

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Prehearing Conference
WHISTLING RIDGE ENERGY, LLC.) Pages 1 - 51
WHISTLING RIDGE ENERGY PROJECT)
_____)

A prehearing conference in the above matter was held on Friday, November 5, 2010, at the Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Room 206, in Olympia, Washington at 10:00 a.m., before the Energy Facility Site Evaluation Council.

* * * * *

WHISTLING RIDGE ENERGY, LLC, Tim McMahan, Attorney at Law, Stoel Rives, LLP, 805 Broadway Street, Suite 725, Vancouver, Washington 98660; and Darrel Peeples, Attorney at Law, 325 Washington Street N.E., No. 440, Olympia, Washington 98506.

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

REPORTED BY: ROGER G. FLYGARE, CCR

WASHINGTON CCR NO. 2248

FLYGARE & ASSOCIATES, INC. - 1-800-574-0414

1 WHISTLING RIDGE PREHEARING CONFERENCE - NOVEMBER 5, 2010

2 APPEARANCES (Cont'd):

3

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

6

7 FRIENDS OF THE COLUMBIA GORGE, Gary K. Kahn Attorney at Law,
8 Reeves, Kahn & Hennessy, P.O. Box 86100, Portland, Oregon
9 97286-0100; Nathan Baker, Staff Attorney, 522 S.W. 5th Avenue,
10 Suite 720, Portland, Oregon 97204-2100.

11

12 SAVE OUR SCENIC AREA (SOSA), J. Richard Aramburu, Attorney at
13 Law, Aramburu & Eustis, LLP, 720 Third Avenue, Suite 2112,
14 Seattle, Washington 98104-1860; Rebecca Maxey and Thomas Drach
15 (appearing by bridge line).

16

17 SKAMANIA COUNTY ECONOMIC DEVELOPMENT COUNCIL, Ken Woodridge
18 (via bridge line), 167 N.W. 2nd, P.O. Box 436, Stevenson,
19 Washington 98648.

20

21 SEATTLE AUDUBON SOCIETY, Shawn Cantrell, Executive Director,
22 8050 35th Avenue N.E., Seattle, Washington 98115.

23

24

25

1 WHISTLING RIDGE PREHEARING CONFERENCE - NOVEMBER 5, 2010

2 APPEARANCES (Cont'd):

3

4 CONFEDERATED TRIBES and BANDS OF THE YAKAMA NATION, (via bridge
5 line) George Colby, Attorney at Law, and Jessica Lally (via
6 bridge line), Archeologist, P.O. Box 151, Toppenish, Washington
7 98948.

8

9 ASSOCIATION OF WASHINGTON BUSINESS, Christian McCabe,
10 Government Affairs Officer, P.O. Box 658, Olympia, WA
11 98507-0658.

12

* * * * *

13 JUDGE WALLIS: Bring this proceeding to order. This
14 conference will please come to order. This is a
15 prehearing conference in the matter of Application
16 2009-01, Whistling Ridge Energy Project, PLLC for
17 siting the Whistling Ridge Energy Project.

18 This conference is being held on November 5,
19 2010 in the offices of the Utilities and
20 Transportation Commission in the Olympia, Washington.

21 I would like at this time to get appearances and
22 let's begin with people in the hearing room and let's
23 begin with the applicant, please.

24 MR. MCMAHAN: Your Honor, Tim McMahan and Darrell Peeples
25 here on behalf of Whistling Ridge Energy.

1 MS. JAFFE: Dorothy Jaffe, Assistant Attorney General,
2 appearing on behalf of the Department of Commerce.

3 JUDGE WALLIS: Department of Commerce.

4 MR. ARAMBURU: J. Richard Aramburu representing Save our
5 Scenic Area.

6 MR. KAHN: Gary Kahn representing the Friends of the
7 Columbia Gorge and with me is Nathan Baker also
8 representing Friends of the Columbia Gorge.

9 JUDGE WALLIS: Very well. Now let's turn to the --

10 MR. MCCABE: Christian McCabe with the Association of
11 Washington Business.

12 JUDGE WALLIS: Could you bring that microphone closer to
13 you?

14 MR. MCCABE: Good morning, Judge. Chris McCabe with the
15 Association of Washington Business.

16 JUDGE WALLIS: Mr. McCabe, you have not, to my
17 recollection, appeared in any of these proceedings
18 yet; are you substituting for one of the prior -- are
19 you now the representative?

20 MR. MCCABE: We're a party intervenor.

21 JUDGE WALLIS: Yes, I know. And you are now representing
22 that party?

23 MR. MCCABE: Always have been, Your Honor.

24 JUDGE WALLIS: Okay, very good, thank you.

25 MS. MAXINE: We have Rebecca Maxey and Tom Drach with Save

1 Our Scenic Area.

2 MR. COLBY: George Colby and Jessica Lally.

3 JUDGE WALLIS: Let me interrupt at this point and say I
4 would like to read through the appearances so that I
5 know we have everyone.

6 Now is Save Our Scenic Area represented not just
7 by Mr. Aramburu but also by parties on the bridge
8 line?

9 MR. ARAMBURU: I am the attorney representing them here
10 and they are listening in but they will probably not
11 be speaking or participating.

12 JUDGE WALLIS: Very good. Skamania County Public Utility
13 District No. 1?

14 MR. WOODRIDGE: Yes, Your Honor, this is Ken Woodridge
15 appearing on behalf of the PUD.

16 JUDGE WALLIS: Mr. Woodridge, thank you.

17 Skamania County Economic Development Council; is
18 Ms. Bryan on the line?

19 Skamania Agri-Tourism Association?

20 The Association of Washington Business we have.

21 Seattle Audubon Society?

22 MR. CANTRELL: Yes, Shawn Cantrell for Seattle Audubon,
23 thank you, Your Honor.

24 JUDGE WALLIS: Columbia River Gorge Commission?

25 The Port of Skamania County?

1 The City of White Salmon?

2 Klickitat County Public Economic Development
3 Authority?

4 The Klickitat and Cascades Tribes of the Yakama
5 Nation and Mr. Slockish?

6 The Confederated Tribes and Bands of the Yakama
7 Nation?

8 MR. COLBY: George Colby and Jessica Lally present.

9 JUDGE WALLIS: Thank you. Are there any other parties
10 represented today? Is there any other people on the
11 bridge line representing a party?

12 MR. MARVIN: Bruce Marvin, Council for the Environment.

13 JUDGE WALLIS: Mr. Marvin, thank you very much.

14 Very well, let's proceed to the agenda. I am
15 going to follow the agenda fairly closely.

16 And for the people in the hearing room I did put
17 some extra copies on the back table if you would like
18 one to follow along.

19 Let me ask first is there additional matters
20 that people would like to add to the agenda today?

21 Let the record show there is no response.

22 A matter came up in one of the recent pleadings
23 indicating a possible request for a subpoena under
24 RCW 34.05.446 which indicates that the presiding
25 officer may issue subpoenas and may enter protective

1 orders but also that a subpoena may be issued with
2 like effect by the agency or the attorney of record
3 upon whose behalf the witness would be required to
4 appear.

5 And I would like to indicate that it has been my
6 practice that the attorneys rather than the agency to
7 issue the subpoena inasmuch as it has like force and
8 so that should respond to that potential request.

9 MR. ARAMBURU: Thank you.

10 MR. KAHN: Your Honor, Gary Kahn, Friends of the Columbia
11 Gorge. We're in the same boat, but what you're
12 saying is although you failed to include that
13 information in the cover letter, but what you're
14 saying, though, should apply to everyone?

15 JUDGE WALLIS: Yes, that is correct.

16 MR. KAHN: Thank you.

17 JUDGE WALLIS: And Mr. Aramburu, I know, indicated that
18 there was no prefile on behalf of that person.

19 Any other party that wishes to subpoena someone
20 to appear, we need to know that the person will be a
21 witness and/or is asked to be a witness and that we
22 program time into the schedule for that witness to
23 appear.

24 MR. KAHN: We're in the same boat. There is another
25 government official from the National Park Service

1 that the process is in motion to have that person
2 testify. It would be based on some of the exhibits
3 to some of the conditions that we filed last week.

4 JUDGE WALLIS: Very well.

5 MR. MCMAHAN: Your Honor, Tim McMahan, for the record.

6 There was no -- I have not exactly waded through all
7 the stuff that came in on late Monday, but I don't
8 recall a notification of any federal agent or person
9 other than Mr. Manager (phonetic) if there is an
10 attempt to subpoena some Park Service person we would
11 certainly like to understand that immediately.

12 JUDGE WALLIS: Mr. McMahan, I am having troubling hearing
13 you and so if you would pull the microphone a little
14 bit closer and try to slow down just a hair.

15 MR. MCMAHAN: Sorry, Your Honor, closer to the microphone.

16 Again, Your Honor, we have not read through
17 everything that was received Monday although we're
18 making our way through it but I don't recall any
19 notification to the parties that a Park Service
20 employee or person would be subpoenaed and so we
21 should have notification from them if that's going to
22 be offered Friends of the Gorge.

23 JUDGE WALLIS: Very well and that would be off the record
24 that -- well, let me ask you to file something in
25 writing indicating that; would that be adequate, Mr.

1 McMahan?

2 MR. MCMAHAN: Yes, thank you, Your Honor.

3 JUDGE WALLIS: As we move along we will need to know, of
4 course, the identity of the witness and
5 ultimately whether they will be appearing and also we
6 will need to program that in our time calculations.

7 I would like at this time to ask Mr. Posner to
8 come forward and to come up to the bench so that you
9 can use the microphone and take that spot at the end
10 of the bench, turn the microphone on, and in that way
11 everyone will be able to hear you.

12 MR. POSNER: Good morning, Judge Wallis.

13 JUDGE WALLIS: Good morning. Please proceed with your
14 report on the progress in the environmental impact
15 statement process.

16 MR. POSNER: I would like to give you an update on where
17 we're at with the EIS, the draft EIS, in developing
18 our response to comments.

19 We have been meeting as you know, to give you
20 some sort of quick background information for you and
21 anybody else that's interested, the public comment
22 period closed on August 27th. We received quite a
23 large number of comments.

24 And since that public comment period has closed,
25 we have been meeting once a week through conference

1 calls with representatives of the BPA, EFSEC, ENTRIX
2 our independent consultant, and URS has been
3 listening in on the calls as well.

4 We have been busy developing -- organizing the
5 comments and we're in the process right now of
6 writing the response to the comments.

7 The comment response team has been -- we've been
8 working very close together and we are still shooting
9 to have information available by the end of November.

10 What we're hoping to have by the end of November
11 is draft responses to the comments and, after those
12 drafts are prepared, we will be putting together a
13 comment response team that will basically look
14 through all of the responses that have been drafted
15 to ensure that there is consistency in the way that
16 they are written and ensure that we have a quality
17 product at the end.

18 Then, after that, we have further identified a
19 number of steps that will take place after the
20 responses are reviewed. We expect that, you know,
21 there may be -- in the comments, we will identify
22 sections of the EIS that may need to be modified or
23 updated. We will move to prepare a preliminary final
24 EIS and then we will issue a final EIS.

25 Now, at this point in time, we are in the

1 process of developing our responses to comments, so
2 the future actions may depend on the significance of
3 the responses to the comments.

4 We have, as I said, we have received quite a few
5 comments but we haven't actually gone through and we
6 aren't to that point where we can actually look at
7 the responses that are being developed in terms of a
8 substantive nature to the point of understanding how
9 much the draft EIS is going to need to be modified.

10 And I think that pretty much brings you up to
11 date on what we've been doing and I will just add
12 that, you know, we've been meeting every week. We
13 are all very committed to putting together a very
14 quality product and that is our goal and that's
15 pretty much it.

16 JUDGE WALLIS: So you expect the draft comments to be
17 available by the end of November?

18 MR. POSNER: Well, I expect the draft comments to be --

19 JUDGE WALLIS: I am sorry. The written responses.

20 MR. POSNER: -- November. The draft comment responses
21 will be at least in their first draft form. I am not
22 sure how much further we will get than that.

23 And then we expect that we will need to go
24 through a second level of review with a, you know,
25 what we are calling a comment response team where we

1 will basically format and make sure that we have
2 consistency in the way that the responses were
3 drafted.

4 JUDGE WALLIS: Very well. Any other questions?

5 MR. ARAMBURU: Richard Aramburu. You indicated draft
6 responses would be ready; is that a product that
7 would be available to the parties?

8 MR. POSNER: I don't believe we're expecting to have that
9 available to the parties. We expect that the
10 comments will be in their first draft form at least.

11 Assuming that's the case, we expect that they
12 would need to go through another level of review to
13 get them to the point where we, I believe, we feel
14 comfortable in distributing them to the parties.

15 JUDGE WALLIS: Are you able to estimate a time frame for
16 that?

17 MR. POSNER: Not at this point in time. We, like I said,
18 we're in the process right now of developing our
19 responses to comments.

20 So, again, there's -- we identified over 2000
21 individual comments that are going to require some
22 sort of response, not all of them substantive, but it
23 does take time to generate that information.

24 MR. ARAMBURU: I guess I would have a question, if I may,
25 Mr. Wallis.

1 Our hearing, the adjudicatory hearing, is
2 scheduled to start on January 3, 2011.

3 Would you anticipate that those comments be
4 available before then?

5 MR. POSNER: The comment responses?

6 MR. ARAMBURU: Yes. I mean, available to the parties?

7 MR. POSNER: Well, what we're hoping for is that we will
8 have a final draft done sometime in November.

9 That is, at this point in time, we're hoping to
10 get to that point. I can't say whether or not it
11 will be in such a form that it would be available to
12 be distributed to the parties.

13 MR. ARAMBURU: I think you said November; did you mean
14 December?

15 MR. POSNER: No, I meant -- the first draft would be the
16 end of November, November 24th, and then from that
17 point to sometime in December we're hoping to
18 finalize those responses.

19 JUDGE WALLIS: Are there other questions or comments?

20 MR. COLBY: That's an ambitious undertaking and I think
21 the time frame is a little unrealistic and I wonder
22 if we should spend some time actually fleshing out
23 whether responses by all the parties, the 2000
24 comments, realizing that November is over with for
25 most people because of the holiday and December has a

1 holiday in it also. Are we compressing time that's
2 not realistic?

3 JUDGE WALLIS: Who is on the line, please?

4 MR. COLBY: Colby, George Colby.

5 JUDGE WALLIS: Mr. Colby.

6 MR. POSNER: Well, I will attempt to respond to that.

7 What I will say is that we have discussed this
8 matter with BPA and ENTRIX and we have a commitment
9 from BPA at this point in time that we will have --
10 and ENTRIX working under contract to EFSEC, we will
11 have our first draft completed by the end of
12 November.

13 And we just had a conference call yesterday and
14 everybody seems to be on track to do that. I know
15 that everybody is working very hard to get to that
16 point.

17 So that's our plan.

18 What happens after that point becomes a little
19 less certain. Again, we have talked about having a
20 final draft done in December, towards the end of
21 December, and that is what we're still shooting for.

22 MR. COLBY: Thank you.

23 MR. ARAMBURU: It seems to me that we're now not talking
24 about having a draft final impact statement per se as
25 a document; is that -- am I correct in that?

1 MR. POSNER: Well, we're not using that term "draft
2 final."

3 I think we were using that initially and then I
4 think there was some correction to the use of that
5 term because it is not -- I don't believe it is
6 appropriate in SEPA.

7 But we're -- what we're shooting for is a
8 preliminary final EIS at some point.

9 MR. CANTRELL: Do you know when that point is?

10 This is Shawn Cantrell, Seattle Audubon.

11 Do you have an absolute date that you can share;
12 particularly, is it before the hearing that begins in
13 January?

14 MR. POSNER: I don't expect that that would be the case
15 not if we're -- we're, at this point, hoping to have
16 our final response to comments by the end of
17 December, I don't see any way that we would have a
18 preliminary final EIS out by the beginning of
19 January.

20 JUDGE WALLIS: What differences, Mr. Posner, would you
21 expect between the responses to the comments and the
22 final EIS, in draft form or ultimately?

23 MR. POSNER: Well, I can't really say at this point in
24 time because we have not gone -- we're not at that
25 point where we have the responses to all of the

1 comments in front of us that we can do a
2 comprehensive analysis of.

3 I mean, like I said, we have -- quantitatively,
4 we have quite a few comments, but whether or not the
5 responses to those comments are significant enough or
6 to what degree they are significant will determine
7 what changes we will recommend in the -- to the draft
8 EIS.

9 MR. BAKER: For the record, this is Nathan Baker with
10 Friends of the Columbia Gorge. I just have a
11 clarifying question.

12 You mentioned the preliminary final EIS being
13 out and I am wondering if EFSEC has decided whether
14 that document, the preliminary final EIS, would be
15 released to the public at some point prior to the
16 final EIS?

17 MR. POSNER: We have not made that decision.

18 JUDGE WALLIS: Any other questions? Very well, let's
19 proceed.

20 Thank you, Mr. Posner.

21 We have a number of questions relating to the
22 structure of the hearing and, before we go into
23 those, I would like to introduce members of the
24 council who are either on the line or are present
25 today.

1 Chairman Luce, I understand that you're online;
2 is that correct?

3 CHAIRMAN LUCE: That is correct, Judge Wallis.

4 JUDGE WALLIS: Are there other council members on the
5 line?

6 It appears not.

7 We do have in the hearing room a council member
8 newly appointed to the council representing Skamania
9 County, Mr. Doug Sutherland.

10 Mr. Sutherland, would you raise your hand so
11 that people can identify you?

12 Thank you very much.

13 Going down our agenda the next item is the time
14 frame for the presentation of objections to
15 prehearing orders and answers.

16 I think people are operating cooperatively in
17 providing objections within five days after the order
18 as indicated earlier and answering promptly.

19 There is a concern that I have, though, and that
20 has to do both in this area and in other areas that
21 hard copies are sometimes delayed beyond the deadline
22 and we have not yet adopted an electronic filing rule
23 and there are times when it is very important to have
24 the paper documents timely filed.

25 So I will call that to the attention of the

1 parties and ask, as matters proceed, that you please
2 comply with the filing deadlines.

3 MR. KAHN: Your Honor, if I may address that, Gary Kahn
4 from the Columbia Gorge.

5 I just asking -- saying that sometimes it's not
6 that feasible. As we understand it, we have five
7 calendar not business days to submit documents.

8 If we have get an order which we had gotten on
9 Friday, the five calendar days would mean that you
10 have to have receipt of it by Wednesday which would
11 mean --

12 JUDGE WALLIS: That's not my recollection. My
13 recollection was that if there is an intervening
14 weekend that it would be business days.

15 MR. KAHN: Okay. Then we understood that not to be the
16 case.

17 And what I was going to say is that if we get an
18 order on Friday, which has to be physically received
19 in a response by Wednesday, that effectively would
20 give us two days and not five days.

21 JUDGE WALLIS: That is why I made that provision.

22 MR. KAHN: Then I apologize for my misunderstanding.

23 MR. ARAMBURU: Mr. Chairman, this is Richard Aramburu
24 again.

25 We went over item four on the agenda and I do

1 have a concern and question.

2 JUDGE WALLIS: Oh, certainly, Mr. Aramburu.

3 MR. ARAMBURU: Mr. Wallis, we had become aware of Mr.

4 Sutherland's appointment by Skamania County to be
5 their representative on EFSEC and so we became aware
6 of that just recently.

7 I know Mr. Sutherland from other times and my
8 clients are also aware of him.

9 We do feel that Mr. Sutherland's participation
10 in these proceedings would violate the appearance in
11 fairness doctrine because of Mr. Sutherland's -- what
12 we see being a very strong supporter of wind power,
13 connections with other parties, including AWB and
14 similar circumstances.

15 So I want to alert you and the other parties
16 that we will be asking for Mr. Sutherland's recusal
17 from these proceedings.

18 You will receive something from us very shortly
19 in more detail in that regard, but under the
20 appearance of fairness doctrine, which the lawyers
21 know, we need to alert other parties know as to the
22 those concerns as soon as we find out and we have
23 found out in the past couple of days.

24 So we will be doing that and we will be doing
25 that in short order and we will go probably make that

1 in the form of a request to Mr. Sutherland and also a
2 motion to the council.

3 JUDGE WALLIS: Very well. Thank you for that information.
4 Are there any other items under general concerns or
5 questions?

6 Let the record show there is no response.

7 The council is obligated and willingly accepts
8 that obligation to accept public testimony during the
9 evidentiary hearing and it has been the council's
10 practice to set aside time to receive that testimony.

11 And I wanted to inquire of the parties what kind
12 of schedule would be preferred for accommodating
13 those public comments?

14 MR. ARAMBURU: Richard Aramburu speaking again. We do
15 support the proposition of having an opportunity for
16 the public to participate.

17 Our suggestion to the council would be that an
18 evening session be scheduled to allow people who are
19 working during the day to come and present their
20 testimony, of course, in the vicinity of the project
21 and perhaps a period of time from 7:00 to 9:00 or
22 7:00 to 10:00 at a location to be established
23 perhaps.

24 And I don't know the numbers of people who might
25 participate but it may be sensible to set aside some

1 time in the afternoon, perhaps at the close of a
2 hearing day, perhaps from 3:00 to 5:00 or 3:00 to
3 6:00, to receive such public comments during the
4 course of the hearing.

5 So we don't particularly have in mind a time for
6 that.

7 Many people are still returning from the
8 Christmas and New Year's holiday, so probably not
9 right at the first day or two of the hearing; so that
10 would be our only request.

11 Thank you.

12 JUDGE WALLIS: Very well. Do you believe that the two
13 sessions as you have indicated would be adequate?

14 MR. ARAMBURU: I don't have a way to judge that
15 particularly but given the past public hearings that
16 the council has held in the vicinity of the project
17 it would seem to me if we set aside two or three
18 hours in the evening and two or three hours in the
19 afternoon that should probably do it.

20 JUDGE WALLIS: Any other party wish to comment?

21 MR. KAHN: Gary Kahn, Friends of the Columbia Gorge. We
22 join in and support of Mr. Aramburu's suggestion.

23 JUDGE WALLIS: Very well. Are there any other comments?
24 Mr. McMahan?

25 MR. MCMAHAN: Yes, thank you, Your Honor. I don't have

1 anything different from what's been stated already.
2 It's just typically a matter of discretion by the
3 council.

4 The parties don't really get involved in
5 scheduling the hearings and it's an important part of
6 the process.

7 I would suggest, however, that I think that it's
8 worked well in the past in these proceedings to have
9 one of the public meetings or hearings at the
10 Underwood area and one real close to the county seat
11 at Stevenson and so I would just make that
12 recommendation.

13 But, other than that, I feel that's important to
14 have an opportunity for the public to participate.

15 JUDGE WALLIS: Is there an objection to that?

16 MR. ARAMBURU: No.

17 MR. KAHN: No.

18 JUDGE WALLIS: Very well. Now I will interject at this
19 point that the council has been in discussions
20 regarding whether we will be able to hold the bulk of
21 the hearing in Stevenson.

22 The state auditor requires agencies to use
23 public facilities and there is a question whether
24 public facilities, adequate public facilities, that
25 are available for scheduling of the hearing.

1 So my anticipation is that the council would
2 definitely hold the public sessions in Skamania
3 County as indicated but we have not been able to firm
4 up the reservations for the hearing itself and we
5 will advise the parties as soon as we're able to do
6 that.

7 MR. KAHN: If it is not, this is Gary Kahn, if it's not in
8 the area are we looking at it be up here in Olympia
9 or closer to the area of, say, Clark County some
10 place?

11 JUDGE WALLIS: We are not able to say definitely at this
12 point. We would certainly consider Clark County to
13 be the first option and Thurston County to be the
14 second.

15 MR. KAHN: Okay.

16 JUDGE WALLIS: We will pursue it in that order.

17 MR. KAHN: Thank you.

18 JUDGE WALLIS: The daily hearing schedule I anticipate
19 will involve a start at probably in the neighborhood
20 of 8:30 and going until noon and then 1:30 to five
21 o'clock or so.

22 It is an ambitious schedule.

23 We understand that.

24 It may be, as we get closer to the hearing, that
25 the estimates of time will indicate that that

1 aggressive of a schedule is not necessary and we will
2 certainly adjust that as appropriate.

3 Do the parties have any comments or questions
4 about that?

5 Let the record show that there was no response.

6 The council has asked for opening statements on
7 the afternoon of the first session, that is the
8 opening session, and I have suggested that the
9 parties for and against the application share each
10 position a 40-minute block of time and I would like
11 to get comments from the parties on that.

12 What would be I think the most helpful to the
13 council would be the summary of the evidence that you
14 intend to present and how that evidence demonstrates
15 that your position should prevail.

16 MR. PEEPLES: I have a question. In the past, I think
17 years ago, we did have oral statements and then in
18 the past several we've gone to written opening
19 statements covering that same thing.

20 So we're not going to have written opening
21 statements because my feeling is written opening
22 statements were much more beneficial than oral
23 statements.

24 JUDGE WALLIS: Would there be objection to that?

25 MR. ARAMBURU: Richard Aramburu again. I don't want to

1 appear to be speaking here in terms for my
2 colleagues, but I think it depends on what we turn
3 this into would have some concern to me.

4 I think that an outline of witnesses, what
5 witnesses' testimony might be, and how this all fits
6 in a relatively brief form would be fine, but I would
7 be reluctant to get involved in something that would
8 be 50 pages or something like that.

9 MR. PEEPLES: We wouldn't either. We totally agree with
10 that. I just found that it expedited the process.
11 They were more coherent. Everybody could say what
12 they wanted to say and --

13 JUDGE WALLIS: Would a page limit be appropriate?

14 MR. PEEPLES: That would be appropriate.

15 JUDGE WALLIS: And how long would the parties expect?

16 MR. PEEPLES: I don't remember. Does anybody -- do you
17 remember how long they were in the last cases? Do
18 you remember? I don't think they were much over 20.
19 I think maybe 15. I think 10, 15 was the maximum
20 that I can recall.

21 MR. MCMAHAN: Your Honor, I think, to that point, I think
22 that they were 10 or 15 pages.

23 The other advantage is just, quite frankly, is
24 it's hard to provide lengthy briefing if you are
25 stuck to 10 or 15 pages and have to show how you're

1 going to need to make the other fit into your case
2 and so it actually deters the tendency that the
3 lawyers would have to brief insignificantly.

4 JUDGE WALLIS: Yes. We would like a road map to let us at
5 the outset understand where each of you are going and
6 how you plan to get there.

7 MR. ARAMBURU: I guess I would request if that were to be
8 done instead of just being done by size as you
9 indicated -- you have heard the for and the against
10 part of this -- I know Mr. Cantrell is operating
11 separately, the Yakamas I believe are separate from
12 us, and so I would at least like to see -- perhaps
13 Friends and SOSA might be able to work into 20 pages
14 but I would not want to try to work other opponents
15 into that 20 pages.

16 JUDGE WALLIS: Mr. Kahn?

17 MR. KAHN: In other words, since we're not taking up time
18 at the proceeding, everybody gets -- each party gets
19 to submit their own 15 or 20-page document, whatever
20 the page limit is.

21 JUDGE WALLIS: If each party submitted a lengthy document,
22 and now we understand that not all parties are
23 planning to present a large number of witnesses, it
24 could turn into something burdensome.

25 MR. COLBY: Judge, this is George Colby.

1 JUDGE WALLIS: Mr. Colby?

2 MR. COLBY: From the Yakama Nation.

3 JUDGE WALLIS: Yes.

4 MR. COLBY: You just hit the nail on the head,
5 "burdensome."

6 If anybody were to ask me and if I could wave a
7 magic wand, I would say what we're talking about
8 should be limited to one page.

9 By the time we get to the hearing, we will have
10 all had thousands of pages of what everybody's
11 position is and why we need to have another document
12 that has to be submitted to all of the different
13 parties and all the hassle that goes to.

14 It's just cutting another tree down.

15 That's all.

16 MR. PEEPLES: I think I would go to a page limit. I have
17 no problem with that. It's just -- it is worth a lot
18 but I believe all parties were allowed and some I
19 think cooperated and I think for FOG and SOSA it
20 would make sense to have something cohesive between
21 them.

22 Ours isn't going to be that long, we wouldn't
23 think, and so I think it just comes down to a page
24 limit.

25 And I hear everybody -- I hear Mr. Colby and I

1 hear everybody saying we don't want to open this up
2 so that we get an arms race out of it type of thing,
3 so -- and I think you could limit it so it would work
4 well, Your Honor.

5 JUDGE WALLIS: We're not looking for opening briefs at
6 this time.

7 MR. PEEPLES: That is correct.

8 JUDGE WALLIS: We want a road map. We want to know what
9 points you intend to prove and how your witnesses
10 will tie into proving those points during the
11 hearing.

12 MR. PEEPLES: Right.

13 CHAIRMAN LUCE: Your Honor, this is Jim Luce.

14 JUDGE WALLIS: Mr. Luce?

15 CHAIRMAN LUCE: I still think that -- I do think that a
16 brief opening statement maybe not -- I am not sure if
17 you said 20 minutes or 40 minutes, a brief opening
18 statement would be helpful in addition to a page
19 limit constraint to highlight for the council members
20 exactly what the positions of the parties are.

21 And it's not required.

22 If the parties choose to make an opening
23 statement or if they choose to file an opening
24 statement in writing, that is something that should
25 be discretionary.

1 But I think the council would benefit from
2 hearing, I think, a succinct and brief statement of
3 the case orally at the outset of the hearing.

4 JUDGE WALLIS: Yes. I agree with that and that would be
5 to my mind a way to satisfy the fact that some people
6 learn through reading and others learn better through
7 hearing.

8 And, as we come into the proceeding, it would be
9 an opportunity for the council members to hear from
10 the parties the direction in which they are going and
11 where they intend to end up and the witnesses'
12 opinions and views.

13 Now I would hope that we could confine the oral
14 statements to a summary of the summary that is
15 presented in writing; is that something that's
16 feasible?

17 MR. PEEPLES: I think that could be.

18 MR. ARAMBURU: Richard Aramburu again. I think that's
19 fine. I guess I would make two suggests. One
20 perhaps it would be most helpful to the council
21 members if it was to be received somewhat in advance
22 of the hearing so that they would have a chance to
23 review it.

24 And, secondly, that very brief opening
25 statements might be made but if council members that

1 have questions about the road map that would have
2 been offered by the parties then they could ask those
3 questions during the time for the opening statements.

4 MR. PEEPLES: I agree with that. I think it was like --
5 and you can check the last two hearings, they were
6 pretty consistent, I don't remember if that time
7 period was ten days or something like that, and so I
8 would suggest going with the same time periods that
9 we had in the last couple of hearings.

10 JUDGE WALLIS: Very well. We understand that the holiday
11 week immediately proceeds that and also that there
12 are other things going on in counsel's lives during
13 that period, so we will try to address that so it is
14 not onerous on the parties but instead a mechanism
15 for you to make your best presentation to the council
16 in favor of your position that you're advocating.

17 MR. KAHN: Mr. Wallis, Gary Kahn. I want to revisit
18 something for a moment that just occurred to me. You
19 have indicated a potential concern about the location
20 for the hearing.

21 JUDGE WALLIS: Yes.

22 MR. KAHN: Is it possible that this will result in a
23 rescheduling of the hearing or a delayed start?

24 JUDGE WALLIS: We don't anticipate that it will result in
25 a change of the schedule and we expect that this will

1 be resolved in the next two or three business days.

2 MR. KAHN: Okay.

3 JUDGE WALLIS: That's our anticipation. Now sometimes
4 those aren't realized but we're certainly working
5 toward that.

6 MR. WOODRIDGE: Your Honor, this is Ken Woodridge.

7 JUDGE WALLIS: Would you move the telephone instrument
8 closer to your mouth and speak directly into it and
9 start over, please? We're having a little trouble
10 hearing you.

11 MR. WOODRIDGE: Yes. Can you hear me now, Your Honor?

12 JUDGE WALLIS: Yes, that's better. Thank you.

13 MR. WOODRIDGE: I would just suggest maybe since I am
14 local in the area there are a couple of areas that I
15 would like, if you could, to explore and that would
16 be Skamania County has the Rock Creek Center which
17 has some large meeting areas and also the Skamania
18 Lodge, I don't know if that is possible, it has a
19 large conference facility. So I just wanted to make
20 sure that you were aware of those.

21 JUDGE WALLIS: Yes. We are aware of those and those are
22 in the mix and we understand the benefits and the
23 limitations of each.

24 MR. WOODRIDGE: Thank you, Your Honor.

25 JUDGE WALLIS: Thank you.

1 MR. CANTRELL: Your Honor, Shawn Cantrell, Seattle
2 Audubon.

3 I want to go back to one of the questions when
4 you started on this topic. You mentioned having
5 opening verbal statements from those in opposition
6 and those who are proponents and my organization
7 hasn't fallen into one of those camps and I am
8 wondering how you would envision our opening
9 statement if we were to make one and time constraints
10 and all of that.

11 I know that my board currently would not feel
12 comfortable having our views lumped in with either
13 the proponents or those against in opposition at this
14 time.

15 JUDGE WALLIS: Yes. I understand that is the case and you
16 would be entitled to your own time frame for
17 presentation.

18 MR. CANTRELL: Thank you. I would anticipate that if we
19 made one it would be well under 20 minutes. So I am
20 not worried that we would take a lot of time, but I
21 would appreciate the opportunity to have a brief
22 opening statement.

23 JUDGE WALLIS: Yes, very good, thank you.

24 MR. ARAMBURU: My only final request on the statements is
25 that we do have scheduled a prehearing conference for

1 December 21st. It would seem to me that any written
2 opening statement should come after that conference.

3 JUDGE WALLIS: Yes. And that conference will provide a
4 further opportunity to hone in on the time frame and
5 process.

6 Thank you, Mr. Aramburu.

7 Moving on, the application was not to my
8 recollection on the applicant's list of exhibits and
9 I am wondering inasmuch as you have witnesses
10 sponsoring the application how you intend to move
11 that into the record?

12 MR. MCMAHAN: Well, I am sitting here trying to remember
13 how we did that with the witnesses.

14 The witness's testimony did specifically sponsor
15 each exhibit within their -- with each element of the
16 application within their domain.

17 JUDGE WALLIS: Yes.

18 MR. MCMAHAN: If we're remiss in calling those sections
19 out by exhibit number we can certainly amend that but
20 that was our intent.

21 JUDGE WALLIS: Would it be feasible to accept the
22 application as -- or to offer the application as one
23 piece and deal with objections as they come up?

24 MR. MCMAHAN: Sure.

25 JUDGE WALLIS: Would that be acceptable to the parties?

1 MR. ARAMBURU: That's fine with us.

2 MR. KAHN: And Friends of the Gorge.

3 JUDGE WALLIS: Very good, thank you. Order of witnesses
4 and cross examination.

5 We do expect that the applicant will first
6 present its case. There are options in the
7 subsequent process.

8 The council's rules provide that it is
9 appropriate to proceed by topic and sometimes that is
10 just in the witness scheduling so that witnesses on
11 the same topic are present at the same time.

12 In other proceedings, the council has proceeded
13 according to the parties and I want to get a read on
14 where the parties are in those terms so that we can
15 make a decision that works for the council and for
16 the parties.

17 Mr. Peeples?

18 MR. PEEPLES: I just, having observed these for years, I
19 think it is easier for everybody to do it as a topic
20 for the convenience of everybody's witnesses rather
21 than holding, you know, somebody from out-of-state
22 forever from one part to the next.

23 So I think that I would support for everybody's
24 benefit on a subject matter basis.

25 And I am not saying what the subject -- that is

1 up to you, but I just think that, you know, if we can
2 coordinate that it will save all the parties money.

3 MR. KAHN: Gary Kahn, Friends of the Columbia Gorge. We
4 absolutely agree for the same reason.

5 We have witnesses on different topics and we
6 don't want to have them sit through things that don't
7 have anything to do with them.

8 JUDGE WALLIS: Is that something that the parties would be
9 able to work together toward on coming to the council
10 if there are road blocks in those discussions?

11 MR. KAHN: In terms of the order of topics?

12 JUDGE WALLIS: Yes.

13 MR. KAHN: I can't imagine that would be a problem.

14 MR. PEEPLES: I would suggest that we just take a look at
15 the order of the topics that we have done in the last
16 couple of cases and put those forward, circulate
17 those, and get comments on them.

18 JUDGE WALLIS: Mr. Peeples, would you take care of that
19 road map and provide copies to the council so that we
20 can follow what's going on?

21 MR. PEEPLES: Sure.

22 JUDGE WALLIS: And I certainly will encourage everyone who
23 is representing a party to participate in those
24 discussions so that by the time of the next
25 prehearing conference we are able to identify and

1 schedule for those witnesses.

2 And that involves another item that is on the
3 agenda and that's estimates of time on cross
4 examination.

5 I know that it may be relatively early in the
6 process for that but having those estimates can be a
7 help in witness scheduling.

8 One option that we have would be for counsel to
9 take those estimates into consideration when you talk
10 about the witness scheduling process and that may be
11 more effective than discussing those estimates now
12 and working from that.

13 Now what are your views?

14 MR. MCMAHAN: Your Honor, I think that's an excellent idea
15 and I frankly think that we can probably accomplish
16 that. I am just thinking about some how to implement
17 this with the prior item.

18 And I guess I would anticipate contacting
19 counsel within the next week or two for a conference
20 call to work through a straw-person-schedule that Mr.
21 Peebles would generate and see what we can do. It
22 strikes me to that we should be able to resolve that
23 on our own.

24 JUDGE WALLIS: Mr. Kahn or Mr. Aramburu?

25 MR. ARAMBURU: Richard Aramburu. I agree. I think

1 cooperation is possible and certainly in this area.

2 The witness scheduling issues are ones that we
3 would address.

4 We also have questions of context of some of the
5 witnesses' the time schedules within this period of
6 time.

7 It is worth while to say something that's
8 obvious now that we don't know who all of the
9 witnesses are at this point because there is the
10 opportunity for rebuttal testimony to be filed by
11 December 16th.

12 JUDGE WALLIS: Yes.

13 MR. PEEPLES: And I think it is, you know, that's probably
14 the best time we're going to get a better idea of
15 what that is going to be and, you know, even going
16 into the hearing, during the hearing process itself,
17 things have always been juggled per people's
18 schedule.

19 I mean, that is an ongoing juggling for
20 everybody's convenience and people have always
21 cooperated. The parties have always cooperated in
22 that at least they have always been.

23 JUDGE WALLIS: Very well. I would like the parties to
24 present a proposal at the December 16th prehearing
25 conference and that would give you a target and it

1 will give us some help in organizing the staff and
2 our own studies.

3 MR. BAKER: Your Honor, you just said December 16th and I
4 just wanted to clarify that it's December 21st.

5 JUDGE WALLIS: December 21st, yes, thank you.

6 MR. BAKER: Thank you.

7 JUDGE WALLIS: If you could file that by -- send it to us,
8 I don't know that it would be need to be formally
9 filed, but get that to us by the 16th, that will be
10 part of our preparation for that -- for that
11 conference.

12 MR. MCMAHAN: Your Honor, we might need a few days beyond
13 that because of the rebuttal deadline and we're going
14 to be racing up -- I assume the other parties will be
15 racing up to that deadline pulling together, juggling
16 and figuring out strategies, et cetera, and so I
17 would say that it is just probably going to have to
18 be a day or before the 21st realistically.

19 JUDGE WALLIS: Very well. How about the 19th?

20 MR. MCMAHAN: We will seek to achieve that deadline.

21 JUDGE WALLIS: Okay. Which is a day or two before. Mr.
22 Colby?

23 MR. COLBY: What do you want on the 19th?

24 JUDGE WALLIS: On the 19th, we are asking for the parties'
25 agreed schedule of witnesses.

1 MR. COLBY: Got it. Thank you.

2 JUDGE WALLIS: Very good.

3 MR. CANTRELL: The 19th is a Sunday.

4 MR. PEEPLES: What is Friday?

5 JUDGE WALLIS: How about Monday by Noon?

6 MR. CANTRELL: Friday would be the 17th.

7 MR. MCMAHAN: Monday by Noon, I agree with that.

8 JUDGE WALLIS: Monday by Noon on the 20th.

9 MR. BAKER: What about e-mail service; would that be
10 appropriate for that?

11 JUDGE WALLIS: Yes.

12 MR. PEEPLES: This is just the proposed schedule from the
13 parties, isn't it? So this is what we're presenting
14 to the judge.

15 JUDGE WALLIS: Yes. I don't anticipate that this needs to
16 be formally filed. It's just part of the pretrial
17 preparation.

18 The order of cross examination is that something
19 we need to spend time with? I understand that many
20 of the parties are cooperating.

21 MR. KAHN: Gary Kahn from Friends of the Gorge. I think
22 from Friends and SOSA you will find pretty much the
23 same level of cooperation and non-duplication that we
24 have had to date.

25 JUDGE WALLIS: Very good. Mr. Colby?

1 MR. COLBY: I agree.

2 JUDGE WALLIS: Very well. The only concern, the real
3 concern, that we have in terms of order of cross is
4 that it not be repetitive from one series of
5 questions to the next party's questions.

6 So, to the extent feasible, I would suggest that
7 parties consider cooperating prior to the hearing on
8 that and, if that's not possible, then we will be
9 conscious during the hearing that lines of questions
10 not be repeated.

11 In terms of exhibits on cross examination, we
12 have in the past found it very helpful to have those
13 documents in advance and to have them identified by
14 witness. If we have an order of cross examination
15 that will help in numbering.

16 I have no feel at the present time the volume of
17 those exhibits and hearings that I have been involved
18 in sometimes they have been very few and at other
19 time they have been many, varying in part on the
20 parties' trial strategies.

21 But it is my hope that any exhibits on cross
22 examination will be presented during the week between
23 Christmas and New Year's so that we can bring those
24 to the hearing on the 3rd and have them organized and
25 be ready to begin the hearing with that organization.

1 If that's not possible, then I would ask that
2 they be, No. 1, that the parties indicate the volume
3 of those exhibits and that you concentrate on the
4 schedule that is determined so that earlier witnesses
5 have the exhibits filed in advance and so that the
6 effort during the hearing to keep organized and allow
7 adequate time for review and for objections be
8 accommodated.

9 MR. KAHN: This is Gary Kahn. To the extent that such
10 exhibits are submitted to the council the week
11 before, are we also to distribute them to all parties
12 or is it just to the council?

13 JUDGE WALLIS: I would ask that they be submitted to all
14 parties. And failing that, definitely submitted to
15 the party sponsoring the witness.

16 MR. KAHN: Okay.

17 JUDGE WALLIS: Okay. Logistical issues for the hearing,
18 we have just talked about pre-distribution of
19 documents; are there any other documents and exhibits
20 that we need to be concerned with at this point?

21 MR. KAHN: This is Gary Kahn. I was going to raise this,
22 and I know we have addressed before but quite frankly
23 I am a little confused and I would like some
24 clarification.

25 With respect to -- we have witnesses who have

1 cited to the DEIS, particularly when the DEIS has
2 been updated and what we understand to be more
3 accurate information than the applicant -- than the
4 application.

5 In that scenario, are we obligated or is
6 somebody obligated to submit the entire DEIS as an
7 exhibit or can we just refer to and if necessary
8 attach and submit the relevant pages rather than the
9 entire document since it's lengthy and the council
10 requires a number of copies.

11 JUDGE WALLIS: Yes. I would not anticipate that we would
12 need the entire DEIS and comments and everything
13 else.

14 I do have a little bit of a concern even with
15 references in that that DEIS is only a draft and it
16 is subject to review.

17 But to the extent it is relevant to the
18 witness's testimony then I would anticipate that a
19 reference would be adequate unless there is some
20 reason to have the document itself and to that extent
21 that individual pages be provided that are identified
22 by the witness or are the concern of the witness or
23 you're using in cross examination or whatever.

24 MR. KAHN: Again, just to triple clarify. So if we feel
25 that a reference alone to the DEIS is all that's

1 necessary because, for example, the witness may
2 restate verbatim and we don't even need to attach
3 that page. It will be completely up to us. There
4 won't be any issue as to foundation or hearsay or
5 anything like that?

6 JUDGE WALLIS: That's my anticipation. Mr. McMahan, do
7 you wish to be heard?

8 MR. MCMAHAN: Well, your Honor, I thought it might be
9 helpful to take this from a hypothetical to reality
10 here.

11 I think what we're talking about is -- what Mr.
12 Kahn is talking about is the reference to the visual
13 simulation in the DEIS, which I think would be
14 frankly helpful for the council to have and we
15 wouldn't have foundation objection to that coming in.

16 MR. KAHN: Okay.

17 MR. MCMAHAN: And I think we -- and, you know, we would
18 also intend to reference those pages so I think if
19 that's the sort of thing that we're talking about
20 that makes a lot of sense.

21 MR. KAHN: It is. It's not just limited to Mr. Poskal
22 (phonetic) but the same concept. Mr. Small would
23 also reference some pages in the DEIS in his direct
24 testimony as well. We're just trying to avoid having
25 to submit 20 copies of voluminous documents here.

1 MR. MCMAHAN: And, Your Honor, what is really at work here
2 is the application was prepared and submitted in
3 March or however long ago it was. What was it, 2009?
4 Some time after, some significant time after that,
5 the DEIS was prepared by the us and the BPA and there
6 were some changes and updates and corrections.

7 And so I think for the council to be best and
8 fully informed obviously the more accurate
9 information we best have in front of the council.

10 JUDGE WALLIS: Yes, we support that.

11 And in whatever facility we wind up with, we
12 certainly are going to need to have an adequate
13 number of microphones.

14 However, it may not be possible to do that and
15 in that case we may ask counsel to use a podium that
16 does have a microphone so that we can be sure that
17 the record is adequately reported.

18 I am not anticipating that other than public
19 sessions we would need evening or weekend sessions
20 but that remains a distant possibility and I wanted
21 to alert counsel to that as you're considering your
22 schedule of witnesses.

23 In terms of logistics that will in part depend
24 on what kind of facility we wind up with and the
25 resources that that facility has. We intend to have

1 modern electronics resources available.

2 If you have any particular needs for a
3 presentation of your case or your witnesses, if you
4 will let Mr. Wright know, the council manager, and we
5 will aim to satisfy that.

6 And if we cannot then we will advise you and
7 you'll have the opportunity to make those
8 arrangements.

9 MR. COLBY: Judge, this is George Colby.

10 JUDGE WALLIS: Mr. Colby?

11 MR. COLBY: Part of the issue that you just talked about
12 and, in fact, people are going to be away from home
13 base, when you access whatever room you have, if that
14 could be an airport or even printer facility that the
15 parties can use if they need to get something off
16 their laptop or something like that, that probably
17 would be helpful because if everybody is going to all
18 of a sudden need something differently perhaps based
19 upon the testimony and want to get something from
20 home via their laptop or something like that. That
21 would be my only suggestion in that regard.

22 JUDGE WALLIS: That's a very practical suggestion. It
23 could be help to the council as well and we'll ask
24 Mr. Wright to inquire about that.

25 Again, at this point, we don't know what

1 facility we will be using or how those arrangements
2 could be made but we will do our best to accommodate
3 it and, if we're not able to, we will advise the
4 parties so that you can make arrangements as you
5 need.

6 Very good.

7 Is there anything else in terms of logistics or
8 preparation anticipation for the hearing itself?

9 MR. ARAMBURU: When would we know about the evening or
10 weekend sessions if they are going to happen?

11 JUDGE WALLIS: That would come up in two contexts. One
12 would be in terms of our ability to secure facilities
13 with the public presentation and the other would be
14 in the event that during your scheduling you
15 determine that cross examination will be so extensive
16 that additional time will be required and so that
17 would not occur I would expect until the time of the
18 next prehearing conference.

19 MR. ARAMBURU: Okay.

20 JUDGE WALLIS: Okay. At this point to my understanding
21 the only objection that has been raised to the
22 applicant's prefiled exhibits is that of Mr.
23 Aramburu; is that correct?

24 MR. BAKER: Yes, Your Honor, just to clarify. This is
25 Nathan Baker. I did sign that objection as well and,

1 in fact, join in for Friends of the Columbia Gorge.

2 JUDGE WALLIS: Thank you.

3 MR. ARAMBURU: That is the testimony of -- I forget the
4 witness now but I think it's one of the appendices or
5 the exhibits to the application that we're objecting
6 to.

7 MR. BAKER: The witness is Katy Chaney, K-A-T-Y,
8 C-H-A-N-E-Y, and it's an objection to three pages of
9 her testimony. The portions of those three pages
10 that are based on Appendix E to the application and
11 an objection to Appendix E.

12 JUDGE WALLIS: Very well. Mr. McMahan or Mr. Aramburu, do
13 you wish to amplify the objections?

14 MR. ARAMBURU: Only to say that we have not yet had an
15 opportunity to thoroughly review the testimony that
16 came in on the 1st of November. There may be
17 additional objections. We don't know at this point.

18 JUDGE WALLIS: Very well. Would you prefer to delay
19 argument on those objections?

20 MR. ARAMBURU: Well, I had sort of thought we were going
21 to address objections during the course of the
22 December 21st hearing and so that at that point we
23 would have objections to all of the testimony.

24 I will note that if materials do come in,
25 additional rebuttal materials, come in on the 16th

1 and I am anticipating, I think Mr. McMahan indicates
2 that there probably will be some rebuttal materials
3 from the applicant, that that is giving us a very,
4 very brief period of time to try to look through that
5 material and formulate our objections but that was
6 certainly of our understanding from the prior
7 prehearing conferences.

8 JUDGE WALLIS: My recollection was that -- that I was
9 anticipating and I seem to recall that the orders
10 reflected that -- that we would not be requiring
11 objections to rebuttal at the prehearing conference
12 because of the time frame.

13 However, we have scheduled a 10:00 a.m.
14 prehearing session on the first day of the hearing
15 itself and it was my anticipation that we might be
16 taking objections at that point.

17 I would certainly encourage you to have those
18 objections concluded at the December prehearing
19 conference, but in the event that the volume of
20 materials or the approach makes that impossible we do
21 have that opportunity on the first day of the hearing
22 session.

23 Any questions or concerns?

24 Is it satisfactory, Mr. McMahan, to defer
25 argument on that?

1 MR. MCMAHAN: I defer to your discretion. I had assumed
2 that it would be done today. They've had the
3 materials for a considerable period of time.

4 I would have thought that by now they would have
5 found objectionable things and could have talked
6 about it today. I am happy to respond to the Katy
7 Chaney objection if you wish.

8 Whatever you wish, Judge.

9 JUDGE WALLIS: Mr. Aramburu?

10 MR. ARAMBURU: I didn't know what we were going to decide
11 that today from your agenda. If you like to discuss
12 it now, we can.

13 MR. MCMAHAN: Your Honor, I am fine taking all of this to
14 December 21st. I think we will be here a while on
15 December 21st. But it's perfectly fine with me if
16 you want to just defer that with whatever else at
17 this point. We will likely have an objection to the
18 testimony received late Monday.

19 JUDGE WALLIS: Very well. So why don't we defer that to
20 until the December 21st conference?

21 Very well. I think we've done remarkable well
22 in terms of covering the material and the time frame
23 and I want to express my appreciation to counsel for
24 your primary role in that.

25 Is there anything else to come before the

1 council at this time?

2 Let the record show that there is no response.

3 Again, thank you all for your presence and we
4 expect to see you again on December 21st.

5 Thank you.

6 * * * * *

7 (Off the record at 11:10 a.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN RE: WHISTLING RIDGE ENERGY PROJECT
APPLICATION NO. 2009-01

A F F I D A V I T

I, Roger G. Flygare, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on November 5, 2010, at the hour of 10:00 a.m., at Olympia, Washington.

ROGER G. FLYGARE, CCR
CCR No. 2248