

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)
_____)

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.

* * * * *

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

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

REPORTED BY:

SHAUN LINSE, CCR

CCR NO. 2029

1 APPEARANCES (Cont'd):

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

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

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

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

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

18 SKAMANIA COUNTY ECONOMIC DEVELOPMENT COUNCIL,
19 Bryan-Miller, Executive Director, 167 N.W. 2nd, P.O. Box
20 436, Stevenson, Washington 98648.

21 SEATTLE AUDUBON SOCIETY, Shawn Cantrell, Director
22 of Conservation, (via bridge line) 8050 35th Avenue N.E.,
23 Seattle, Washington 98115.

24

25

1 APPEARANCES (Cont'd):

2 PORT OF SKAMANIA COUNTY, John McSherry, Manager,
3 (via bridge line) P.O. Box 1099, Stevenson, Washington
4 98648.

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

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

12 SKAMANIA COUNTY and KLUCKITAT COUNTY PUBLIC
13 ECONOMIC DEVELOPMENT AUTHORITY, Susan Drummond, Attorney at
14 Law, Law Offices of Susan Elizabeth Drummond, 1200 Fifth
15 Avenue, Suite 1650, Seattle, Washington 98101; and Michael
16 Canon, Executive Director for Economic Public Development
17 Authority, MS-CH-26, 127 West Court, Goldendale, Washington
18 98620.

19 * * * * *

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

1 the Washington Utilities and Transportation Commission in
2 Olympia, Washington.

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

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

9 JUDGE WALLIS: Counsel for the Environment?

10 MR. MARVIN: Bruce Marvin is attending by
11 telephone.

12 JUDGE WALLIS: Thank you. Mr. Marvin.
13 Department of Commerce?

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

17 JUDGE WALLIS: Thank you.
18 Friends of the Columbia Gorge?

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

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

24 MR. KAHN: Gary Kahn representing Friends of the
25 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.

20 He 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?

1 MR. McCABE: Good morning, Chris McCabe, Counsel
2 for party intervenor Association of Washington Business.

3 JUDGE WALLIS: Thank you, Mr. McCabe.
4 Seattle Audubon Society?

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

7 JUDGE WALLIS: Port of Skamania County?

8 MR. McSHERRY: John McSherry, manager.

9 JUDGE WALLIS: City of White Salmon?
10 Klickitat County Public Economic Development
11 Authority?

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

15 JUDGE WALLIS: What is your name, please?

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

17 JUDGE WALLIS: Ms. Drummond, thank you.
18 Klickitat and Cascade Tribes of the Yakama Nation?

19 MR. SLOCKISH: Wilbur Slockish, Jr.

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

22 JUDGE WALLIS: Thank you.
23 The Confederated Tribes and Bands of the Yakama
24 Nation?

25 MR. COLBY: George Colby, attorney for intervenor

1 for Yakama Nation along with Jessica Lally, Councilman
2 Warren Spencer, and Councilman Rick Watlamet.

3 JUDGE WALLIS: Thank you. And Skamania County?

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

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

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

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

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

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

20 JUDGE WALLIS: Very well. I would like to
21 acknowledge also that the Gorge Commission has withdrawn its
22 participation in this proceeding and is no longer a party to
23 the action. The Council has received a request to deny
24 participation to Mr. Sutherland who's been appointed as
25 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, would you like to describe the
24 request and the basis for it.

25 MS. DRUMMOND: Yes, thank you. Skamania County

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

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

14 Let the record show that there is no response.

15 MR. CANTRELL: Your Honor?

16 JUDGE WALLIS: Yes.

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

20 JUDGE WALLIS: Mr. Cantrell.

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

1 MS. DRUMMOND: Should I address that, Your Honor?

2 JUDGE WALLIS: Ms. Drummond.

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

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

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

23 MS. DRUMMOND: The county will endeavor to not
24 delay the proceedings in any way and to address the issues,
25 of course, before us that are before the Council, and as you

1 know we have submitted rebuttal testimony, and what the
2 county intends to present will be roughly along the lines of
3 what we presented in that testimony and is unlikely to stray
4 too far from that, although we would like to reserve the
5 right to comment as other issues that come up as this matter
6 proceeds.

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

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

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

25 I am going to encourage counsel as we go through

1 these matters both proposing and opposing objections to the
2 material to be very much to the point and to present your
3 arguments succinctly. Let's begin now with SOSA's objection
4 to Ms. Chaney's testimony and exhibits. That was only a
5 portion as I recall. Could you identify the portion to
6 which the objection is addressed.

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

18 JUDGE WALLIS: Certainly. Thank you.

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

23 JUDGE WALLIS: Thank you.

24 MR. ARAMBURU: For the record, Richard Aramburu
25 representing SOSA. On November 1 we filed an objection to a

1 portion of the testimony of Katy Chaney which is identified
2 as proposed Exhibit No. 2 to these proceedings, and we
3 particularly objected to pages 3 through 5 of her materials
4 and to Appendix E to the application. We do not object to
5 the remainder of the Chaney testimony. Exhibit E and the
6 testimony that is provided in support thereof is a proposed
7 zoning ordinance that was proposed to be adopted by Skamania
8 County in 2006 and 2007 I believe or 2007 and 2008.

9 However, when that proposed zoning ordinance, when the
10 ordinance was proposed a determination of nonsignificance
11 under SEPA was prepared. That determination of
12 nonsignificance for the proposed ordinance was appealed to
13 the Skamania County Hearing Examiner, and we were successful
14 in asking the Hearing Examiner to determine that the
15 determination of nonsignificance was inappropriate, and that
16 an environmental impact statement needed to be prepared for
17 proposed new zoning ordinance in Skamania County. Since
18 then, and we have new testimony just coming in from Skamania
19 County, that that ordinance was not adopted and no
20 environmental impact statement for the ordinance has ever
21 been prepared.

22 Now I understand that the Board does consider
23 local zoning ordinances, but this is not an adopted
24 ordinance. It is only a proposed ordinance. It cannot be
25 adopted until an environmental impact statement is prepared

1 for the ordinance outlining the impacts of that ordinance;
2 therefore, we believe that it's inappropriate for the
3 Council to consider an ordinance that has not yet been
4 adopted, and particularly one which cannot be considered or
5 adopted until the environmental review is complete.

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

9 JUDGE WALLIS: For the Applicant?

10 MR. McMAHAN: Thank you, Your Honor and Members of
11 the Siting Council, Tim McMahan for the record.

12 Just briefly, frankly we're not all that concerned
13 about this one way or the other, but I would say this. We
14 included that testimony. It was in the application for site
15 certification. We believe it's important background on how
16 this applicant has attempted to meet all applicable
17 criteria. I think it does inform the Siting Council in
18 rendering its determination on land use consistency, and as
19 you know there is a certificate of land use consistency
20 filed with the county. I think this is interesting and
21 informative background to help the Council understand the
22 whole landscape of what this county has attempted to do and
23 what we've attempted to do to comply.

24 The ASC itself has a narrative of our efforts to
25 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

1 witnesses, Canon, McSherry, and Covert.

2 MR. KAHN: Then as we discussed earlier my same
3 argument will apply to Mr. Mentor, Mr. Bauer,
4 Ms. Bryan-Miller, Mr. Canon, and Mr. Pearce down at the
5 bottom of No. 7.

6 JUDGE WALLIS: Yes, thank you.

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

11 JUDGE WALLIS: Thank you.

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

21 The exhibits and testimony to which we've objected
22 here, and we circulated a list yesterday of specific pages
23 and by witness, for the most part except Mr. Mentor they are
24 all testimony from municipal representatives or state
25 subagency representatives about a gloom and doom scenario

1 that will occur to their body if the scenic area standards
2 and guidelines are applied beyond the scenic area. We are
3 not contending that the scenic area guidelines shall be
4 applied in a direct regulatory fashion against any lands
5 here. So we believe that all of this information and for
6 that matter our own testimony submitted on behalf of Michael
7 Lang which responded to this is also irrelevant and
8 immaterial as it has nothing to do with EFSEC's role in this
9 adjudication.

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

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

21 So we believe that all of the exhibits and
22 testimony that we've circulated yesterday afternoon
23 addressing this buffer issue for extension of the management
24 plan issue is a red herring and should be stricken from the
25 record, and again that would also include Michael Lang's.

1 JUDGE WALLIS: For the Applicant?

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

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

24 That issue was also raised as a basis for
25 intervention by Klickitat County Public Economic Development

1 Authority. Skamania County has articulated its own
2 interest. Ms. Drummond has addressed those today. A
3 variety of parties have indicated that if that is an issue
4 at play in this proceeding for site certification that they
5 are at risk of a ruling just as Friends has said it's an
6 issue for us. These parties indicated it was an issue for
7 them. Now when we take up the testimony of Mr. Apostol it's
8 irrefutable. He says anybody standing in the scenic area
9 cannot discern whether or not they are looking through an
10 exempt area within the NSA. They cannot discern and people
11 from the outside looking in cannot discern where the
12 boundaries of the scenic area start and stop.

13 And FOG in particular has taken the position
14 repeatedly that the proximity of these projects to the
15 National Scenic Area must be a factor for consideration not
16 just in the SEPA proceeding, but in Mr. Apostol's testimony
17 you are being asked in this proceeding to make
18 determinations as to the legal extent of the effect of the
19 National Scenic Area Act insofar as it drives special
20 management plans, insofar as it drives visual impact
21 assessments from the outside looking in and from the inside
22 looking out. That is the testimony that is covered by
23 Ms. Bryan for Skamania County EDC, that is the testimony
24 provided by Mr. Covert who alleges one of those areas
25 Mr. Apostol testifies to you can see right through, and

1 therefore we need to be concerned about notwithstanding its
2 exempt status. The same issue is raised by Mr. McSherry. I
3 believe Skamania County has issues with that. Mr. Mentor's
4 testimony goes directly to the congressional intent of the
5 extent of the application of that scenic act. In fact, I
6 would contend that this is at the heart of a lot of what
7 we're doing here in this proceeding. Like I indicated, if
8 they are suggesting that this strictly is a SEPA issue, we
9 can take a variety of testimony out of it and that includes
10 Mr. Apostol if counsel is here today to indicate whether or
11 not that was truly their intent.

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

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

1 be Commissioner Pearce and that was submitted by Mr. Canon
2 and Mr. Covert from Klickitat County all of that testimony
3 would certainly be relevant to this proceeding.

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

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

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

17 JUDGE WALLIS: Mr. Kahn.

18 MR. KAHN: Ms. Anderson indicated, I don't
19 remember exactly the words, but they would agree if we were
20 willing to stipulate that the proximity of the project in
21 the scenic area is not a factor. No, that's not what we're
22 willing to stipulate to. Again, we are not contending that
23 there is a single word in the management plan for the scenic
24 area, the scenic area standards and guidelines or the Scenic
25 Area Act itself, that has any regulatory effect on this

1 project.

2 What we are contending, for example, under NEPA
3 which comes into play here because of BPA and to a lesser
4 extent SEPA because of the EIS that EFSEC is involved in,
5 one of the issues they have to consider is the impacts of
6 the project on other sensitive natural or designated areas.
7 The scenic area is obviously is federal designated area. So
8 in the SEPA process there has to be some special
9 considerations and analysis given to the impacts of this
10 project on the scenic area. That is the SEPA process. That
11 has nothing to do with the National Scenic Area standards
12 and guidelines. That's number one.

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

23 In the here EFSEC has used a different process.
24 Largely one used by the Federal Highway Administration or
25 modeled after that. Mr. Apostol's testimony is along these

1 lines. This area is not a highway. It's not near a
2 highway. It's a half a mile from the scenic area. It's in
3 a mixed landscape of forest and other types of topography,
4 much like the scenic area. The Forest Service has developed
5 a methodology, a method for evaluating and analyzing impacts
6 from a project like this. We recommend you use that.
7 That's what we are saying.

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

20 Simply put, Mr. Apostol's testimony is pertaining
21 to the measuring of the impacts, not to the project, not to
22 the regulations of the impact. We are not contending in any
23 way that the scenic area boundary should be expanded which
24 is what most of that testimony that we are objecting to
25 consisted of. It was talking about impacts within an urban

1 area or to development outside the scenic area boundary.
2 The Scenic Area Act does not apply directly to any of that.
3 There are other statutes though that as I mentioned SEPA
4 requires an analysis, an additional analysis of the impacts
5 to protected and designated areas. That's part of the SEPA
6 process. Your organic statute comes into play here because
7 of the considerations you have to give to protection of the
8 environment. One the elements of the environment is the
9 scenic area, and the fact that it has been designated
10 because of the sensitive scenic natural and cultural
11 resources. So one of the decisions you have to make is
12 whether the impacts of this project on those sensitive
13 resources is material enough and significant enough to
14 warrant a denial or modification of the site certification,
15 but again I'm not and neither will Mr. Point to a single
16 standard and guideline in the National Scenic Area Act that
17 we will contend applies in a mandatory basis to regulate
18 this project.

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

25 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
3 to just reference Mr. Mentor's testimony which I think is
4 very important to this proceeding. Mr. Apostol says
5 essentially three things boil down.

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

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

1 Ten miles, twenty miles, five miles distance doesn't
2 matter."

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

13 JUDGE WALLIS: Any final thoughts?

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

1 And his answer was, "Yes, I think they can and should be
2 used to help assess impacts." The question was again
3 completely independent of any regulatory considerations.

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

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

25 Mr. Mentor's testimony was a little bit different

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

14 JUDGE WALLIS: Very well.

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

18 JUDGE WALLIS: Very briefly.

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

1 JUDGE WALLIS: We understand that to be your
2 position.

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

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

6 We're now on Item 8 and the declarations.
7 Mr. Baker and Mr. Till and Mr. Aramburu have presented
8 declarations by which it is proposed that certain documents
9 be received in the record. My first question relating to
10 these items is the use of a declaration and how that
11 replaces the necessity for a witness to identify and sponsor
12 documents and answer to them. Well, let's stop there.

13 Regarding the declarations?

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

17 JUDGE WALLIS: Yes.

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

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

22 MR. KAHN: The challenge documents fall into three
23 categories that were attached to declarations. One is land
24 use documents, the second is wind speed, and the third is
25 BPA system impact study.

1 With respect to the land use documents, you had a
2 land use hearing it seems like decades ago, and we submitted
3 a number of documents that were pertinent to your
4 determination as to whether this project is consistent with
5 local land use laws in connection with that proceeding.

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

21 As to the issue as to whether they are hearsay,
22 under the APA Rules of Evidence which apply to this
23 proceeding hearsay is readily admissible at the discretion
24 of the Hearings Examiner. It's more a reliability issue
25 rather than a hearsay issue.

1 So the land use documents we don't have a witness
2 to sponsor them. They are merely to be relied upon as you
3 indicated in Prehearing Order 10. You said that documents
4 can be submitted if they are going to be relied on in the
5 brief.

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

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

18 With respect to the wind speed documents, there's
19 objections aimed at those. One is that they're hearsay, and
20 again the APA does not exclude hearsay. That's RCW
21 34.05.452 (1). The other objection is that these are not
22 subject to EFSEC's authority. It's not an issue in the
23 case. Washington Administrative Code 463-60-125 requires as
24 part of this proceeding climatological information to be
25 submitted. That's what this is. In Section 2.1.3.2 of the

1 application, and we have copies of that page here, it refers
2 to the very same kind of maps that Mr. Till is referring to
3 in his declaration. So it's been put into evidence by the
4 Applicant, it's required to be in evidence by the Washington
5 administrative code, and therefore we're certainly entitled
6 to submit evidence in connection with it.

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

23 As to the BPA documents, Mr. Aramburu will address
24 that. I believe I've covered all of the other exhibits. We
25 do have a copy of the application page in which this data is

1 referenced. It's at page 2.1-6 of the amended application.

2 JUDGE WALLIS: Mr. McMahan.

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

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

23 So I think two things. Both I think we need to
24 reconcile what happened with the land use proceeding and
25 that record and legal argument.

1 Secondly, as to Mr. Till's so-called declaration,
2 you know, it's one thing to put information into the record
3 from an expert with expert testimony that's subject to
4 cross-examination. It's something entirely different to do
5 what the Friends have done here putting in an unqualified, a
6 patently unqualified witness in through a declaration. This
7 isn't just raw data. Mr. Till did a science or computer
8 project with data, and we have no evidence or information
9 that he's competent to do that. He is not available for
10 cross-examination. This is an extremely inappropriate way
11 of putting evidence into the record that cannot be
12 challenged with witness testimony or cross-examination.

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

18 I want to just also clarify mischaracterization of
19 what happened in the discovery motion. I did indicate that
20 in prior proceedings, including the Kittitas Valley
21 proceeding, we would be happy to put forward in these
22 proceedings if the Council wanted it regarding wind
23 information on the site in a way that didn't cross the
24 boundary of what is proprietary information. So what
25 Mr. Nierenberg does is he does without providing the

1 proprietary data he does talk about the wind speeds on the
2 project. It's in rebuttal to Mr. Till's testimony. But if
3 that is of interest to the Siting Council, you know, that is
4 in the record in these proceedings at this point in time.
5 But, again, I don't believe any of this is relevant and is
6 appropriately considered at this point in time.

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

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

1 question, Mr. Till, explain what you did with the exhibits
2 and then his declaration is the answer, and we will make him
3 available for cross-examination in the appropriate stage of
4 the process.

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

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

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

14 Number one has to do with the land use consistency
15 letter. I think we've discussed that. I think there is
16 some confusion as to how those materials advance from
17 whatever their status is now to become a part of the
18 adjudication for EFSEC. We put that in because we wanted to
19 make sure that that was a part of the record. Item No.
20 29.02 is the decision of Skamania County Hearing Examiner.
21 That issue has come up already this morning with respect to
22 the Katy Chaney testimony, and I'm happy to withdraw that so
23 we don't have another thing to worry about here. We will be
24 using it as a cross-examination exhibit of Commissioner
25 Pearce when he appears on the stand so we can resolve that

1 matter I think easily.

2 The Skamania County Comprehensive Plan which is
3 Exhibit No. 29.03 is a copy of the prior comprehensive plan
4 of Skamania County. We have used it to show, to deal with
5 land use consistency issues to show that there were not
6 material changes between 2007. I believe it is the
7 comprehensive plan and the 1977 comprehensive plan, and that
8 is again relevant to land use consistency issues. There is
9 no objection filed by the Applicant or by Skamania County
10 for that matter that Exhibit 29.03 is not an accurate
11 representation of the 1977 Skamania County Comprehensive
12 Plan. And since it is relevant to the materials here, and I
13 can describe that we got this through a public records
14 request from Skamania County, I think it should stay in the
15 record as relevant to the land use consistency proceedings.

16 Exhibit 29.04, the system impact study from BPA,
17 that is a study that relates directly to this project. It
18 identifies a previous request by Puget Sound Energy to use
19 BPA transmission lines for the transmission of energy from
20 this proposed project. It is relevant to this project. We
21 don't have a sponsoring witness for it, but we have
22 identified it was as part of the official record of BPA. We
23 can't in state proceedings subpoena federal witnesses in any
24 event, but there is no objection that I am hearing from
25 anyone that this material is not accurate material.

1 There is objections, there are questions raised by
2 the Applicant as to what that material means now, and we're
3 prepared to deal with that. But we think 29.04 should
4 remain in the record as with several of these documents.
5 There's not a realistic way to have these materials come
6 into the record except in this manner, and I think the real
7 inquiry of EFSEC should be are these materials authentic?
8 Are there problems with them? Are they accurate? Do they
9 represent what they say they represent, and are they
10 material to the proceeding?, not withstanding some technical
11 issues about how they got into the record

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

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

18 MR. McMAHAN: No, the Michaels' testimony.

19 MR. KAHN: And Nierenberg and Yourkowski.

20 JUDGE WALLIS: Very well.

21 MR. McMAHAN: Thank you. Your Honor, I filed a
22 written motion long ago, not long ago. It seems like long
23 ago. It's been a long week. Thursday I filed a written
24 motion to strike and exclude an objection to the Michaels'
25 testimony, and I am not going to spend any particular time

1 on this other than to reserve an opportunity to rebut what
2 might be argued. Prehearing Order No. 12 which was issued
3 by the Siting Council after the whole discovery flap speaks
4 for itself. It is our view that this Siting Council has
5 already ruled almost entirely all of Mr. Michaels' testimony
6 irrelevant and immaterial to these proceedings. That I
7 think is clear enough from my motion. I don't need to
8 elaborate on it further. I would like to make one
9 observation though. As we have kind of proceeded on through
10 the rebuttal phase in the proceedings, Mr. Michaels proffers
11 himself as an economist rebutting specifically economic
12 issues that have been offered by other witnesses, and I
13 would certainly be willing to concede that that's fair game
14 at this point in time should Mr. Michaels wish to be a
15 witness, expert witness on the economic issues that are
16 pending before the county from a variety of their witnesses,
17 including Mr. Hovee and others. But as to the need for
18 power and market issues and whether a merchant power plant
19 should be regulated, whether the siting of generation
20 globally should be regulated by the Siting Council in
21 individual proceedings, this Siting Council has already
22 ruled on that. I have nothing further.

23 JUDGE WALLIS: Mr. Aramburu.

24 MR. ARAMBURU: Members of the Council, I am going
25 to pass out for the Council's use and for the attorneys here

1 some sections of the application that has been filed in
2 response to the objections to the Michaels' testimony.

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

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

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

22 There will be a great amount of testimony in this
23 proceeding regarding the environmental impacts, impacts on
24 bird life, wildlife, impacts on visual resources. The
25 Michaels' testimony identifies particularly the value of

1 this resource. Is it a resource that is a resource that
2 should be considered valuable in the balancing of this
3 resource against the environmental values that are here?

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

19 We concede that it looks like from our vantage
20 point that the Whistling Ridge Project is going to be
21 immensely profitable and we'll concede that at that point.
22 We're not challenging that part, but what we are challenging
23 is in light of the existing resources, in light of the
24 existing problems in the Northwest whether these matters
25 should be given consideration as a part of the decision of

1 the Council. But more to the point, we have passed around
2 and given to the Council Members portions of the ASC, the
3 application here, in which the very issues that Mr. Michaels
4 is testifying about has been raised by the Applicant. For
5 example, the Applicant says that this project is designed to
6 provide low cost renewable energy to the growing needs of
7 the Northwest, and Michaels' testimony addresses that point;
8 indicates that this is not going to be low cost renewable
9 energy, indicates serious questions as to whether or not
10 there is the need for additional wind resources within the
11 Northwest, directly in opposition to the material found on
12 page 1-1 of the application. And this is by handout, and
13 for the convenience of the Council Members I have underlined
14 those materials here.

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

22 Also at Section 1.1 there is a significant bit of
23 puffery here about this being a premier undeveloped wind
24 site in the Northwest, again in Section 1.1, page 1.1 of the
25 application. Mr. Michaels at pages 14 and 15 of his

1 materials directly addresses that and points out that these
2 wind resources are likely to require fossil fuel burning
3 balancing resources for development of this property. The
4 Applicant discusses and spends a whole section of his
5 material discussing the Pacific Northwest Power Plan and the
6 needs of the power plant, a whole section. Mr. Michaels'
7 testimony again addresses that at pages 16 to 19 of the
8 testimony based upon the new Sixth Annual Pacific Northwest
9 Power Plan which heavily emphasizes conservation and
10 indicates that the needs of the Northwest are likely to be
11 met in substantial portion by conservation efforts as
12 opposed to new energy production efforts.

13 So, again, we're responding to materials that are
14 found in this application. The Applicant says at Section
15 1.1 that this power from this project can be easily
16 integrated into the grid. Pages 19 to 24 of the Michaels'
17 testimony takes issue with that and points to the problems
18 of trying to integrate this new power into the grid. So,
19 again, specifically responding to assertions made within
20 this application that are sponsored by Mr. Spadaro who is
21 going to testify on these matters within the course of the
22 hearing.

23 Again, pages 219-1 of the application, discussion
24 of a proportion of the resources that this will meet growing
25 power needs, again we've addressed that issue in the

1 Michaels' testimony. So, again, this is material that's
2 directly responsive to their application and also directly
3 in tune and in line with the responsibilities of the
4 Commission to consider these matters and consider the very
5 delicate balancing issue. Unless you know the nature of the
6 resource and the need for the resource and the issues
7 connected with the resource it's not possible for this
8 Commission really to do that balance.

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

16 MR. BAKER: Your Honor, if I may, this is Nathan
17 Baker. I'd like to add one additional example to those
18 cited by Mr. Aramburu of the relevance of this material. As
19 Mr. Aramburu stated the testimony from Dr. Michaels talks
20 about integration into the grid. There is a rule in the
21 EFSEC rules that requires the application to describe the
22 impacts and plans for utilizing or mitigating impacts caused
23 by the proposed facility on utilities. The citation is WAC
24 463-60-535(4)(e), and in fact the application has a section
25 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 MR. McMAHAN: Your Honor, Tim McMahan for the
9 record again. The idea that we haven't briefed this is kind
10 of mysterious to me. All of these issues were briefed
11 exceptionally thoroughly in the discovery motion that led up
12 to Prehearing No. 12. The Council is fully aware of that.
13 We briefed exactly these issues extensively. There was no
14 need to provide you with yet another, you know, 50-page
15 brief to support this motion. It's all in the record.

16 There is a really very, very big difference in
17 introductory information that talks about the project that's
18 in the ASC versus what Mr. Michaels is suggesting with his
19 testimony. You need only flip through what you have in
20 front of you from Mr. Aramburu. For example, on page 1-1 to
21 take one, the Whistling Ridge Project is designed to provide
22 low cost renewable energy to meet the growing needs of the
23 Pacific Northwest. It's intended to provide the capability
24 of delivering least cost effective renewable energy to these
25 growing communities. There is a number of statements, a

1 handful that have been shown to you that have statements of
2 intent and why we're bothering, what this application is
3 suppose to do.

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

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

24 So again this one has been played out already.
25 Your Prehearing Order No. 12 already addresses these issues.

1 It's already been deemed to be irrelevant, and Mr. Michaels'
2 testimony at a very minimum should be narrowed to that which
3 is responsive to other testimony. It's certainly not trying
4 to have this Council decide that which you've said it won't
5 decide and which is already deemed irrelevant. Thank you.

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

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

10 JUDGE WALLIS: Mr. Colby, yes.

11 MR. COLBY: I received right at the beginning of
12 this hearing today a packet from Stoel Rives that has been
13 FedExed out to the agency. I got it this morning. It
14 contains the Applicant's prefiled rebuttal testimony of
15 Wilbur Slockish and Johnny Jackson, and I'm wondering
16 whether you want to hear from me now or at No. 12 of the No.
17 10 or 11 or 12 in regard to some things that I would like to
18 bring up in regards to those two pieces of testimony that I
19 just found?

20 JUDGE WALLIS: Mr. McMahan.

21 MR. McMAHAN: Your Honor, Mr. Colby and other
22 members of the tribe are also on the e-mail circulation.
23 Our filings did not bounce back from any members of the
24 Yakama Nation. They had them on Thursday, and I believe the
25 Council asked all parties to identify any objections at

1 these proceedings today so I think this is untimely.

2 JUDGE WALLIS: Well --

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

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

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

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

17 MR. COLBY: Judge, two concerns, and I've had them
18 all along, and they have been on the record before at these
19 telephonic hearings, and in attendance today at this hearing
20 is Wilbur Slockish and Johnny Jackson. I want to point out
21 for the EFSEC Commission Judge that when I mail things to
22 Wilbur Slockish who identifies himself as Chief Wilbur
23 Slockish of the Klickitat and Cascade Tribes of the Yakama
24 Indian Nation, even though they have an elected
25 representative on the Yakima Nation Tribal Council, but be

1 that as it may, when I mail him information it goes to Jason
2 Spadaro at Whistling Ridge Energy, P.O. Box 266, Bingen,
3 Washington. And in the packet that I received this morning,
4 and I'll take Mr. McMahan's word for it that it came on the
5 e-mail too, I'm not disputing that, but the hard copy in
6 front of me comes from the Stoel Rives firm who appears to
7 be representing Wilbur Slockish and Johnny Jackson
8 representing the Yakama Indian Nation because they're not
9 hired by the Yakama Indian Nation. They are not attorneys
10 of the Yakama Indian Nation in this proceeding, but when you
11 read the things that they are proposing that be on their
12 testimony from both of these gentlemen they purport to
13 represent the Yakima Indian Nation and they do not. And
14 attorneys who are writing information for them should be
15 careful that there are other attorneys that represent the
16 Yakama Indian Nation and it's not the firm of Stoel Rives,
17 and we are concerned about what is going on. Either we have
18 people involved in this process that do not represent the
19 Yakama Indian Nation but purport to.

20 JUDGE WALLIS: Mr. McMahan.

21 MR. McMAHAN: I will respond, Your Honor. We in
22 no sense, not at all have purported to represent the Yakama
23 Indian Nation. There's nothing in the testimony, the
24 transmittal letter, anything whatsoever that would make that
25 contention. We certainly disavow here. Never have. We've

1 never purported to represent the Yakama Nation, nor do we
2 even represent Mr. Slockish or Mr. Jackson. Their testimony
3 speaks for itself. They themselves and their testimony
4 state they are not representing the Nation. They're
5 representing themselves and their cultural heritage and
6 their ancestry and their knowledge of the site. That's all
7 they are testifying. They asked us to submit the testimony
8 rather than they submit as intervenors frankly because they
9 don't have the capability of circulating the testimony like
10 other parties to the proceedings do and that is stated in
11 their testimony.

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

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

17 MR. COLBY: Judge, can I respond?

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

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

22 JUDGE WALLIS: Please.

23 MR. COLBY: Page 9 of the proffered Applicant's
24 prefiled rebuttal testimony Witness No. 14 Chief Wilbur
25 Slockish, Jr., it says on page 9, line 13, on Stoel Rives

1 pleading paper, we work with the Yakama Nation government.
2 They do not. They do not represent the Yakama Nation in any
3 way, shape, or form. In fact, yesterday my office filed and
4 is in the mail to you Final Tribal Council Resolution, and
5 I'll put it on the record right now. Nobody has gotten it
6 because it's in the mail. It's T013-11 Tribal Council
7 Resolution of Yakama Indian Nation regarding this particular
8 situation stating out the fact that only the Yakama Indian
9 Nation Tribal Council speaks for itself under the Treaty of
10 1855 (12 Stat. 951). The Yakama Indian Nation is a
11 resolution nation, and they have two resolutions that govern
12 it, T-38-56 and T-10-61. And these resolutions haven't
13 given Johnny Jackson or Wilbur Slockish any authority to
14 speak with any authority of the Yakama Indian Nation. And
15 when you go through their testimony as it's proffered, it's
16 all about the Yakama Nation this and Yakama Nation that, and
17 we object to it.

18 JUDGE WALLIS: Thank you.

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

21 JUDGE WALLIS: Mr. Marvin.

22 MR. MARVIN: Upon review of my records I realize
23 that a substantial portion of the rebuttal testimony that
24 was submitted by the Applicant via e-mail. I received one
25 e-mail regarding the testimony from Mr. Mentor, and I did

1 receive a cover letter indicating that there was additional
2 testimony that was being forwarded, but I did not receive it
3 by e-mail. So, again, I have no reason to believe that it
4 was not sent to me, that perhaps it was lost, but going
5 forward I would ask that extra caution be used with regard
6 to these communications.

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

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

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

25 MR. MARVIN: Yes, I will see if I can find that

1 link. I did not see anything referenced, and I do have my
2 legal assistant is in touch with your office, Tim, trying to
3 sort that out. But I just felt just in all candidness I
4 would throw that out there and I'll work it out. We'll work
5 it out.

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

10 MR. COLBY: Colby again, Judge.

11 JUDGE WALLIS: Mr. Colby.

12 MR. COLBY: To follow up, number one, on the Stoel
13 Rives Firm, I certainly thank them for all of the
14 information that they get out. I'm not trying to raise any
15 criticisms. My issue is with the Yakama Indian Nation only.
16 Other people have other issues with other things, but I am
17 concerned that we are raising the spectra that there are two
18 attorneys for the Yakama Indian Nation and there are not.

19 Page 9 of Jason Spadaro's prefiled rebuttal
20 testimony at line 22 of page 9 talks about the history of
21 the engagement with the Yakama Indian Nation, and this is
22 the prefiled testimony of Jason Spadaro that I guess
23 everybody has now. Anyway on line 22 it starts October 2007
24 SDS, that's Jason Spadaro, provides initial project
25 presentation and site tour to local tribes Chief Johnny

1 Jackson and Chief Wilbur Slockish asking for any concerns
2 regarding the project.

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

7 JUDGE WALLIS: Very well. Thank you.

8 Anything further?

9 Mr. Aramburu.

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

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

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

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

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

23 MS. ANDERSON: I would agree with that.

24 JUDGE WALLIS: Very well.

25 MR. ARAMBURU: With respect to the testimony of

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

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

18 Now, what's going on is the Applicant, who just
19 can't stand not to talk about this, has submitted the
20 testimony of Mr. Nierenberg which is essentially that I
21 have, and this is what he says, I have done a lot of the
22 meteorological evaluation of this site, and I have nine
23 years of meteorological data, and I've got them right here.
24 But you can't see them, but I'm going to testify about those
25 materials, and I am going to tell you how good this project

1 is based upon me looking at this meteorological information
2 and the net capacity factors. And I'm going to tell you
3 that this is an absolutely great site based upon that.

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

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

18 Second, Prehearing Order 12 itself discussed the
19 difference between confidential wind data and the kind of
20 testimony that had been submitted in the Kittitas Valley
21 proceeding. It was accepted by the Siting Council and was
22 challenged in those proceeding as well. We offer that, and
23 I talked about it during oral argument on the discovery
24 motion on confidential data. There is a way of discussing
25 wind data without disgorging highly confidential proprietary

1 information. I saw Prehearing Order 12 inviting us to
2 provide similar testimony in these proceedings that was
3 accepted in KV. That's exactly what we did, but again, you
4 know, if Mr. Till's testimony comes out, I think this is
5 sort of a sideshow issue that doesn't have any large bearing
6 on the outcome of the proceedings. Thank you.

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

16 JUDGE WALLIS: Mr. Aramburu.

17 MR. ARAMBURU: The next item on your agenda,
18 Mr. Examiner, is our objection to the Yourkowski testimony,
19 and we particularly ask that portions of that testimony
20 beginning on page 3, line 23 to page 5, line 14 be stricken,
21 and the basis for that is this: Mr. Yourkowski purports to
22 testify as to broad public support in the Pacific Northwest
23 for renewable resources and how those factors should be
24 taken into account and how Mr. Michaels' testimony did not
25 take those factors into account.

1 We think this kind of beauty pageant approach to
2 your proceedings is inappropriate. Whether or not there's
3 broad public support does not have to do with what this
4 Commission is doing, and it lends itself to people coming
5 forth and talking in generalities about these issues. We
6 think that kind of testimony is not appropriate to these
7 proceedings and should be stricken.

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

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

21 That was responsive specifically to the Michaels'
22 testimony mischaracterization of it and his lack of
23 consideration of the public input that goes into that
24 question that Mr. Michaels offers specific testimony about,
25 and that response is extremely relevant to this Council's

1 consideration of his testimony.

2 The second piece that is objected to from 4 to 5,
3 would the Whistling Ridge Energy Facility be a qualifying
4 renewable energy resource in Washington -- excuse me. The
5 question is I guess on page 5: Do you agree with the
6 Michaels' testimony that whether it is exported or kept in
7 the Pacific Northwest wind power is in excess of current
8 amounts and is of little value to Washington state?

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

23 JUDGE WALLIS: Very well.

24 MR. ARAMBURU: Mr. Michaels' testimony doesn't
25 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

1 affidavits as an attempt to establish such testimony are
2 inappropriate. Should the Council wish it, we can provide
3 by probably this afternoon the authority that supports that
4 proposition. Thank you.

5 JUDGE WALLIS: Very well. Anything further?

6 Ms. Drummond.

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

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

18 MS. DRUMMOND: Okay. Thank you.

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

24 JUDGE WALLIS: I thought we were doing actually
25 quite well.

1 MR. ARAMBURU: I thought so too.

2 JUDGE WALLIS: Very well.

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

17 JUDGE WALLIS: We understand your position. Thank
18 you. What we would like to do is take a brief recess to
19 look at a schedule. The Council I believe would like to
20 discuss the arguments that have been heard this morning and
21 respond to them with decisions on the individual exhibits
22 that have been challenged, and there are on the list a few
23 remaining housekeeping items that will expedite our conduct
24 to the proceeding if we address those, resolve any questions
25 about them.

1 So let's go off the record for just a moment, and
2 we'll take a look at the clock and the Council's schedule
3 for when we might reconvene after the Council's discussions.

4 (Recess taken from 11:40 a.m. to 11:43 a.m.)

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

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

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

19 MR. ARAMBURU: Mr. Chairman, as I have indicated I
20 have to be standing tall in Pierce County Superior Court at
21 1:30 so I will not be here.

22 JUDGE WALLIS: Very well. That's understood.

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

25 JUDGE WALLIS: Very well.

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

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

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

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

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

24 The declaration of Richard Till is a little bit
25 different from the suggested declarations of the attorneys,

1 and the Council would not exclude the appearance of Richard
2 Till and his sponsorship of the documents. That does not
3 mean the documents might still be subject to objection and
4 exclusion from evidence, but if the parties wish to present
5 Mr. Till to sponsor those documents then the Council will
6 consider that. The other objections are denied, and the
7 evidence including the prefiled testimony will be received
8 in evidence. Are there any questions?

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

10 JUDGE WALLIS: Mr. Kahn.

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

22 JUDGE WALLIS: Exactly what documents are you
23 referring to?

24 MR. KAHN: The documents attached to Mr. Baker's
25 declaration and the documents that are attached to

1 Mr. Aramburu's declaration that pertain to the land use
2 proceeding. We don't have any witnesses on the land use
3 proceeding. We presented that in the prior hearing. You've
4 indicated that we have to resubmit those documents for this
5 proceeding which we've done. They've now been rejected.
6 How do we get those in?

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

9 MR. KAHN: Mr. Baker will do that.

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

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

15 MR. BAKER: Sure. 23.01 is an e-mail from the
16 Skamania County planner to me. 23.02 is a copy of a
17 resolution by the Skamania County Commissioners passed
18 within the past six months, and there was an earlier
19 resolution along the same lines that was submitted at the
20 land use in June of 2009. So this is an updated resolution.
21 23.03 is a letter from the Department of Natural Resources
22 to EFSEC. It is part of the SEPA record. Most of the
23 letter does contain SEPA issues, but we are not submitting
24 it for a SEPA issue.

25 The other ones are Rick Aramburu's exhibits. I'm

1 not sure 23.01. No, I think it's 29.01 which is a letter
2 from Rick Aramburu to EFSEC I believe. 29.02 which I
3 believe it's a decision of the Hearings Examiner of Skamania
4 County. 29.03 which is a copy of the Skamania County
5 Comprehensive Plan from 1977. I believe that's all.

6 MR. KAHN: In terms of the land use.

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

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

19 The Council did have some discussion about the
20 relationship between the two processes, the land use and the
21 adjudicative, and reached no conclusion. So my suggestion
22 is at this point to defer that you have the ability to use
23 the public documents in your presentation and to bring up
24 the remaining documents at the time you wish to offer to use
25 them in your prosecution of the matter.

1 MR. KAHN: For clarification, you referred a
2 couple times to public documents. We've got what I'll call
3 two classes of public documents here; one which are
4 ordinances, the comp. plan which I think you've indicated
5 you would take official notice of.

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

10 JUDGE WALLIS: No, not at all.

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

13 JUDGE WALLIS: Very good. Any other questions?

14 MR. McMAHAN: No.

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

1 available and make sure that people know how to run them.
2 Just some of the practical matters of conducting a hearing
3 of this sort. What are counsel's views on that?

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

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

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

19 MR. McMAHAN: We concur.

20 JUDGE WALLIS: Very well. I will ask the parties
21 to be available at 1:15 on that day in case there are
22 questions about operating the machinery and how we will
23 proceed in that manner. The remainder of the week it's our
24 intention to begin an 8:30 with the evidentiary hearing, and
25 to the extent that prehearing issues arise or administrative

1 issues, I would like the parties to convene at 8:00, and we
2 can deal with any issues of that nature unless we are
3 advised in advance of issues which may come up. And we ask
4 that parties do that, then there would be no need to convene
5 earlier than 8:30. We do ask that everybody be ready to go
6 promptly at 8:30 so we can just go on the record and
7 proceed.

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

23 Wednesday we have a session in Underwood at 3:30
24 so we'll extend the morning session a little bit longer and
25 break for lunch and travel time at about one o'clock. What

1 we will try to do in setting breaks is to find in the
2 cross-examination an appropriate point so we don't interrupt
3 the line of questioning unless there's some reason to do
4 that.

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

13 MR. SUTHERLAND: Oh, great.

14 MR. KAHN: You asked.

15 JUDGE WALLIS: Any other parties?

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

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

20 MR. COLBY: Judge, this is George Colby. If we
21 could address that issue just a little bit. You know, stuff
22 has been coming in so rapidly. I'm not complaining, but
23 stuff has been coming in rapidly and there could be by the
24 time Monday, January 6, at ten o'clock in the morning comes
25 around there could be a need for more than one or two

1 parties that have things ready to go for cross-examination
2 by then.

3 JUDGE WALLIS: Yes.

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

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

8 MR. KAHN: And that is January 3.

9 JUDGE WALLIS: Yes, Monday, January 3.

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

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

1 in or you want to check in during the next week?

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

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

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

14 MR. ANDERSON: No need for extra.

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

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

20 MR. COLBY: Oh, okay.

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

25 MR. COLBY: They can rotate in and out.

1 JUDGE WALLIS: Very well.

2 MR. ANDERSON: Your Honor, that works for us too.
3 Commerce we actually only need one seat.

4 JUDGE WALLIS: Okay. Very good.

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

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

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

24 MR. McMAHAN: Your Honor, as you know, we
25 circulated a schedule and revised schedule on the 20th,

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

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

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

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

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

25 MR. PEEPLES: I would suggest before that people

1 fill out the witness schedule that we had there. The order
2 is to be determined by the Council, but before that if they
3 could fill out the amount of estimated time for cross-exam
4 and e-mail that to everybody so everybody has that hard when
5 we're talking at the prehearing conference.

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

8 MR. PEEPLES: Everybody should have it.

9 JUDGE WALLIS: -- to me, and I will circulate it.
10 There was some questions about the document that I saw
11 relating to exhibit numbers and to just whether all of the
12 potential witnesses were identified.

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

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

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

24 MR. McMAHAN: Right.

25 MR. KAHN: This is Gary Kahn. I would prefer

1 something Tuesday or Thursday for doing a telephone
2 conference.

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

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

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

13 MR. McMAHAN: 11:00.

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

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

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

20 JUDGE WALLIS: Mr. Kahn.

21 MR. KAHN: Number one, in past prehearing
22 conferences we've discussed the possibility of either a site
23 visit by the Council or a visit to some of the key viewing
24 areas within the National Scenic Area, and I believe it was
25 to be decided or discussed later. That doesn't seem to be

1 factored into the schedule. Does that mean it's been
2 implicitly denied?

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

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

22 MR. McMAHAN: I agree, Your Honor. Again, you
23 know, we weren't trying to gain this by the order we put out
24 and sent to the parties yesterday. I thought Mr. Aramburu
25 came fairly close to what I was suggesting. So if we could

1 perhaps work from this list and try to narrow it down, again
2 we're going to need to tell people with some reasonable
3 probability when they're going to need to be out there.

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

6 JUDGE WALLIS: Mr. Colby.

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

10 JUDGE WALLIS: Yes.

11 MR. COLBY: This is just an observation from an
12 old suit. At the very end on the second page of energy and
13 need for facility and there's five or six witnesses there,
14 I'm wondering -- this is just my thought -- that I would ask
15 that people consider putting that first after the Applicant
16 gives their general application because I think that given
17 the conversation this morning from some of the attorneys and
18 some of the other people involved in regards to the energy
19 issue and the need for facility, I think it would frame what
20 follows: avian, wildlife, visual, the cultural resources,
21 and all the other things. I think it would follow better if
22 after the Applicant made their general application content
23 and background and then immediately go into the energy and
24 need for facility. I think from my perspective the flow of
25 questioning would make more sense if all the people who are

1 for and/or against this project have a framework of what to
2 be for or against versus something coming at the very end
3 that almost by then is out of context. Thank you.

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

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

1 available on Friday and Michael Lang is not available on
2 Thursday.

3 JUDGE WALLIS: The second week?

4 MR. BAKER: Of the first week.

5 JUDGE WALLIS: The first week.

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

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

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

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

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

24 JUDGE WALLIS: Would we be better off just holding
25 the balance of this discussion until Tuesday when people

1 have had a chance to look at the current status?

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

10 MR. KAHN: This is Gary Kahn. I think maybe we're
11 not on the same page. We were talking about Mr. Lang and
12 Dr. Michaels being available Monday the 10th, not Monday the
13 7th. Oh, I thought you said Monday the first week.

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

16 MR. KAHN: Okay.

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

1 that that witness is off the hook.

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

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

25 You know, we're not particularly hung up on

1 whether biology or avian or scenic goes first or second.
2 Again, this is a stab. I, again, defer to the Council
3 concerning whether they want time to visit the KVAs or
4 whatever. That doesn't bother us one way or the other.

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

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

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

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

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

21 MR. COLBY: This is Colby here. Would it make
22 sense to start Monday at eight o'clock instead of ten
23 o'clock so that we could perhaps get the site visit done
24 after perhaps the general application content and background
25 and go for a site visit and then go into the schedule that

1 you have, avian, visual, cultural, etc., etc.? Because
2 you're going to run out of time. It takes time to go to
3 these sites.

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

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

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

18 Very well. It may be difficult for some of the
19 Council Members or staff to make the arrangements to be
20 there in time for an eight o'clock start on Monday also. So
21 my suggestion is we hold to the ten o'clock administrative
22 start and 1:30 hearing start. And then we can take an
23 assessment of weather and snow conditions and determine
24 whether it's possible during the week or potentially the
25 following week to get people to where they need to go. The

1 Council is committed to having the site visit and the view
2 scape visits before it enters deliberations.

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

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

11 JUDGE WALLIS: Mr. McMahan.

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

1 get to cultural resource and archeology. Am I understanding
2 that correctly, Your Honor?

3 JUDGE WALLIS: It appears so, yes.

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

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

11 Mr. Tayer.

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

23 MR. BAKER: Your Honor, this is Nathan Baker. I
24 have a thought on that. It's likely that many of the scenic
25 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 MR. TAYER: That makes sense.

8 JUDGE WALLIS: I see some nods from Council
9 Members.

10 MR. McMAHAN: I'm still not clear on what that
11 means with the order of things. Are we still then blocking
12 a day out here after the introductory testimony for a site
13 visit in essence creating one reserved day for that right at
14 the beginning of the hearing?

15 JUDGE WALLIS: I don't hear that we would be
16 reserving a day for a site visit that would be vacant if
17 conditions did not permit that visit. What the Council
18 would prefer I'm sure would be to have as Mr. Baker
19 suggested witnesses available and the ability to proceed,
20 and there may be a way to arrange witnesses who don't have
21 to travel long distance so that we could fill that time.

22 MR. McMAHAN: So when I put together the
23 spreadsheet would you like -- I think what I'm hearing, and
24 again I just need real precision so we can call some
25 witnesses. I am intending to simply move the visual effects

1 up below witness number one, number two, with no notation
2 for a site visit at all, no block for that, but just
3 proceeding through; is that correct?

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

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

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

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

1 individual schedules.

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

6 JUDGE WALLIS: Very well.

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

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

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

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

22 MR. BAKER: Could I add one further thing? If we
23 proceed with the site visit and the KVAs then, of course, we
24 might not finish all the scenic area testimony before the
25 schedule of the wildlife testimony, and in that case it

1 might make sense to have some of the scenic testimony later
2 because again those witnesses are more flexible. We would
3 prefer to have the scenic area first, but we do have
4 flexibility.

5 JUDGE WALLIS: Very good.

6 MS. DRUMMOND: Quick note.

7 JUDGE WALLIS: Ms. Drummond.

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

13 JUDGE WALLIS: Thank you.

14 What other information do you need, Mr. McMahan?

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

23 MR. BAKER: As far as the socioeconomic category
24 the only conflict is that Michael Lang is unavailable on
25 Thursday of the first week. So if it were to happen on

1 Friday then that would be fine.

2 MR. McMAHAN: That's the kind of thing we just
3 need to accommodate.

4 MR. PEEPLES: Yes.

5 MR. McMAHAN: Does that satisfy the Council if we
6 put that on the schedule?

7 JUDGE WALLIS: Yes.

8 Let me inquire. We did ask earlier about the
9 possibility of stipulations and suggested that parties
10 attempt to reach stipulations on evidence or other matters.
11 Has there been any progress in that regard?

12 MR. McMAHAN: No, Your Honor.

13 JUDGE WALLIS: With the exception of one witness
14 mentioned earlier.

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

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

22 JUDGE WALLIS: Yes.

23 MR. KAHN: Can we assume that there will be
24 facilities for power point presentation available? Do we
25 need to bring our own laptop or is there a way we can find

1 that out?

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

16 MR. KAHN: Two other hopefully brief issues.
17 Earlier today what seems like a long time ago Mr. McMahan
18 referred to -- this is in the context of the documents that
19 were attached to Mr. Aramburu's and Mr. Baker's declaration
20 on land use issues -- Mr. McMahan said something to the
21 effect that there's a lot of ways to get those in. They can
22 be attached to the exhibits to the brief, the post-hearing
23 brief which raises a logistical question. Are we permitted
24 to do that? After the hearing we understand there's an
25 opportunity to brief, to summarize by briefing what's

1 occurred factually and evidentiarily. Are we allowed to
2 attach new exhibits to our brief at that point?

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

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

19 JUDGE WALLIS: Is there any objection to that?

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

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

24 MR. KAHN: Mr. Peeples, did you just say you
25 objected, there probably will be objection, or you probably

1 want that to happen?

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

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

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

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

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

23 JUDGE WALLIS: I think it's premature to make a
24 ruling. Let's see what happens during the questions and
25 answers.

1 Is there any other matters?

2 MR. KAHN: No.

3 MR. COLBY: When you say that --

4 JUDGE WALLIS: Mr. Colby?

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

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

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

12 JUDGE WALLIS: Any there any other items?

13 Yes, we are at that point.

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

16 JUDGE WALLIS: Okay. Go ahead.

17 MR. COLBY: Being we're at No. 12, other matters
18 of concern to counsel or Council Members, this is a matter
19 of concern to the Yakama Nation, and I want it on the
20 record, and I appreciate you allowing me to do this. The
21 Yakama Nation and me representing them we don't have any
22 problem with Chief Wilbur Slockish and Chief Johnny Jackson
23 being elders down on the river. There are all kinds of
24 elders down on the Columbia River from all the different
25 tribes, but the point of it is the Yakama Nation is governed

1 in a certain way, and the Applicant has gone out of his way
2 or out of their way to subsume and give the appearance that
3 Chief Slockish and Chief Jackson speak for the Yakama Nation
4 under the cover of, well, they're just talking on their own
5 behalf, but when you read the statements that have been
6 provided that clearly isn't this. And so what I would like
7 to do on this witness schedule you have sponsoring parties
8 and under Chief Wilbur Slockish and Chief Johnny Jackson, I
9 request that the sponsoring parties for those two witnesses
10 be the Applicant.

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

18 MR. COLBY: Our position is rewrite their
19 testimony that he wrote for them.

20 JUDGE WALLIS: Your comment is noted and I will
21 also for the record say that the Council itself in one of
22 the prehearing conferences was faced with questions and did
23 announce in an order that it understood that the individuals
24 were not speaking and were are not authorized
25 representatives of the Yakama Nation itself but

1 representatives of their own interest. So as far as the
2 Council is concerned, they as individuals have demonstrated
3 standing and right to appear, but they are not speaking
4 officially on behalf of the Yakama Nation.

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

10 JUDGE WALLIS: I understand your concern.

11 MR. COLBY: Thank you.

12 JUDGE WALLIS: Is there anything further to
13 address today?

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

22 JUDGE WALLIS: Okay.

23 MR. KAHN: Then the second issue you also skipped
24 No. 11 which is the counsel questioning. I don't know if
25 that's something we need to address now or wait until later.

1 JUDGE WALLIS: My suggestion is we wait until
2 Tuesday when we have our discussion.

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

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

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

14 MR. KAHN: Okay.

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

19 JUDGE WALLIS: Are those copies available
20 electronically as well?

21 MR. McMAHAN: Sure, yeah. And those will probably
22 be on the FTP site again. I just want clarification to do
23 with my own faulty memory. When was it that you had wanted
24 the written opening filed and served by the parties? I
25 think that was in a prior proceeding.

1 JUDGE WALLIS: I believe Wednesday at noon.

2 MR. McMAHAN: Of next week?

3 JUDGE WALLIS: Yes.

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

6 JUDGE WALLIS: No.

7 MR. COLBY: I vote for Wednesday.

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

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

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

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

24 Ms. Drummond, can you clarify the status of that
25 document?

1 MS. DRUMMOND: Yes, I can clarify that. Because
2 Skamania County is a party, it is only necessary that
3 Commissioner Pearce testify on behalf of Skamania County.
4 We just in an abundance of caution filed in multiple places.

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

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

12 JUDGE WALLIS: Are they identical?

13 MS. DRUMMOND: They are exactly identical, yes.

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

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

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

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

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

24 And Mr. Pytel for the Klickitat Economic
25 Development Authority? There was some confusion in my mind

1 as to the numbering on the documents that we received for
2 Mr. Pytel and Mr. Covert.

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

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

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

12 JUDGE WALLIS: No.

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

17 JUDGE WALLIS: No.

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

24 JUDGE WALLIS: Yes, and that was provided later.

25 MS. ANDERSON: If the Council wants to renumber

1 them, I suppose we could.

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

4 MS. ANDERSON: I don't know.

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

7 MS. DRUMMOND: We haven't filed a formal, but I
8 have been -- yeah. So a number of exhibits were filed
9 48.01, but I just jumped on so I'll refer to you.

10 JUDGE WALLIS: Whose testimony was that?

11 MS. DRUMMOND: Michael Canon's testimony was filed
12 48.01 rebuttal testimony, and Chuck Covert's was 49.

13 JUDGE WALLIS: Okay.

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

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

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

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

1 things they may have different numbers. I'm not sure what
2 they were.

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

6 MR. BAKER: Thank you.

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

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

12 JUDGE WALLIS: Who is this, please?

13 MR. MARVIN: This is Bruce Marvin.

14 JUDGE WALLIS: Mr. Marvin.

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

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

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

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

25 JUDGE WALLIS: Very good. Is there anything

1 further to come before the Council? It appears not at this
2 time, and we have the telephone conference set for the
3 following Tuesday at what time?

4 MR. KAHN: 11:00.

5 JUDGE WALLIS: Tuesday at 11:00.

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

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

11 * * * * *

12 (The prehearing conference adjourned at 2:13 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1 In re: Whistling Ridge Energy Project
2 Application No. 2009-01
3
4
5

6 A F F I D A V I T
7

8 I, Shaun Linse, CCR, do hereby certify that the
9 foregoing transcript prepared under my direction is a
10 full and complete transcript of proceedings held on
11 December 21, 2010, in Olympia, Washington.
12
13

14 _____
Shaun Linse, CCR 2029
15
16
17
18
19
20
21
22
23
24
25