Road 35.

8 THE WITNESS: As well as Viewpoint 7, 8, 9,
9 and 10 which, we did not redo.

10 JUDGE TOREM: So that sets some context for
11 what you're going to be discussing today.

12 THE WITNESS: Yes, it will make it--I think
13 it will make that discussion just a lot more clear.

14 JUDGE TOREM: Mr. Peeples, any other
15 preliminary?

16 MR. PEEPLES: Yes.

17 BY MR. PEEPLES:

18 Q. I just wanted to point out is that am I
19 correct that vis sims that you have up here,
20 Dr. Priestley, they are the vis sims that are basically
21 the ones in red?

22 A. Yes, that is correct.

23 Q. Those are the ones that were attached to the
24 addendum to the DEIS.

25 A. That is correct.

1 JUDGE TOREM: Mr. Peeples, I'm noticing that
2 when I counted the five on the map, there were five red
3 dots, one of which was in the legend. Is there a fifth
4 one or is the green one along the highway to the lower
5 left is that the fifth one that wasn't redone?

6 BY MR. PEEPLES:

7 Q. Can you answer that?

8 A. There's a red dot over on the other map, over
9 on the Part B.

10 JUDGE TOREM: So the five that you redid are
11 in total, four of which are on A and the fifth is on B.

12 THE WITNESS: That's correct.

13 JUDGE TOREM: Does that clarify for the
14 Council?

15 MS. TOWNE: Thank you.

16 JUDGE TOREM: So the two, Vis-1a and Vis-1b,
17 taken together show the five that you focused on for the
18 revised project.

19 THE WITNESS: That is correct.

20 JUDGE TOREM: Mr. Slothower, did you get all
21 that?

22 MR. SLOTHOWER: I got it.

23 JUDGE TOREM: Then we're ready to go with
24 your cross-examination.

25 MR. SLOTHOWER: Thank you.

1 CROSS-EXAMINATION

2 BY MR. SLOTHOWER:

3 Q. Dr. Priestley, when you did the simulations
4 did you actually go on the ground and stand at the point
5 and take the pictures yourself?

6 A. Yes. Well, in most cases, in most cases I
7 did. In the case of the view from Section 35 which
8 required access to private property at the time when I
9 couldn't be available that was done by Horizon staff, and
10 for the view from Forest Road 35 that was done by Horizon
11 staff as well because I couldn't get out here at the time
12 we needed to do it.

13 Q. Thank you. Determining visual impact is
14 really a subjective science, isn't it?

15 A. Well, it involves a process that is mildly
16 systematic. In the end it requires making judgments, but
17 in the landscape architecture profession a whole series of
18 protocols has been developed for at least very, very
19 systematically structuring the way in which assessments of
20 impacts, visual impacts are made.

21 And you will see in my testimony,
22 particularly my original testimony, I do go to some
23 lengths to describe the efforts done particularly by
24 agencies of the federal government to development
25 procedure and protocols for assessment of the visual

1 character and quality of landscapes and for the various
2 systematic assessment of the affects of changes to those
3 existing landscapes.

4 Q. But at the end of the day after you've taken
5 particular structures through those protocols your
6 conclusions may vary from other individual conclusions; is
7 that correct?

8 A. What we try to do is lay out the procedure,
9 lay out the assumptions, come to a reasonable conclusion,
10 but also leave that information on the table for others to
11 review.

12 Q. I understand that. But my question was when
13 you reach a conclusion if you take someone else through
14 the same process, they may very well come to a different
15 conclusion on the impact; is that correct?

16 A. Yes.

17 Q. Thank you.

18 A. That's true.

19 Q. Essentially you're trying to quantify an
20 impact that means different things to different people and
21 therefore by its very nature is going to be subjective.

22 A. I would not at all use the term quantify.

23 Q. Okay. That's my term. You're right. That's
24 my term. If you have a better term for it, I think you
25 know what I'm asking.

1 A. Yes. I know the approach I take, the
2 approach that most professionals would like to take in
3 fact would avoid quantification. An effort again is made
4 to very objectively identify what actually is happening,
5 what is there in the situation that you are dealing with
6 now by photographs so everybody can see, perhaps through
7 analyses to show objectively what can you see from, how
8 much can you see from where, development simulations so
9 everybody can see what is the physical change that we are
10 talking about. Again, it's a whole process of kind of
11 focusing things down, walking through it in a very, very
12 systematic way to provide a basis for people to come to an
13 understanding what do we have here now, how are things
14 going to change with the project.

15 Q. Dr. Priestley, in your testimony, your
16 supplemental testimony at page 6 you state the following:
17 "My professional opinion is that County's insistence that
18 all turbines must be back 2,500 feet from residences is
19 not a sound decision." You go on to say, "This is a rigid
20 requirement that does not reflect the fact that in many
21 cases, although turbines proposed as a part of this KVVPP
22 project may be located within 2,500 of residences, they
23 have little aesthetic impact." You testified to that; is
24 that correct?

25 MR. PEEPLES: I'm going to object. He

1 didn't read the rest of the sentence.

2 JUDGE TOREM: Mr. Slothower, I think it's
3 fair to read the words after aesthetic impact that follow
4 the word because, and the Council seems to have that open
5 so I'll have them read it along, but the full sentence I
6 guess the first two sentences there from line 12 to line
7 18 would be the better context.

8 Mr. Priestley, that's your testimony; is
9 that right?

10 THE WITNESS: Yes, this is my testimony.
11 That opening statement was definitely very, very highly
12 qualified in some very specific ways.

13 BY MR. SLOTHOWER:

14 Q. Mr. Priestley, this testimony though makes it
15 clear, at least to me and correct me if I'm wrong, that
16 the setback, the appropriate setback depends upon a
17 site-specific analysis of each situation; is that correct?

18 A. Yes, I think before you impose, before you
19 impose a setback you really need to take a look at what is
20 happening in the situation to determine what, if anything,
21 would be appropriate in terms of a setback.

22 Q. So in certain circumstances a setback of
23 1,320 feet maybe that type of a setback will minimize the
24 visual impact given that specific situation.

25 A. In fact, in many circumstances and, in fact,

1 I have some other information in my testimony which in
2 fact provides a basis for understanding how 1,320 feet in
3 fact could provide a level of visual mitigation.

4 Q. But in other circumstances 2,500 feet may
5 provide no mitigation at all to the visual impacts.

6 A. Essentially you are correct. In some very,
7 very, in some very, very specific circumstances that could
8 be true, but it would require, you know, a very specific,
9 you know, site-specific assessment how you come to that
10 conclusion.

11 Q. That's really, Dr. Priestley, my point
12 exactly. The impact, the visual impact and whether a
13 1,320-foot setback or a 2,500-foot setback or some other
14 setback will not be known until the sites, until is the
15 turbines are specifically and finally located; is that
16 correct?

17 A. What I want to say to that is what we have
18 done here in this case does provide an adequate basis for
19 analysis. My technical colleagues can confirm this, but
20 it is my understanding that because of all the technical
21 constraints, once we've made this preliminary location of
22 the turbines within the string further modification is
23 likely to be very, very limited. We're not talking about
24 a dramatic change in the layout here. We're talking about
25 rather some tweaks to the siting of each individual

1 turbine.

2 And I might add that the procedure that we
3 follow here is very much standard practice in the wind
4 industry and amongst the regulatory agencies that regulate
5 the projects of this type because at this point in the
6 process it's impossible to know down to the centimeter
7 exactly where the turbine is going to be. It can come
8 close as we have in this case.

9 And I might cite, for example, my experience
10 in the last year working on the Bigelow Canyon project in
11 Sherman County, Oregon there we had a very, very similar
12 situation. We had to base our analysis on preliminary
13 location of turbines within the turbine corridors, and
14 that approach was accepted by the Oregon EFSEC which in
15 fact approved the project.

16 Q. In your testimony you have a chart where you
17 you go to specific you had residence map I.D. references.
18 This is at page 8, Table 1 of your testimony. You're
19 familiar with that?

20 A. Yes, I see it.

21 Q. I note that you've got the view shed notes
22 and for some you have turbine none in primary view shed
23 and others you have view blocked by terrain. Did you go
24 to each one of these houses?

25 A. Yes. Yes, as a matter of fact. In fact,

1 I've heard it said apparently in Seattle there was some
2 grumbling that the aesthetic consultant had not spent any
3 time out at the project site, and I really take exception
4 to that because over the last couple of years I have spent
5 a lot time at the site looking very, very closely at
6 things; and because many of these properties, many of the
7 residences on those properties are like very far off the
8 public road, from the public spaces it's hard to tell
9 what's going on. So to get a complete understanding of
10 what is really happening with these residences Horizon
11 rented a helicopter for a day and I spent the day in a
12 helicopter and around with my camera looking at every
13 single residence, photographing it from every angle,
14 taking copious notes as to, well, what is the orientation
15 of the house, where is the location of the windows, where
16 are the location of the outdoor activity spaces so I could
17 get an idea of how is the home situated, how is it angled
18 in terms of views toward the areas where the turbines
19 would be located. So, in fact, the view shed was quite
20 real.

21 Q. Does that mean that you determined this using
22 a helicopter or you determined it standing on the ground?

23 A. I think it was a combination of both things.
24 To the extent to which I could see things from the ground
25 I used that data as well as the insight gathered by the

1 flying around photographing things from the sky so it was
2 a combination.

3 JUDGE TOREM: Perhaps it would be easier,
4 Dr. Priestley, if you would answer as to how many of those
5 residences. You refer to 16 in the chart here and 27 all
6 together that were alleged by the County to have. How
7 many of those residences did you visit on the ground?

8 THE WITNESS: The focus was on these 16. In
9 terms of 27 the first thing, of course, we did was take a
10 look at which of the residences would be within a half a
11 mile.

12 JUDGE TOREM: For these 16 then.

13 THE WITNESS: Are all within half a mile of
14 the turbines.

15 JUDGE TOREM: How many of these 16 were
16 visited on the ground at their properties?

17 THE WITNESS: I would have to kind of go
18 here and take a look to be able to tell you. I can't tell
19 you off the top of my head to be quite honest.

20 JUDGE TOREM: Ball park? Half?

21 THE WITNESS: I would say I'm just looking
22 at the map here to kind of refresh my memory of where some
23 of these places are located. I would say the number of
24 residences that you couldn't tell very much from the road
25 could be on the order of 40 percent to half. Because, for

1 example, public access to--well, a number of these homes
2 are set way back on lots and some of these other areas are
3 very, very private and public access is pretty limited.

4 BY MR. SLOTHOWER:

5 Q. So, Dr. Priestley, then as I understand it,
6 you didn't necessarily go right to the house, stand in
7 their yard and look. You looked from the road; is that
8 correct?

9 A. It was a combination of looking from the road
10 and flying over, which actually was better than looking
11 from the road because flying over you get that bird's eye
12 view and a very, very good idea of how things are
13 oriented.

14 Q. But flying over, Dr. Priestley, you don't get
15 the perspective of the occupants of the residence who was
16 looking out from their structure; is that correct?

17 A. Yes, that is correct, but I should tell you--

18 Q. Thank you. Does topography make a difference
19 when you assess visual impact?

20 A. Yes, it does. Because very frequently
21 topography blocks views of turbines. In a number of cases
22 turbines that the County would require be removed under
23 their 2,500-foot setback requirement would be either not
24 visible or barely visible because of the effect of
25 topography.

1 Q. Well, generally the steeper the terrain, does
2 that tend to magnify the visual impacts? For instance, if
3 I'm standing on Highway 97 and I'm looking up a ridge line
4 and I see the towers there, that tends to magnify the
5 impact, does it not?

6 A. I can't give you a yes or no answer to that
7 because there are a lot of different things going on at
8 the same time. If, for example, you're driving along
9 Highway 97 and there are very gray steep slopes it may
10 well be that your primary code of vision is being
11 channeled by topography and the fact you are not looking
12 like way up where the turbine might be located.

13 Q. If I'm looking up a ridge line and I see a
14 turbine there, one of two things is going to happen as far
15 the background. Either I'm going to see the sky.
16 Correct?

17 A. That's correct.

18 Q. Or I'm going to see more terrain behind the
19 turbine.

20 A. Yes, that's correct.

21 Q. And depending upon how the turbine is painted
22 will have an impact on or will determine to a certain
23 extent the level of impact that I see there. Correct?

24 A. Yes, it will have an affect.

25 Q. For instance, if I am standing on Highway 97

1 and I'm looking up a ridge line and I see a turbine and
2 behind it I see more ridge line and the turbine is painted
3 white, that has a much greater impact, does it not, than
4 if the turbine were painted for lack of a better color
5 taupe or something like that?

6 A. Let's say it would have more contrast with
7 its backdrop than if it were some color that were
8 attempting to blend in, yes.

9 Q. So with more contrast it becomes more visible
10 and the eye catches it quicker. Right?

11 A. That's correct.

12 Q. I read the report that's attached to your
13 testimony and in there you talked about some mitigating
14 factors. In fact, you point to color. I think it's page
15 11 of your analysis. You talk about the finish.

16 A. Is that my memo?

17 Q. Yes, that's your memo. I'm sorry,
18 Dr. Priestley.

19 A. Thank you.

20 Q. The memo attached to your supplemental
21 testimony. On page 11 you have a number of what I really
22 viewed as well as you called it mitigation measures
23 because they are things that if you did this you would
24 mitigate the impact; is that correct?

25 A. Yes, the idea is to build these right into

1 the site of your project.

2 Q. And one of the goals is to minimize contrast
3 with the sky backdrop; is that correct?

4 A. Yes, that is correct.

5 Q. You testified a minute ago that you've been
6 to the Valley on and off over the last couple of years.
7 Have you been in the Valley since the Wild Horse project
8 went up?

9 A. Only I guess on the visit starting yesterday.

10 Q. Did you have an opportunity to view the
11 visual impact of the Wild Horse Project?

12 A. Only from the interstate.

13 Q. Viewing from the interstate is a good place,
14 a good perspective. So there are some turbines there at
15 the Wild Horse project that are close to the top of the
16 ridge line and they protrude up into this sort your
17 backdrop is the sky; is that correct?

18 A. Yes.

19 Q. Those are much more visible than the turbines
20 that are not contrasted with the sky; is that correct?

21 A. I haven't had the opportunity to look closely
22 enough to really render a decision on what's happening in
23 terms of the visibility of the structures at Wild Horse.

24 Q. But generally you just testified that the
25 turbine that is contrasted against the sky has a greater

1 impact.

2 A. That is very often the case.

3 Q. Have you examined other wind power projects,
4 done the same analysis on other wind power projects?

5 A. Yes, I have.

6 Q. Are the turbines always painted a white
7 color?

8 A. Not necessarily white. Often an off white
9 kind of like a very gray, neutral grayish, somewhere
10 between gray and off white.

11 Q. I say that because in looking at the Wild
12 Horse turbines they appear to me to be very white and they
13 contrast so the eye is drawn right to them. Would you
14 agree with that?

15 A. Again, not having spent enough time like
16 really looking at Wild Horse I hesitate to say one way or
17 another.

18 Q. Are you familiar with the Bureau of Land
19 Management Visual Resource Management System?

20 A. Yes, I am.

21 Q. That system suggests that visual contrasts
22 such as we have been discussing decrease as you move away
23 or as the receptor moves away. Right?

24 A. Yes, generally that's true.

25 Q. And that system suggests that towers need to

1 be as far away from the receptor as possible; is that
2 correct?

3 A. I don't think that it is written in a way
4 that specifically mentions towers.

5 Q. Turbines, if you will.

6 A. Objects or changes that's one of the
7 variables that can be played with.

8 Q. So under the BLM system in order to minimize
9 those impacts you try to move as far away as possible; is
10 that correct?

11 A. Not necessarily, but you do consider--again,
12 distance is a variable that you take into consideration in
13 making your siting decisions.

14 Q. Can visual impacts be mitigated with
15 distance?

16 A. Yes. If the distances are far enough, yes,
17 distance can play a role in changing the level of impacts.
18 Whether it's a mitigation is another question because is
19 it feasible to move the facility further from the site
20 than it needs to be at?

21 Q. Well, I guess that gets to the question of
22 whether this is an appropriate site or if there are other
23 places in Kittitas Valley that would be more appropriate
24 because they are farther away from the visual receptors.

25 A. Yes. I don't think that's a question that

1 I'm in a position to answer.

2 MR. SLOTHOWER: I think that's all my
3 questions.

4 JUDGE TOREM: Thank you, sir.

5 Mr. Hurson, did you want to take next?

6 CROSS-EXAMINATION

7 BY MR. HURSON:

8 Q. Correct me if I'm wrong, Mr. Priestley, but
9 none of the visual assessments--

10 A. I'm wondering if you could talk closer to the
11 microphone.

12 Q. Okay. Sure.

13 MR. PEEPLES: Mr. Hurson, he is pretty much
14 deaf in this other ear.

15 MR. HURSON: All right.

16 BY MR. HURSON:

17 Q. Correct me If I'm wrong, but none of the
18 visual assessments that are shown up on this board or that
19 we have pictures of are from the adjoining property
20 owners' residence.

21 A. Not adjoining property owners but, for
22 example, the view I guess it's from 4 the view up in
23 Section 35 in fact is from the front porch of the
24 residence. It's No. 1 on Highway 97. It was
25 intentionally selected to be at a place where a

1 residential, people were coming from a residential
2 subdivision turn onto Highway 97. So there was an effort
3 to reflect views that would be seen by residents of the
4 surrounding area.

5 Q. But that residence is, if I'm looking at the
6 scale correctly, it's well in excess of a mile to the
7 nearest turbine in that layout.

8 A. It's certainly over; for example, 4, it's
9 Section 35, that would be over a half a mile from the
10 turbines that are now being proposed.

11 Q. Okay. So it's over, it's over half.

12 JUDGE TOREM: Mr. Hurson, you're just going
13 to have to use the mic or take it with you.

14 MR. HURSON: Okay. That diagram sort of
15 inherently requires me to wander around.

16 BY MR. HURSON:

17 Q. No. 4 is this one up here. Correct?

18 A. In the Section 35, yes.

19 Q. So that's somewhere up here.

20 A. Yes.

21 Q. And so No. 4 and then according to this
22 diagram the nearest turbines there were eliminated.

23 A. That's correct.

24 Q. According to the scale that's roughly a mile
25 and so there's no turbines within a mile of there.

1 A. Correct.

2 MR. PEEPLES: I'm going to object to where
3 he put his pen. He tended to lay it on the top of the map
4 rather than where the potential residences would be.

5 BY MR. HURSON:

6 Q. Mr. Priestley, if I could--Mr. Priestley?

7 A. Yes, right here.

8 Q. Right here. Let's go over here. There's 4.
9 You agree that nearest turbine is?

10 A. About a mile away.

11 Q. The length of my pen which is in excess of
12 1.2 miles. Correct?

13 JUDGE TOREM: These are always clumsy things
14 to get into the record, but to preserve the question you
15 pointed to Forest Road 35 viewpoint which is No. 4.

16 MR. HURSON: Viewpoint 4.

17 JUDGE TOREM: You looked at the scale at the
18 bottom of that map, which is Vis-1 Revised A, and looked
19 at the scale to determine in judgment up to how far away
20 the nearest turbine displayed on that map is and
21 Dr. Priestley's agreed that it's about a mile away or
22 more. Is that right?

23 THE WITNESS: That's correct.

24 BY MR. HURSON:

25 Q. Let's see. The other turbines that were

1 removed--let's see. We have Viewpoints 3, 5, and 2. You
2 look at those. Would you mind looking at the addendum in
3 the Draft EIS on 3-18?

4 MR. PEEPLES: I've got it. Here you go

5 A. I've got it.

6 BY MR. PEEPLES:

7 Q. Drawing your attention there, it appears to
8 me where it's saying is the original layout there were
9 nine turbines ranging from .04 to a mile away. Correct?

10 A. Okay. Let me make sure I know where you were
11 on the page. Are you talking about Viewpoint 4?

12 Q. Viewpoint 2.

13 A. Viewpoint 2 that is the location north of the
14 gravel pit.

15 Q. Second paragraph in the original layout nine
16 turbines and Turbine String G would have been visible at
17 Viewpoint 2 at distances ranging from .4 to one mile.
18 Correct?

19 A. That is correct.

20 Q. The potential visual impact for Viewpoint 2
21 would have been moderate to high. Correct?

22 A. That is correct.

23 Q. These nine turbines have been removed in the
24 revised layout the project therefore no longer has visual
25 impact from the viewpoint.

1 A. That's correct. That's what it says.

2 Q. So we had Viewpoint 2. It showed some high
3 impact and they removed those.

4 A. That's correct.

5 Q. And four showed some impact. They removed
6 those. They removed some from the viewpoint from 4,
7 visual reduction. Right here. Correct?

8 A. That's correct.

9 Q. Let's see.

10 JUDGE TOREM: Mr. Hurson, the document
11 you're reading from is in his supplemental testimony or
12 part of the DEIS?

13 MR. HURSON: It's part of the DEIS. The
14 addendum to the Draft EIS.

15 JUDGE TOREM: If you can identify the page
16 numbers for the record, that would be helpful.

17 MR. HURSON: Certainly. The page I was
18 referencing earlier was page 3-18 in Chapter 3.

19 BY MR. HURSON:

20 Q. And then the Viewpoint 5 is this one here.
21 Correct?

22 A. Okay. Yes.

23 Q. And originally Viewpoint 5 would have had
24 these turbines in its view.

25 A. That's correct.

1 Q. The northern string there those have been
2 eliminated?

3 A. That's true.

4 Q. Based upon that. So we eliminated turbines
5 that were shown in Viewpoints 2, 5, 3, and 4. Correct?

6 A. That is correct.

7 Q. All right. Now, that included removal of
8 turbines that were located within a half a mile of the
9 project or within a half a mile of the viewpoint.
10 Correct?

11 A. Within--yes, I'd have to take a look at my
12 initial analysis to confirm that that is the case.

13 Q. You might look at Viewpoint 2, if that would
14 help.

15 A. Okay. This indicates that the closest of
16 those turbines was four-tenths of a mile, with a range
17 from four-tenths of a mile to one mile.

18 Q. Can you point to me any of these viewpoints
19 that are 1,320 feet away from a turbine as its currently
20 proposed?

21 A. Yeah, without spending some time with this
22 scale, I just couldn't do that right off the top my head.

23 Q. Are you aware of any viewpoints or
24 assessments that were done at 1,320 feet as part of the
25 environmental analysis?

1 A. What I want to say is that in the selection
2 of the viewpoints for analysis, you know, you can't
3 simulate every single view in your project area. So there
4 are some kind of decision roles that people who do this
5 kind of analysis use in selecting their viewpoints, and
6 you try and find a representative cross-section of views
7 particularly that represent views that are sensitive and
8 that are seen by large numbers of people. That's why, for
9 example, there are views along Highway 97 which carries a
10 great deal of traffic and like from Section 35 we had a
11 view that was representative of views of that area where
12 there's a concentration of people.

13 JUDGE TOREM: Dr. Priestley, I think his
14 question is to the point of the main objection that the
15 County has is that the Applicant has not made available to
16 the Board of County Commissioners adequate justification
17 of why 1,320 feet is adequate visual mitigation. They
18 want to know what were the closest viewpoints that were
19 done to the turbine and was 1,320 feet done or what was
20 the closest one that was at a greater distance.
21 Mr. Hurson, is that a fair assessment?

22 MR. HURSON: Thank you, yes.

23 A. We did not do a simulation specifically from
24 1,320 feet.

25 JUDGE TOREM: Do you know the closest

1 distance from a chosen viewpoint to a proposed turbine in
2 the current layout that was considered by the Board of
3 County Commissioners? Half mile or less?

4 A. Yeah, I would really, I would really have to
5 look very, very closely to be able to tell you, and I
6 might add that at no point had we received a request to do
7 a closer simulation because of the consultant to EFSEC
8 adopted the viewpoints that we had used originally did not
9 select any closer viewpoints, did not ask us to supply any
10 closer viewpoints. We went through this whole proceeding
11 with the County and they never at any point made any
12 request to us for simulations from closer viewpoints.

13 JUDGE TOREM: I understand that, sir, and I
14 don't think that either I or Mr. Hurson are trying to
15 criticize the choice of the viewpoints but simply to point
16 out that the Council is now going to be faced with
17 evaluating this 1,320 feet is it enough, is it a
18 significant setback to mitigate impacts or not, and this
19 body needs to know what the closest viewpoints done were.

20 We're not at this late date going to ask our
21 consultant or you to go out and provide additional
22 studies; however, if the closest possible one again
23 depending on the layout, the terrain, and a variety of
24 other factors maybe gives us the best idea how to make
25 that stretch of logic when it comes down to deliberations

1 and weigh that with the rest of the testimony we will get
2 the next few days at the public hearings Wednesday and
3 Thursday of this week.

4 So I think what Mr. Hurson's pointing out
5 from the County's perspective where they couldn't make up
6 their minds in favor of the project and will be able to
7 argue later why this body should reach the same conclusion
8 as the Board. So I want you to be able to respond for
9 your client as to perhaps the alternative if such
10 arguments could be made or there are facts that should be
11 pointed out and highlighted in the record.

12 THE WITNESS: Yes, I have a partial answer
13 for you, and that is the data that you are asking for
14 actually is in the technical memo that is here among the
15 things I submitted. In Table Vis-2 there is in our
16 description of the assessment change for each viewpoint
17 there is an indication of the distance of the viewpoints
18 to the various turbines that can be seen in that view. So
19 it would be a matter of going through those turbines,
20 going through those descriptions on the table underlying
21 the distances and seeing well, okay, in which view are the
22 turbines the closest.

23 JUDGE TOREM: So I understand,
24 Dr. Priestley, this is your supplemental testimony. The
25 technical memorandum should be on pages 7, 8, and 9, and

1 it's labeled Table Vis-2 analysis of impacts of visual
2 resources during the project operation. For instance, on
3 the analysis View-1 it talks about 30 turbines visible at
4 distances of 0.8 to three or more miles. Is that what you
5 were referring to?

6 THE WITNESS: Yes, that's correct. And for
7 each viewpoint you will find similar data and by mining
8 this table then the commission and its staff will be able
9 to find the data at least.

10 JUDGE TOREM: That should be very helpful as
11 far as the partial answer goes. Thank you, sir.

12 Mr. Hurson.

13 BY MR. HURSON:

14 Q. Well, it's your understanding that the County
15 felt that a 2,500-foot setback was what you needed to
16 mitigate. Correct?

17 A. Excuse me?

18 Q. The 2,500-foot setback is what the County was
19 looking for. You understand that. Correct?

20 A. I understand now, but this is, you know, a
21 development that took place after we prepared for the
22 hearings.

23 Q. Before the Commissioners?

24 A. Yes, and before the County.

25 Q. So you would agree, wouldn't you, that with

1 the revisions made to just the limited viewpoints and the
2 turbines that you removed there that in fact all the
3 visual viewpoints that are shown here would comply with
4 the county 2,500-foot distance? They're all greater than
5 2,500 feet from the viewpoint, the turbines.

6 A. From the viewpoints, yes, all the viewpoints
7 that we have analyzed it is correct I believe lie within
8 the more than half a mile from the turbine locations.

9 Q. You would agree, would you not, that the wind
10 farms are viewable from locations other than those
11 viewpoint areas that were designated. Correct?

12 A. Yes, I'm afraid I'm going to have to ask you
13 to repeat the question.

14 Q. You would agree that the wind farm is
15 viewable from places other than those viewpoint
16 assessments areas.

17 A. I would agree, yes.

18 Q. There were no viewpoint--there was no view
19 analysis done at 2,500 feet from these turbines anywhere.

20 A. We prepared, yes, we prepared no simulations
21 at a distance from 2,500 feet, but it's incorrect to say
22 we didn't do any view analysis.

23 Q. We don't have any pictures or analysis to
24 look at for simulations for 2,500 feet or 1,320 feet
25 distances, do we, for this project?

1 A. There's something I might point out is that
2 in my most recent addendum to the testimony I presented
3 information drawn from the turbine design research field
4 on the question of the role objects at various sizes that
5 related to relative visual effect of objects to the
6 distance of the object from the observer times the height
7 and you will find that on Exhibit 34 supplement, page 16.

8 Q. But for this particular site we don't have
9 any visual assessments completed. Correct? I'm not
10 asking about the picture from before.

11 A. For this particular site we do not have
12 simulations at these distances.

13 Q. Now, your analysis does not involve any
14 quantification of the existing visual quality as done in
15 the environmental impact statement. Correct?

16 A. That's correct. And there is very good
17 reasons for it.

18 Q. So you don't have any visual quality
19 assessments for any of this Table 1. You would agree in
20 your testimony--let me finish my question--the Table 1 in
21 your testimony is not a visual quality assessment, is it?
22 It's simply a view shed map.

23 A. I guess my first question is you will have to
24 identify which Table 1 you are referring to and which
25 testimony.

1 Q. The one in your supplemental prefiled
2 testimony beginning at page 8.

3 A. Yes, thank you. That's correct. This is
4 strictly an evaluation of the relationship of residences
5 to potential turbine locations with an identification of
6 the orientation of the view and the relationship of that
7 view to the locations of the proposed turbines.

8 Q. In order to make a full and complete
9 evaluation of an impact of a particular viewpoint that's
10 done in the EIS, you have to have a sensitivity analysis
11 and a scenic quality analysis to come to an ultimate
12 conclusion on the ultimate visual impact. Correct?

13 A. If in fact the goal of this analysis were to
14 do that, that's what we would have had to do.

15 Q. So there really wasn't any goal then to
16 undertake an analysis, visual impact analysis from any of
17 the residences then.

18 A. The goal in this case was to understand what
19 is the physical relationship of the residences to the
20 proposed turbines to what extent would the turbine be at
21 all visible from the residence, and if the turbine is
22 visible what role would it play in the overall view from
23 that residence.

24 Q. But basically what we have is an incomplete
25 analysis.

1 A. It's complete for what it intended to do.

2 Q. And it didn't intend to provide a visual
3 analysis as the environmental impact statement did.

4 A. It did not intend for each of those
5 individual residences to provide a complete assessment of
6 the potential impact of the project from that view. I've
7 never seen an environmental impact assessment that has
8 gone house to house to do analyses of the impact.

9 Q. I take it you're aware that the Kittitas
10 County Board of County Commissioners turned down the KV
11 project earlier.

12 A. I'm aware of that, yes.

13 Q. A large part of the reason they turned it
14 down it was based upon the visual analysis or lack
15 thereof.

16 A. My understanding it was based on concerns
17 about the potential effects of the project on the views of
18 residences.

19 Q. Nobody from your client, Horizon, said get
20 out there and do visual sensitivity analyses so we can
21 show that 2,500-foot setbacks aren't needed.

22 A. Yes, I think that the analyses that we have
23 done have demonstrated that a blanket 2,500 foot setback
24 is not the answer. I mean that maybe the question is
25 different. That setback is almost--the 2,500-foot setback

1 is almost beside the point.

2 Q. Is a blanket 1,320 foot setback the answer?

3 A. Well, it begins. I think that setback begins
4 to be useful because it relates to principles related to
5 what it is that people see in their field of view and when
6 things begin to be less dominant in your view.

7 We know that one of the themes in the
8 County's decision was referenced to the term looming.
9 They appeared to have concerns about turbines looming in
10 people's views. And when you set a turbine a quarter a
11 mile away or 1,300 something feet away from the viewer you
12 are in a zone where the object, the turbine, would be
13 almost completely contained within the field of view. And
14 according to certain principles of design there's a
15 threshold at which when you can see the object completely
16 within your field of view without having to move your head
17 up and down that the object is considered to be no longer
18 dominant in the view.

19 So for turbines of the height that we're
20 assuming this project worst case would be--let's see. How
21 high?--it be would 410 feet. The zone at which there is a
22 complete transition and the object can be seen completely
23 in your field of view without moving your head would be
24 four times the height. That would be 1,640 feet. So a
25 quarter of a mile, 1,300 something feet gets you fairly

1 close to a point at which removing effect has disappeared.

2 Q. I'm a little confused from your testimony.
3 On the last page on page 18, line 4 and 5, you indicate
4 the view of turbines ceases to dominant (looming) at about
5 1,640 feet, is that correct, page 18 of your supplemental
6 testimony? I think you're looking at the wrong page.

7 A. Okay. So I'm now on page 18 and the sentence
8 is?

9 Q. Line 4 and 5, the view of turbines ceases to
10 dominant (looming) at about 1,640 feet. Correct?

11 A. Yes, that's correct. That's what it says.

12 Q. So if there was a blanket setback from 1,320
13 feet, you would agree then that all of the turbines at
14 1,320 feet away would be dominating and looming to the
15 residences?

16 A. What it would do, it would get your turbines
17 out into the zone where a transition is taking place
18 between looming and not looming. It wouldn't be right at
19 the threshold, but it would be relatively close to that
20 threshold.

21 Q. You can have significant visual impacts well
22 in excess of half a mile. Correct? We went through some
23 of these here where there were turbines from .04 to one
24 mile and they removed them all because of the negative
25 impact. Correct?

1 A. Well--

2 Q. Correct?

3 A. First, we need to define significant, but I
4 think there are cases where there can be substantial
5 impacts that are very, very context related. For example,
6 if you had a turbine that was located right in the middle
7 of your view toward a very important landmark feature
8 focal point in the landscape and the viewing point were
9 very sensitive like from a scenic overlook or something of
10 that nature, then you begin to have the ingredients for a
11 substantial impact. But in every case there's like a
12 whole set of things that you need to consider. It's not
13 just one variable.

14 Q. Lacking that scenic quality assessment you
15 can't make a determination that there's not a negative
16 impact.

17 A. Yes, in many cases in conducting these
18 analyses you could begin to focus your analysis on places
19 where you know that there is a high probability that
20 there's going to be an impact because of your
21 understanding of the various factors that go into making
22 an impact. Because, again, when you do these studies, you
23 can't study every single viewpoint. You have to do your
24 professional best to apply your professional knowledge
25 through an area to understand, well, okay, what are the

1 viewing locations that are likely to be more sensitive,
2 where they're most likely to be the greatest problems, and
3 you spend your time looking closely at those. It was kind
4 of a de facto moving out of a lot of places where you know
5 that, well, the likelihood of a high impact is relatively
6 low.

7 Q. Okay. But now understanding the fact that
8 the County turned down the KV application, you were not
9 asked to do any assessment, visual assessment in any new
10 locations such as those that would replicate what the
11 County setback would do for the KV project.

12 A. That's true. Instead we did this other
13 analysis that you see in my supplemental testimony.

14 Q. In your testimony you discussed about earlier
15 some of your pictures at Klondike. That's in Oregon.

16 A. Yes.

17 Q. Did you take those pictures?

18 A. I did not.

19 Q. I think Figure 3 shows what it looks like
20 1,320 feet and then Figure 4 is 2,500 feet. Correct?

21 A. Okay. The pictures are in front of me. You
22 want to run that by me again.

23 Q. Okay. I'll put them up so you see them.
24 This is how our printer printed them, and I think Counsel
25 will have the color photo. I didn't have a color copy

1 printed. I had to print it off the computer, but these
2 are the photographs. Correct?

3 A. Yes, they are.

4 Q. So the bottom photograph here which is the
5 Figure 4 shows what a view looks like at 2,500.

6 JUDGE TOREM: Let me interrupt just a moment
7 so I can orient the Council and they can find these
8 photographs.

9 MR. HURSON: Yes. That would be Exhibit 34,
10 which is Mr. Priestley's supplemental prefiled testimony.

11 JUDGE TOREM: You'll find these at pages 13,
12 14, and 15. They're not as an attachment, but they're set
13 up right in the middle of the supplemental testimony. I
14 think everybody has got it.

15 MR. HURSON: For the Council's reference,
16 what I have here is I have 14 and 15 are what I have in
17 the blowups here.

18 BY MR. HURSON:

19 Q. As I understood it, these were the turbine
20 heights that Mr. Taylor in his testimony opined there's a
21 subtle difference between this and this turbine; is that
22 correct?

23 A. Yes, let's verify that in the text of my
24 analysis here for the turbine to determine exactly what
25 height that we're looking at. If you look on page 12 the

1 height of the tip of the blade is 389 feet.

2 Q. Okay. All right. But these are the
3 differences that Mr. Taylor in his testimony had indicated
4 he saw as a subtle difference between this turbine and
5 this turbine.

6 A. I can't speak to that. I heard Mr. Taylor
7 say that, but, you know, I can't interpret what he said.

8 Q. Do you think to say that these views and
9 these turbine impacts have a subtle difference is an
10 accurate use of the term subtle?

11 A. Are you phrasing that question at me?

12 Q. Would you agree or disagree that this is a
13 subtle difference, the difference between the view at
14 2,500 feet and the difference between the view at 1,320
15 feet that's instituted in your picture as Mr. Taylor had
16 indicated?

17 A. Yeah, I would agree that--I would agree that
18 there is a difference in the appearance of the turbines
19 when seen at these two distances. I would also--

20 Q. But I'm asking if a characterization as being
21 subtle in your expert opinion is an appropriate evaluation
22 of those differences? Do you agree that this is a subtle
23 difference or do you agree it's more than subtle?

24 A. I'd probably use a different term. I would
25 say that there's an incremental difference.

1 Q. As I was understanding these pictures in your
2 analysis, if I could, when you were going through these,
3 as I understood it, these pictures are suppose to show
4 what your entire field of view would show. Correct?

5 A. That's correct.

6 Q. So a way that I was conceptually thinking of
7 it is let's say, for instance, I'm in my house in the
8 living room window, and I walk up to the window so I can
9 just barely see the outward corners of my window and this
10 is the picture I would see.

11 A. Yeah, that would if you were 1,320 feet.

12 Q. So this would frame the picture. If you were
13 to say your picture window and you stood at your picture
14 window at the right depth.

15 A. If your picture window happened to be
16 oriented toward that turbine.

17 Q. Or the bedroom window or the bathroom window
18 or the back deck. I'm just talking about the framing
19 concept. All right? Okay. You agree that that's how it
20 works.

21 A. This is what you would see.

22 Q. Do you understand that--now, you would agree
23 that the 2,500-foot setback the turbines are still quite
24 visible, wouldn't you?

25 A. I would.

1 Q. You understand that that kind of visibility
2 was a visibility that the Kittitas County Board of County
3 Commissioners was willing to go with.

4 A. Well, I understand that Kittitas County
5 Commissioners is requesting a setback just all across the
6 board of 2,500 feet.

7 Q. But your understanding was that people could
8 see them, this sort of an impact, this kind of a visual
9 the Kittitas County Board of County Commissioners said we
10 can live with that visual impact. I'm sure Mr. Garrett
11 and some of the other folks don't want it, but my client
12 said we'll live with this kind of a visual impact.
13 Correct?

14 A. I'm sorry. You will have to repeat that last
15 part.

16 Q. The 2,500, this kind of a visual impact is
17 the impact the Board of County Commissioners said, "We'll
18 live with it. We'll accept that kind of an impact."
19 Correct?

20 A. Well, as I understand it, they said they
21 wanted a setback of 2,500 feet.

22 Q. Okay. And the picture here reflects what the
23 Applicant is saying without exception they can put
24 turbines this close to people's residences anywhere they
25 want anytime. Any turbine can go this close and this is

1 the impact that they feel the neighboring landowners have
2 to put up with. Correct?

3 A. Well, you know, that's your statement.

4 Q. You would agree this is the 1,320-foot visual
5 that you prepared.

6 A. This is what a turbine would look like at
7 1,320, at a distance of 1,320 feet.

8 Q. Okay. Now, as I was going through this, I
9 was having a hard time figuring out because of your
10 definition of dominant view. It says basically on page
11 12, line 10, the entire turbine is contained within the
12 field of view and because of this it's entirely contained
13 within the area taken in by the human eye, it is less than
14 a dominant view. That's your analysis?

15 A. Yes, that's what it says here. That's my
16 analysis.

17 Q. So if I'm understanding it correctly then,
18 what you're saying is if an object could be seen within
19 this entire view, it doesn't dominate.

20 A. Could you rephrase that.

21 Q. What you're saying is if an object can be
22 seen within the entire picture here, it does not dominate
23 the view.

24 A. It can be seen within the entire area that
25 would be taken in by your eye. If it's within that, it

1 would be less than dominant in your view rather than one
2 that would cause you to have your head up and down to see
3 the whole thing.

4 Q. What this picture reflects is what that view
5 area would be.

6 A. Yes.

7 Q. So anything that fits inside of here doesn't
8 dominate under your analysis. Correct?

9 A. Yes, under this definition of dominance or
10 looming.

11 Q. I was thinking of not asking this, but I have
12 to ask this now. Using your analysis then that bunny does
13 not dominate the view, correct, because you can see the
14 entire bunny?

15 MR. PEEPLES: I'm going to object at this
16 point.

17 JUDGE TOREM: Let me just note for the
18 record the visuals first and then you can object. For the
19 record proposed is an illustrative exhibit. It's a very
20 large rabbit has materialized in a view. I have no idea
21 how big, but there is a little bit of room if I can
22 characterize this, Mr. Hurson, that the ears don't quite
23 reach the top of the frame there. And your suggestion is
24 to point out that it's not dominant by the definition.

25 The objection, please.

1 MR. PEEPLES: The objection is this is a
2 cross-examination document. It would have had to be
3 presented seven days before, first, and, secondly, it is
4 not illustrative of a wind turbine. They've got an animal
5 that is taking up a totally different shape. It's
6 irrelevant. The other part of it would be irrelevant. If
7 we're going to start flipping documents out because we can
8 do that too.

9 JUDGE TOREM: Mr. Peeples, just sit tight
10 here for a minute.

11 MR. HURSON: Your Honor, like I said, I
12 wasn't sure if I was going to use it, but for illustrative
13 purposes I think it needs--Mr. Priestley is the one who
14 established and he set the parameters for what a dominant
15 or nondominant view was. I think his credibility before
16 this Council is critical or his lack of credibility is
17 critical. And based upon what he determines is dominant,
18 I came up with, yes, frankly what is a rather unusual
19 graph. I guess I could have just taken it and taped it
20 onto the top. I didn't intend to offer it as an exhibit,
21 although I think it's already been reflected in the record
22 but it was to make the point that I think has been made.

23 JUDGE TOREM: Mr. Hurson, I'm going to
24 sustain the objection on the basis described, and for lack
25 of a better term put the rabbit back in the hat and use

1 the illustrative exhibits that are here. I think that the
2 definition of dominance is made clear to the Council from
3 the discussion I'm overhearing just on Exhibits 3 and 4
4 that are contained at the 1,320 and 2,500 foot.

5 I think it's very clear to the Council that
6 based on your questions as to what are Dr. Priestley's
7 definition of dominant in the view that essentially it can
8 be contained and not run over the top of the picture. If
9 it's contained and it doesn't run over as is the case in
10 the rabbit you've put back in the hat and these other
11 pictures it's not dominant, and that's Dr. Priestley's
12 view.

13 Clearly you disagree and clearly other
14 Councilmembers might take issue with what Dr. Priestley on
15 the definition of dominant is depending on the scope of
16 the picture and the rest. Counsel, your point has been
17 made so we'll strike that question as to the bunny rabbit
18 proposed exhibit.

19 Let's press on. If you want to ask more
20 questions about the Klondike photographs which I think are
21 quite illustrative of the point of not only his definition
22 but contrast within the 1,320 and the 2,500. Let's stick
23 to that. I think that will be sufficient to make all the
24 points necessary.

25 MR. HURSON: Just for clarification, I think

1 I made the point when you're saying you're going to strike
2 it all.

3 JUDGE TOREM: We're not going to put the
4 rabbit into the record.

5 MR. HURSON: Into the record. Oh, that's
6 fine. I had not intended to offer it.

7 MR. PEEPLES: Well, if he wasn't intending
8 to offer it, why did he hand it up?

9 MR. HURSON: Okay. I would move to admit it
10 then because Mr. Priestley has made a conclusion that that
11 doesn't dominate, and I think I'm entitled to make my
12 point which I think I did. If I can make my point by just
13 putting a sticky note up and saying so that doesn't
14 dominate, I could do it that way too.

15 JUDGE TOREM: Well, I guess my point and I
16 think Mr. Peeples' point is the same, but exhibits that
17 were--these have not been filed well in advance and seven
18 days ago had you submitted this picture then Mr. Peeples
19 may have been ready to make an objection at that time, but
20 that would have been the appropriate way under our rules.
21 I can't unring the bell and make it so this never
22 appeared. I don't have that sort of magic powers.

23 However, Mr. Peeples' point is well taken;
24 that if we allow ourselves to continue to take items out
25 that haven't been previously noticed in just mid

1 cross-examination we're not sticking to the rules we
2 promised ourselves we would have for this proceeding and
3 it can quickly go down hill.

4 MR. HURSON: That was the only one.

5 JUDGE TOREM: I understand the point, but it
6 opens the door for others to do the same, and it's lucky
7 there was good humor involved here and after five o'clock
8 well appreciated. Nonetheless, let's try to stick to if
9 you do have something that hasn't been noticed to the
10 Council, there are early morning at 8:30 everyday or 9:00
11 whenever we start. That's the time to let me and
12 everybody else know that you intend to pull your
13 proverbial rabbit out of your proverbial hat and know that
14 we're going to have objections in advance and we'll save
15 this sort of exchange. So, please, if you bring anything
16 else out, expect me to sur sponte tell you to stop before
17 Mr. Peeples has anymore apoplection about it so that I can
18 take care of it because it really shouldn't be tolerated,
19 and I understand what you meant to do here and there was
20 no offense intended. Apparently some has been taken and I
21 understand that perspective as well.

22 Do you have any additional questions now
23 that those points have been made?

24 MR. HURSON: Again, I would just if I caused
25 a problem, I apologize.

1 JUDGE TOREM: Had you used a fly today, I
2 could have allowed that.

3 MR. HURSON: I could have used a fly. I
4 could have put my fist up and pretend that's the thing. I
5 was simply for illustrative purposes trying to show what
6 his interpretation of what dominant means and carried it
7 frankly to an extreme.

8 JUDGE TOREM: Okay. Any other questions
9 beyond that?

10 MR. HURSON: Nope. Nothing else. Thank
11 you.

12 JUDGE TOREM: Mr. Carmody.

13 MR. CARMODY: I'm just going to ask one or
14 two questions.

15 JUDGE TOREM: If you can please stick to the
16 microphone to accommodate Dr. Priestley, that be would
17 much appreciated.

18 CROSS-EXAMINATION

19 BY MR. CARMODY:

20 Q. Your testimony was that in the mind's eye
21 when they looked at a feature and in this case a turbine
22 at 1,320 feet, it would be dominant and what that means is
23 that a portion of that structure would be out of the view
24 of the observer; is that correct?

25 A. That you would begin to be moving into the

1 zone where in fact it would be contained within your view.

2 Q. So at 1,320 feet with a 410-foot tower the
3 human eye would look at it but would not see the entire
4 tower and would have to look up to see the total tower.

5 A. If you were standing on a completely level
6 plane with the object, and if the object really were let's
7 see 1,610 feet tall.

8 Q. And the dominance factor would be increased,
9 wouldn't it, if the turbine was on top of a ridge that you
10 were looking up at?

11 A. Actually that's kind of an
12 interesting--that's kind of an interesting question
13 because, in fact, if you were at the base of a ridge
14 because of the angle of view you might not be looking up
15 at the top of the ridge. Your view might be contained in
16 fact by the side of the ridge. So in fact you might be
17 looking straight at this ridge and not seeing the turbine
18 on the top.

19 Q. So Figure 3 which is 1,320 feet is a bit
20 misleading, isn't it, because the human eye would only see
21 a portion of that turbine and not all of it plus this
22 additional stuff?

23 JUDGE TOREM: I think Mr. Carmody's question
24 is as to the picture that's taken here, Mr. Carmody, and
25 correct me if I'm wrong, Dr. Priestley, is not a 410-foot

1 turbine; so the math that's done, and you said this
2 earlier, correct me if I'm wrong, Doctor, because four
3 times the height that gave you the 1,540 reference that
4 you're using.

5 THE WITNESS: Yes.

6 JUDGE TOREM: These if my notes are correct
7 were 389 feet.

8 THE WITNESS: That's correct.

9 JUDGE TOREM: So with that context of the
10 question it would be 1,560 feet approximately that it
11 would take. Mr. Carmody's question is your Figure 3 shows
12 a nondominant turbine at four times away, less than four
13 times away that you said it would continue to dominate
14 until it's four times its height in distance away. Isn't
15 that therefore a misleading photograph? Is that fair?

16 MR. CARMODY: That's correct.

17 JUDGE TOREM: So, Dr. Priestley, how do you
18 respond to your definition of four times the height it
19 would remain dominant and in this picture that's
20 apparently not the case?

21 Is the photograph showing more in a vertical
22 fashion than the human eye?

23 THE WITNESS: It may well be that under
24 those circumstances it's showing more than the human eye
25 would see.

1 MR. CARMODY: I have no further questions.

2 JUDGE TOREM: Thank you Mr. Carmody.

3 Mr. Peeples, any redirect?

4 MR. PEEPLES: I do have redirect.

5 JUDGE TOREM: Council, you want to hold any
6 cross you have until Mr. Peeples has redirect?

7 MR. PEEPLES: I'll go after the Council.

8 JUDGE TOREM: They're fine with that.

9 That's okay. Why don't we do your redirect first.

10 REDIRECT EXAMINATION

11 BY MR. PEEPLES:

12 Q. First of all, Mr. Slothower was asking you
13 questions whether or not this was a subjective science. I
14 think that's his words. How would you portray what you
15 do?

16 A. Again, I would portray what I do as using
17 very, very systematic methods to kind of tie down what is
18 actually happening out there in the landscape in general,
19 look at things, again, in a very, very systematic way.
20 So, you know, again to the extent to which something is
21 visible or not, what's the degree of contrast, what is the
22 degree of change, what is the degree of sensitivity and so
23 on. Take all these variabilities and tie them down as
24 best we can so that we have a basis for rendering a
25 judgment about aesthetic change.

1 Q. Do you use accepted methodologies to do that?

2 A. Yes, I have.

3 Q. Have they been adopted by BLM and came out of
4 BLM?

5 A. The methodology that I used was primarily on
6 the methods used by the Federal Highway Administration,
7 but some degree by other methods that I am very, very,
8 very familiar with.

9 Q. Now, do you know in your experience of any
10 setback, aesthetic setback requirements, not view
11 blockage, you know, but aesthetic setback requirements
12 that you've run on to?

13 A. For what kind of--

14 Q. For looking at something. Not view blockage,
15 not a building that would block a view, but something
16 behind it, but just general aesthetic setbacks.

17 A. Yeah, you know, most I would say in general
18 looking at urban design plans and the like, scenic highway
19 plans, your typical regulations related to views very much
20 are oriented toward projecting specific views, keeping
21 objects out of important views. So the only thing I could
22 say about setbacks is in your typical zoning ordinance
23 there are setback requirements that your house has to be
24 say 30 feet from your front lawn line. But to the extent
25 from which those are strictly aesthetic, intended to

1 mitigate people's view of their house, for example, I
2 can't say.

3 Q. You were somewhat chastised for not going out
4 and doing a vis sims within 2,500 feet of the turbines.
5 Would you please kind of explain to the Council what you
6 went through on that and why you didn't think it was
7 necessary to do a vis sims and what you're trying to
8 accomplish by your study. And this is your EIS analysis.

9 A. When you say my EIS analysis, meaning my
10 initial ASC, my initial ASC analysis?

11 Q. And what you did for the ADEIS.

12 A. Yes. Again, as I started to explain before
13 when for people who do visual resource assessments, impact
14 assessments we go through a protocol in terms of selection
15 of viewpoints. And, again, there was just no way that you
16 can simulate every viewpoint so you try to find viewpoints
17 that are representative and in particular representative
18 views that are seen by large numbers of people and are
19 particularly sensitive. So that's how we ended up with
20 the set of viewpoints that we used. And, you know, one of
21 the questions is why didn't you select any viewpoints that
22 were like as close as 1,000 feet? And one of the things
23 that you can say is well, in fact, this project does not
24 entail any turbines that would lie as close as 1,000 feet
25 to a residence.

1 We did do a very systematic analysis of
2 turbines lying within a half a mile of the project and
3 project turbines, and, again, these are located on Table
4 1. If you look at the distances involved, there are none
5 as close as 1,000 feet. In fact, most of the so-called
6 turbines that are under half a mile are out at beyond
7 1,600 feet from the turbines. So there wasn't in this
8 project there wasn't a pressing need to look at
9 close-at-hand views as there was say in the Desert Claim
10 Project where there were a great many homes lying within
11 1,000 feet of the proposed turbine locations.

12 Q. Are you familiar with the Desert Claim site?

13 A. Yes, I am.

14 Q. How are you familiar with that?

15 A. I'm been working with Desert Claim from
16 several points of view. One, I was asked by EFSEC to do
17 an analysis of the cumulative effects of Desert Claim and
18 KV taken together. So at that point I had the opportunity
19 to look at the Desert Claim analyses very, very closely
20 and think about it in terms of its relationship to KV; and
21 then in addition at the time that Puget was looking for
22 renewable energy resources to buy and add to its
23 portfolio, it asked my firm to assist it in doing due
24 diligence of a project that it was considering. And one
25 of the projects under consideration at that time was the

1 Desert Claim project, and I was asked to evaluate the
2 aesthetic analysis that had been done at Desert Claim. So
3 that gave me quite a bit of familiarity with that
4 project's aesthetics effects and the analysis that was
5 done of them.

6 Q. Did you review and travel around the Kittitas
7 Valley Wind Power Project site and look at the type of
8 residences and where they were located with regard to the
9 terrain and trees, etc., before you started your analysis
10 originally?

11 A. Yes, I did.

12 Q. And what did that indicate to you?

13 A. Well, that certainly gave me a feeling of
14 understanding the relationship of the project to its
15 surrounding setting and to potential viewers, and it was
16 based on that very intimate look at things that developed
17 an understanding of what was going on. Review of maps
18 showing the view shed of the project or the so-called zone
19 of visual influence analysis, pouring over GIS maps, it
20 was based on all of that that I made decisions which
21 viewpoints would be most appropriate and useful to use for
22 simulations and the basis for analysis.

23 Q. You testified that the concern was more with
24 regard to how many people would see a view rather than
25 small amounts isolated. Would that be a fair statement?

1 A. It would be correct that the emphasis wasn't
2 on isolated views. It was on more representative views.

3 Q. Have you ever seen a study that's taken a vis
4 sions of every single house and miles of square mile area?

5 A. No, I have not.

6 Q. With regard to the photos that you have in
7 your testimony--let me find it--I'd point you to Figure 2
8 which is Klondike 11, 1,175. What is the relevance of
9 that picture at 1,175 with regard to a height versus
10 setback?

11 A. It was intended to provide an idea of what if
12 you're this distance from a turbine of that size what is
13 it that you are seeing; what does it play in the overall
14 view.

15 Q. And what zone would that be in?

16 A. Let's see. Let's see. Yes, in this case
17 four times the height of the tip of the blade so it would
18 be in Zone 3.

19 Q. So that is to illustrate to the Council what
20 actual Zone 3 would be for that size of turbine.

21 Okay. Now, going to the analysis that you
22 did with regard to the 16 houses within 2,500 feet, I'm
23 not going to go through this individually because it's
24 Table 1 and you can see the distances there. But you were
25 asked a question about visual quality. Let me ask you

1 this question. If I'm a turbine and I'm standing over
2 here and you're faced that way, what's your visual
3 quality?

4 A. Well, in terms of visual effect there's no
5 visual effect.

6 Q. Okay. And if I'm out here but I'm hiding,
7 what's the visual quality?

8 A. Well, again the effect is none. The visual
9 quality is the same as the existing visual quality.

10 JUDE TOREM: Just so the record can capture
11 this, Mr. Peeples, who was not wearing a rabbit suit, was
12 moving about to be behind where Mr. Priestley's field of
13 vision is and then in his field of vision yet behind an
14 obstruction for the second example.

15 And I believe the point, Mr. Peeples, is to
16 demonstrate that visual quality can be affected by what
17 else might be or might not be in the field of view. Is
18 that correct, sir?

19 MR. PEEPLES: Correct.

20 JUDGE TOREM: And hopefully we're cutting to
21 the chase that the pictures of Klondike how nothing else
22 is in the field of view and it might be different than
23 from what we see here.

24 MR. PEEPLES: And also the houses that we
25 have in this exhibit.

1 BY MR. PEEPLES:

2 Q. You did that analysis, correct, when you went
3 through and looked at those 16 houses within 2,500 feet,
4 you did the analysis of what they would be looking at?
5 Right?

6 A. Right.

7 Q. Is there any way to hide a turbine?

8 A. Well, to the extent that they are located in
9 areas that are outside of the main field view of observers
10 I suppose that it's hiding from. So the answer, yes,
11 turbines are very big and they are difficult to hide. But
12 there are some locations where they're going to be a lot
13 less visible to people in their normal everyday views than
14 others.

15 Q. We've previously testified you're familiar
16 with both the Desert Claim Project and your work there and
17 with the Kittitas Valley Wind Power Project. Would you
18 describe what you perceived as a difference with respect
19 to the issue we're talking about between those two
20 projects?

21 A. Between?

22 Q. Desert claim--

23 A. --and KV. Yes, these projects are in very,
24 very different landscape context. They really have
25 somewhat different aesthetic issues. I guess for those of

1 you who are familiar with the Desert Claim Project it's
2 located generally on the valley floor and just kind of
3 creeping a little bit into the foothills. So this is a
4 landscape that is different from the ridge area that is
5 part of the KV.

6 So unlike the KV area landscape in Desert
7 Claim is very, very open and there is much more in the way
8 of kind of like active agriculture activity with farm
9 houses going along with it, and as well as ranchettes that
10 would be in close proximity to the turbines, and that
11 would have views toward them. I just reviewed the
12 environmental analysis that was done for KV and there's a
13 figure in there showing something like 31 dwellings that
14 would be--

15 Q. KV or Desert Claim?

16 A. For Desert Claim. Sorry. For, Desert Claim.
17 In the Desert Claim there's a map showing something like
18 31 residences located within 1,000 feet of the boundaries
19 of Desert Claim. And it's interesting. Many of those
20 residences are located at exactly 1,000 feet from
21 locations where turbines were proposed, and that actually
22 is quite different from the situation in Kittitas Valley
23 where there are fewer residences because of the topography
24 and the views are not as open and at no point have there
25 been any residences located within 1,000 feet of turbines

1 in the Kittitas Valley Project. Typically located, you
2 know, further away, somewhat further away at least than
3 1,000 feet.

4 MR. PEEPLES: No further questions.

5 JUDGE TOREM: At this time I think
6 Mr. Peeples, it's appropriate before we overlook it to see
7 if you want to move these other illustrative exhibits,
8 Figure Vis-1 Revised Part A and B, into the record.

9 MR. PEEPLES: Yes, we'll do that. Irina,
10 could you give us new numbers as to probably--

11 JUDGE TOREM: Probably Mr. Priestley's
12 supplemental.

13 MR. PEEPLES: His supplement testimony.
14 That would be fine.

15 MS. MAKAROW: Those would be 34.15 and
16 34.16.

17 (Exhibit Nos. 34.15 and 34.16 marked for
18 identification.)

19 JUDGE TOREM: So those would be 34-SUP.
20 Right?

21 MS. MAKAROW: Just 34.15 and 34.16.

22 JUDGE TOREM: All right. So just 34.15 and
23 34.16.

24 Council, any objections to these coming in?
25 All in favor?

1 COUNCILMEMBERS: Aye.

2 JUDGE TOREM: So these now are part of the
3 record and we'll make arrangements to make sure that
4 everybody has a chance to have a copy of those, as well
5 as the earlier one we brought in under Chris Taylor's
6 testimony.

7 (Exhibit Nos. 34.15 and 34.16 admitted into
8 evidence.)

9 JUDGE TOREM: Now, let me just poll the
10 Council.

11 Questions for Mr. Priestley, Councilmember
12 Johnson?

13 MS. JOHNSON: No.

14 JUDGE TOREM: Councilmember Fryhling?

15 MR. FRYHLING: No.

16 JUDGE TOREM: Sweeney?

17 MR. SWEENEY: No.

18 JUDGE TOREM: All right.

19 MS. WILSON: My questions were asked.

20 JUDGE TOREM: All right. Thank you,
21 Councilmember Wilson.

22 Councilmember Adelsman?

23 MS. ADELSMAN: No.

24 JUDGE TOREM: Councilmember Towne?

25 MS. TOWNE: No.

1 JUDGE TOREM: And the Chair?

2 CHAIR LUCE: No.

3 JUDGE TOREM: It appears I think most of
4 questions I had seen that needed to be asked in this area
5 that were precirculated as described last Tuesday were
6 actually asked during the cross so I'm not surprised the
7 Councilmembers you've exhausted them in many different
8 ways this afternoon, folks, and with their questions as
9 well.

10 MR. FRYHLING: Could we have these available
11 to us tomorrow to look at?

12 MR. PEEPLES: We'll run off smaller copies
13 if that's okay.

14 MS. JOHNSON: The pictures.

15 JUDGE TOREM: These documents have been
16 admitted to the record and the request is can the larger
17 scale be available for continuing viewing throughout the
18 course of the proceedings? So I'm going to ask that
19 those--

20 MR. PEEPLES: You talking about these?

21 JUDGE TOREM: Yes.

22 MR. PEEPLES: Yes, those are yours.

23 JUDGE TOREM: Now, there's a few other
24 pieces of business. Does anybody else first have any
25 additional recross for this witness?

1 I see Mr. Hurson has one or two questions.
2 I'll allow that. Once Mr. Hurson's done, we'll talk about
3 reminding everybody about the potential affidavit
4 witnesses for Wednesday and the answers will be back
5 tomorrow and the site visit planning and then talk about
6 tomorrow's schedule and then we'll adjourn for the day.

7 So no pressure to get to the end,
8 Mr. Hurson. Your questions.

9 MR. HURSON: It should be very quick.

10 RE-CROSS-EXAMINATION

11 BY MR. HURSON:

12 Q. In your summary Table 1 of your supplemental
13 testimony under view shed notes, you took things view
14 partially blocked by trees, view not in the primary view
15 shed, those sort of things. Correct?

16 A. Okay. Just to be very clear you're talking
17 about Table 1 as in my supplemental testimony on page 8?

18 Q. Correct. Eight over to nine.

19 A. Right.

20 Q. And those are your characterizations.

21 A. Correct.

22 Q. Now, this doesn't give us a full picture of
23 what the impact of the view or consequences are, does it?

24 A. This is not a full analysis of the impact in
25 each one of these views, but it certainly creates a

1 context because, for example, if the turbine is like
2 behind, you know, is screened by topography and you can't
3 see it, you know that there is not going to be any impact.
4 Or if it's way off to the side of the view, that provides
5 a suggestion to the extent there could be an impact it's
6 not going to be a major one.

7 Q. I'll just show you it's Figure 3.9-20,
8 Viewpoint 4 simulated view.

9 JUDGE TOREM: Which document is this?

10 MR. HURSON: That is in the Draft
11 Environmental Impact Statement.

12 MR. PEEPLES: I'm going to--is that one of
13 the older ones? Is that still a valid sim? Remember, we
14 have sims that are no longer valid.

15 MR. HURSON: I'm asking him for a completely
16 different purpose. I'll try to be frank with it. What
17 I'm doing is I would like you to agree that the view is
18 partially blocked by trees in this picture.

19 JUDGE TOREM: Hold on. Let me get the
20 picture there. Mr. Peeples, take a look at that and see
21 if you want to continue with that objection or perhaps
22 it's not for the purpose of understanding is it an
23 accurate visual simulation but simply to use that
24 particular photo that's already in the record as an
25 illustration of what's there.

1 MR. PEEPLES: That's fine. Just Chairman
2 Luce raised the issue of which are present. I don't know
3 if that's a present one or not.

4 JUDGE TOREM: So Mr. Hurson--

5 MR. PEEPLES: If he's using it for the
6 purpose he's using it for, I don't object.

7 JUDGE TOREM: The page number that without
8 the photograph you're referring to is the EIS.

9 MR. HURSON: It says Figure 3.9-20. I don't
10 know what the page number is because they don't number
11 them that way. It's a series of photos after 3.9-29.

12 JUDGE TOREM: So it follows 3.9-29 in the
13 page numbers?

14 MR. HURSON: And the page is just a
15 reference. It's this picture.

16 JUDGE TOREM: So the label on this figure is
17 Figure Vis-5b analysis, View 4, simulated view looking
18 south from residence of Section 35, Elk Springs Road.

19 MR. HURSON: It's pretty close to it,
20 although the wind turbines seem a little harder to see in
21 the blowup than they do in the EIS.

22 BY MR. HURSON:

23 Q. Anyway, all I was asking is you would agree
24 that this picture shows a view partially blocked by trees.

25 A. Yes, I would use the term partially screened.

1 Q. Okay.

2 JUDGE TOREM: For clarification let me ask
3 the Council to look not at the DEIS photograph but the one
4 that's on the board up here at my left you have a
5 different version of that in front of you. In the end of
6 the supplemental testimony, Mr. Priestley, there are some
7 attached photographs. You will find this as Vis-5b. It's
8 on a page that has 5a and 5b, and that's a reasonable
9 facsimile of what Mr. Hurson's getting at, and, again, the
10 question was partially blocked by trees.

11 Mr. Hurson, that was the point.

12 MR. HURSON: Yes.

13 BY MR. HURSON:

14 Q. The point was and then the difference is that
15 also it has an evaluation below it on the EIS, and what it
16 shows I would like to confirm this, you have an existing
17 visual sensitivity of moderate. That's probably because
18 of the distance. Correct?

19 A. That was the analysis done by the consultant
20 to EFSEC.

21 Q. Existing visual quality, however, was
22 moderately high to high even though there's a view
23 partially blocked by trees.

24 A. Yeah, the blockage of views by trees doesn't
25 necessarily detract from the visual quality. In fact, in

1 some cases it can enhance the quality of the view.

2 MR. HURSON: That's it. Thank you,
3 Mr. Hurson.

4 JUDGE TOREM: Anything else further for this
5 witness?

6 MR. PEEPLES: Yes, I have some redirect.

7 JUDGE TOREM: Go ahead.

8 (Off the record for court reporter to change
9 paper.)

10 JUDGE TOREM: We're ready to resume the
11 record. The court reporter has paper.

12 Mr. Peeples.

13 RE-REDIRECT EXAMINATION

14 BY MR. PEEPLES:

15 Q. I'm pointing you to the EIS, the Draft EIS,
16 and I point you to figure, Figure 3.9-2, the foldout. You
17 want to look at this one?

18 Looking at Figure 3.9-2 in the Draft EIS are
19 there any turbines there where you have a viewpoint that
20 is closer than 1,300 feet?

21 A. Yes, if you want to look at this. If you see
22 Viewpoint 2 on Bettas Road that viewpoint is within 800
23 feet of the closest turbines. No, that's Viewpoint 2, I'm
24 sorry, on the top of Highway 97.

25 Q. That's fine. Now, the other question I would

1 have would be you just had a question from counsel
2 regarding the visual quality and he pointed out to I
3 believe it's Figure Vis-5b which shows you looking through
4 trees out into a distance with a big territorial view
5 across the valley. Was that a typical view of many of the
6 residence you were looking at or were they more very
7 limited by terrain?

8 A. Oh, I would say that this view is very, very
9 unique to views in Section 35, which is actually somewhat
10 anomalous for this project area. Most of the project area
11 consists of fairly open ridge terrain kind of shrub-steppe
12 ecology and only when you get, you know, way up at the
13 northern end at higher elevations do you get into the
14 trees. So this is actually quite unique to that area. In
15 most places the views tend to be more open.

16 MR. PEEPLES: No further questions.

17 JUDGE TOREM: Anything else further for this
18 witness?

19 MR. HURSON: I'm afraid I'm going to have
20 to. I apologize. I think we opened new ground so.

21 RE-RE-CROSS-EXAMINATION

22 BY MR. HURSON:

23 Q. Viewpoint 2. For Viewpoint 2 assessment is
24 configured, the view itself is configured so it is as if I
25 am looking at Mr. Torem and the turbine is here. Correct?

1 JUDGE TOREM: For the record, that's to your
2 right.

3 MR. HURSON: Right.

4 BY MR. HURSON:

5 Q. Correct? The nearest turbine is out of the
6 viewpoints after the turbines were removed.

7 A. I think what we should do is take a look at
8 the original simulation in the Draft EIS and that would be
9 Figure 3.9-17, and that very closest turbine, that view is
10 just at the edge of the view, but there is another one.
11 If you're finding this photo, the simulation you will see
12 that there are others that are also quite close.

13 Q. All right. But the revised layout as shown
14 on this document here with Vis-1, two is looking basically
15 north and the turbine is basically to your right, correct,
16 after you remove the turbines?

17 A. It's quite true. And so when the project was
18 revised that the turbines that would be visible on this
19 view have been removed.

20 Q. Following up to Mr. Peeples' comment and you
21 can't see something, now if I'm looking at Mr. Torem and
22 you're behind me that's not going to show up in the
23 picture. Correct? Correct? So I can't see you. And so
24 you could be--

25 MR. PEEPLES: Let him answer the question.

1 You've asked him a question.

2 A. In answering this question, I'd just say that
3 I raised the issue related to this viewpoint to indicate
4 that in the process of evaluating this project and its
5 various forms initially, yes, we had looked at a view at
6 1,000 feet or less from the closest turbine and as it just
7 so happens that it was turbines in this view that were
8 removed and are no longer visible at this point in the
9 project.

10 BY MR. HURSON:

11 Q. But my point is the direction of the camera
12 according to your diagram here goes north, and the nine
13 turbines are removed. And if I'm following the charting
14 here, you removed the 9 but left the 10th. So correct me
15 if I'm wrong, but as in standing here looking at Mr. Torem
16 where I can't see you, if I were to turn to my right, I
17 could see you. Correct?

18 A. Well, if in driving up Highway 97 you were to
19 take your eyes off the road and look directly to the right
20 and cast your head up the hill, yes, you would be able to
21 see it.

22 Q. So, in others words, a visual assessment as
23 Mr. Peebles was getting to depends upon the direction and
24 if you point your camera away from the turbine, you could
25 have a turbine five feet behind you and would say, "Oh,

1 there's no visual impact." But if you turn around, you're
2 standing on top of a turbine basically. Right?

3 A. The selection and framing of views and
4 conduct of visual impact assessment really takes a great
5 deal of care. In framing your view you try to pick the
6 view that is going to be most commonly seen and that in
7 fact is representative of what somebody at that location
8 would see. So, again, for travelers on Highway 97 the
9 likelihood of them twisting their heads, people that are
10 driving twisting their heads around to see something way
11 over on their right is probably limited.

12 Q. But my point is--and I thought that
13 Mr. Peeples was trying to say that there was evaluations
14 done within a half mile that didn't have any visual. The
15 fact of the matter is the camera is pointing the wrong
16 direction to see the turbines. Right?

17 MR. PEEPLES: I'm going to object to
18 portraying what my question was. That was not my
19 question. The question was did you do this sims within
20 1,000 feet and he did.

21 A. We did one that was relevant for the project
22 as it was initially proposed.

23 BY MR. HURSON:

24 Q. And the only visual simulation done within
25 half a mile here had the camera pointing away from the

1 turbines. Correct?

2 A. It happened to be a view from which the
3 turbines were removed.

4 Q. So, in other words, the camera showed the
5 after shot of this pointing in a direction where none of
6 the remaining turbines located there could be seen in the
7 photo shot. Correct?

8 A. That's true.

9 Q. And people drive in different parts. Say
10 let's move Visual Site 2 down to here and you're looking
11 in that direction. You would be--

12 JUDGE TOREM: For the record, you're
13 suggesting that you move further south below the proposed
14 string of turbines there.

15 BY MR. HURSON:

16 Q. Then you would be able to see those three
17 turbines, wouldn't you, if you moved this viewpoint down
18 to here, shot up north? You could then see the three
19 turbines.

20 A. Which viewpoint are you referring to?

21 JUDGE TOREM: Dr. Priestley, he's asking you
22 to take Viewpoint 2 the same way he's been discussing and
23 shift it looks like approximately a half a mile.

24 THE WITNESS: You know, it's not necessarily
25 true because you have to going in and take a look at what

1 the topography is doing in there. So I wouldn't be
2 prepared to say that, yes, you would be able to see them.
3 You need to either actually prepare the simulation or give
4 me some feasibility.

5 JUDGE TOREM: In fairness to Mr. Hurson's
6 question, if the topographies allows those would now be in
7 the view shed of the driver driving northbound on 97.

8 THE WITNESS: From that portion, from that
9 portion of Highway 97.

10 MR. HURSON: Thank you. Nothing else.

11 MR. PEEPLES: No further questions.

12 JUDGE TOREM: Thank you, sir.

13 Dr. Priestley, thank you for your patience
14 this afternoon and for bringing some further clarity to
15 these issues that are very important to the parties and
16 the Council. You're dismissed. Thank you very much.

17 Congratulations, folks. We've finished in
18 one hour later than we thought today. Tomorrow we will
19 begin at 8:30 in the morning again, and we'll have the
20 following witnesses in the morning: Mr. Wagoner,
21 Mr. Piercy, and Mr. Garrett. The afternoon is dedicated
22 to Mr. Lathrop's cross-examination. So we have cut
23 through five witnesses today, four of them will be on the
24 schedule for tomorrow, and I hope we'll be a little
25 further along at four or five o'clock.

1 We have also, Councilmembers, the following
2 witnesses you need to look at their testimony tonight and
3 if you can identify those that you do not have any
4 questions for. They will then be moved in by affidavit.
5 Apparently there's no opposition to this. They are
6 Mr. Weaver, Mr. Bevis, Mr. Flenniken, Mr. Polisky,
7 Ms. O'Neill, Mr. Butler, Ms. Acutanza, and Mr. Pitzler.
8 So there are I believe eight potential witnesses if I'm
9 counting correct that could come in by affidavit and would
10 be appreciated by the parties if we could tell them
11 tomorrow morning between 8:30 and 9:00 so that those
12 witnesses can be identified and dismissed from Wednesday's
13 proceeding, if at all possible.

14 MR. PEEPLES: Could I perhaps add one more.
15 The indication from Jeff we're not going to cross-examine
16 Steve Lathrop. I don't think anybody else is. So unless
17 the Council has questions of him.

18 JUDGE TOREM: Mr. Lathrop is already coming
19 tomorrow afternoon so we'll see where things are. I
20 believe the Council may have some questions directly for
21 him.

22 MR. PEEPLES: But, if not, we're willing to
23 move to do that with respect to Mr. Lathrop.

24 Mr. Tribble.

25 MR. TRIBBLE: For the record, Ms. O'Neill,

1 although the Applicant has told us this morning that she's
2 unavailable this week, I have not waived my request to
3 cross-examine her. So that still may be something for
4 further discussion for us. I just wanted to make the
5 record clear for the Councilmembers.

6 JUDGE TOREM: So tomorrow morning I'll ask
7 again the parties if they have any further objections. If
8 it turns out she'll be available for affidavit, the
9 Council's concerns I will reconfirm them at that time,
10 Mr. Tribble, with you.

11 MR. TRIBBLE: Thank you.

12 JUDGE TOREM: I have one other announcement
13 before I take the final from the parties. The site visit
14 planning is still going to occur with staff today but it's
15 now six o'clock. I appreciate that if we're really not
16 going to have cross-examination of Mr. Lathrop tomorrow
17 afternoon, we could do this tomorrow since we've runover
18 today; and I just want a nod from staff if they want to
19 take some initial input this afternoon for the next 15
20 minutes and then let people go for the evening. It's
21 going to be 6:15 by that point and then we could take this
22 up again tomorrow afternoon because I don't think the
23 Councilmembers have digested anything that could say to
24 staff ahead of you for what they want to do based on just
25 now finishing Mr. Priestley's testimony.

1 So, staff, kick this to tomorrow starting in
2 the afternoon and put the site visit together is that
3 going to prejudice things?

4 MS. MAKAROW: If the parties are comfortable
5 with that and they're comfortable with losing one day in
6 making any extra arrangements that might be needed to make
7 this happen, I'm fine with it.

8 JUDGE TOREM: You're fine with it as long as
9 the parties make the logistics they need to put in place
10 won't be prejudiced by starting tonight rather than
11 tomorrow night.

12 Parties, any problem with doing that
13 tomorrow?

14 Let's defer the site visit planning until
15 tomorrow afternoon, and hopefully the assessment that no
16 one is going to cross-examine Mr. Lathrop comes true, and
17 we'll have plenty of time to deal with that.

18 Mr. Peeples, you have an item.

19 MR. PEEPLES: I just want to note Jim was
20 going to do a declaration for Clay and I was wondering
21 when you're going to do one. Can we do just a blanket one
22 that everybody can use and send out?

23 MR. HURSON: You mean the form?

24 MR. PEEPLES: Yes, we'll just do a blanket
25 form.

1 MR. SLOTHOWER: Yes, whatever you want.

2 JUDGE TOREM: Mr. Hurson, have you already
3 come up with a form affidavit?

4 MR. HURSON: I e-mailed one to Mr. White
5 and he mailed it back and I assume it's in my in bin at my
6 office. I haven't had a chance to get there today.

7 JUDGE TOREM: Will you bring that with you
8 tomorrow so that the other parties can look at their
9 format and decide? Thank you.

10 Parties, anything else that needs to be on
11 the record?

12 MR. HURSON: Just as a scheduling matter, I
13 know we went late today and it looks like the afternoon is
14 going to loosen up. I'm frankly right now theoretically
15 suppose to be at the planning commission in 25 minutes for
16 a comprehensive plan hearing, and with the schedule it is
17 and we got our new things on these other ordinances, it's
18 kind of hard to do all of this. Would it be a problem
19 with starting at 9:30 tomorrow instead of 8:30 so that we
20 have a little time and I could get some work done in the
21 in the office instead of going in at 6:00 like I did this
22 morning? I looked at the schedule. I think we probably
23 spent most of the intense cross-examination, maybe some
24 tomorrow, and then I don't see a whole lot after that.

25 JUDGE TOREM: I'd rather see you get the

1 work done in the afternoon when the rest of our work is
2 already done, sir, and just I want to keep the time we
3 have.

4 MR. HURSON: I guess it is I wanted an
5 opportunity to get through the things Mr. Peck just
6 brought up between now and tomorrow morning.

7 JUDGE TOREM: Right now we're not going to
8 get Mr. Peck on tomorrow. It's not my intention to bring
9 him on tomorrow. So you can take your time if he comes
10 back. So that would be on Wednesday or Thursday. So
11 we'll still have time

12 Mr. Carmody, you had something?

13 MR. CARMODY: Just very briefly. Mr. Torem,
14 I would ask the Council's permission that I not attend
15 tomorrow. Quite frankly, it's just very difficult for
16 citizen groups to afford this kind of process.

17 JUDGE TOREM: I understand that.

18 MR. CARMODY: Mr. Slothower has volunteered
19 to cover any issues that I would have. So with that
20 request, I would hope that would be acceptable to the
21 Council.

22 JUDGE TOREM: Mr. Slothower, you're willing
23 to take on that additional responsibility?

24 MR. SLOTHOWER: Yes, Mr. Carmody and I
25 talked about it. That's fine.

1 JUDGE TOREM: I don't think the Council has
2 any objections to that. Seeing none, that's fine,
3 Mr. Carmody. I understand.

4 Do any of the parties object to that?
5 Parties, any objections to Mr. Slothower trying to expand
6 the scope of his cross to take in ROKT's issues? I take
7 it that will mean that Mr. Garrett with be assisting you
8 and handing you some notes as needed as the lay
9 representative for ROKT.

10 MR. SLOTHOWER: Right.

11 JUDGE TOREM: I don't see any problem with
12 that.

13 MR. SLOTHOWER: Mr. Garrett is also
14 scheduled to testify tomorrow.

15 JUDGE TOREM: All right. You will be able
16 to introduce his testimony on his behalf?

17 MR. SLOTHOWER: Yes.

18 JUDGE TOREM: And do any redirect that comes
19 up?

20 MR. SLOTHOWER: Yes.

21 JUDGE TOREM: So, Mr. Carmody, you're not
22 going to be here to protect your own witness?

23 MR. CARMODY: I trust his ability.

24 JUDGE TOREM: All right.

25 Parties, anything else today?

1 All right, seeing none, then it is now 5
2 minutes after 6:00. We're adjourned until 8:30 tomorrow
3 morning.

4 * * * * *

5 (The hearing was adjourned at 6:05 p.m.)
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A F F I D A V I T

I, Shaun Linse, CCR, Certified Court Reporter,
do hereby certify that the foregoing transcript
prepared under my direction is a true and accurate
record of the proceedings taken on September 18, 2006,
in Ellensburg, Washington.

Shaun Linse, CCR

CCR NO. 2029