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 - 106
WHISTLING RIDGE ENERGY PROJECT )
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A prehearing conference in the above matter was held on Friday, December 21, 2010, at the Washington State Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Room 108, in Olympia, Washington at 10:00 a.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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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:

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APPEARANCES (Cont'd):

DEPARTMENT OF COMMERCE, Mark Anderson, Energy Division, P.O. Box 43173, Olympia, Washington 98504-3173.

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


CONFEDERATED TRIBES and BANDS OF THE YAKAMA NATION, (via bridge line) George Colby, Executive Committee Attorney, and Jessica Lally (via bridge line), Archeologist, P.O. Box 6, Toppenish, Washington 98948.

SKAMANIA COUNTY PUBLIC UTILITY DISTRICT NO. 1, Robert Wittenberg, Jr., General Manager, 1492 Wind River Highway, Carson, Washington 98610.

SKAMANIA COUNTY ECONOMIC DEVELOPMENT COUNCIL, Bryan-Miller, Executive Director, 167 N.W. 2nd, P.O. Box 436, Stevenson, Washington 98648.

SEATTLE AUDUBON SOCIETY, Shawn Cantrell, Director of Conservation, (via bridge line) 8050 35th Avenue N.E., Seattle, Washington 98115.
APPEARANCES (Cont'd):

PORT OF SKAMANIA COUNTY, John McSherry, Manager, (via bridge line) P.O. Box 1099, Stevenson, Washington 98648.

KLICKITAT and CASCADE TRIBES of the YAKAMA NATION, Wilbur Slockish, Jr., Chief of Klickitat Tribe; and Johnny Jackson, Chief of Cascade Tribe., Whistling Ridge Energy, LLC, P.O. Box 266, Bingen, Washington 98605.

ASSOCIATION OF WASHINGTON BUSINESS, Chris McCabe, Staff Attorney, 1414 Cherry Street S.E., P.O. Box 658, Olympia, Washington 98509.

SKAMANIA COUNTY and KLICKITAT COUNTY PUBLIC ECONOMIC DEVELOPMENT AUTHORITY, Susan Drummond, Attorney at Law, Law Offices of Susan Elizabeth Drummond, 1200 Fifth Avenue, Suite 1650, Seattle, Washington 98101; and Michael Canon, Executive Director for Economic Public Development Authority, MS-CH-26, 127 West Court, Goldendale, Washington 98620.

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JUDGE WALLIS: This is a prehearing conference in the matter of the Council application 2009-01 of the Whistling Ridge Energy Project. This prehearing conference is being held before the Council. My name is Robert Wallis. I am the Administrative Law Judge for this proceeding, and we are convened today, December 21, 2010, in the offices of
the Washington Utilities and Transportation Commission in
Olympia, Washington.

Let's begin by getting appearances beginning with
the applicant.

MR. McMAHAN: Thank you, Your Honor. Tim McMahan
Stoel Rives Law Firm. On my right is Erin Anderson my
colleague in our Seattle office, and to my left is Darrel
Peeples from Olympia representing the Applicant.

JUDGE WALLIS: Counsel for the Environment?

MR. MARVIN: Bruce Marvin is attending by
telephone.

JUDGE WALLIS: Thank you. Mr. Marvin.

Department of Commerce?

MR. ANDERSON: Mark Anderson. Our counsel was
unable to attend even by telephone. I will be coordinating
our efforts and so I'm sitting in place.

JUDGE WALLIS: Thank you.

Friends of the Columbia Gorge?

MR. KAHN: Gary Kahn representing Friends of the
Columbia Gorge. On my left is Nathan Baker also staff
attorney for Friends of the Columbia Gorge.

JUDGE WALLIS: Could you pull the microphone
closer and make sure it's on there.

MR. KAHN: Gary Kahn representing Friends of the
Columbia Gorge. On my left is Nathan Baker also
1 representing the Friends of the Columbia Gorge.
2            JUDGE WALLIS: Save our Scenic Area.
3            MR. ARAMBURU: Richard Aramburu representing SOSA.
4            JUDGE WALLIS: Skamania County Public Utility
5 District No. 1?
6            MR. WITTENBERG: Bob Wittenberg. I'm the General
7            Manager.
8            JUDGE WALLIS: Could you come forward and speak
9 into the microphone, please.
10           MR. WITTENBERG: Yes. Good morning. My name is
11 Bob Wittenberg. I am the general manager of Skamania County
12 PUD. Our counsel is Ken Woodrich is unable to attend, and
13 I'm here in his stead.
14            JUDGE WALLIS: Thank you.
15            Skamania County Economic Development Council?
16            MS. BRYAN-MILLER: You want me to come forward?
17 Yes, my name is Peggy Miller, formally Bryan of the Skamania
18 County Economic Development Council. I do have an attorney
19 that I will be retaining. He's not able to be here today. He
20 will be filing a notice of appearance prior to the
21 January 3 beginning, and his name is Brad Andersen with
22 Schwabe Williamson & Wyatt law firm. Thank you.
23            JUDGE WALLIS: Skamania County Agri-Tourism
24 Association?
25            The Association of Washington Business?
MR. McCabe: Good morning, Chris McCabe, Counsel for party intervenor Association of Washington Business.

JUDGE WALLIS: Thank you, Mr. McCabe.

Seattle Audubon Society?

MR. CANTRELL: Shawn Cantrell, Executive Director on the telephone.

JUDGE WALLIS: Port of Skamania County?

MR. McSHERRY: John McSherry, manager.

JUDGE WALLIS: City of White Salmon?

Klickitat County Public Economic Development Authority?

MS. DRUMMOND: Susan Drummond is here for Klickitat County Public Economic Development Authority. Thank you.

JUDGE WALLIS: What is your name, please?

MS. DRUMMOND: Susan Drummond, D-r-u-m-m-o-n-d.

JUDGE WALLIS: Ms. Drummond, thank you.

Klickitat and Cascade Tribes of the Yakama Nation?

MR. SLOCKISH: Wilbur Slockish, Jr.

MR. JACKSON: My name is Johnny Jackson on the Cascades.

JUDGE WALLIS: Thank you.

The Confederated Tribes and Bands of the Yakama Nation?

MR. COLBY: George Colby, attorney for intervenor
for Yakama Nation along with Jessica Lally, Councilman Warren Spencer, and Councilman Rick Watlamet.

JUDGE WALLIS: Thank you. And Skamania County?

MS. DRUMMOND: Thank you, Your Honor. Susan Drummond appearing on behalf of Skamania County.

JUDGE WALLIS: Thank you, and you are a petitioner for intervention at this point; is that correct?

MS. DRUMMOND: That's correct and a party of right.

JUDGE WALLIS: Very well. I have distributed some draft agendas and as we go through these items if folks have suggestions about the order in which we approach things today or have items that you would like to have addressed, we certainly welcome those suggestions.

Jumping right in, we have notification from the intervenors Friends and SOSA that Witness Wiley who was to appear in fact will not appear; is that correct?

MR. BAKER: Yes, Your Honor. This is Nathan Baker. That is correct.

JUDGE WALLIS: Very well. I would like to acknowledge also that the Gorge Commission has withdrawn its participation in this proceeding and is no longer a party to the action. The Council has received a request to deny participation to Mr. Sutherland who's been appointed as representative for Skamania County and has personally been
1 asked to recuse himself from this proceeding.

2 The Council has prepared an order and

3 Mr. Sutherland has prepared an order for service today

4 responding to those requests. The Council is denying the

5 motion presented to it on the basis that the Council has no

6 authority to take the action requested, and Mr. Sutherland

7 in his order is declining to recuse himself for the reasons

8 stated therein.

9 Mr. Sutherland, do you have anything you would

10 like to say at this point?

11 MR. SUTHERLAND: Your Honor, only minimal comment.

12 I'd like it to be known that I have read all of the

13 materials that were submitted, both for the Council as well

14 as for myself, and I feel that there's no problem with my

15 participation in these deliberations. I feel that I can do

16 due diligence to the issues before us. I believe that I can

17 do a calm, objective deliberation and participation as

18 requested, and I feel that there is no problem about my

19 continued participation.

20 JUDGE WALLIS: Thank you, Mr. Sutherland.

21 We do have a request from Skamania County to

22 participate in this proceeding.

23 MS. DRUMMOND: Yes, thank you. Skamania County
has filed a notice of appearance on behalf of Skamania County. We also in an abundance of caution filed a motion for recognition as a party of right or in the alternative motion for intervener status. This county consulted with the Applicant, and the Applicant has no objection as I learned yesterday. That Friends of the Columbia Gorge and SOSA also do not have any objection to that request. So in light of that, I have an argument that I could go through, but in the interest of efficiency might defer to you as to how you wish to proceed.

JUDGE WALLIS: Let's ask if any of the parties present have an objection to the participation of Skamania County in this proceeding?

Let the record show that there is no response.

MR. CANTRELL: Your Honor?

JUDGE WALLIS: Yes.

MR. CANTRELL: Shawn Cantrell from Seattle Audubon. I'm not sure I have an objection, but I would just like to ask a question if possible.

JUDGE WALLIS: Mr. Cantrell.

MR. CANTRELL: I was just curious as to why intervening now as opposed to at the appropriate designated time, why the county chose not to intervene then and is now? It may be in the filings, and I apologize if I could have read this but I didn't see that.
MS. DRUMMOND: Should I address that, Your Honor?

JUDGE WALLIS: Ms. Drummond.

MS. DRUMMOND: Yes, it is addressed in our filing, and there are two principal reasons. First, Skamania County is a county with extremely limited resources. As I note in the filing, 85 percent of the county is in national forest and so there's very limited development there, and since they were hit hard, of course, by the bullet of the forest industry. So the county has attempted to conserve costs by delaying retaining legal counsel but has participated throughout the proceeding and submitted comment and believed itself to be a party of right.

Then the other reason for intervening at this point is because it became alarmed with some of the exhibits that were submitted and wanted to address those, and also there was some new information that we reattached to exhibits that we are filing as well. So those are the two principal reasons.

JUDGE WALLIS: You have filed a proposed exhibit that will be a part of our discussions later. Let me ask if there is any other participation that you intend to pursue in the proceeding?

MS. DRUMMOND: The county will endeavor to not delay the proceedings in any way and to address the issues, of course, before us that are before the Council, and as you
know we have submitted rebuttal testimony, and what the county intends to present will be roughly along the lines of what we presented in that testimony and is unlikely to stray too far from that, although we would like to reserve the right to comment as other issues that come up as this matter proceeds.

JUDGE WALLIS: Very well. The Council has examined the request to participate, and in light of the absence of any objections it is consistent with the Council's wishes to grant your participation, and we will consider you a party to the proceeding from this point.

MS. DRUMMOND: Thank you, Your Honor. The County appreciates that.

JUDGE WALLIS: The following items relate to objections that have either been filed or identified up to this point to testimony and exhibits that have been presented for inclusion in the record. Just as a matter of clarification, right now at this point the record is totally empty. What we have are proposals for matters to be received in evidence, and that once they are received in evidence we will populate the record. I would like to go through these in the order that they're listed on the agenda beginning with SOSA's objection to portions of Katy Chaney's testimony and exhibits.

I am going to encourage counsel as we go through
these matters both proposing and opposing objections to the material to be very much to the point and to present your arguments succinctly. Let's begin now with SOSA's objection to Ms. Chaney's testimony and exhibits. That was only a portion as I recall. Could you identify the portion to which the objection is addressed.

MR. KAHN: Your Honor, this is Gary Kahn on behalf of Friends of the Columbia Gorge. Before Mr. Aramburu addresses that, we would request out of just convenience that as we take things we combine a couple of things. The last line under Sub 4 of No. 3, Mentor, Bauer, Bryan-Miller, Canon, and Pearce the arguments against those are identical to the arguments against Michael Canon, Mr. McSherry, and Mr. Covert numbers Sub 2, Items 1, 2, and 3. We're just wondering if we could just move -- I don't care the order, but the arguments are going to be identical so we might as well lump them together to save some time.

JUDGE WALLIS: Certainly. Thank you.

MR. BAKER: Your Honor, this is Nathan Baker. One further clarification. Friends did join in this issue involving the Chaney testimony, but Mr. Aramburu will address it for both of us.

JUDGE WALLIS: Thank you.

MR. ARAMBURU: For the record, Richard Aramburu representing SOSA. On November 1 we filed an objection to a
portion of the testimony of Katy Chaney which is identified as proposed Exhibit No. 2 to these proceedings, and we particularly objected to pages 3 through 5 of her materials and to Appendix E to the application. We do not object to the remainder of the Chaney testimony. Exhibit E and the testimony that is provided in support thereof is a proposed zoning ordinance that was proposed to be adopted by Skamania County in 2006 and 2007 I believe or 2007 and 2008. However, when that proposed zoning ordinance, when the ordinance was proposed a determination of nonsignificance under SEPA was prepared. That determination of nonsignificance for the proposed ordinance was appealed to the Skamania County Hearing Examiner, and we were successful in asking the Hearing Examiner to determine that the determination of nonsignificance was inappropriate, and that an environmental impact statement needed to be prepared for proposed new zoning ordinance in Skamania County. Since then, and we have new testimony just coming in from Skamania County, that that ordinance was not adopted and no environmental impact statement for the ordinance has ever been prepared.

Now I understand that the Board does consider local zoning ordinances, but this is not an adopted ordinance. It is only a proposed ordinance. It cannot be adopted until an environmental impact statement is prepared.
for the ordinance outlining the impacts of that ordinance; 
therefore, we believe that it's inappropriate for the 
Council to consider an ordinance that has not yet been 
adopted, and particularly one which cannot be considered or 
adopted until the environmental review is complete.

So on those grounds we ask that Exhibit E, the 
proposed zoning ordinance and the references in the 
testimony from Ms. Chaney be stricken from the record.

JUDGE WALLIS: For the Applicant?
MR. McMahan: Thank you, Your Honor and Members of 
the Siting Council, Tim McMahan for the record.
Just briefly, frankly we're not all that concerned 
about this one way or the other, but I would say this. We 
included that testimony. It was in the application for site 
certification. We believe it's important background on how 
this applicant has attempted to meet all applicable 
criteria. I think it does inform the Siting Council in 
rendering its determination on land use consistency, and as 
you know there is a certificate of land use consistency 
filed with the county. I think this is interesting and 
informative background to help the Council understand the 
whole landscape of what this county has attempted to do and 
what we've attempted to do to comply.

The ASC itself has a narrative of our efforts to 
satisfy even pending county policy; that which has been
1 challenged by the Friends of the Columbia Gorge and SOSA.
2 So it's for no purpose other than that. We are not
3 suggesting that it is applicable, legally enforceable
4 zoning, nothing of the kind. So the question for you I
5 guess is whether it's considered relevant to the proceedings
6 to inform your decision.
7           Your Honor, again, we don't really -- it doesn't
8 matter all that much how this comes down, but we felt it was
9 helpful to the Council. Thank you, Your Honor.
10           JUDGE WALLIS: Any response?
11           MR. ARAMBURU: No. In determining the land use
12 consistency we believe that the Council must review only
13 adopted ordinances of local government, not proposed
14 ordinances. Thank you.
15           JUDGE WALLIS: Very well. Items 2 and 6,
16 Mr. Baker's declaration and the objections identified
17 yesterday.
18           MR. KAHN: As to Mr. -- you're jumping to Item No.
19 3 on this?
20           JUDGE WALLIS: No, I believe it's No. 2.
21 Let's be off the record for a moment.
22 (Discussion off the record.)
23           JUDGE WALLIS: Let's now take up the SOSA
24 objection to prefiled evidence from the Klickitat Economic
25 Development Authority and the Port of Skamania County
MR. KAHN: Then as we discussed earlier my same argument will apply to Mr. Mentor, Mr. Bauer, Ms. Bryan-Miller, Mr. Canon, and Mr. Pearce down at the bottom of No. 7.

JUDGE WALLIS: Yes, thank you.

MR. KAHN: There seems to be some misunderstanding of the position Friends and SOSA has taken, and let me also note that Friends also filed the objection to this so it wasn't just SOSA.

JUDGE WALLIS: Thank you.

MR. KAHN: Neither Friends nor SOSA has contended, is contending, or will contend that there is anything in the National Scenic Area Act or its management plan that has any direct regulatory effect on this project, this land, or in fact any lands outside the National Scenic Area. We will sign a stipulation to that effect. Again, let me say we do not contend that the Scenic Act in and of itself has any bearing on this, has any direct regulatory impact on this project.

The exhibits and testimony to which we've objected here, and we circulated a list yesterday of specific pages and by witness, for the most part except Mr. Mentor they are all testimony from municipal representatives or state subagency representatives about a gloom and doom scenario
that will occur to their body if the scenic area standards and guidelines are applied beyond the scenic area. We are not contending that the scenic area guidelines shall be applied in a direct regulatory fashion against any lands here. So we believe that all of this information and for that matter our own testimony submitted on behalf of Michael Lang which responded to this is also irrelevant and immaterial as it has nothing to do with EFSEC's role in this adjudication.

There may be other aspects of the existence of the scenic area that come to play with respect to the SEPA analysis, but as Your Honor has made it very, very clear that's a whole separate parallel process, and we'll address the interplay between SEPA and the Scenic Act in that process, and we already have through our comments on the EIS.

But we are not contending that a single standard and guideline in the management plan for the National Scenic Area has any direct regulatory effect on this project or EFSEC's adjudication of whether this project should proceed.

So we believe that all of the exhibits and testimony that we've circulated yesterday afternoon addressing this buffer issue for extension of the management plan issue is a red herring and should be stricken from the record, and again that would also include Michael Lang's.
JUDGE WALLIS: For the Applicant?

MS. ANDERSON: Thank you, Your Honor. Erin Anderson for the Applicant. Your Honor, I concur then with Mr. Kahn. If Friends and SOSA are stipulating that the issue of the proximity of the National Scenic Area to this project is strictly a SEPA issue, then I would submit that all the testimony of Dean Apostol comes out in this matter; that the issue is removed from consideration by this Council insofar as we are discussing issuance of a site certificate. If it is limited to SEPA, Apostol is irrelevant to this proceeding, and then we can proceed to discuss the relevancy of the other parties.

Insofar as this Council determines that, no, Mr. Apostol's testimony is relevant beyond the scope of the strictly SEPA, and I believe this Council has already made the ruling that it is relevant in this proceeding, then all of this testimony is appropriately responsive and the Council will recall that the petitions of not only Friends and SOSA -- well, let's start with them. Their petitions indicate we have membership that live near the Whistling Ridge Project. The National Scenic Area dictates that properties near the National Scenic Area are entitled to protection by virtue of their proximity thereto.

That issue was also raised as a basis for intervention by Klickitat County Public Economic Development.
Authority. Skamania County has articulated its own interest. Ms. Drummond has addressed those today. A variety of parties have indicated that if that is an issue at play in this proceeding for site certification that they are at risk of a ruling just as Friends has said it's an issue for us. These parties indicated it was an issue for them. Now when we take up the testimony of Mr. Apostol it's irrefutable. He says anybody standing in the scenic area cannot discern whether or not they are looking through an exempt area within the NSA. They cannot discern and people from the outside looking in cannot discern where the boundaries of the scenic area start and stop.

And FOG in particular has taken the position repeatedly that the proximity of these projects to the National Scenic Area must be a factor for consideration not just in the SEPA proceeding, but in Mr. Apostol's testimony you are being asked in this proceeding to make determinations as to the legal extent of the effect of the National Scenic Area Act insofar as it drives special management plans, insofar as it drives visual impact assessments from the outside looking in and from the inside looking out. That is the testimony that is covered by Ms. Bryan for Skamania County EDC, that is the testimony provided by Mr. Covert who alleges one of those areas Mr. Apostol testifies to you can see right through, and
therefore we need to be concerned about notwithstanding its 
exempt status. The same issue is raised by Mr. McSherry. I 
believe Skamania County has issues with that. Mr. Mentor's 
testimony goes directly to the congressional intent of the 
extent of the application of that scenic act. In fact, I 
would contend that this is at the heart of a lot of what 
we're doing here in this proceeding. Like I indicated, if 
they are suggesting that this strictly is a SEPA issue, we 
can take a variety of testimony out of it and that includes 
Mr. Apostol if counsel is here today to indicate whether or 
not that was truly their intent.

JUDGE WALLIS: Ms. Drummond, did you wish to 
comment? You have entered an appearance on behalf of the 
sponsored parties.

MS. DRUMMOND: Yes, Susan Drummond on behalf of 
Skamania County and Klickitat County Public Economic 
Development Authority. We actually did for both entities 
prepare a response to the motion to strike. We hadn't filed 
it yet, and we don't have actually Mr. Canon's signature on 
it. I can wait until he appears to sign it and I can 
formally file it. We have given just this morning copies to 
Friends and SOSA, but I would concur with Ms. Anderson's 
comments that as long as, well, this question of setbacks 
from the scenic area is in play then most definitely the 
testimony that was submitted by Skamania County which would
be Commissioner Pearce and that was submitted by Mr. Canon
and Mr. Covert from Klickitat County all of that testimony
would certainly be relevant to this proceeding.

I can address some of the other -- there was one
other argument that Friends and SOSA had made regarding the
relevance of Mr. Canon's testimony and the Klickitat
County's EDA. It was not addressed just now, but I can
address it very briefly if you would like.

JUDGE WALLIS: Let's just take these one at a
time, please.

MS. DRUMMOND: Okay. Okay. So as I just said to
wrap up, as long as that issue is in place certainly their
testimony on background of the Scenic Area Act and why it
was structured the way it was structured and how it has been
applied in both Klickitat and Skamania County is relevant.
Thank you.

JUDGE WALLIS: Mr. Kahn.

MR. KAHN: Ms. Anderson indicated, I don't
remember exactly the words, but they would agree if we were
willing to stipulate that the proximity of the project in
the scenic area is not a factor. No, that's not what we're
willing to stipulate to. Again, we are not contending that
there is a single word in the management plan for the scenic
area, the scenic area standards and guidelines or the Scenic
Area Act itself, that has any regulatory effect on this
What we are contending, for example, under NEPA which comes into play here because of BPA and to a lesser extent SEPA because of the EIS that EFSEC is involved in, one of the issues they have to consider is the impacts of the project on other sensitive natural or designated areas. The scenic area is obviously is federal designated area. So in the SEPA process there has to be some special considerations and analysis given to the impacts of this project on the scenic area. That is the SEPA process. That has nothing to do with the National Scenic Area standards and guidelines. That's number one.

Ms. Anderson also attempted to connect Mr. Apostol's testimony to this issue that we are now attempting to try to avoid. Mr. Apostol is a landscape architect with significant experience both in the public sector and private sector. What his testimony was along these lines. The scenic area, the Forest Service within the National Scenic Area has developed a process to measure the adverse impacts to scenic resources from development. It's a well-established process, and he's one of the recognized experts in the area.

In the here EFSEC has used a different process. Largely one used by the Federal Highway Administration or modeled after that. Mr. Apostol's testimony is along these
lines. This area is not a highway. It's not near a highway. It's a half a mile from the scenic area. It's in a mixed landscape of forest and other types of topography, much like the scenic area. The Forest Service has developed a methodology, a method for evaluating and analyzing impacts from a project like this. We recommend you use that. That's what we are saying.

We are not saying that any of the standards and guidelines that are inherent in that Forest Service methodology are mandated to be applied here by the Scenic Area. We are not contending that there is any buffer mandated by the Scenic Act. We are only contending contacted that the methodology used within the National Scenic Area to measure the impacts to scenic resources is the perfect method to be used here. We are not saying you are required to use it because of the Scenic Area Act. We are not saying you are required to apply any of the specific provisions because of the National Scenic Area. Merely that it is the most prudent and reasonable methodology to use.

Simply put, Mr. Apostol's testimony is pertaining to the measuring of the impacts, not to the project, not to the regulations of the impact. We are not contending in any way that the scenic area boundary should be expanded which is what most of that testimony that we are objecting to consisted of. It was talking about impacts within an urban
area or to development outside the scenic area boundary. The Scenic Area Act does not apply directly to any of that. There are other statutes though that as I mentioned SEPA requires an analysis, an additional analysis of the impacts to protected and designated areas. That's part of the SEPA process. Your organic statute comes into play here because of the considerations you have to give to protection of the environment. One the elements of the environment is the scenic area, and the fact that it has been designated because of the sensitive scenic natural and cultural resources. So one of the decisions you have to make is whether the impacts of this project on those sensitive resources is material enough and significant enough to warrant a denial or modification of the site certification, but again I'm not and neither will Mr. Point to a single standard and guideline in the National Scenic Area Act that we will contend applies in a mandatory basis to regulate this project.

So we believe all of the gloom and doom scenario about what happens in the extreme hypothetical situation which is not relevant of the National Scenic Area Act boundary being expanded or the standards and guidelines being expanded beyond the National Scenic Area boundary, all of that, including Mr. Lang's testimony, is irrelevant.

MR. McMahan: If I might have a quick opportunity
1 to respond, Tim McMahan for the record.

2 Just to be very clear here, in particular I want to just reference Mr. Mentor's testimony which I think is very important to this proceeding. Mr. Apostol says essentially three things boil down.

3 Number one, a viewer within the scenic area cannot discern the boundary; therefore, that which is beyond the boundary should be regulated, and the guidelines apply within the scenic area should apply.

4 Number two, they rely on KVA (key viewing area) analysis in their testimony, and the specifically of import to this proceeding all of Highway 84 (Interstate 84), all of SR-14, all of the Hood River Highway. I ask you -- the Columbia River Highway, excuse me -- what is exempt? What is not subject then to the scenic area provisions? Under that KVA analysis is the entire Gorge and everything seen within the Gorge. The third thing they do in the Apostol testimony, is they do, Mr. Apostol does a KVA-by-KVA analysis which we have rebutted in our testimony in the record, and I won't bore you with it here. You have it. But they do a KVA-by-KVA analysis and effectively say, "Siting Council, because it is visible to the scenic Area it is de facto a impact. Because it is visible at that KVA it is de facto a high impact. Because it is visible from that KVA distance doesn't matter, distance doesn't matter.
Ten miles, twenty miles, five miles distance doesn't matter."

Now I believe what I just heard Mr. Kahn say is this is all about SEPA and NEPA period. Now, if it's all about SEPA and NEPA, I don't know why on what earth we're talking about this, and I can tell you from our witness list that we circulated to the Siting Council this proceeding gets real short because Chris Watson, Tom Watson, Dautis Pearson, Dean Apostol, Joe Mentor, Leonard Bauer, Paul Pearce, Mike Canon all are either out and not testifying or their testimony is limited to things that are not related to this issue. Thank you.

JUDGE WALLIS: Any final thoughts?

MR. KAHN: Yes. Mr. Apostol certainly did say that some of the impacts visible to KVAs would be high impact, and maybe his reasoning was perhaps because they were KVAs. But what he didn't say was that anything about the regulatory provisions to protect KVAs applies here. I'm trying to figure out the testimony to which Ms. Anderson was referring. This is on page 10 of Mr. Apostol's testimony. The question was: In your opinion -- and the next words are the key -- completely independent of any regulatory considerations," and then it goes on to refer to the maps and the data collected through the scenic area whether that can be helpful in regulating the visual impacts from this.
And his answer was, "Yes, I think they can and should be used to help assess impacts." The question was again completely independent of any regulatory considerations.

There have been key viewing areas designated within the National Scenic Area. Those are the areas that the Forest Service and the Gorge Commission thought the view shed from which was the most important to protect, and to the extent that that view shed includes Whistling Ridge or other areas outside of the scenic area that's a factor that should be considered. Not regulated by this Council, not applying the Gorge Commission's standards and guidelines in the management plan as to whether this project can proceed because it will be visible, but certainly that is a factor that you need to consider to determine whether this complies with the criteria or whether the environmental impacts of this project are too severe to approve the site certification.

Again, nothing regulates this project, but it certainly has an impact. All of the testimony to which we are objecting other than Mr. Mentor, and I'll talk about him in a moment, is from municipalities or subagencies of the state talking about what will happen if the scenic area standards and guidelines apply outside of the scenic area. We are not contending that.

Mr. Mentor's testimony was a little bit different
and I think wholly irrelevant. He is a staffer to one of
the committees that was involved in the drafting of the act.
He has put something forward 25 years after the fact, and we
had a memo that was addressing this. We decided not to
raise it, but I will raise it now. Even legislators who
voted on those acts 25 years ago their statements now as to
what it was intended as a matter of statutory construction
is of little or no help. A staffer's comments about what
happened are even less relevant. So we believe, and we
don't believe the same list of witnesses would be eliminated
as Mr. McMahan just ticked off, but certainly a number of
witnesses and a lot of the exhibits would go by the wayside
because they're just not relevant to this proceeding.

JUDGE WALLIS: Very well.

MS. ANDERSON: Your Honor, if I may briefly
address Mr. Mentor's situation. It appears they have
launched into that somewhat separately.

JUDGE WALLIS: Very briefly.

MS. ANDERSON: I don't believe SOSA and FOG can
have it both ways. If Mr. Apostol in his very carefully
crafted language says, "No, this is not a regulatory effect,
this is just a SEPA matter for purposes of assessing impacts
and methodology," then we are talking about the SEPA, NEPA
in which case Mr. Mentor's testimony and all of these others
will no longer go.
JUDGE WALLIS: We understand that to be your position.

MS. ANDERSON: If he says it's both, then you cannot have it both ways.

JUDGE WALLIS: Thank you. Let's move on.

We're now on Item 8 and the declarations.

Mr. Baker and Mr. Till and Mr. Aramburu have presented declarations by which it is proposed that certain documents be received in the record. My first question relating to these items is the use of a declaration and how that replaces the necessity for a witness to identify and sponsor documents and answer to them. Well, let's stop there.

Regarding the declarations?

MR. ARAMBURU: Mr. Chairman, I have a question about the numbering here. On the agenda I think we're on Section 7 and Subsection iii. Is that where we are?

JUDGE WALLIS: Yes.

MR. ARAMBURU: But you said Section 8 and I think that's the section you're talking about.

JUDGE WALLIS: All right. Thank you. The challenges of automatic renumbering.

MR. KAHN: The challenge documents fall into three categories that were attached to declarations. One is land use documents, the second is wind speed, and the third is BPA system impact study.
With respect to the land use documents, you had a land use hearing it seems like decades ago, and we submitted a number of documents that were pertinent to your determination as to whether this project is consistent with local land use laws in connection with that proceeding.

In an early prehearing order, I don’t know which, you made it clear that if we wanted to use those documents for any aspect of this adjudication we had to resubmit and recirculate hard copies of those exhibits. That’s what we did. It is not tied to anybody’s testimony. It is pertinent to the land use process, and we intend to rely on those documents in the briefing that follows the adjudication. We believe we interpreted your direction as best we could. If there’s another way to submit these land use documents to get them in the record so we can rely on them for the briefing, even though they’re already in the land use hearing record, we’re happy to comply. I would also note that some of the documents that were objected to would also be subject to official notice by this body under the APA because they constitute ordinances of local bodies.

As to the issue as to whether they are hearsay, under the APA Rules of Evidence which apply to this proceeding hearsay is readily admissible at the discretion of the Hearings Examiner. It’s more a reliability issue rather than a hearsay issue.
So the land use documents we don't have a witness to sponsor them. They are merely to be relied upon as you indicated in Prehearing Order 10. You said that documents can be submitted if they are going to be relied on in the brief.

JUDGE WALLIS: Did the order say that they need not be supported with testimony?

MR. KAHN: It wasn't very clear. It didn't say that. It had "and" and it could be interpreted with and/or. If necessary we will sponsor a witness who will say I'm familiar with the land use rules. These are documents pertaining to land use. If that's what's necessary, then we'll do that. But we want these documents in the record so we can rely on them in our briefing. We thought submitting them a year and a half ago in the land use proceeding would have been sufficient, but you indicated that we had to resubmit them so that's what we've done.

With respect to the wind speed documents, there's objections aimed at those. One is that they're hearsay, and again the APA does not exclude hearsay. That's RCW 34.05.452 (1). The other objection is that these are not subject to EFSEC's authority. It's not an issue in the case. Washington Administrative Code 463-60-125 requires as part of this proceeding climatological information to be submitted. That's what this is. In Section 2.1.3.2 of the
application, and we have copies of that page here, it refers to the very same kind of maps that Mr. Till is referring to in his declaration. So it's been put into evidence by the Applicant, it's required to be in evidence by the Washington administrative code, and therefore we're certainly entitled to submit evidence in connection with it.

In Prehearing Order No. 12 on the discovery dispute you rejected our motion to compel or the administrative equivalent of it where we were seeking some of this data, and in the order the reasoning was that the data is proprietary, it is confidential, but it can easily be obtained in other formats for use in this proceeding. Well, that's exactly what Mr. Till did. He obtained it in other formats. He attached it to his declarations setting forth where it came from. It should be admissible on those grounds. And furthermore in the hearing before this prehearing conference -- I don't know which one it was -- on October 12, Mr. McMahan -- this is from the transcript -- Mr. McMahan acknowledged that such information could be put forward in these proceedings but not obtained from his client. That we could go out and get it from independent sources which is what we did.

As to the BPA documents, Mr. Aramburu will address that. I believe I've covered all of the other exhibits. We do have a copy of the application page in which this data is
referred. It's at page 2.1-6 of the amended application.

JUDGE WALLIS: Mr. McMahan.

MR. McMAHAN: Thank you, Your Honor, Members of the Council. First of all, I guess we do need a better understanding from the Siting Council on how the record of the land use proceeding is transmitted forward into this record, and maybe there's some confusion about that as best resolved by the Siting Counsel.

In my view that as part of the Council's proceedings a record was held and testimony was taken. We also submitted some rather brief legal argument in that proceeding. In any event, regardless the testimony that's referenced here and attached to Mr. Aramburu's declaration would be I suppose interesting to the Siting Council in legal argument. It is not factual information. It is not evidentiary factual information that should be offered into a proceeding at this point in time. It is legal argument, and the matters of public record that support that argument, including the comprehensive plan and the zoning and whatever, there is plenty of opportunity to have that put forth as exhibits to briefs if that's what Mr. Aramburu wishes to do in the future.

So I think two things. Both I think we need to reconcile what happened with the land use proceeding and that record and legal argument.
Secondly, as to Mr. Till's so-called declaration, you know, it's one thing to put information into the record from an expert with expert testimony that's subject to cross-examination. It's something entirely different to do what the Friends have done here putting in an unqualified, a patently unqualified witness in through a declaration. This isn't just raw data. Mr. Till did a science or computer project with data, and we have no evidence or information that he's competent to do that. He is not available for cross-examination. This is an extremely inappropriate way of putting evidence into the record that cannot be challenged with witness testimony or cross-examination.

To be clear, Ron Nierenberg, Mr. Nierenberg has in fact rebutted this declaration. Mr. Nierenberg's testimony need not remain in the record frankly if Mr. Till's declaration is stricken from the record. So I think that does clean things up somewhat.

I want to just also clarify mischaracterization of what happened in the discovery motion. I did indicate that in prior proceedings, including the Kittitas Valley proceeding, we would be happy to put forward in these proceedings if the Council wanted it regarding wind information on the site in a way that didn't cross the boundary of what is proprietary information. So what Mr. Nierenberg does is he does without providing the
proprietary data he does talk about the wind speeds on the project. It's in rebuttal to Mr. Till's testimony. But if that is of interest to the Siting Council, you know, that is in the record in these proceedings at this point in time. But, again, I don't believe any of this is relevant and is appropriately considered at this point in time.

The system impact study from BPA I know that Mr. Aramburu has not addressed it, but for efficiency I would be happy to do it now. I think my motion is clear enough on why we have a concern with that. Again, Mr. Raschio has provided testimony responding directly to that piece of that e-mail, the series of e-mail correspondence that was dumped into the record as a declaration from a lawyer. So if that's stricken, then Mr. Rashio's testimony similarly can be withdrawn from the proceedings, and again we economized on the testimony before you. I believe I have hit all off those. Thank you.

MR. KAHN: As to Mr. Till's testimony, his declaration laid out exactly what he did on his so-called computer or science project, and I will go one step further. If this resolves it, we will make Mr. Till available as a witness for cross-examination to answer questions about what he did and how he prepared that. In that case since we didn't submit his declaration in the form of a question and answer like the other ones, we can just ask as a first
question, Mr. Till, explain what you did with the exhibits
and then his declaration is the answer, and we will make him
available for cross-examination in the appropriate stage of
the process.

MR. ARAMBURU: Mr. Examiner, just a couple of
responses on my materials, if I may.

MR. COLBY: Could you have the people identify
themselves that are speaking for those of us that are on the
phone?

MR. ARAMBURU: Okay. This is Richard Aramburu
representing SOSA. There are objections to the four
documents that I have submitted by declaration, and I'll go
through those very briefly for you.

Number one has to do with the land use consistency
letter. I think we've discussed that. I think there is
some confusion as to how those materials advance from
whatever their status is now to become a part of the
adjudication for EFSEC. We put that in because we wanted to
make sure that that was a part of the record. Item No.
29.02 is the decision of Skamania County Hearing Examiner.
That issue has come up already this morning with respect to
the Katy Chaney testimony, and I'm happy to withdraw that so
we don't have another thing to worry about here. We will be
using it as a cross-examination exhibit of Commissioner
Pearce when he appears on the stand so we can resolve that
The Skamania County Comprehensive Plan which is Exhibit No. 29.03 is a copy of the prior comprehensive plan of Skamania County. We have used it to show, to deal with land use consistency issues to show that there were not material changes between 2007. I believe it is the comprehensive plan and the 1977 comprehensive plan, and that is again relevant to land use consistency issues. There is no objection filed by the Applicant or by Skamania County for that matter that Exhibit 29.03 is not an accurate representation of the 1977 Skamania County Comprehensive Plan. And since it is relevant to the materials here, and I can describe that we got this through a public records request from Skamania County, I think it should stay in the record as relevant to the land use consistency proceedings.

Exhibit 29.04, the system impact study from BPA, that is a study that relates directly to this project. It identifies a previous request by Puget Sound Energy to use BPA transmission lines for the transmission of energy from this proposed project. It is relevant to this project. We don't have a sponsoring witness for it, but we have identified it was as part of the official record of BPA. We can't in state proceedings subpoena federal witnesses in any event, but there is no objection that I am hearing from anyone that this material is not accurate material.
There is objections, there are questions raised by the Applicant as to what that material means now, and we're prepared to deal with that. But we think 29.04 should remain in the record as with several of these documents. There's not a realistic way to have these materials come into the record except in this manner, and I think the real inquiry of EFSEC should be: are these materials authentic? Are there problems with them? Are they accurate? Do they represent what they say they represent, and are they material to the proceeding?, not withstanding some technical issues about how they got into the record.

So we believe that Exhibits 2901, 03, 04 should remain in. 29.02, the decision of the Skamania County Hearing Examiner, will be a cross-examination exhibit for Commissioner Pearce when he appears?

JUDGE WALLIS: Very well. Does that conclude the objections to the prefiled evidence.

MR. McMAHAN: No, the Michaels' testimony.
MR. KAHN: And Nierenberg and Yourkowski.

JUDGE WALLIS: Very well.

MR. McMAHAN: Thank you. Your Honor, I filed a written motion long ago, not long ago. It seems like long ago. It's been a long week. Thursday I filed a written motion to strike and exclude an objection to the Michaels' testimony, and I am not going to spend any particular time
on this other than to reserve an opportunity to rebut what
might be argued. Prehearing Order No. 12 which was issued
by the Siting Council after the whole discovery flap speaks
for itself. It is our view that this Siting Council has
already ruled almost entirely all of Mr. Michaels' testimony
irrelevant and immaterial to these proceedings. That I
think is clear enough from my motion. I don't need to
elaborate on it further. I would like to make one
observation though. As we have kind of proceeded on through
the rebuttal phase in the proceedings, Mr. Michaels proffers
himself as an economist rebutting specifically economic
issues that have been offered by other witnesses, and I
would certainly be willing to concede that that's fair game
at this point in time should Mr. Michaels wish to be a
witness, expert witness on the economic issues that are
pending before the county from a variety of their witnesses,
including Mr. Hovee and others. But as to the need for
power and market issues and whether a merchant power plant
should be regulated, whether the siting of generation
globally should be regulated by the Siting Council in
individual proceedings, this Siting Council has already
ruled on that. I have nothing further.

JUDGE WALLIS: Mr. Aramburu.

MR. ARAMBURU: Members of the Council, I am going
to pass out for the Council's use and for the attorneys here
some sections of the application that has been filed in response to the objections to the Michaels' testimony.

I will say, Mr. Wallis and Members of the Council, that is an in limine motion. We have had only a very, very few days to look at this material and in very, very short notice. And while I recognize that has been scheduled, this has put an extreme burden on the parties to receive and review 18 separate testimonies that were received on Thursday and to do the various other matters that were involved.

But with respect to the Michaels' testimony, first of all, the Council has some very fundamental responsibilities under its siting act. It is the balance, the increasing demand for energy and operations in conjunction with the broad interest of the public. That's in your statute. That's in your regulation.

In addition to that, the Council is mandated under SEPA and under its own SEPA regulations to consider environmental amenities and values and to give those appropriate considerations with respect to the decisions it makes.

There will be a great amount of testimony in this proceeding regarding the environmental impacts, impacts on bird life, wildlife, impacts on visual resources. The Michaels' testimony identifies particularly the value of
this resource. Is it a resource that is a resource that
should be considered valuable in the balancing of this
resource against the environmental values that are here?

Now we have received the objection to the
Michaels' testimony. We'll note with seven weeks to prepare
it there is not a single bit of legal authority, no case
law, no statutes, no regulations found in this motion to
strike the Michaels' testimony. I further note that despite
the extensive references to Prehearing Order No. 12, in
fact, Prehearing Order No. 12 dealt with the question of the
application of the Kittitas Valley Supreme Court case, and
in that case there was a question of whether or not the
Applicant can challenge the economic viability of an
individual project through EFSEC proceedings, and you ruled
on that, but that's not what Mr. Michaels is testifying
about. Mr. Michaels is testifying about the broader issues
of low cost energy, about integration of wind into the
Northwest power pool, and other issues of that nature.

We concede that it looks like from our vantage
point that the Whistling Ridge Project is going to be
immensely profitable and we'll concede that at that point.
We're not challenging that part, but what we are challenging
is in light of the existing resources, in light of the
existing problems in the Northwest whether these matters
should be given consideration as a part of the decision of
the Council. But more to the point, we have passed around and given to the Council Members portions of the ASC, the application here, in which the very issues that Mr. Michaels is testifying about has been raised by the Applicant. For example, the Applicant says that this project is designed to provide low cost renewable energy to the growing needs of the Northwest, and Michaels' testimony addresses that point; indicates that this is not going to be low cost renewable energy, indicates serious questions as to whether or not there is the need for additional wind resources within the Northwest, directly in opposition to the material found on page 1-1 of the application. And this is by handout, and for the convenience of the Council Members I have underlined those materials here.

The application says that this project has the advantage of being able to provide low cost renewable energy to growing communities that is in the Portland-Vancouver area. We directly address that in the Michaels' testimony and whether or not there is any indication that this power will be in fact picked up by Portland, Vancouver, or whether or not this power is actually going to be sold elsewhere.

Also at Section 1.1 there is a significant bit of puffery here about this being a premier undeveloped wind site in the Northwest, again in Section 1.1, page 1.1 of the application. Mr. Michaels at pages 14 and 15 of his
materials directly addresses that and points out that these wind resources are likely to require fossil fuel burning balancing resources for development of this property. The Applicant discusses and spends a whole section of his material discussing the Pacific Northwest Power Plan and the needs of the power plant, a whole section. Mr. Michaels' testimony again addresses that at pages 16 to 19 of the testimony based upon the new Sixth Annual Pacific Northwest Power Plan which heavily emphasizes conservation and indicates that the needs of the Northwest are likely to be met in substantial portion by conservation efforts as opposed to new energy production efforts.

So, again, we're responding to materials that are found in this application. The Applicant says at Section 1.1 that this power from this project can be easily integrated into the grid. Pages 19 to 24 of the Michaels' testimony takes issue with that and points to the problems of trying to integrate this new power into the grid. So, again, specifically responding to assertions made within this application that are sponsored by Mr. Spadaro who is going to testify on these matters within the course of the hearing.

Again, pages 219-1 of the application, discussion of a proportion of the resources that this will meet growing power needs, again we've addressed that issue in the
Michaels' testimony. So, again, this is material that's
directly responsive to their application and also directly
in tune and in line with the responsibilities of the
Commission to consider these matters and consider the very
delicate balancing issue. Unless you know the nature of the
resource and the need for the resource and the issues
connected with the resource it's not possible for this
Commission really to do that balance.

So we reject the largely unsupported petition of
the motion to strike the Michaels' testimony, particularly
on this kind of short notice. I think the Commission needs
to hear this. We can go through these matters in detail
during the course of the hearing. This material should stay
in the record, and it's not appropriate to strike it at this
time.

MR. BAKER: Your Honor, if I may, this is Nathan
Baker. I'd like to add one additional example to those
cited by Mr. Aramburu of the relevance of this material. As
Mr. Aramburu stated the testimony from Dr. Michaels talks
about integration into the grid. There is a rule in the
EFSEC rules that requires the application to describe the
impacts and plans for utilizing or mitigating impacts caused
by the proposed facility on utilities. The citation is WAC
463-60-535(4)(e), and in fact the application has a section
that describes positive impacts on utilities. It's the last
1 page of Section 4 of the application. There are other
2 parties other than the applicant such as Skamania County
3 PUD, Mr. Wittenberg's testimony, which talks about the
4 reliability of the grid, the impact on the PUD. Much of the
5 rebuttal testimony from Dr. Michaels filed on Thursday
6 responded to that material. We believe it's all relevant
7 under the rules and should not be stricken. Thank you.
8
9 MR. McMAHAN: Your Honor, Tim McMahan for the
10 record again. The idea that we haven't briefed this is kind
11 of mysterious to me. All of these issues were briefed
12 exceptionally thoroughly in the discovery motion that led up
13 to Prehearing No. 12. The Council is fully aware of that.
14 We briefed exactly these issues extensively. There was no
15 need to provide you with yet another, you know, 50-page
16 brief to support this motion. It's all in the record.
17
18 There is a really very, very big difference in
19 introductory information that talks about the project that's
20 in the ASC versus what Mr. Michaels is suggesting with his
21 testimony. You need only flip through what you have in
22 front of you from Mr. Aramburu. For example, on page 1-1 to
23 take one, the Whistling Ridge Project is designed to provide
24 low cost renewable energy to meet the growing needs of the
25 Pacific Northwest. It's intended to provide the capability
26 of delivering least cost effective renewable energy to these
27 growing communities. There is a number of statements, a
handful that have been shown to you that have statements of intent and why we're bothering, what this application is supposed to do.

That is not at all framed as criteria for decision making. There's a huge difference to put information in an ASC that describes why we're bothering with this horrendous process by coming to you with this application versus taking issues of need for facility and transmission issues and translating that into criteria, specific criteria for the Siting Council to use without regulations supporting the application of what Mr. Michaels talks about siting criteria. That is an enormous difference from what we have in the ASC, and it's not fair to paint them the same.

Quite frankly, you know, Prehearing Order 12 should apply equally to that which is in the application that talks about that. It is not intended to be responsive to criteria, and to the extent that the Siting Council believes that consideration of need for power and whether there is too much or enough wind power on the entire system in the Northwest which he wants you to decide in these proceedings. So whether that's in any way addressed that's equally inadmissible and inapplicable to these proceedings in applying your criteria.

So again this one has been played out already. Your Prehearing Order No. 12 already addresses these issues.
It's already been deemed to be irrelevant, and Mr. Michaels' testimony at a very minimum should be narrowed to that which is responsive to other testimony. It's certainly not trying to have this Council decide that which you've said it won't decide and which is already deemed irrelevant. Thank you.

JUDGE WALLIS: Very well. Now, does that conclude the disputed --

MR. COLBY: This is George Colby. Can you hear me?

JUDGE WALLIS: Mr. Colby, yes.

MR. COLBY: I received right at the beginning of this hearing today a packet from Stoel Rives that has been FedExed out to the agency. I got it this morning. It contains the Applicant's prefiled rebuttal testimony of Wilbur Slockish and Johnny Jackson, and I'm wondering whether you want to hear from me now or at No. 12 of the No. 10 or 11 or 12 in regard to some things that I would like to bring up in regards to those two pieces of testimony that I just found?

JUDGE WALLIS: Mr. McMahan.

MR. McMAHAN: Your Honor, Mr. Colby and other members of the tribe are also on the e-mail circulation. Our filings did not bounce back from any members of the Yakama Nation. They had them on Thursday, and I believe the Council asked all parties to identify any objections at
these proceedings today so I think this is untimely.

JUDGE WALLIS: Well --

MR. COLBY: I would object that it's untimely. I mean we've heard all kinds of things that you heard today that people have brought up at the last minute. That's the whole point of these hearings is to take care of things that can be smoothed over or determined or taken care of before the hearing actually starts. So if that's Mr. McMahan's objection it's not valid.

JUDGE WALLIS: Mr. McMahan, my question was whether you want to do that or whether you would rather wait until later?

MR. McMahan: You know, I would defer to the Siting Council really. I don't have a position on that.

JUDGE WALLIS: Why don't we hear that now. Mr. Colby, please proceed.

MR. COLBY: Judge, two concerns, and I've had them all along, and they have been on the record before at these telephonic hearings, and in attendance today at this hearing is Wilbur Slockish and Johnny Jackson. I want to point out for the EFSEC Commission Judge that when I mail things to Wilbur Slockish who identifies himself as Chief Wilbur Slockish of the Klickitat and Cascade Tribes of the Yakama Indian Nation, even though they have an elected representative on the Yakima Nation Tribal Council, but be
that as it may, when I mail him information it goes to Jason
Spadaro at Whistling Ridge Energy, P.O. Box 266, Bingen,
Washington. And in the packet that I received this morning,
and I'll take Mr. McMahan's word for it that it came on the
e-mail too, I'm not disputing that, but the hard copy in
front of me comes from the Stoel Rives firm who appears to
be representing Wilbur Slockish and Johnny Jackson
representing the Yakama Indian Nation because they're not
hired by the Yakama Indian Nation. They are not attorneys
of the Yakama Indian Nation in this proceeding, but when you
read the things that they are proposing that be on their
testimony from both of these gentlemen they purport to
represent the Yakima Indian Nation and they do not. And
attorneys who are writing information for them should be
careful that there are other attorneys that represent the
Yakama Indian Nation and it's not the firm of Stoel Rives,
and we are concerned about what is going on. Either we have
people involved in this process that do not represent the
Yakama Indian Nation but purport to.

JUDGE WALLIS: Mr. McMahan.

MR. McMahan: I will respond, Your Honor. We in
no sense, not at all have purported to represent the Yakama
Indian Nation. There's nothing in the testimony, the
transmittal letter, anything whatsoever that would make that
contention. We certainly disavow here. Never have. We've
never purported to represent the Yakama Nation, nor do we even represent Mr. Slockish or Mr. Jackson. Their testimony speaks for itself. They themselves and their testimony state they are not representing the Nation. They're representing themselves and their cultural heritage and their ancestry and their knowledge of the site. That's all they are testifying. They asked us to submit the testimony rather than they submit as intervenors frankly because they don't have the capability of circulating the testimony like other parties to the proceedings do and that is stated in their testimony.

MR. COLBY: Page 9 of Wilbur Slockish's --

MR. McMahan: I think I was responding, Mr. Colby. Specifically they asked us to file the testimony on their behalf. They're very serious about this matter, and again I think the testimony speaks for itself.

MR. COLBY: Judge, can I respond?

JUDGE WALLIS: Mr. Colby. Sorry, Mr. Colby. Are you there?

MR. COLBY: This is Colby. Judge, could I respond to that?

JUDGE WALLIS: Please.

MR. COLBY: Page 9 of the proffered Applicant's prefilled rebuttal testimony Witness No. 14 Chief Wilbur Slockish, Jr., it says on page 9, line 13, on Stoel Rives
pleading paper, we work with the Yakama Nation government. They do not. They do not represent the Yakama Nation in any way, shape, or form. In fact, yesterday my office filed and is in the mail to you Final Tribal Council Resolution, and I'll put it on the record right now. Nobody has gotten it because it's in the mail. It's TO13-11 Tribal Council Resolution of Yakama Indian Nation regarding this particular situation stating out the fact that only the Yakama Indian Nation Tribal Council speaks for itself under the Treaty of 1855 (12 Stat. 951). The Yakama Indian Nation is a resolution nation, and they have two resolutions that govern it, T-38-56 and T-10-61. And these resolutions haven't given Johnny Jackson or Wilbur Slockish any authority to speak with any authority of the Yakama Indian Nation. And when you go through their testimony as it's proffered, it's all about the Yakama Nation this and Yakama Nation that, and we object to it.

JUDGE WALLIS: Thank you.

MR. MARVIN: Your Honor, this is Bruce Marvin, Counsel for the Environment.

JUDGE WALLIS: Mr. Marvin.

MR. MARVIN: Upon review of my records I realize that a substantial portion of the rebuttal testimony that was submitted by the Applicant via e-mail. I received one e-mail regarding the testimony from Mr. Mentor, and I did
receive a cover letter indicating that there was additional testimony that was being forwarded, but I did not receive it by e-mail. So, again, I have no reason to believe that it was not sent to me, that perhaps it was lost, but going forward I would ask that extra caution be used with regard to these communications.

JUDGE WALLIS: Yes, Mr. McMahan, will you work with your staff and perhaps ask your staff to talk to Mr. Marvin's staff and see if there was any glitch that could be prevented in the future.

MR. McMahan: Just to be clear about this point, we have obviously a great deal of testimony that was filed. It was impossible to transfer attachments to e-mails 256 megabytes or something like that because it had some huge maps. So we sent an FTP site link. Now, in my transmittal letter we knowledge that some people might have trouble with FTP links given the technologies. Because of that we sent hard copies overnight mail which is over and beyond what the Council requires in these proceedings, and I think we are the only party that sent information overnight mail. So we did our best to circulate things, and I would apologize to Mr. Marvin if he didn't get that FTP link.

JUDGE WALLIS: Mr. Marvin, if you will follow up with that to make sure that --

MR. MARVIN: Yes, I will see if I can find that
link. I did not see anything referenced, and I do have my legal assistant is in touch with your office, Tim, trying to sort that out. But I just felt just in all candidness I would throw that out there and I'll work it out. We'll work it out.

JUDGE WALLIS: Thank you to both of you for working on this issue. Is there anything further that the parties want to raise with regard to the admissibility of prefiled evidence?

MR. COLBY: Colby again, Judge.

JUDGE WALLIS: Mr. Colby.

MR. COLBY: To follow up, number one, on the Stoel Rives Firm, I certainly thank them for all of the information that they get out. I'm not trying to raise any criticisms. My issue is with the Yakama Indian Nation only. Other people have other issues with other things, but I am concerned that we are raising the spectra that there are two attorneys for the Yakama Indian Nation and there are not. Page 9 of Jason Spadaro's prefiled rebuttal testimony at line 22 of page 9 talks about the history of the engagement with the Yakama Indian Nation, and this is the prefiled testimony of Jason Spadaro that I guess everybody has now. Anyway on line 22 it starts October 2007 SDS, that's Jason Spadaro, provides initial project presentation and site tour to local tribes Chief Johnny
Jackson and Chief Wilbur Slockish asking for any concerns regarding the project.

That would tell me that almost three years ago somebody began working with people that don't represent the Yakama Indian Nation and they're still at it. Thank you. That's all I have on that issue.

JUDGE WALLIS: Very well. Thank you.

Anything further?

Mr. Aramburu.

MR. ARAMBURU: Members of the Council, I think we're now at Section 7, iv, of the agenda that was sent out yesterday. That is our objections to the Nierenberg, Yourkowski, Mentor, Bauer, Bryan-Miller, Canon, and Pearce testimonies.

MS. ANDERSON: Your Honor, I believe we --

JUDGE WALLIS: Yes, I understood that that was taken up earlier. Is that not correct?

MR. ARAMBURU: No, no. Our objections to those three witnesses have not been taken up yet.

MR. BAKER: Your Honor, just to clarify, there are two witnesses that have not yet been covered. They're Nierenberg and Yourkowski.

MS. ANDERSON: I would agree with that.

JUDGE WALLIS: Very well.

MR. ARAMBURU: With respect to the testimony of
Mr. Nierenberg, Friends and SOSA have objected to page 5 of that testimony. The remainder of the testimony is not objectionable on its face. The question on page 5 is: Have you made an energy estimate of the wind resource of the project site, and how does that compare with other sites? And then he goes on to say that the estimated net capacity factor of the Whistling Ridge site is higher than other sites and the same as certain other sites.

Now, we had an extended proceeding before the Council with regard to our request that we receive information regarding just the question of net capacity factors, meteorological information, and all those of other materials, and I don't think anyone here can forget the rounds that we've had over that issue. And it was only ultimately determined that because of confidentiality reasons which we continue to strongly object to, that those materials would not be submitted.

Now, what's going on is the Applicant, who just can't stand not to talk about this, has submitted the testimony of Mr. Nierenberg which is essentially that I have, and this is what he says, I have done a lot of the meteorological evaluation of this site, and I have nine years of meteorological data, and I've got them right here. But you can't see them, but I'm going to testify about those materials, and I am going to tell you how good this project
is based upon me looking at this meteorological information and the net capacity factors. And I'm going to tell you that this is an absolutely great site based upon that.

Now I think it's completely unfair for a witness like this to appear to rely on information that we cannot receive because it's supposedly confidential, and to make an evaluation of this project in comparison with other projects. I think it's contrary to that order, I think it's unfair to the intervenors, and if this testimony is to be proffered, then this witness should disgorge the meteorological information and the net capacity factors that have been discussed. So we object to the last question on page 5 in the Nierenberg testimony.

MR. McMAHAN: Your Honor, Tim McMahan again. That testimony is directly responsive to Mr. Till's testimony. If Mr. Till's testimony is stricken, then Mr. Nierenberg's should be stricken, first.

Second, Prehearing Order 12 itself discussed the difference between confidential wind data and the kind of testimony that had been submitted in the Kittitas Valley proceeding. It was accepted by the Siting Council and was challenged in those proceeding as well. We offer that, and I talked about it during oral argument on the discovery motion on confidential data. There is a way of discussing wind data without disgorging highly confidential proprietary
information. I saw Prehearing Order 12 inviting us to provide similar testimony in these proceedings that was accepted in KV. That's exactly what we did, but again, you know, if Mr. Till's testimony comes out, I think this is sort of a sideshow issue that doesn't have any large bearing on the outcome of the proceedings. Thank you.

MR. BAKER: Your Honor, could I respond to that? This is Nathan Baker. The declaration of Rick Till, Richard Till and the exhibits attached are a completely different category of information than what's on page 5 of the Nierenberg testimony. The Till documents involve publicly available data that was taken off a website. Page 5 of the Nierenberg testimony discusses the confidential or the so-called confidential data that we have not been able to see. It's a completely different category. Thank you.

JUDGE WALLIS: Mr. Aramburu.

MR. ARAMBURU: The next item on your agenda, Mr. Examiner, is our objection to the Yourkowski testimony, and we particularly ask that portions of that testimony beginning on page 3, line 23 to page 5, line 14 be stricken, and the basis for that is this: Mr. Yourkowski purports to testify as to broad public support in the Pacific Northwest for renewable resources and how those factors should be taken into account and how Mr. Michaels' testimony did not take those factors into account.
We think this kind of beauty pageant approach to your proceedings is inappropriate. Whether or not there's broad public support does not have to do with what this Commission is doing, and it lends itself to people coming forth and talking in generalities about these issues. We think that kind of testimony is not appropriate to these proceedings and should be stricken.

MR. McMAHAN: Your Honor, Members of the Council, let's look at what is happening with the Yourkowski testimony on page 3. Question: Do you agree with the Michaels' statements that, "Whistling Ridge is unlikely to produce abundant energy at reasonable cost both in context of the Northwest Power Market and relative to alternative sources of energy or energy services?"

Mr. Yourkowski's responds to that. Part of his response is "the Michaels' testimony gave no weight to the broad public support in the Pacific Northwest and California for expanding the use of new renewable energy as a way to reduce reliance on fossil fuels and offset emissions of greenhouse gases," etc.

That was responsive specifically to the Michaels' testimony mischaracterization of it and his lack of consideration of the public input that goes into that question that Mr. Michaels offers specific testimony about, and that response is extremely relevant to this Council's
The second piece that is objected to from 4 to 5, would the Whistling Ridge Energy Facility be a qualifying renewable energy resource in Washington -- excuse me. The question is I guess on page 5: Do you agree with the Michaels' testimony that whether it is exported or kept in the Pacific Northwest wind power is in excess of current amounts and is of little value to Washington state?

Response: No, it ignores several factors, including the broad public support in Washington in increasing the amount of new renewable energy in the region, etc. I won't keep reading. The point is Mr. Michaels himself holds up and testifies about issues of need for power and policy issues that underpin that without giving the full picture. Mr. Yourkowski's testimony gives you the full picture based upon the RPS and the support in this region as driving markets that Mr. Michaels dislikes given his perspective and background. That is an accurate statement, a purely accurate statement there is broad public support in Washington state. I think it was by a 2:1 vote the voters enacted Initiative 937. That's simply a statement of fact.

JUDGE WALLIS: Very well.

MR. ARAMBURU: Mr. Michaels' testimony doesn't support or say there isn't broad public support. It doesn't
1 discuss the issue. It's inappropriate and we have not
2 asked -- we start on line 24 of the Yourkowski on page 3 his
3 criticism of Mr. Michaels' testimony is fine, but when he
4 starts to say, for example, on page 2 please describe the
5 broad public support, it's attempt to make this into a
6 proceeding that once again is a beauty contest rather than a
7 factual proceeding. So we believe that portion and that
8 portion only of the Yourkowski testimony should be stricken.
9
JUDGE WALLIS: Very well. Let's be off the record
10 a moment for a scheduling discussion.
11
MR. ARAMBURU: May I just have brief comment about
12 the Mentor testimony which is the next Item 7, iv. We can
13 provide to the Council extensive Washington authority, and
14 we can do so very quickly that essentially says the Mentor
15 testimony is an attempt to establish legislative history of
16 the scenic area and based on the testimony of a staffer.
17 There is abundant authority in the state of Washington that
18 says the legislative history as a defined manner of being
19 established, and that manner is not by a staffer who was not
20 testifying or siting materials that were contemporaneous to
21 the enactment of the legislation, and such attempts to
22 establish legislative history is entirely inappropriate.
23 That is another basis, as well as the ones that
24 have been identified by Friends as to why the Mentor
25 testimony should be stricken, particularly litigation.
affidavits as an attempt to establish such testimony are inappropriate. Should the Council wish it, we can provide by probably this afternoon the authority that supports that proposition. Thank you.

JUDGE WALLIS: Very well. Anything further?

Ms. Drummond.

MS. DRUMMOND: Yes, Your Honor, I have a quick question of procedure now that I have Mr. Canon's signature on the Klickitat County Public Economic Development Authority's response to the motion to strike. Would it be useful for the Council to have it distributed now? We did hand it out to Friends and SOSA this morning; otherwise, we can formally file it tomorrow, whichever would be the Council's preference. This addresses the earlier argument regarding the motion to strike.

JUDGE WALLIS: Yes, it would be appropriate to distribute that now.

MS. DRUMMOND: Okay. Thank you.

MR. ARAMBURU: Mr. Chairman, one other matter. I unfortunately have a hearing in Pierce County Superior Court at 1:30 so I'll have to be leaving the proceedings at 12:30 and beg the indulgence of the Council. I didn't realize that it might go as long as it did so I thank you.

JUDGE WALLIS: I thought we were doing actually quite well.
MR. ARAMBURU: I thought so too.

JUDGE WALLIS: Very well.

MR. BAKER: If I could just take one moment. We did just receive copy of Ms. Drummond's brief at this hearing. I'd just like to respond very briefly. The top of page 2 the brief says that the application of the Scenic Area Act's legal effect beyond the boundary of the National Scenic Area has been confirmed as an issue in this proceeding. That's not accurate. The only support provided for that is the statement of Klickitat County Public Economic Development Authority at the bottom of page 2. So only in the mind of the Klickitat County Economic Development Authority is this an issue, but again we are willing to stipulate that the Scenic Area Act has no regulatory effect on this project. So it's a phantom. It's a nonissue. Thank you.

JUDGE WALLIS: We understand your position. Thank you. What we would like to do is take a brief recess to look at a schedule. The Council I believe would like to discuss the arguments that have been heard this morning and respond to them with decisions on the individual exhibits that have been challenged, and there are on the list a few remaining housekeeping items that will expedite our conduct to the proceeding if we address those, resolve any questions about them.
So let's go off the record for just a moment, and we'll take a look at the clock and the Council's schedule for when we might reconvene after the Council's discussions. (Recess taken from 11:40 a.m. to 11:43 a.m.)

JUDGE WALLIS: The Council is going to take a recess until one o'clock. That will give parties the opportunity to grab a bite to eat in the meantime, and if we're fortunate the Council also, and then we will take up the remaining housekeeping matters. My prediction is that it will not take terribly long time to deal with those housekeeping matters. I have a sense that there's a lot of disagreement. It's just a matter of getting straight what it is we need to do to keep the hearing itself on track with that.

MR. PEEPLES: Your Honor, would you anticipate that we would be done about 1:30?

JUDGE WALLIS: That is my anticipation; however, my anticipation is sometimes unenlightened.

MR. ARAMBURU: Mr. Chairman, as I have indicated I have to be standing tall in Pierce County Superior Court at 1:30 so I will not be here.

JUDGE WALLIS: Very well. That's understood.

MR. ARAMBURU: My compatriots can speak for me on that.

JUDGE WALLIS: Very well.
MR. CANTRELL: Shawn Cantrell. Just to confirm that this is the same phone number that will be operable when we phone in at one o'clock?

JUDGE WALLIS: Yes, that's correct. Let's be in recess.

(Recess taken from 11:44 a.m. to 1:00 p.m.)

JUDGE WALLIS: During the recess the Council met and discussed the objections to evidence that were posed earlier and has determined to grant the objection to the proposed testimony of Mr. Mentor, Exhibit 19, for the reasons stated that the recollections of a staff member are not the best means of determining the interpretation of a statute.

The Council also has determined to grant the objections to the declarations believing that those are not appropriate means by which to offer evidence to the record. There are some documents such as a copy of an ordinance or a proposed ordinance, administrative decisions of which the Council is willing to take official notice so that the significant matters of that nature will be available and will be referenced during the hearing. If copies are not already provided, then parties will be asked to provide those documents for the record.

The declaration of Richard Till is a little bit different from the suggested declarations of the attorneys,
and the Council would not exclude the appearance of Richard
Till and his sponsorship of the documents. That does not
mean the documents might still be subject to objection and
exclusion from evidence, but if the parties wish to present
Mr. Till to sponsor those documents then the Council will
consider that. The other objections are denied, and the
evidence including the prefiled testimony will be received
in evidence. Are there any questions?

MR. KAHN: Yes, I was going to wait, but --

JUDGE WALLIS: Mr. Kahn.

MR. KAHN: Thank you. Sorry. Gary Kahn on behalf
Friends of the Columbia Gorge, and I think I'm also speaking
for SOSA since Mr. Aramburu is not here. Earlier
Mr. McMahan raised the question about perhaps asking the
Council for some guidance on how we incorporate the
documents submitted in the land use proceeding as part of
the adjudication. We join in that request given that we
have apparently not done what you've wanted us to do to get
those documents in the record. So is there any way you
could educate us on how we can utilize these documents if we
don't have a witness?

JUDGE WALLIS: Exactly what documents are you
referring to?

MR. KAHN: The documents attached to Mr. Baker's
declaration and the documents that are attached to
Mr. Aramburu's declaration that pertain to the land use proceeding. We don't have any witnesses on the land use proceeding. We presented that in the prior hearing. You've indicated that we have to resubmit those documents for this proceeding which we've done. They've now been rejected. How do we get those in?

JUDGE WALLIS: Can you specifically identify the documents to which you are referring?

MR. KAHN: Mr. Baker will do that.

MR. BAKER: Sure, Nathan Baker. All three of my exhibits which are 23.01, 23.02, and 23.03 those were all submitted for land use purposes not for SEPA purposes.

JUDGE WALLIS: Could you identify what those documents actually are.

MR. BAKER: Sure. 23.01 is an e-mail from the Skamania County planner to me. 23.02 is a copy of a resolution by the Skamania County Commissioners passed within the past six months, and there was an earlier resolution along the same lines that was submitted at the land use in June of 2009. So this is an updated resolution. 23.03 is a letter from the Department of Natural Resources to EFSEC. It is part of the SEPA record. Most of the letter does contain SEPA issues, but we are not submitting it for a SEPA issue.

The other ones are Rick Aramburu's exhibits. I'm
not sure 23.01. No, I think it's 29.01 which is a letter
from Rick Aramburu to EFSEC I believe. 29.02 which I
believe it's a decision of the Hearings Examiner of Skamania
County. 29.03 which is a copy of the Skamania County
Comprehensive Plan from 1977. I believe that's all.

MR. KAHN: In terms of the land use.

JUDGE WALLIS: To some of those documents they are
official documents. They are publicly available as official
documents. The comprehensive plan, the ordinances or
resolutions the Council is authorized under the APA to take
official notice of those documents. You have provided
copies, and they will be available for discussion.

The e-mails, other documents we will have to go
back and look at the context in which they are referred to,
and -- well, we have no context because this is a
resolution, and I cannot say that we would or would not
appropriately receive them. If you use them as an exhibit
on cross that may be one approach to doing that.

The Council did have some discussion about the
relationship between the two processes, the land use and the
adjudicative, and reached no conclusion. So my suggestion
is at this point to defer that you have the ability to use
the public documents in your presentation and to bring up
the remaining documents at the time you wish to offer to use
them in your prosecution of the matter.
MR. KAHN: For clarification, you referred a couple times to public documents. We've got what I'll call two classes of public documents here; one which are ordinances, the comp. plan which I think you've indicated you would take official notice of.

There's another class of documents that are in the public records. They're communications, example, from Mr. Baker to a planner or vice versa. They're certainly a public document. Is that what you're referring to?

JUDGE WALLIS: No, not at all.

MR. KAHN: Thank you. Just trying to get a clarification.

JUDGE WALLIS: Very good. Any other questions?

MR. McMAHAN: No.

JUDGE WALLIS: All right. Let's move on then to the more mundane matters related to the process of the hearing. We do have the hearing facility reserved for two weeks, and we had planned to take up Monday morning at ten o'clock as needed for prehearing issues. I'm not sure right now as a result of our discussions today that we will need that time to prepare for the beginning of hearing. I do think it could be helpful to us to convene at let's say 1:00 or 1:15 to make sure that the documents needed for the opening presentations and the first witness are available, to take a look at the audiovisual equipment that we have
available and make sure that people know how to run them.

Just some of the practical matters of conducting a hearing of this sort. What are counsel's views on that?

MR. KAHN: Your Honor, at this point we're not aware of any issue that would need to be addressed at the hearing, but candidly frequently after we've received an order following one of these prehearing conferences issues arise. Perhaps we could notify you mid week the prior week whether where we need the prehearing conference or not.

JUDGE WALLIS: I am not anticipating that the Council will be entering an order as a result of this hearing. All of the Council Members, the Council's decision has been conveyed. Unless there are questions arising, and you have the opportunity to present that now I don't anticipate an order.

MR. KAHN: Then at this point we don't have any issues that we're aware of that would be the subject to a prehearing conference.

MR. McMAHAN: We concur.

JUDGE WALLIS: Very well. I will ask the parties to be available at 1:15 on that day in case there are questions about operating the machinery and how we will proceed in that manner. The remainder of the week it's our intention to begin an 8:30 with the evidentiary hearing, and to the extent that prehearing issues arise or administrative
issues, I would like the parties to convene at 8:00, and we
 can deal with any issues of that nature unless we are
 advised in advance of issues which may come up. And we ask
 that parties do that, then there would be no need to convene
 earlier than 8:30. We do ask that everybody be ready to go
 promptly at 8:30 so we can just go on the record and
 proceed.

So in my understanding we are not going to have
telephone line availability so that people who wish to
participate must be present in the hearing room. We will
aim to have at least one break in the morning and one in the
afternoon. Coffee will be available in the main lounge at
the facility and is without cost, at least until it runs
out. In the afternoon coffee is not available in the
gathering room, but it would be available in the restaurant
itself. We'll aim to take a lunch hour of about an hour and
fifteen minutes. The lodge is aware of the time issue and
said that they would try to have some entries that are quick
in preparation. They do want to have 50 or more potential
customers for a buffet so it does not look like unless
people have a lot of friends that they're going to bring
along to the hearing that we would qualify for that.

Wednesday we have a session in Underwood at 3:30
so we'll extend the morning session a little bit longer and
break for lunch and travel time at about one o'clock. What
we will try to do in setting breaks is to find in the

cross-examination an appropriate point so we don't interrupt
the line of questioning unless there's some reason to do
that.

The evening session will be at the Rock Creek
Center at 6:30 on Thursday. We expect to go as late as 8:30
depending on the attendance. On Friday we will aim to close
the session promptly about 4:30, and that way we will be
able get people to do our traveling on the road and back
home. We have not had to my recollection any exhibits on
cross presented so I'm expecting that except -- oh, we do
have a few. Okay.

MR. SUTHERLAND: Oh, great.

MR. KAHN: You asked.

JUDGE WALLIS: Any other parties?

MR. McMAHAN: We have ours with us today, Your
Honor.

JUDGE WALLIS: Well, we do have something to meet
at ten o'clock on the first Monday.

MR. COLBY: Judge, this is George Colby. If we
could address that issue just a little bit. You know, stuff
has been coming in so rapidly. I'm not complaining, but
stuff has been coming in rapidly and there could be by the
time Monday, January 6, at ten o'clock in the morning comes
around there could be a need for more than one or two
parties that have things ready to go for cross-examination by then.

JUDGE WALLIS: Yes.

So we will have a morning session on that Monday, and are people comfortable setting that for ten o'clock?

People in the hearing room are nodding in affirmation so let's hold to that

MR. KAHN: And that is January 3.

JUDGE WALLIS: Yes, Monday, January 3.

We do have a rostrum or a podium available for Council. We are thinking of putting a podium in so that Counsel will be able to stand and have your materials in front of you and a microphone dedicated and then seats nearby for either co-counsel or an expert for purposes during your cross-examination.

There will be limited seats at the counsel table so people with numerous counsel or witnesses please let me know if you have a consistent need for two seats; otherwise, we will provide one seat for each attorney. Some representatives, those who are not attorneys or those who are, may not wish to be present at counsel table for the entire proceeding, and I am going to ask parties to give me some indication of whether you will need that facility and whether you will need more than two seats at any point in the process. Are we prepared to do that now or can we check
in or you want to check in during the next week?

MR. KAHN: We might want a third seat for Friends of the Columbia Gorge in addition. This is Gary Kahn. In addition Mr. Baker and myself the conservation director of the Friends of the Gorge will be attending. He's a witness and he will also be attending part of the hearing so we would ask a third seat for us.

MR. McMAHAN: We would also request three seats, Your Honor.

JUDGE WALLIS: That may take up half of our available seating capacity, but we will do a count. We are in the process of setting arrangements and we will do our best. Other parties who are in the room?

MR. ANDERSON: No need for extra.

MR. COLBY: This is George Colby. Are people saying they want everybody at the table at once? Is that what we're talking about is table seating or room seating?

JUDGE WALLIS: Well, we're looking at how many people are going to need seats at counsel table.

MR. COLBY: Oh, okay.

JUDGE WALLIS: And how many of those -- some of the attorneys are going to be active throughout the proceeding and others who will be more interested in one or two of the witnesses or a small number.

MR. COLBY: They can rotate in and out.
JUDGE WALLIS: Very well.

MR. ANDERSON: Your Honor, that works for us too.

Commerce we actually only need one seat.

JUDGE WALLIS: Okay. Very good.

MR. CANTRELL: Your Honor, Shawn Cantrell for Seattle Audubon. I would anticipate that we would only have limited need to sit at counsel table. Our primary likely questioning would be on fish and wildlife issues, and other issues we are highly unlikely to have any need to do questions and therefore would not be seated at the table.

JUDGE WALLIS: All right. What I'm going to do I think is send out an e-mail to counsel and ask for the identification of witnesses where you will be at the counsel table, and then we will make the facility's plans on that basis.

There was some discussion among the parties about the order of topics, the order of witnesses, and the approximate time of estimated cross-examination. Now, I understand that some of you may have related questions about evidentiary matters that have been presented and resolved. Are there any other matters that are impeding the parties' agreement on order of witnesses and estimates of time on cross?

MR. McMAHAN: Your Honor, as you know, we circulated a schedule and revised schedule on the 20th,
yesterday morning I guess, and, you know, I wouldn't say there's any agreement at all between the parties. It looked like from Mr. Aramburu's e-mail that perhaps we got a little bit closer, but I think it strikes me we need to go through this and have an understanding of how much time lawyers anticipate to cross-examine witnesses so we that know how to get people there on specific days or at least within range of likely times. So I think, you know, the Council needs to walk through this and resolve it here because I don't have confidence we will do it on our own.

MR. KAHN: We can give you estimates of cross-examination time. Part of the problem to be honest is we got a whole pile of material last Thursday in rebuttal exhibits. We have not had the opportunity to go through those with our experts to see how much more that adds on to it. So whatever we give you now is really just an estimate.

JUDGE WALLIS: How about if we have a telephone status conference next week and use that opportunity to get everybody on the line who intends to sit at counsel table and who intends to cross-exam, and we will go through just witness by witness and topic by topic?

MR. PEEPLES: Your Honor, could we request --

JUDGE WALLIS: Mr. Peeples, could you grab a microphone.

MR. PEEPLES: I would suggest before that people
fill out the witness schedule that we had there. The order
is to be determined by the Council, but before that if they
could fill out the amount of estimated time for cross-exam
and e-mail that to everybody so everybody has that hard when
we're talking at the prehearing conference.

JUDGE WALLIS: Could you or your staff e-mail that
document --

MR. PEEPLES: Everybody should have it.

JUDGE WALLIS: -- to me, and I will circulate it.

There was some questions about the document that I saw
relating to exhibit numbers and to just whether all of the
potential witnesses were identified.

MR. McMAHAN: Your Honor, the second one we sent
out yesterday on the 20th is complete. I think we need to
put Mr. Till on, but beyond that I believe it's complete.

JUDGE WALLIS: So if you could recirculate that
today and put a new header on it so people identify it, and
that will certainly help me in working with you. Is there a
day or time next week that would be better for folks?

MR. KAHN: While we're addressing that,
Mr. McMahan, just to clarify Mr. Mentor is on the witness
list. In light of the panel's ruling he should be
eliminated.

MR. McMAHAN: Right.

MR. KAHN: This is Gary Kahn. I would prefer
something Tuesday or Thursday for doing a telephone conference.

JUDGE WALLIS: This is Bruce Marvin. I'm going to be traveling on Tuesday so Thursday would work best.

MR. McMAHAN: Your Honor, I have to say that with all of us needing to get people on airplanes and such I think we need to do this on Tuesday. Maybe Mr. Marvin could fill out the schedule and give us his best sense of things, but I think we should just do this at 9:00 a.m. Tuesday morning.

MR. KAHN: I have a conflict at 9:00. Could we do it later in the morning say 11:00?

MR. McMAHAN: 11:00.

JUDGE WALLIS: Is there any objection to eleven o'clock on Tuesday?

Very well. Are there any other matters of concern relating to the conduct of the hearing?

MR. KAHN: I'll go first if that's all right. This is Gary Kahn. We have a couple of issues.

JUDGE WALLIS: Mr. Kahn.

MR. KAHN: Number one, in past prehearing conferences we've discussed the possibility of either a site visit by the Council or a visit to some of the key viewing areas within the National Scenic Area, and I believe it was to be decided or discussed later. That doesn't seem to be
factored into the schedule. Does that mean it's been implicitly denied?

JUDGE WALLIS: No, it does not, but the Council Members that I have talked to are very interested in having an actual view if they go to these locations, and we can plug something in tentatively depending on time and also depending on weather. So we may need to have some flexibility if it is possible to do that during the two-week period. The other issue here is whether there will be adequate time to take probably an entire afternoon in order to accomplish that. I think the Council Members at this point, particularly if the weather is not good, would prefer to endure the hearing process rather than possibly inclement weather without a view.

MR. KAHN: Other issues. You indicated we're going to have a conference call to discuss primarily the time necessary for cross-examination. I'm wondering if it might be helpful to iron out the order of the subjects today. We certainly have that. We don't necessarily know how much time we'll have to cross-examine so we'll need a few more days for that, but the order isn't going to change.

MR. McMAHAN: I agree, Your Honor. Again, you know, we weren't trying to gain this by the order we put out and sent to the parties yesterday. I thought Mr. Aramburu came fairly close to what I was suggesting. So if we could
perhaps work from this list and try to narrow it down, again
we're going to need to tell people with some reasonable
probability when they're going to need to be out there.

MR. COLBY: Judge, can I weigh in on this topic?
This is Colby.

JUDGE WALLIS: Mr. Colby.

MR. COLBY: Thank you. What we're talking about
is a WREP witness schedule that was updated 12/20/2010.
Correct?

JUDGE WALLIS: Yes.

MR. COLBY: This is just an observation from an
old suit. At the very end on the second page of energy and
need for facility and there's five or six witnesses there,
I'm wondering -- this is just my thought -- that I would ask
that people consider putting that first after the Applicant
gives their general application because I think that given
the conversation this morning from some of the attorneys and
some of the other people involved in regards to the energy
issue and the need for facility, I think it would frame what
follows: avian, wildlife, visual, the cultural resources,
and all the other things. I think it would follow better if
after the Applicant made their general application content
and background and then immediately go into the energy and
need for facility. I think from my perspective the flow of
questioning would make more sense if all the people who are
for and/or against this project have a framework of what to be for or against versus something coming at the very end that almost by then is out of context. Thank you.

MR. McMAHAN: Well, Your Honor, as I stated in
some prior e-mail if I'm understanding the approach of having Mr. Michaels testify it goes back to the 80.50.010 balancing issue. Again, I think the Council has ruled on that, but that seems to imply that you look at the overall impacts, potential impacts of the project and somehow balance that against energy need. If that's the intent of the testimony, I don't know how it happens without that discussion happening at the end of the process. I think having it front loaded, first of all, starts this off in kind of an odd position without understanding the ecological issues, that most principally relevant issue pending before the Siting Council. Now, I would defer to the Council, but again I think that doesn't make a lot of sense.

MR. BAKER: Your Honor, Nathan Baker for Friends of the Columbia Gorge and SOSA. As I believe I stated in my e-mail, we do agree with Mr. McMahan on this point that it's fine logically to have the socioeconomic and energy and need discussion at the end of the hearing. The only concern we have is logistical. Two of our witnesses on this category, Michael Lang and Dr. Robert Michaels, have some schedule conflicts at the end of the week. Dr. Michaels is not
available on Friday and Michael Lang is not available on Thursday.

JUDGE WALLIS: The second week?

MR. BAKER: Of the first week.

JUDGE WALLIS: The first week.

MR. BAKER: So if the hearing is likely to be extended into the second week, we would prefer to schedule this to Monday the 10th rather than Thursday or Friday.

MR. McMAHAN: I think that's a fine suggestion, Your Honor.

MR. PEEPLES: Your Honor, this is Darrel Peeples. Just another comment. When everybody is trying to get a hold of their witnesses now --

JUDGE WALLIS: Mr. Peeples, could you get a little bit closer to that microphone.

MR. PEEPLES: When everybody is getting a hold of their witnesses now there may be still some additional schedule conflicts in trying to get witnesses at this short notice. So those should be discussed again and the testimony arranged. I'm not anticipating anybody, but if it is that's something we need to talk on Tuesday about, and there may be some witnesses that may have to be taken a bit out of order.

JUDGE WALLIS: Would we be better off just holding the balance of this discussion until Tuesday when people
have had a chance to look at the current status?

MR. McMAHAN: Your Honor, I don't think so. I think that, and I'm looking across at the honorable opposition, and what I'm hearing is that we bump energy need etc., to Monday, Tuesday, that the rest of the schedule probably works within the first week timeframe, and I'm sure hoping not to go all through the second week. So then we can talk to witnesses and have a better sense Tuesday where we might have some challenges.

MR. KAHN: This is Gary Kahn. I think maybe we're not on the same page. We were talking about Mr. Lang and Dr. Michaels being available Monday the 10th, not Monday the 7th. Oh, I thought you said Monday the first week.

MR. McMAHAN: I didn't mean to if I did. No, I think we're on the same page.

MR. KAHN: Okay.

MR. BAKER: This is Nathan Baker. I would concur that we should be able to finish everything else in the first week. As far as setting the balance of the discussion to another date, I think there are a couple things we could still try and resolve today. One of the issues is we can stipulate here today that we will have no questions of one of the Applicant's witnesses. That's Jeff Walker on wetlands. So it might make sense to ask any of the other parties if they would have questions, then we could know
that that witness is off the hook.

The other issue is although we have agreed on many things, I think we are in a little disagreement about which topic would be first, and we would concur with the idea of having a visit to -- we believe there should be a visit to the site and to the key viewing areas. There should be a discussion about which key viewing areas should be visited. That can be taken up at a later date, but this is particularly important because three of the members of the Council have not been on the site while the others have. We would recommend that everyone on the Council have the same knowledge of the site, and we believe it makes sense to visit the key viewing areas prior to the testimony on scenic resources, and logically it would make sense to do the site visit of the key viewing areas first and then segue into the discussion on scenic impacts. There are also more witnesses on the scenic impacts, another reason to have it earlier in the agenda.

MR. McMAHAN: Well, to follow up on what was a rather productive discussion here, if we could have Mr. Walker simply provide a sworn affirmation of his testimony, he doesn't need to come out and that takes a few hours out. That would be a nice solution to at least one witness.

You know, we're not particularly hung up on
whether biology or avian or scenic goes first or second.
Again, this is a stab. I, again, defer to the Council
concerning whether they want time to visit the KVAs or
whatever. That doesn't bother us one way or the other.

JUDGE WALLIS: I'm not aware that the Council has
strong preference so it may depend on the availability of
witnesses.

MR. McMAHAN: Then I would just suggest so we can
continue to productively talk to our witnesses that we keep
it the way it is here with avian and wildlife coming after
the general information and then visual effects after that,
but, again, I'm not that hung up on it. I just want to have
a conclusion of it so we can talk to people.

MR. BAKER: Again, we want to reiterate that we
believe the site visit, the visit of the key viewing areas
should come first followed by the scenic testimony and then
the wildlife.

MR. McMAHAN: If that's the Council's preference.

JUDGE WALLIS: I hear some suggestion from the
Council that that would be the Council's preference.

MR. COLBY: This is Colby here. Would it make
sense to start Monday at eight o'clock instead of ten
o'clock so that we could perhaps get the site visit done
after perhaps the general application content and background
and go for a site visit and then go into the schedule that
you have, avian, visual, cultural, etc., etc.? Because you're going to run out of time. It takes time to go to these sites.

MR. BAKER: Your Honor, this is Nathan Baker. It would be nice to have that happen, but I think it would be unlikely that we would finish everything in two hours. We have a prehearing conference scheduled for 10:00 that morning so I don't know if it would be possible to do that in two hours.

MR. McMAHAN: Your Honor, the key practical thing, I just spoke to Mr. Spadaro about the road up to the site is covered by a foot and a half of snow. So, you know, whether that is even feasible will particularly given the forecast at least I have seen for the next couple weeks I think needs to be factored in here.

JUDGE WALLIS: And half tracks are not part of the standard equipment, helicopter in.

Very well. It may be difficult for some of the Council Members or staff to make the arrangements to be there in time for an eight o'clock start on Monday also. So my suggestion is we hold to the ten o'clock administrative start and 1:30 hearing start. And then we can take an assessment of weather and snow conditions and determine whether it's possible during the week or potentially the following week to get people to where they need to go. The
Council is committed to having the site visit and the view
scape visits before it enters deliberations.

MR. CANTRELL: Your Honor, Shawn Cantrell. Could you summarize where we're at then because I lost track as far as the first day or first couple days. Once we've got the general application and background is the intent to do avian and wildlife or something else or to be determined?

MR. McMAHAN: Well, Your Honor, what I think we're talking about here and I need clarification. I think we all need clarification.

JUDGE WALLIS: Mr. McMahan.

MR. McMAHAN: What I think we're talking about here is witness one and two, Jason Spadaro and Katy Chaney, general background information, the application into the record, etc., would remain at the top of the list followed by all the visual and aesthetic testimony. Somewhere in there weather permitting the Siting Council prefers to do a site visit before visual and aesthetic testimony. That means both the site and KVAs or wherever else they want to go up and down the gorge which is probably a day realistically or more. But I'm hearing that you want to try to accomplish that before we get into the ecological testimony, specifically visual aesthetics, and then following the aesthetics all the avian and wildlife, the five or so witnesses come after visual aesthetic. Then we
get to cultural resource and archeology. Am I understanding that correctly, Your Honor?

JUDGE WALLIS: It appears so, yes.

MR. McMAHAN: Okay. So I think it's likely that we should plan for probably the first session with the Applicant and Ms. Chaney and then a day's break for the site visit before get back in for avian and wildlife; is that correct?

JUDGE WALLIS: Let me get a reality check from the Council Members.

Mr. Tayer.

MR. TAYER: I don't think that makes sense. That puts a significant amount of uncertainty in the week. If we end up down there on Monday and we don't have weather conditions that allow us to do it on Tuesday, we will be sitting there doing nothing on Tuesday shoving the witnesses back. It seems like given the level of uncertainty of January our ability to get up on the site that we ought to block up our testimony. Given it would be better if we look at it first, but by doing that it seems like it puts a lot of uncertainty in the rest of the week. That is my two cents worth.

MR. BAKER: Your Honor, this is Nathan Baker. I have a thought on that. It's likely that many of the scenic exerts, Mr. Apostol and Mr. Watson and Mr. Pearson, they
1 would likely want be to -- we would want them on the site
2 visit as well to see the same thing that the Council Members
3 see. So it made sense to me to have some flexibility to do
4 the site visit with them included, but if the weather
5 doesn't permit then we could just go into their testimony
6 instead.
7
8 MR. TAYER: That makes sense.
9
10 JUDGE WALLIS: I see some nods from Council
11 Members.
12
13 MR. McMAHAN: I'm still not clear on what that
14 means with the order of things. Are we still then blocking
15 a day out here after the introductory testimony for a site
16 visit in essence creating one reserved day for that right at
17 the beginning of the hearing?
18
19 JUDGE WALLIS: I don't hear that we would be
20 reserving a day for a site visit that would be vacant if
21 conditions did not permit that visit. What the Council
22 would prefer I'm sure would be to have as Mr. Baker
23 suggested witnesses available and the ability to proceed,
24 and there may be a way to arrange witnesses who don't have
25 to travel long distance so that we could fill that time.
26
27 MR. McMAHAN: So when I put together the
28 spreadsheet would you like -- I think what I'm hearing, and
29 again I just need real precision so we can call some
30 witnesses. I am intending to simply move the visual effects
up below witness number one, number two, with no notation
for a site visit at all, no block for that, but just
proceeding through; is that correct?

JUDGE WALLIS: I think it would be the preference
to do the site visit at that time if conditions permit.

MR. BAKER: This is Nathan Baker. That's my
understanding as well, and all the scenic experts are local
witnesses as well. I think it would be yet another reason
to have the scenic area first because those witnesses can be
flexible to either go on the site visit or go into their
testimony whereas as one of our wildlife experts is from
California so it would be better to have that scheduled
later in the hearing.

MR. COLBY: From the Yakama Nation our person that
would go on the site visit we're flexible in that regard,
whether it's the first day or the second day. I understand
what Nathan has said that finally when people have to come
from other states there has to be some certainty when
they're suppose to show up.

JUDGE WALLIS: We do have the option and it might
not be a first-choice option to tack a site or view scape
visit at the end of the hearing so that even though we would
lose potentially the best opportunity to have witnesses
available to accompany the Council, at least there would be
flexibility gained in terms of the witnesses and in terms of
individual schedules.

MR. BAKER: I would suggest that that should be a fallback, but the preference should be to have it first. But if weather doesn't permit it, then it could happen later.

JUDGE WALLIS: Very well.

MR. ANDERSON: Your Honor, Mark Anderson, Commerce. I just have a question about what I'm understanding. If the first testimony is general background which is going to start about 1:30, I'm not sure how long it's going to take, but I'm not sure that the light is going to be available much longer after the testimony is done.

JUDGE WALLIS: No, I think that the first day will be taken up with the opening statements and the introductory witnesses.

MR. ANDERSON: So we would try to do the site visit on the second day reasonably early?

JUDGE WALLIS: That's what I'm hearing, the site visit and the KVAs. And if we can't do the site visit because of accessibility issues, then we would just do the KVA site visits.

MR. BAKER: Could I add one further thing? If we proceed with the site visit and the KVAs then, of course, we might not finish all the scenic area testimony before the schedule of the wildlife testimony, and in that case it
might make sense to have some of the scenic testimony later because again those witnesses are more flexible. We would prefer to have the scenic area first, but we do have flexibility.

JUDGE WALLIS: Very good.

MS. DRUMMOND: Quick note.

JUDGE WALLIS: Ms. Drummond.

MS. DRUMMOND: Susan Drummond for Skamania County, Klickitat County Economic Development. I note I will be coming from Seattle so I will coordinate with Mr. McMahan to make sure. Most of our witnesses are local, but I won't be so.

JUDGE WALLIS: Thank you.

What other information do you need, Mr. McMahan?

MR. McMahan: Let me just clarify one last item. We talked about the energy and need for facility testimony moving to Monday. I want to just look across the room here, and I guess it's my hope that we're going to accomplish getting through the socioeconomic testimony as well during the first week. So the only thing we're at least right now anticipating moving to Monday is that last block that's entitled energy and need for facility; is that correct?

MR. BAKER: As far as the socioeconomic category the only conflict is that Michael Lang is unavailable on Thursday of the first week. So if it were to happen on
Friday then that would be fine.

Mr. McMah: That's the kind of thing we just need to accommodate.

Mr. Peebles: Yes.

Mr. McMah: Does that satisfy the Council if we put that on the schedule?

Judge Wallis: Yes.

Let me inquire. We did ask earlier about the possibility of stipulations and suggested that parties attempt to reach stipulations on evidence or other matters.

Has there been any progress in that regard?

Mr. McMah: No, Your Honor.

Judge Wallis: With the exception of one witness mentioned earlier.

Very well. Are there any other scheduling or other mechanical administrative matters that parties wish to raise?

Mr. Kahn: Yes, this is Gary Kahn. I have several. I don't know if this is the right place to bring them up. Number one, you mentioned earlier the audiovisual facilities that might be there.

Judge Wallis: Yes.

Mr. Kahn: Can we assume that there will be facilities for power point presentation available? Do we need to bring our own laptop or is there a way we can find
that out?

JUDGE WALLIS: We will find that out. There are benefits as well as detriments from having some of that equipment available. I've seen people spending a long time trying to get things to work. If they bring their own, there will definitely be some visual material available. We have asked for a quotation from the facility about exactly what equipment and what cost is associated with that. Have not seen that quote yet so don't know exactly what. They do appear to have some really snazzy stuff however, and that's a technical term that I learned early in my life, and they have electronic ways to get transparencies and overhead projection and humongous screens that will give us life-size views. I think we can if the budget allows be prepared to be very much impressed by the quality of that material.

MR. KAHN: Two other hopefully brief issues. Earlier today what seems like a long time ago Mr. McMahan referred to -- this is in the context of the documents that were attached to Mr. Aramburu's and Mr. Baker's declaration on land use issues -- Mr. McMahon said something to the effect that there's a lot of ways to get those in. They can be attached to the exhibits to the brief, the post-hearing brief which raises a logistical question. Are we permitted to do that? After the hearing we understand there's an opportunity to brief, to summarize by briefing what's
occurred factually and evidentiarily. Are we allowed to attach new exhibits to our brief at that point?

JUDGE WALLIS: I am not expecting that we would joyfully welcome new exhibits that haven't been ruled either a part of the record or something of which the Council could take official notice.

MR. KAHN: Okay. The last question is some of the information that was submitted on Friday by the Applicant in terms of rebuttal raises questions that some of our witnesses are already -- the witnesses who've prefiled testimony may want to address. We understand that the purpose of those witnesses appearing at the hearing is primarily to be cross-examined by the other side. My question is if Mr. McMahan or any of the other parties cross-examination of a particular witness does not cover something that witness wants to say in response to rebuttal documents submitted last week are we permitted to have our witness go into that on redirect?

JUDGE WALLIS: Is there any objection to that?

MR. PEEPLES: I think there probably will be maybe on both sides.

MR. COLBY: That's fine. We were anticipating that that would happen anyway.

MR. KAHN: Mr. Peeples, did you just say you objected, there probably will be objection, or you probably
want that to happen?

MR. PEEPLES: I'd probably object to it. Probably ability to it. I think at that point you're reopening the whole thing.

MR. KAHN: How are we reopening the whole thing? We would have somebody testify, another witness testify. That's part and parcel of litigation.

MR. PEEPLES: So now what you're going to have is the third round of testimony. I mean that's what will happen. I'm just saying that's what will happen.

JUDGE WALLIS: My suggestion is that we not rule on this generically without an example in mind. I can conceive of situations where it might be appropriate and situations where it might not.

MR. BAKER: This is Nathan Baker. I have one example in mind. The rebuttal testimony of Greg Johnson filed Thursday afternoon is 50 pages long, and we believe there is material in there that our witness will wish to respond to. It's possible that there wouldn't be a question on cross-examination relating to some of that material, and therefore if we don't get a chance to ask a question on redirect our witness would never be able to respond to it.

JUDGE WALLIS: I think it's premature to make a ruling. Let's see what happens during the questions and answers.
Is there any other matters?

MR. KAHN: No.

MR. COLBY: When you say that --

JUDGE WALLIS: Mr. Colby?

MR. COLBY: Exhibit No. 12 when you say that are there any other questions then on the one we're just talking about?

MR. KAHN: He's asking if you're addressing that as a catchall?

MR. COLBY: The schedule for this meeting is all I'm asking. Where are we?

JUDGE WALLIS: Any there any other items?

Yes, we are at that point.

MR. COLBY: Okay. I have one whenever you're ready.

JUDGE WALLIS: Okay. Go ahead.

MR. COLBY: Being we're at No. 12, other matters of concern to counsel or Council Members, this is a matter of concern to the Yakama Nation, and I want it on the record, and I appreciate you allowing me to do this. The Yakama Nation and me representing them we don't have any problem with Chief Wilbur Slockish and Chief Johnny Jackson being elders down on the river. There are all kinds of elders down on the Columbia River from all the different tribes, but the point of it is the Yakama Nation is governed
in a certain way, and the Applicant has gone out of his way
or out of their way to subsume and give the appearance that
Chief Slockish and Chief Jackson speak for the Yakama Nation
under the cover of, well, they're just talking on their own
behalf, but when you read the statements that have been
provided that clearly isn't this. And so what I would like
to do on this witness schedule you have sponsoring parties
and under Chief Wilbur Slockish and Chief Johnny Jackson, I
request that the sponsoring parties for those two witnesses
be the Applicant.

MR. McMahan: Your Honor, that's up to the parties
if they want to sponsor their own testimony. I frankly
don't know how they feel about it. Again, we have been over
and over this, but we are not suggesting nor are these two
gentlemen suggesting that they represent the Yakama Nation,
per se. I don't think we need to talk about this any
further.

MR. Colby: Our position is rewrite their
testimony that he wrote for them.

Judge Wallis: Your comment is noted and I will
also for the record say that the Council itself in one of
the prehearing conferences was faced with questions and did
announce in an order that it understood that the individuals
were not speaking and were are not authorized
representatives of the Yakama Nation itself but
representatives of their own interest. So as far as the Council is concerned, they as individuals have demonstrated standing and right to appear, but they are not speaking officially on behalf of the Yakama Nation.

MR. COLBY: Judge, with all due respect then let them speak on behalf of who they're promoting, and if you look at the address you have to send stuff to them it's to the Applicant. So let's just be honest about what their purpose there is.

JUDGE WALLIS: I understand your concern.

MR. COLBY: Thank you.

JUDGE WALLIS: Is there anything further to address today?

MR. KAHN: Your Honor, This is Gary Kahn. There's items on the agenda that we skipped. I don't know if that was intentional. The first one is Item 6 which is corrections to some exhibit numbers, and there's at least one witness who Mr. Pearce from Skamania County does not have an exhibit number. We wonder whether there's going to be something circulated that clarifies all this so we know how to refer to documents.

JUDGE WALLIS: Okay.

MR. KAHN: Then the second issue you also skipped No. 11 which is the counsel questioning. I don't know if that's something we need to address now or wait until later.
JUDGE WALLIS: My suggestion is we wait until Tuesday when we have our discussion.

MR. KAHN: Okay. Then finally the cross-examination exhibits that we brought today. What are we doing with these?

JUDGE WALLIS: Let's see that they're distributed and distributed at the end of the conference.

MR. McMahan: Your Honor, on that score, we brought cross-examination exhibits to file with the Siting Council thinking that I might have to do something different with them if witnesses were excluded. So I did not bring copies for counsel. They are going in the mail to you today.

MR. KAHN: Okay.

MR. McMahan: I will give the signal those should be dropped in the mail now that I know that those are in fact the documents, but we are prepared to give them to Tammy at the end. I have one other question.

JUDGE WALLIS: Are those copies available electronically as well?

MR. McMahan: Sure, yeah. And those will probably be on the FTP site again. I just want clarification to do with my own faulty memory. When was it that you had wanted the written opening filed and served by the parties? I think that was in a prior proceeding.
JUDGE WALLIS: I believe Wednesday at noon.

MR. McMAHAN: Of next week?

JUDGE WALLIS: Yes.

MR. BAKER: Your Honor, I thought it was Monday of next week.

JUDGE WALLIS: No.

MR. COLBY: I vote for Wednesday.

JUDGE WALLIS: Monday is a furlough day for state employees so state employees will not be available to receive that information.

MR. COLBY: Your Honor, could you also clarify how that's going to be served.

MR. CANTRELL: We indicated earlier that if it were delivered electronically that would be adequate because of the short timeframe.

JUDGE WALLIS: The question that I have about exhibit numbers are principally at the tail end of the list and related to Mr. Pearce and Mr. Pytel because I think that Exhibit No. 50 was taken by the Klickitat Economic Development Group, but it was not -- I think we had received a document indicating that Commissioner Pearce would be testifying on behalf of the Klickitat EDA, as well as on behalf of Skamania County.

Ms. Drummond, can you clarify the status of that document?
MS. DRUMMOND: Yes, I can clarify that. Because Skamania County is a party, it is only necessary that Commissioner Pearce testify on behalf of Skamania County. We just in an abundance of caution filed in multiple places.

JUDGE WALLIS: Very well. So let's assign Exhibit No. 50.00R to Commissioner Pearce's prefiled testimony.

MR. BAKER: Your Honor, just to clarify, well, there's two different sets of Paul Pearce's testimony. I thought that one of them was already No. 50 I could be wrong, but probably both documents should be assigned a number.

JUDGE WALLIS: Are they identical?

MS. DRUMMOND: They are exactly identical, yes.

MR. BAKER: But submitted on behalf of two different parties.

MS. DRUMMOND: That is correct. One was submitted under Klickitat County EDC.

JUDGE WALLIS: And you're withdrawing that as I understand?

MS. DRUMMOND: Yes, it goes through Skamania County.

JUDGE WALLIS: So let's call Skamania County documents Exhibit No. 50.

And Mr. Pytel for the Klickitat Economic Development Authority? There was some confusion in my mind
as to the numbering on the documents that we received for
Mr. Pytel and Mr. Covert.

MS. ANDERSON: What is the Council's question in
regard to those? I've looked at everybody's testimony and
it appears Mr. Pytel and Mr. Covert --

JUDGE WALLIS: Beginning with Exhibit No. 48
Michael, is that properly the designation of the testimony
of Michael Canon's rebuttal?

MR. McMAHAN: I think in terms of the witness
schedule, I believe Mr. Canon is Witness No. 48 so his
rebuttal is 48R. Does that resolve the confusion?

JUDGE WALLIS: No.

MR. BAKER: Your Honor, I recall there was one
issue where one of Michael Canon's exhibits was mislabeled
as 43 when it should have been 48. I'm not sure if that's
what you're referring to or not.

JUDGE WALLIS: No.

MS. ANDERSON: In addition to that, the referring
order that assigned exhibit numbers for all of the parties
did not assign exhibit numbers for the Klickitat County
Public EDA. Everybody got a chunk of exhibit numbers from
KCPDA that were omitted. That may be where this confusion
comes from.

JUDGE WALLIS: Yes, and that was provided later.

MS. ANDERSON: If the Council wants to renumber
them, I suppose we could.

JUDGE WALLIS: What numbers have you assigned for your witnesses, the EDA?

MS. ANDERSON: I don't know.

JUDGE WALLIS: Oh, I am sorry. The EDA is not represented here today; is that correct?

MS. DRUMMOND: We haven't filed a formal, but I have been -- yeah. So a number of exhibits were filed 48.01, but I just jumped on so I'll refer to you.

JUDGE WALLIS: Whose testimony was that?

MS. DRUMMOND: Michael Canon's testimony was filed 48.01 rebuttal testimony, and Chuck Covert's was 49.

JUDGE WALLIS: Okay.

MS. DRUMMOND: I don't have the other.

MS. ANDERSON: My record reflects that Paul Pearce was Witness 50, and that Mr. Pytel was 51 all coming in through Klickitat County, but we're now moving Exhibit 50 to Skamania County and 51 would remain with Klickitat County.

JUDGE WALLIS: Okay. Very well. We will correct this and circulate a copy for verification. Are there any other questions in the series about proper numbering?

MR. BAKER: Yes, this is Nathan Baker. I may have missed this, but for the Yakama Nation's witnesses I'm not clear on what their numbers are. On the document itself it is just numbers that are 1, 2, 3, but in the scheme of
things they may have different numbers. I'm not sure what they were.

JUDGE WALLIS: They were assigned 37, 38, and 39. So Mr. Lally would be 37, Ms. Mennick would be 38, and Mr. Spencer would be 39.

MR. BAKER: Thank you.

JUDGE WALLIS: Okay. Any other questions? Is there anything further?

MR. MARVIN: Judge, I'm sorry to reopen the scheduling issue, but I do have a witness that's going to be traveling some distance on wildlife issues.

JUDGE WALLIS: Who is this, please?

MR. MARVIN: This is Bruce Marvin.

JUDGE WALLIS: Mr. Marvin.

MR. MARVIN: Did we come up with at least a rough coordinate in terms of when the wildlife issues will be heard? I'm thinking Thursday or Friday. Am I way off mark on the first week?

MR. BAKER: Your Honor, I was thinking Wednesday. This is Nathan Baker.

MR. McMAHAN: Wednesday and maybe Thursday. I think socioeconomic is Friday. That's how I'm anticipating this.

MR. MARVIN: Thank you. That's great.

JUDGE WALLIS: Very good. Is there anything
further to come before the Council? It appears not at this
time, and we have the telephone conference set for the
following Tuesday at what time?

MR. KAHN: 11:00.

JUDGE WALLIS: Tuesday at 11:00.

MR. KAHN: Can we get a phone number e-mailed to
us?

JUDGE WALLIS: Yes. Very good. This concludes
the prehearing conference. Thank you all very much for
attending.

* * * * *

(The prehearing conference adjourned at 2:13 p.m.)
In re: Whistling Ridge Energy Project
Application No. 2009-01

AFFIDAVIT

I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on December 21, 2010, in Olympia, Washington.

______________________________
Shaun Linse, CCR 2029