

Page 2

1 Appearances (cont'd):
 2 DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC
 3 DEVELOPMENT, Tony Usibelli, Assistant Director, Energy
 4 Policy Division, and Mark Anderson, Senior Energy Policy
 5 Specialist, P.O. Box 43173, Olympia, Washington 98504-3173.
 6 RENEWABLE NORTHWEST PROJECT, Susan Drummond,
 7 Attorney at Law; Foster Pepper & Shefelman, PLLC, 1111 Third
 8 Avenue, Suite 3400, in Seattle, Washington 98101-3299.
 9 RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT),
 10 James C. Carmody, Velikanje, Moore & Shore, P.S., 405 East
 11 Lincoln Avenue, P.O. Box 22550, Yakima, Washington 98907.
 12 F. STEVEN LATHROP, Jeff Slothower, Attorney at
 13 Law; and F. Steven Lathrop, Attorney at Law, Lathrop,
 14 Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh
 15 Avenue, Ellensburg, Washington 98926.
 16 ECONOMIC DEVELOPMENT GROUP, Debbie Strand,
 17 Executive Director, 1000 Prospect Street, P.O. Box 598,
 18 Ellensburg, Washington 98926.
 19 * * * * *
 20 JUDGE TOREM: This prehearing conference is
 21 called to order on Tuesday, August 10, 2004 at five
 22 minutes after 1:00.
 23 Will the clerk please call the roll.
 24 MR. MILLS: Community Trade and Economic
 25 Development?

Page 3

1 MR. FRYHLING: Richard Fryhling is attending
 2 by conference phone.
 3 MR. MILLS: Department of Ecology?
 4 MS. ADELSMAN: Hedia Adelsman is here.
 5 MR. MILLS: Department of Fish and Wildlife?
 6 MS. TOWNE: Ms. Towne.
 7 MR. MILLS: Department of Natural Resources?
 8 MR. IFIE: Tony Ifie is here.
 9 MR. MILLS: Utilities and Transportation
 10 Commission?
 11 MR. SWEENEY: Tim Sweeney.
 12 MR. MILLS: Chair?
 13 CHAIR LUCE: Present.
 14 MR. MILLS: Kittitas County?
 15 MS. JOHNSON: Patti Johnson.
 16 MR. MILLS: There is a quorum.
 17 JUDGE TOREM: Thank you, Mr. Mills.
 18 Let me review for the record who is present
 19 and for the sake of efficiency and time I will just run
 20 through each party and the folks that I know are here in
 21 the room and are on the telephone, and if you will simply
 22 acknowledge by saying something that tells me, yes, I've
 23 got you noted.
 24 Representing the applicant today is one of
 25 their attorneys, Darrel Peoples.

Page 4

1 MR. PEEPLES: Yes.
 2 JUDGE TOREM: Attorney Tim McMahan.
 3 MR. McMAHAN: Yes.
 4 JUDGE TOREM: And Attorney Chuck Lean.
 5 MR. LEAN: Yes.
 6 JUDGE TOREM: Also Christopher Taylor is
 7 present.
 8 MR. TAYLOR: Yes.
 9 JUDGE TOREM: For the Counsel for the
 10 Environment, Assistant Attorney General John Lane is
 11 present here.
 12 MR. LANE: Present.
 13 JUDGE TOREM: Kittitas County by telephone
 14 today is Deputy Prosecutor Jim Hurson. Mr. Hurson, are
 15 you there?
 16 MR. HURSON: Yes.
 17 JUDGE TOREM: Excellent.
 18 And the Planning Department for Kittitas
 19 County, Clay White.
 20 MR. WHITE: Yes.
 21 JUDGE TOREM: For Renewable Northwest
 22 Project, Sonja Ling.
 23 MS. LING: Here.
 24 JUDGE TOREM: And Susan Drummond.
 25 MS. DRUMMOND: Yes.

Page 5

1 JUDGE TOREM: Community, Trade and Economic
 2 Development present here in Olympia are Mark Anderson.
 3 MR. ANDERSON: Yes.
 4 JUDGE TOREM: And Tony Usibelli.
 5 MR. USIBELLI: Yes.
 6 JUDGE TOREM: For Residents Opposed to
 7 Kittitas Turbines are Attorney Jim Carmody.
 8 MR. CARMODY: Yes.
 9 JUDGE TOREM: Ed Garrett.
 10 MR. GARRETT: Yes.
 11 JUDGE TOREM: And Mike Robertson.
 12 MR. ROBERTSON: Yes.
 13 JUDGE TOREM: And for Intervenor Steven
 14 Lathrop, Mr. Lathrop, you're appearing yourself, correct?
 15 MR. LATHROP: Yes.
 16 JUDGE TOREM: And Attorney Jeff Slothower.
 17 MR. SLOTHOWER: Yes.
 18 JUDGE TOREM: Also on the telephone from the
 19 Economic Development Group is Debbie Strand.
 20 MS. STRAND: Yes.
 21 JUDGE TOREM: One of the Applicant's,
 22 Zilkha, employees apparently, Jennifer Diaz.
 23 MS. DIAZ: Yes.
 24 JUDGE TOREM: Is there anyone else present
 25 here in Olympia that I'm not seeing or present on the

Page 6

1 telephone I'm not so far aware of?
2 All right. Then we are ready to proceed.
3 The notice for today's prehearing conference told you that
4 we had received a motion from the Applicant on Friday
5 afternoon to continue the hearings scheduled to begin a
6 week from yesterday. We said because the motion could
7 have significant impact on the hearing process the Council
8 requested that parties provide input on this request at
9 the prehearing conference. What was meant by this, if it
10 was not fully understood, was we did not want to burden
11 folks with another written product given the schedule and
12 the activity that have already occurred since our last
13 prehearing conference eight days ago.
14 Also we indicated the Council planned to
15 announce its rulings on the motions to stay the hearing as
16 filed by parties. That included Mr. Lathrop, ROKT, and
17 Kittitas County. I think it best to indicate already as
18 to Mr. Lathrop's motion a written order has now been
19 signed, and it will be placed on the email and the website
20 later this afternoon. I will just announce the ruling in
21 summary at this time.
22 First, the Council is choosing to take under
23 consideration, under advisement whether or not the GMA,
24 the Growth Management Act, has any impact on its
25 preemption powers as contained in Revised Code of

Page 7

1 Washington 80.50.110. That matter has not been
2 determined; although, it's taken as a serious issue. You
3 will see the discussion of that in the written motion, so
4 I don't think there's a whole lot of need for anyone to
5 take notes on this particular one. You will have the
6 written order in a few hours or moments as the case may
7 be.
8 However, we don't see a reason that we need
9 to deny or that we need to grant the stay at this time
10 simply because of the Growth Management Act issues raised
11 by you, Mr. Slothower. So we're denying the stay, but
12 we're going to reserve the right to issue a ruling on the
13 substance of the motion and the reasons it contains at a
14 later date. Just to be clear, that may be prior to the
15 hearing itself or it may be as part of the recommendation
16 to the Governor. That's part of the research process
17 going on now for the Council as well.
18 There is a possibility but not I would say a
19 strong probability that we will be asking for additional
20 briefing prior to drafting an order. What I foresee is
21 that once the Council and I have an opportunity to
22 research this issue and issue a draft order we'll
23 circulate that if it comes out before the hearing and then
24 ask for additional comments on that and hold another
25 prehearing conference.

Page 8

1 If we choose to issue it as part of the
2 recommendation to the Governor after the adjudication and
3 all other documents have been issued, then, of course,
4 there will be the motion for reconsideration that are
5 allowed at that point, but we will have already had the
6 adjudication and had post-hearing briefs on the issue at
7 that point. So that would be the opportunity rather than
8 to comment on a draft order to comment on that as part of
9 the hearing and as part of your post-hearing briefs. So
10 one way or another we'll have additional chance for all
11 the parties to comment on the issue of preemption and the
12 role of the Growth Management Act, if any, in modifying
13 this body's powers under RCW 80.50.110. So that is our
14 ruling on Mr. Lathrop's motion.
15 As to the Residents Opposed to Kittitas
16 Turbines that motion is in a drafting process or the order
17 is in a drafting process now, but the motion for stay on
18 SEPA grounds will be denied. I won't go into the details
19 of that yet other than to inform you, Mr. Carmody, that
20 the motion is denied simply because the Council disagrees
21 with your reading of the State Environmental Policy Act
22 and the SEPA rules, as well as the Council's SEPA rules
23 that have been adopted as well and see no reason to have a
24 legal requirement to issue a Final EIS prior to the
25 adjudicative hearings. So that will be denied, and you

Page 9

1 will get all the reasons in writing. With any luck it
2 will be out tomorrow.
3 Mr. Hurson, you had a motion with a number
4 of different grounds, and I'll go through those. I've
5 grouped Grounds 1, 2, and 3 regarding a stay of the
6 proceedings to allow preparation of additional rebuttal
7 testimony and if not in the alternative motion to strike.
8 I won't be ruling on the motion to strike verbally today.
9 That as well as the Applicant's motions to strike
10 testimony will be dealt with later on in a written fashion
11 but won't be addressed at today's conference, and I think
12 the reason for that will become obvious shortly.
13 But the motion to stay the proceedings in
14 order to provide additional rebuttal testimony is denied.
15 Again, the substance of the alternative motion to strike
16 will be ruled upon later. That's Grounds 1, 2, and 3.
17 Ground 4 requests to strike from
18 consideration as substantive evidence the Applicant's
19 request for preemption that was filed in February of this
20 year is denied. I will call your attention, Mr. Hurson,
21 to the Administrative Procedure Act RCW 34.05.476, and
22 that addresses what is the record in an administrative
23 hearing or adjudicative proceeding as is the case here.
24 Section 2(c) as in Charlie tells you that any pleadings
25 filed are already part of the record, so there's no reason

Page 10

1 for it to have been submitted as additional evidence and
2 exhibit.

3 The second part of that ground Mr. Hurson
4 asked for additional time to prepare response testimony.
5 The document was filed in February, so that response or
6 request is denied.

7 Number five asked for a stay of the
8 proceedings asking that SEPA authority is lacking and that
9 the County should be the lead agency. The Draft
10 Environmental Impact Statement in this case was issued in
11 December of 2003. It's clearly been more than 15 days
12 that have past, and if we look at the SEPA rules and the
13 statute there is only a 15-day limitation to petition to
14 the Department of Ecology to say that someone else should
15 be the lead agent. The time to do that, Mr. Hurson, has
16 past, so I will not stay the proceedings on that ground.
17 There's been a SEPA process and it's too late to question
18 lead agency status for this project.

19 Item 6, the disqualification of
20 Councilmember Ifie, that has already been denied on a
21 motion from Mr. Lathrop. I'm not sure if you overlooked
22 that or forgot or if there's a new ground here. But
23 regardless that issue has already been looked at in detail
24 by the Council and ruled upon. I will make reference to
25 the specific Council orders in the written decision, but

Page 11

1 that ground is also denied.

2 Skipping over Ground 7, the first portion of
3 it and looking only at the last part, asking for a release
4 of any and all preliminary or draft response to comments.
5 As you will recall that was already ruled upon and adopted
6 by a motion by the Council on August 2 that there would
7 not be a release of comments in advance of the Final
8 Environmental Impact Statement. So that portion of Ground
9 7 is denied.

10 Ground 8 asking to stay the proceedings
11 based upon the cumulative effect is denied. There is not
12 any cumulative effect necessary. I think just because a
13 lot of paper has been filed is not going to result in
14 saying we need more time. Certainly perhaps I might
15 benefit the most from that by having more time to write
16 the decisions and the orders on behalf of the Council, but
17 no stay will be granted for any cumulative effect.

18 Finally the 9th ground asked not for a stay
19 but for some disclosure, and, Mr. Hurson, I have to deny
20 that because it seems as though it's a public disclosure
21 request of sorts, but it's not stated as one, and it's not
22 being made if it is a public disclosure request to the
23 appropriate officer. So I will ask you if that is
24 something you would like to request to file it
25 appropriately, so that is denied.

Page 12

1 Now going back to the first part of,
2 Mr. Hurson, your motion, Part 7, and taking that in
3 conjunction with the Applicant's motion to continue the
4 hearing date. It seems that these two requests, one for a
5 stay and one for a continuance to a date more certain have
6 to deal with mainly the Supplemental Draft Environmental
7 Impact Statement.

8 It is designated I believe, Ms. Makarow, to
9 be released tomorrow; is that correct?

10 MS. MAKAROW: That is correct.

11 JUDGE TOREM: There's been some discussion
12 as to when a public comment session on this will be held.
13 Have we decided that yet?

14 MS. MAKAROW: A date certain has not been
15 decided yet. It would be sometime in late August.

16 JUDGE TOREM: So that's being looked at. To
17 allow sufficient time we would need if it comes out
18 tomorrow and we decide today that it is a ground to grant
19 the continuance or have a limited stay as requested by
20 Mr. Hurson to allow all the parties to look at the
21 off-site impact analysis that's contained in the Draft
22 SEIS, and I do have a copy of it in front of me, so it
23 sure looks like it's going to be ready to go tomorrow if
24 I'm already holding a bound copy that I was handed before
25 the meeting today.

Page 13

1 I want to have some discussion from the
2 parties as to what their feelings are on a stay for a
3 limited period of time or a continuance or a recess,
4 whatever you want to call it, but some kind of
5 postponement of the hearings scheduled for August 16
6 through 20 and August 23 to 27. The Council has discussed
7 this and it has some opinions, but it is not ready to make
8 a decision without hearing from all the other parties on
9 this particular issue.

10 Councilmembers, is there anything you would
11 like to add on this, on all the other topics so far?

12 All right. Mr. Peeples, it's your motion.
13 I think it speaks for itself. Is there anything you want
14 to add?

15 MR. PEEPLES: Well, I have nothing to add.
16 I agree. I think it speaks for itself. The basis of the
17 motion is stated in the motion and also on our responses
18 to Mr. Hurson and I believe to ROKT's request for a stay.
19 We're asking for a continuance, not a stay.

20 JUDGE TOREM: Mr. Hurson, did you have a
21 response to this Applicant's motion to continue as it
22 relates to your Ground 7 in your motion to stay?

23 MR. HURSON: I frankly took their motion as
24 agreement at least in part with our Motion No. 7. Frankly
25 I didn't see a distinction between a stay or strike the

Page 14

1 current hearing date, continuing, however you want to
 2 characterize it. So I think we do agree that it's the
 3 best interest for the public to have this all available to
 4 look at the document that's going to come out tomorrow and
 5 prepare supplemental information related to that. So we
 6 agree with them to strike the current date, reset it to a
 7 date down the roads. I guess it's just a matter of what
 8 date that would be and how. I don't know if you want to
 9 talk about that right now.

10 JUDGE TOREM: The Council's feeling was that
 11 we needed to at least have the public comment period and
 12 perhaps even allow all of the comments to close rather
 13 than just have the public comment hearing. We recognize
 14 that's optional, but because of the very high level of
 15 interest in this project we thought it better rather than
 16 to have 50 people call for a public comment hearing go
 17 ahead and give the opportunity. It seems like there have
 18 been at least 50 people in attendance at all public
 19 meetings regarding this project. So Council does want to
 20 hold a public comment hearing and take written comments
 21 for the full required period as well.

22 With that in mind, I believe, Mr. Peeples,
 23 your motion suggested that this be toward the end of
 24 September or beginning of October. Let me hear from other
 25 parties first as to their agreement or disagreement with a

Page 15

1 postponement of the hearing.
 2 Counsel for the Environment, is there any
 3 position you want to announce today as to a postponement
 4 for the reason given dealing with the Supplement Draft
 5 Environmental Impact Statement?

6 MR. LANE: Your Honor, Members of the
 7 Council, it seems like a postponement meets at least one
 8 of the areas that the parties agree on, so Counsel for the
 9 Environment would not object to the postponement. Counsel
 10 for the Environment wants to ensure that the public has
 11 full access to the document, the ability to read, review,
 12 and comment, and therefore believes that a postponement
 13 would probably be in the best interests at this time.

14 JUDGE TOREM: Does one of the people from
 15 Community, Trade, and Economic Development, Mr. Usibelli,
 16 want to offer a position?

17 MR. USIBELLI: Yes. We are not opposed to
 18 the continuance. That would be fine to continue.

19 JUDGE TOREM: Mr. Lathrop or Mr. Slothower,
 20 whoever is speaking for you, Mr. Lathrop, today.

21 MR. SLOTHOWER: This is Jeff Slothower.
 22 We're not opposed to the continuance. Thank you.

23 JUDGE TOREM: Mr. Carmody, on behalf of
 24 ROKT?
 25 MR. CARMODY: We're not opposed to the

Page 16

1 continuance. I would assume that you will be using the
 2 comment period established by SEPA and WAC 197-11-455
 3 which I believe to be a 30-day comment period.

4 JUDGE TOREM: That's correct, sir.

5 MR. CARMODY: Then there would be a public
 6 comment hearing as well. Those are the only comments that
 7 we have.

8 JUDGE TOREM: Ms. Ling, Ms. Drummond, for
 9 Renewable Northwest?

10 MS. DRUMMOND: RNP has no objection to the
 11 motion.

12 JUDGE TOREM: All right. And Ms. Strand?

13 MS. STRAND: We have no objection also.

14 JUDGE TOREM: Are there any other parties
 15 that I missed that want to voice no objection or any
 16 objection at this time?

17 Councilmembers, it sounds as though the
 18 parties then are okay with the motion for a continuance.
 19 We wanted to address that concern and ensure that no party
 20 would be unduly prejudiced if the motion were granted,
 21 especially in light of the Council's not granting any of
 22 the other motions for stay on any of the other grounds.
 23 Council is from the discussions we've had
 24 apparently in agreement for the SEPA process to give the
 25 greatest amount of public involvement to this issue and

Page 17

1 also because much of what's in the Draft Supplemental EIS
 2 could be very relevant to the request for preemption, and
 3 that that is a hotly contested issue being presented
 4 perhaps on the merits for the first time in the history of
 5 EFSEC that the matter be allowed for further public
 6 comment.

7 So, Councilmembers, is there a motion to
 8 grant the continuance, not to a date certain, but just to
 9 grant the continuance?

10 MR. IFIE: I so move.

11 MS. TOWNE: I second.

12 JUDGE TOREM: Moved by Mr. Ifie and seconded
 13 by Councilmember Adelsman – or by Ms. Towne. Any other
 14 discussion on this necessary, Councilmembers?

15 CHAIR LUCE: Call for the question.

16 JUDGE TOREM: All in favor?

17 COUNCILMEMBERS: Aye.

18 JUDGE TOREM: It's unanimous then. The
 19 continuance, stay, postponement, whatever label one wants
 20 to put on it is granted.

21 So, Mr. Peeples, your motion is granted.
 22 Now we'll discuss the impact of that, and, Mr. Hurson,
 23 your motion as regard to the first phrasing of Paragraph 7
 24 to stay the proceedings is granted again in the form of a
 25 continuance as you've indicated it's maybe in this case a

1 distinction without a difference.
 2 Let's talk about when then. Council has
 3 taken the liberty of anticipating that this may occur
 4 today and taken a look at adding two dates to the hearing
 5 schedule. Currently there are ten days scheduled in the
 6 next two weeks. We need to confirm that facilities would
 7 be available in the City of Ellensburg and that all of you
 8 might confirm your witnesses will be available at some
 9 point during these following 12 proposed days.
 10 First, our group of three days, September
 11 27, 28, and 29. That's a Monday, Tuesday, and Wednesday.
 12 The hearing would then stop on Wednesday. My
 13 understanding is that Thursday morning, the 30th of
 14 September, for those parties involved in the Applicant's
 15 Wild Horse Project there may be scheduled, if it's not
 16 already, may be finalized a prehearing conference, and
 17 there would be intervention issues in that case the
 18 following morning on Thursday, September 30.
 19 Ms. Makarow, is that already scheduled?
 20 MS. MAKAROW: No, that is not scheduled yet.
 21 JUDGE TOREM: But that is a time it may
 22 occur, the following morning, so that's one of the reasons
 23 for the Council not to go on to Thursday the 30th. But it
 24 would be three days that week, then five days the week of
 25 October 4. So October 4 would be the fourth day of the

1 hearing, and it happens to coincide with the calendar, the
 2 fifth day of the hearing would be the fifth and so on
 3 through Friday the 8th. And then four additional days the
 4 following week beginning on Monday, October 11, and the
 5 last date being allocated to the hearing as the 12th day
 6 would be October 14, a Thursday.
 7 So you should have again for clarity, three
 8 days September 27, 28, and 29; Monday through Wednesday,
 9 five days, October 4 through 8; and then four additional
 10 days, October 11 through 14, all in 2004.
 11 To the Applicant, Mr. Peeples, are you
 12 immediately aware of any conflicts for any of those dates?
 13 MR. PEEPLES: We haven't check with our
 14 witnesses, but I believe we should be fine. We may have
 15 to jockey things around. I'm just concerned about the
 16 witness from Denmark. I think everybody else should be
 17 okay.
 18 JUDGE TOREM: Mr. Lane, Counsel for the
 19 Environment, have any concerns about the new schedule as
 20 proposed?
 21 MR. LANE: I'm unaware of any conflicts at
 22 this time.
 23 JUDGE TOREM: I recognize for all parties
 24 that if you're unaware of a conflict today the light bulb
 25 proverbially goes on as soon as you get back to the

1 office, so we need to know preliminarily today if you know
 2 of any conflicts that would be potentially a reason to
 3 consider alternate dates. But we'll give some time in the
 4 next 24 to 48 hours to filing any written objections to
 5 the proposed schedule and determine how we are going to
 6 rule on those or if they can be accommodated.
 7 Let's go down list then. Kittitas County,
 8 Mr. Hurson, are you available those two weeks?
 9 MR. HURSON: I'm not in my office. I don't
 10 have my full calendar, but I don't think there's a
 11 conflict with Mr. White's availability. I believe that I
 12 have Superior Court arguments on the 7th and 8th, and I
 13 think both of them involve Mr. Carmody, so he probably has
 14 the same conflict. At least one of them I believe
 15 involves Mr. Slothower.
 16 JUDGE TOREM: What time would your arguments
 17 be scheduled? Are they in the afternoon or are they in
 18 the morning?
 19 MR. HURSON: I don't remember which part of
 20 the day it is. I know they're half-day arguments, and I
 21 don't know if they're in the morning or in the afternoon.
 22 I don't know if they're movable. I guess if you're going
 23 to look at those dates, perhaps we could try to work with
 24 the Court to see if we could move those. But I believe
 25 those were dates that took quite a while to get scheduled

1 Mr. Carmody's assistant may have better information on
 2 that.
 3 MR. SLOTHOWER: Your Honor, this is Jeff
 4 Slothower. There is a hearing on the 7th that
 5 Mr. Carmody, Mr. Hurson, and myself are involved in. It
 6 commences at 1:30. It's in Yakima County Superior Court.
 7 There is another argument set for Friday, October 8, again
 8 in Yakima County Superior Court that begins at 9:30 and is
 9 set for a half-day hearing.
 10 MR. CARMODY: That's correct.
 11 JUDGE TOREM: So there's potential problems
 12 for the afternoon of the 7th and the morning of the 8th.
 13 MR. SLOTHOWER: Yes.
 14 MR. CARMODY: Your Honor, this is Jamie
 15 Carmody. Also I have a trial scheduled in Yakima County
 16 Superior Court September 29 and September 30.
 17 JUDGE TOREM: So yours would be potentially
 18 affected on Wednesday the 29th.
 19 MR. CARMODY: Yes.
 20 JUDGE TOREM: All right. Mr. Carmody, do
 21 you know if you're planning to file any motion to
 22 intervene in the Wild Horse matter?
 23 MR. CARMODY: I'm sure that we will, yes.
 24 JUDGE TOREM: So we will take that into
 25 consideration for scheduling that prehearing conference as

1 well.

2 MR. WHITE: Mr. Torem, this is Clay White.

3 JUDGE TOREM: Yes, sir.

4 MR. WHITE: If we're scheduling any type of
5 evening comment meetings, the 27th is our regular Planning
6 Commission meeting, September 27 and October 13 is the
7 Board of Adjustments, and that's all that I have right
8 now.

9 JUDGE TOREM: Our thoughts, Mr. White, would
10 have been to look at a public comment meeting the week of
11 October 4 and an appropriate date so that we would be able
12 to get the hearings rolling and then take public comments
13 once issues are already being discussed. So it sounds
14 like that would meet the County's already prescheduled
15 meeting needs.

16 MR. WHITE: That sounds pretty good. On the
17 28th also as Zilkha Renewable Energy has filed for a text
18 amendment to our zoning code, and preliminarily the 28th
19 was going to be that hearing date.

20 JUDGE TOREM: All right. We've been made
21 aware of that as well.

22 MR. CARMODY: This is Jamie Carmody. Did I
23 understand that you were looking at the evening of October
24 4?

25 JUDGE TOREM: One day during that week.

1 MR. CARMODY: Monday, October 4, I have
2 hearings in the City of Zillah.

3 JUDGE TOREM: Okay. We'll take that into
4 consideration.

5 Let me ask then, Gentlemen, that those
6 proceedings that are scheduled on October 7 and October 8
7 that you approach the appropriate court and ask for its
8 courtesy given the bulk of this hearing.

9 Mr. Hurson, I'm going to ask that you had
10 asked for a stay, and I know that the County is not --
11 well, the County is involved in this you've said. As it
12 turns out all three of you gentlemen that asked for stays
13 and have now gotten it in some form have to deal with the
14 consequences of it. So I'd ask that you go to your
15 respective courts and see if you can be made free for
16 these dates that are scheduled. For those dates that you
17 can't, I don't need a written order from the Court telling
18 me they couldn't accommodate. Certainly I think an
19 Administrative Law Judge has to know their place with the
20 Superior Courts, but nonetheless I'd appreciate hearing
21 back from all of you in some sort of email saying that
22 you've approached the judge or judges, made the request,
23 and gotten a response if it can be accommodated. I know
24 you have other clients in those matters as well whose
25 interests are affected by making such a request, and I

1 expect your professional duties include going to your
2 client to seek permission to move their interest back in
3 favor of these other issues before EFSEC.

4 I am not particularly worried about the
5 delays that I've heard so far. Are there any other
6 parties that see show-stopping delays here for this set of
7 12 days?

8 Hearing none, -- and I don't mean to offend
9 any of the parties. What I'm looking at is the proposed
10 witness schedules that came in yesterday as well I think
11 it was, and they look as though the hearing might be done
12 in less than ten days. Depending on the amount of
13 testimony that comes in as additional testimony regarding
14 the Supplemental DEIS we very well won't need all 12 days.

15 So come back to me, Gentlemen, and hope that the judge
16 moves the case, so we can do these days as close in
17 sequence as possible. But there is some optimism if we
18 had the three days of the week of September 27th, five
19 days the following week, it's entirely possible we could
20 be done and not need to come back the week of October 11.
21 Noting that there's no proposed conflicts or noted
22 conflicts as of today for that week, it could be that if
23 we cannot accommodate with the Superior Courts moving some
24 trial dates around, it appears that we might be able to
25 come back and move along and just spill over and finish in

1 those extra days. This is one of the reasons we wanted to
2 propose 12 days as opposed to 10 that were already there,
3 so that we had a chance if we can only go four days the
4 week of October 4 or three and a half, whatever it's going
5 to be, we can accommodate doing this all in one stretch as
6 opposed to getting into too late in October.

7 Mr. Hurson, you have indicated it won't be a
8 conflict other than what you've noted. The County has
9 before it another wind farm project, Desert Claim. Are
10 any hearings scheduled on that as well?

11 MR. WHITE: This is Clay White. At this
12 time we're going to be going the last two weeks of
13 October.

14 JUDGE TOREM: So there's incentive for us to
15 complete this by the 14th of October to allow the County
16 to take up its own process; is that right, Mr. White?

17 MR. WHITE: Yes, it will be taking it up. I
18 think regardless of schedule that's when those hearings
19 are looking at going right now. We're going to have our
20 Final EIS out on Monday, so that's when we're scheduling
21 at this time. Obviously any nonappeal we could have the
22 hearings earlier, but at this point we're looking at the
23 last two weeks of October.

24 JUDGE TOREM: So you would be scheduled to
25 begin on October 18?

1 MR. WHITE: That's what we're looking at
2 right now.

3 MR. HURSON: Tentatively we're looking at
4 it. We're scheduled to issue our Final EIS Monday, and
5 that's what it looks like, and we're trying to kind of
6 clear the schedule for our boards of commissions right
7 now. I guess if what you're asking is does the schedule
8 you have talked about is it going to interfere with the
9 schedule we're looking at for EnXco project, no, it
10 doesn't interfere with it.

11 JUDGE TOREM: Excellent.
12 Mr. Usibelli.

13 MR. USIBELLI: I just wanted to note that I
14 would not be available on the 28 and 29, but that
15 shouldn't be a show stopper. I'm available for other
16 dates.

17 JUDGE TOREM: Right. So scheduling
18 Mr. Usibelli's witness testimony would not be the 28th or
19 the 29th of September. And depending on the issues what I
20 see, Mr. Peeples, is we originally had talked about the
21 schedule next week Monday and Tuesday going a day and a
22 half on the proposed preemption issue, and then with the
23 Draft SDEIS coming out and adding potentially additional
24 information to that third prong of the administrative code
25 provision regarding the requirements for preemption to be

1 approved and recommended by the Council that that may add
2 some time to that portion of the hearing. So perhaps that
3 first three days in September would be where you might aim
4 to address the preemption issue presuming that all the
5 appropriate witnesses are available those three days.

6 Now I'm more concerned about Mr. Carmody's
7 availability on the 29th, but it may be, Mr. Carmody, that
8 if we don't take up any of the issues that's within the
9 scope of your petition for intervention your absence can
10 be excused for that date and perhaps another member of
11 ROKT or they may be able to use another attorney from your
12 office as legal counsel that day that the hearing need not
13 be postponed for that three-day block for this trial that
14 you would have beginning that day. What's your thought on
15 that, Mr. Carmody?

16 MR. CARMODY: We can look at that.

17 JUDGE TOREM: I appreciate your willingness
18 to accommodate that. I don't know the exact substance of
19 your petition for intervention, but whether it would be
20 something you could handle maybe your cross-examinations
21 could be scheduled for Monday and Tuesday as appropriately
22 and then Wednesday Mr. Garrett or Mr. Robertson would be
23 given some latitude in being able to formulate some
24 questions. I have done it in the past for pro se clients
25 appearing in front of me in other matters formulate

1 questions on their behalf once I understand exactly what
2 it is they might want to inquire into.

3 MR. CARMODY: We would be happy to work on
4 that.

5 JUDGE TOREM: Excellent. So it sounds as
6 though the first three days we can go ahead, and the
7 Council will be able to schedule those, and then we will
8 find out what's going to happen on October 7 and 8, and
9 the schedule sounds like it's going to work.

10 Was somebody else just joining the call or
11 was that a drop off calling back in?

12 Must have been dropping back off.

13 All right. Are there any other issues as to
14 the schedule as proposed? Then it will stand as September
15 27, 28, and 29 followed by a full week of hearing on
16 October 4 through 8 unless the Council determines based on
17 Mr. Hurson, Mr. Lathrop, and Mr. Carmody's efforts to move
18 their various proceedings on the afternoon of the 7th and
19 8th, we may be able to accommodate those. The remaining
20 dates as necessary will be the week of October 11, and we
21 will run until the hearing is done on or about before
22 October 14.

23 For Mr. Hurson, Mr. Carmody, and
24 Mr. Slothower, if you will please file something with us
25 no later than Friday of this week. That should give you

1 sufficient time to talk to the judges in those cases and
2 get back to us. That would be appreciated, and the
3 Council will plan then next week to issue a new notice of
4 hearing with sufficient time and notice as required by our
5 statutes and regulations.

6 There is one other portion of the
7 Applicant's motion to continue that still needs to be
8 dealt with, and that is the requirement or the request
9 that additional prefiled testimony and exhibits be allowed
10 and be filed limited to the SDEIS and its alternative
11 off-site locations.

12 Mr. Peeples, can you speak to that a little
13 bit more as to what you might think -- I know not having
14 seen the document -- what scope of additional testimony
15 you're asking be allowed?

16 MR. PEEPLES: Without seeing it, I really
17 don't know myself. It seems to me the parties had a
18 chance to comment with regard to the DEIS itself. So if
19 for any reason I would say that this raises something that
20 a party would want to address by testimony, that it could
21 be appropriate to do that, and I say that also
22 understanding that the SEPA process is a separate process
23 and probably that you would not cause any legal problems
24 to do that. But I think the Council's operated for years
25 with a DEIS out before the hearing, and I'm trying to keep

Page 30

1 it consistent with the past practice probably since '96.
2 I have no idea what that testimony would be, but it would
3 have to be related to the alternative site analysis.
4 JUDGE TOREM: Would you be able to file any
5 prefiled testimony as necessary by September 7, which
6 would be 30 days or so from now?
7 MR. PEEPLES: Yes. I don't know if we would
8 even file testimony ourselves. We reserve the right, but
9 I don't even know if we would file any testimony
10 ourselves.
11 JUDGE TOREM: Mr. Hurson. Are you still out
12 there, Mr. Hurson?
13 MR. HURSON: Yes, I am.
14 JUDGE TOREM: I wanted your opinion as to
15 let's assume the Applicant filed some additional prefiled
16 testimony in relation to the SDEIS on September 7, which
17 is the Tuesday after the Memorial Day weekend.
18 MS. TOWNE: Labor Day.
19 JUDGE TOREM: Sorry. Labor Day. I can
20 never get those two right.
21 Thank you, Ms. Smith Towne.
22 Is there any indication you could give us as
23 to how long it would take the County to put together any
24 additional prefiled testimony I assume of Mr. White or if
25 there is any other witness you might think of as to an

Page 31

1 alternative off-site analysis witness that may be
2 appropriate?
3 MR. HURSON: Again, not knowing what it says
4 or what it's going to do if you're going to give
5 Mr. Peeples until say the 7th, maybe we could try to get
6 ours filed by the 17th or before the 20th.
7 MR. PEEPLES: Your Honor, our request and
8 our idea would be everybody to file simultaneously, so it
9 just comes in.
10 JUDGE TOREM: Maybe that's what we could do.
11 I was trying to think if we would have time to go through
12 the Applicant's testimony, then response testimony, and
13 then as necessary any rebuttal. If we can work that, I
14 would be happy to allow it. But it doesn't necessarily
15 mean that if the Applicant chooses not to file something
16 that the other parties are precluded, but I wanted to be
17 able to offer the Applicant and the other parties
18 opportunity for rebuttal testimony, if necessary.
19 Mr. Hurson essentially pegged the date I was looking at
20 with maybe ten days later of the 17th and rebuttal
21 testimony due sometime in the middle of the following
22 week, but that would be very tight. Perhaps it's better
23 to have everybody file their prefiled testimony on the
24 10th and have rebuttal testimony due on the 20th.
25 Mr. Hurson, what do you think of that?

Page 32

1 MR. HURSON: You mean so all parties file
2 initial and then all parties file rebuttal.
3 JUDGE TOREM: That would be what I'm
4 suggesting on the 10th and on the 20th.
5 MR. HURSON: I think I can work that out. I
6 think it's important for the process for people to have a
7 chance to respond, to flush out the issues. So I didn't
8 want to have a simultaneous filing with no chance to
9 rebut, but as long as -- I guess it could make sense that,
10 yes, if all parties filed initial by the 10th and then
11 everybody has to file a response by the 20th. If they
12 want to file a response to anybody else that seems to
13 work.
14 JUDGE TOREM: I believe that Friday is
15 September 10, and that it would be a Monday for September
16 20; is that correct? Does anybody know?
17 MR. HURSON: That's what I have.
18 MR. CARMODY: Would that be electronic
19 filing on those too? Because if it's not electronic
20 filing for those of us on this side of the state, that
21 really is about a one week response period for the
22 rebuttal.
23 JUDGE TOREM: That's fine.
24 MR. PEEPLES: I would like to point out that
25 when things are filed it's on the website that day.

Page 33

1 JUDGE TOREM: I was going to note that. I
2 appreciate you pointing it out.
3 I believe, Ms. Makarow, correct me if I'm
4 wrong as we receive filings they are posted.
5 MS. MAKAROW: Staff makes all attempts to
6 get them posted as close to five o'clock the day they are
7 received.
8 JUDGE TOREM: What's our staff's success
9 rate in your estimation over the last 30 days?
10 MS. MAKAROW: Eighty percent.
11 JUDGE TOREM: That other 20 percent how soon
12 after five o'clock on the day of filing are they on the
13 website?
14 MS. MAKAROW: By the next day.
15 JUDGE TOREM: For those of you and I've read
16 a certain amount of whining as to who got served what when
17 and the mail seems to be slower on the east side of the
18 mountains, I don't buy it. We'll just put that clearly on
19 the record. There's plenty of places to get information.
20 If you know there's a filing and its due, and you think
21 you're waiting for the hard copy, there's plenty of other
22 ways to get it. If there's not, let me know, and we will
23 get it to you.
24 MR. CARMODY: Your Honor, that was not my
25 question. What we had been instructed to do was to have

1 the hard copies in your office on the filing date, so if
2 it was September 20, we were required to have that out of
3 here by express mail on the Friday before that.

4 JUDGE TOREM: Right. I understand,
5 Mr. Carmody. That's a little bit of a separate issue, and
6 I don't mean to direct that comment at you or if it's
7 meant to be directed at you, it shouldn't be directed at
8 you alone.

9 MR. CARMODY: I don't care if it's directed
10 at me.

11 JUDGE TOREM: What I'm saying is, yes, you
12 may avoid that type of advance express mailing which cuts
13 days off your deadline. You can file it electronically
14 and serve it on all the parties by email. I know there's
15 a few parties that are having some difficulty with email.
16 I believe that was at Mr. Slothower's office or perhaps,
17 Mr. Anderson, have you solved your email difficulties in
18 the building?

19 MR. ANDERSON: We believe we have, yes, sir.

20 JUDGE TOREM: Unless Mr. Anderson tells you
21 differently, he's back on line.

22 Mr. Slothower, have you been receiving any
23 emails this week?

24 MR. SLOTHOWER: Yes, I have.

25 JUDGE TOREM: Let's presume then, folks,

1 that if you're going to file prefiled testimony, you can
2 send it by email along to all the other parties and to
3 Ms. Makarow, and she will put it on the Council's website
4 that day or the next morning. So look for things on the
5 website on Friday, September 10 or the following Monday
6 morning at the latest. I don't expect Ms. Makarow to be
7 here over any weekends. And on the 20th, on Monday, check
8 the website on the 21st, and that will be the last filing
9 and all chances in this case.

10 Motions to strike as necessary I think will
11 have to be filed by the 23rd which is Thursday. It's
12 probably much more than long enough. So if there's going
13 to be any motions to strike on those documents, let's have
14 them by Thursday the 23rd. I will probably unfortunately
15 not be able to announce a ruling on that until the first
16 day of the hearing, and this could impact witnesses that
17 are being called the second and third day of the hearing
18 it sounds like because they might be preemption witnesses.
19 But I think in the balance of sanity that's all I can
20 promise you is a ruling in advance Monday morning say the
21 following witnesses that have been added will or won't be
22 allowed to testify.

23 Any questions on that, Mr. Peeples?

24 MR. PEEPLES: I want to make sure we got
25 this straight because there was some misunderstanding

1 before on the service, and I wasn't trying to hold
2 anything back from anybody. I look at the website the day
3 or the day after, and that's where usually I pull my
4 copies out even before I get the hard copies. I didn't
5 understand, and I still don't recall the hearings officer
6 saying to file electronically, and I'm a bit confused with
7 the hearings officer's ruling. Are we to file
8 electronically everybody or is that an option?

9 JUDGE TOREM: Mr. Luce, as Chairman do you
10 see a need to file hard copies at this stage for the
11 limited proceedings that might still come in or will we
12 allow --

13 CHAIR LUCE: I would say it's an option.

14 MR. PEEPLES: I understand the parties from
15 Kittitas County difficulty trying to supply hard copies,
16 and I support that. It's much easier for me to walk down
17 and file it than for him.

18 JUDGE TOREM: I think unless, Ms. Makarow,
19 you have a reason not to that the simple sending of this
20 electronically at this late stage in the game will be
21 fine. We'll distribute it electronically to the Council
22 and hard copies can be sent in a limit number as necessary
23 to the Council by first class mail thereafter.

24 MS. MAKAROW: I think that would be
25 appropriate.

1 CHAIR LUCE: On reflection I think
2 uniformity is probably a good idea. If everybody files
3 electronically that's probably the easiest way and that
4 way there's no confusion.

5 JUDGE TOREM: So to be clear, it must be
6 delivered electronically on the due dates of September 10
7 and 20 and for the motions on September 23. I suppose
8 that if there's responses to the motions, they'll have to
9 be the next day, September 24. All of those will be filed
10 electronically. If you choose not to file electronically,
11 then you will assume the burden of delivering the hard
12 copies by five o'clock on that date to Olympia. So for
13 some reason your computer goes toes up on the morning of
14 the due date, and you can't find an alternate, get it here
15 by five o'clock that day or it will be untimely.

16 MR. HURSON: Judge Torem, Jim Hurson. As
17 far as the filing I understand. I think it makes sense to
18 do the electronic filing say by September 10. That also
19 means that the service be done electronically. Because if
20 the filing happens --

21 JUDGE TOREM: That's what I'm saying,
22 Mr. Hurson, if I haven't been clear. You can file it at
23 EFSEC and serve it on all the other parties
24 electronically. There's no need for you to put a hard
25 copy in the mail for your prefiled testimony for September

1 10 or your rebuttal testimony September 20 or for your
2 motions to strike or responses thereto on those other two
3 dates of September 23 and 24. So filing and service for
4 these four items only are clearly authorized. There is no
5 need to file or serve in the hard copy format.

6 Now Councilmember Adelsman mentions just now
7 that could be by fax as well. So if for some reason
8 electronic is not working for email, I think we're all
9 discussing facsimile would also be an acceptable way to
10 go. But, of course, there would be several more buttons
11 to push for all of you.

12 MR. HURSON: Jim Hurson again. Maybe I'm
13 not speaking clearly. I guess what I'm asking is if there
14 could be a directive that it could be either hard copy,
15 fax, electronic, or whatever, but all the parties have to
16 should be receiving them by that deadline.

17 JUDGE TOREM: Exactly correct.

18 MR. HURSON: Not mailed on the 10th and it
19 and doesn't get there until the following Monday. If they
20 want to drop a hard copy off at my office, that's fine.
21 If they want to me email it to me, that's fine.

22 JUDGE TOREM: Excellent.

23 MR. HURSON: Okay.

24 JUDGE TOREM: As long as those are receipt
25 dates, and they can be received electronically, by fax,

1 Pony Express, whatever you want to use. Get it there on
2 those dates.

3 MR. HURSON: Thank you, sir, because we need
4 it that weekend.

5 JUDGE TOREM: Mr. Anderson, you had
6 something else that you had your hand up a little while
7 ago.

8 MR. ANDERSON: That answered my question.

9 JUDGE TOREM: All right. Mr. Peeples.

10 MR. PEEPLES: There are some people whose
11 email still come back, and I guess I think like a backup
12 -- it needs to be emailed to everybody. But in the event
13 you don't get it, those copies should be available on the
14 website immediately. So I don't know how you're going to
15 work that. I'm just always a bit leery about emails going
16 astray. I think we're all dealing with the one list. One
17 of the things that would be appreciated if maybe the
18 Council could distribute the two in the email in a form so
19 that we know when we click and drag that we are getting
20 everybody. Are you following me on that?

21 JUDGE TOREM: I am. If I understand your
22 request you're asking for Ms. Makarow or someone else on
23 the staff to send a --

24 MR. PEEPLES: An acceptable list so that we
25 know when we do it we've got it done.

1 JUDGE TOREM: All right. I think that can
2 be done certainly prior to the need for any further filing
3 on September 10, but there's plenty going on here at this
4 time. It will be a few weeks before Ms. Makarow gets to
5 that, but she will send all of you an email and probably a
6 hard copy by mail with the current email list. If any of
7 you need to make a correction to that, to what might be on
8 the service list now, it would be appreciated if you
9 update that with Irina Makarow as soon as possible.

10 CHAIR LUCE: As long as we're talking
11 technology, which I'm not really qualified to talk about,
12 Power Point and Windows I've learned there's a difference
13 between the two, and so some people have one and some
14 people have the other and some people have both. So I
15 don't know. We operate on the PDF Windows.

16 MS. MAKAROW: Councilmembers don't have to
17 worry because I do whatever translation needs to be done
18 to satisfy Councilmember needs.

19 CHAIR LUCE: I received them on Power Point
20 in which case all is lost.

21 JUDGE TOREM: I think the PDF is the most
22 universal format.

23 MR. PEEPLES: That's one concern when I sent
24 out that proposed schedule I had it on Excel, not Power
25 Point but Excel, and I think that's probably what you're

1 referring to.

2 CHAIR LUCE: No, actually it's not.

3 MR. PEEPLES: Did anybody on line have
4 difficulty opening the Excel schedule I sent out? I
5 didn't hear any response on it. I had a concern when I
6 sent that out some people may not of had Excel.

7 CHAIR LUCE: Irina translated it to PDF.

8 MR. PEEPLES: Okay.

9 CHAIR LUCE: Anyway enough said.

10 JUDGE TOREM: Just to sum up then I'm going
11 to tell you everything we did today one more time. I
12 think it's the military guy in me to tell you what you're
13 going to do, tell you to do it, and then tell you what you
14 did.

15 We denied Mr. Lathrop's motion. It's
16 already going to be in writing and on the website today.
17 Check the website. We denied Mr. Carmody's motion on
18 behalf of ROKT. We denied the majority of Mr. Hurson's
19 motion on behalf of the County granting only in
20 conjunction with the Applicant's motion for a continuance
21 that portion of Ground No. 7 which requests a stay in
22 order for the parties to take into account a Supplemental
23 Draft EIS which is planned to be issued tomorrow on
24 Wednesday, August 11.

25 With that in mind, the hearing has been

Page 42

1 rescheduled, and the dates, and I think I can call them
2 more than tentative now, will be of these 12 dates the
3 Monday through Wednesday, September 27 to 29, 2004
4 resuming the following Monday, October 4, and then going
5 all that week through October 8 unless we hear otherwise
6 from several counsel who have expressed conflicts on the
7 afternoon of the 7th and the morning of the 8th. Even
8 with those conflicts it may be necessary to resume the
9 hearing for four more days the week of October 11 through
10 14. Somewhere within those dates we should be able to
11 complete the proceedings. We'll issue another order
12 rescheduling it once we've heard back from those counsel
13 who are Mr. Hurson, Mr. Carmody, and Mr. Slothower about
14 proposed conflicts on those dates. I note here also
15 Mr. Carmody may have a conflict on September 29, but that
16 should be something we can work around.

17 Now, prefiled testimony to sum up on the
18 SDEIS, and, again, I want to be clear now. It will be
19 limited in scope as to what can be brought up. So for
20 those of you whose motions to have additional rebuttal
21 testimony were denied today, please do not try the Trojan
22 horse approach as bringing it in through this new and very
23 limited approach for rebuttal or nonrebuttal but new
24 prefiled testimony related to what is in the SDEIS coming
25 out tomorrow.

Page 43

1 I don't want a lot of motions to strike, but
2 I will grant a lot of motions to strike if the testimony
3 is outside the scope as I've just described, and I will
4 leave it to your judgment to say is it within the scope of
5 the SDEIS. I know there's creative ways to bring it
6 within the scope. Do it or don't at your peril.

7 Prefiled testimony for all parties, the
8 Applicant and all intervenors and Counsel for the
9 Environment as a statutory party, is due to be
10 electronically filed and served September 10, 2004.
11 That's a Friday. Filing can be electronically, by fax, by
12 email, or it can be actually hard copy served, but it must
13 be served and filed on September 10.

14 September 20 is the deadline for any
15 rebuttal testimony, and that is a Monday. Same filing and
16 service rules apply. If there are motions to strike they
17 will be under the same filing and service rules due
18 September 23 and responses to those motions to strike
19 September 24.

20 Which means if there are those motions, the
21 ruling will not occur until the first thing on Monday
22 morning September 27. We will hold an additional
23 prehearing conference prior to the adjudication beginning.
24 We will stick probably to the same 8:30 a.m. beginning,
25 whether that's for the prehearing conference or the

Page 44

1 adjudication remains to be seen.

2 Councilmembers, is there anything else they
3 needed to address at today's prehearing conference?

4 MR. SLOTHOWER: Judge Torem, this is Jeff
5 Slothower. I have a question.

6 JUDGE TOREM: Hold that question for a
7 moment. Let me get back responses from Councilmembers.
8 Councilmembers, anything else?

9 MS. ADELSMAN: Are we still doing September
10 30 for Wild Horse?

11 JUDGE TOREM: That has yet to be set, and
12 Ms. Makarow will look at that prehearing conference for
13 the Wild Horse matter later.

14 MS. ADELSMAN: And then the public hearing
15 we'll set it up later.

16 JUDGE TOREM: Yes. Let me be clear also.
17 There is a public hearing that has not been continued.
18 It's not the subject of these matters. It's for Tuesday
19 evening, August 24. That's to take comment I believe on
20 the Draft Environmental Impact Statement for Wild Horse.
21 So those of you that are crossing that evening off your
22 calendar are mistaken. It's a separate proceeding, and
23 there's no motion to continue that. The Council will be
24 in Ellensburg on Tuesday, August 24 and possibly, possibly
25 for Wednesday, August 25 for the comment on the SDEIS.

Page 45

1 That remains to be announced, but the August 24 date in
2 the evening should not be removed from your calendars.

3 Mr. Slothower, you had a question.

4 MR. SLOTHOWER: Yes. Several prehearing
5 conferences ago the Applicant indicated that there was a
6 potential settlement with Intervenor Hall.

7 JUDGE TOREM: Yes, that's correct.

8 MR. SLOTHOWER: She has not participated in
9 any hearings for some time, and I'm curious as to the
10 status of that matter.

11 MR. PEEPLES: It's still in progress. I
12 don't have the details right now. I don't think it's been
13 formalized. I think the agreement has been done, and I'm
14 not sure if it's been signed or not. I will get a hold of
15 you as soon as I hear. I will give you a call.

16 MR. SLOTHOWER: Okay.

17 MR. HURSON: Jim Hurson. I had a couple of
18 questions too about different issues.

19 JUDGE TOREM: Go ahead, sir.

20 MR. HURSON: One of them I know we continued
21 the hearing date. I take that also continues the public
22 comment. I think there was a meeting for public comment.
23 I think it was on the 19th or something like that.

24 JUDGE TOREM: That is correct. That public
25 comment session which was going to be held during the

Page 46

1 hearing is probably going to be reset for sometime during
2 the week of October 4. It won't be on Monday night to
3 accommodate Kittitas County's prescheduled meetings.
4 Mr. White said something about that night. I don't
5 remember what it was.
6 MR. HURSON: I just want to be able if
7 people ask us, we can tell them that night meeting is
8 being reset too.
9 JUDGE TOREM: Yes. Thank you, Mr. Hurson,
10 for bringing that up.
11 Mr. Anderson from Community, Trade and
12 Economic Development.
13 MR. ANDERSON: That was my question.
14 JUDGE TOREM: That was your question. There
15 we go. We're all thinking alike here.
16 MR. HURSON: This is Jim Hurson. I had one
17 other question just for clarification on the process. I
18 know you denied the motions about us filing additional
19 prefiled response testimony, but I'm just wondering as far
20 as what the process would be for I guess you would call it
21 surrebuttal.
22 JUDGE TOREM: There was going to be no
23 surrebuttal. We addressed that at a prehearing conference
24 I think back in February, so there is no further
25 opportunity for that, Mr. Hurson. If you're creative

Page 47

1 enough to find a way to work into what's necessary with
2 the SDEIS, more power to you. If not, then those
3 witnesses will not come on.
4 MR. HURSON: I am not trying to be creative
5 to try to sneak something in under a different process. I
6 mean typically you have case in chief, response, replies,
7 rebuttal, surrebuttal.
8 JUDGE TOREM: This is not your typical case.
9 We discussed it back in February and ruled otherwise.
10 MR. HURSON: Okay.
11 JUDGE TOREM: Mr. Peeples.
12 MR. PEEPLES: I just want to get one more
13 clarification with regard to the electronic filing and
14 service. I am taking that to mean on those dates given
15 the 10th and the 20th and I guess the 23rd is the other
16 day or whatever the other date is that we're talking about
17 by five o'clock business hours specific daylight time; is
18 that correct?
19 JUDGE TOREM: That is correct. We're not
20 moving the clocks until later on.
21 MR. PEEPLES: I don't care if it's six
22 o'clock or whatever. I just want to make sure there is a
23 time certain. If somebody wants a different time, that's
24 fine with me.
25 JUDGE TOREM: Is five o'clock okay with all

Page 48

1 the parties for a filing deadline or those given dates?
2 MR. HURSON: That's fine.
3 JUDGE TOREM: Five o'clock it is.
4 Mr. Anderson.
5 MR. ANDERSON: Just one other question. Is
6 Mr. Peeples still putting together what would be the
7 witness schedule?
8 JUDGE TOREM: Yes. I take it with a
9 continuance being granted that once the dates and order is
10 issued with the exact dates, he will then reschedule.
11 There's no reason to restart that process now because we
12 don't know if the 7th and 8th will actually be used in
13 whole or in part. But the first three days of the hearing
14 looks like other than accommodating Mr. Carmody's need for
15 any cross-examination on witnesses not to occur on
16 Wednesday, we will be okay on starting the schedule and
17 getting a draft going that far.
18 MR. PEEPLES: Is there a date that you would
19 submit to me as a due date for that? I operate better
20 that way. What about September 1st? Would that be okay?
21 I don't care.
22 JUDGE TOREM: The only thing you won't know
23 includes asking for any witnesses to be added on the 10th,
24 so perhaps September 13. You will have worked all the
25 witnesses except those that might be added. And for those

Page 49

1 of you that know you're going to do prefiled testimony but
2 you don't know exactly what it's going to say, please do
3 the courtesy of letting Mr. Peeples know you're adding a
4 witness and tell the rest of the parties as well. You
5 don't have to tell them anything other than here's another
6 witness, and it might be how many pages of prefiled, so we
7 can start thinking about cross-examination.
8 Mr. Taylor.
9 MR. TAYLOR: Judge Torem, one other point on
10 the witness schedule. Well, I think for most of us who
11 are going to be present or readily available as witnesses
12 that kind of time line is very reasonable. For certain
13 witnesses I guess particularly in our case where we're
14 bringing people from a long distance away if we can give
15 them more than three weeks notice when we want them.
16 They're going to have to fly across the country or across
17 the continent.
18 JUDGE TOREM: Let me say this, Mr. Taylor.
19 You've got three dates at the beginning part of September
20 now pretty well firm that we know we're not going to
21 change and three days the beginning of the next week
22 pretty well firm that we're not going to change. So those
23 six days if you want to pick the best for that witness
24 even if it's out of order we can work with.
25 MR. TAYLOR: Thank you. That's what I was

1 going ask to for.
 2 JUDGE TOREM: I think in general we're
 3 looking at having the hearing scheduled as we discussed
 4 last Monday on topics and as best in order as we can.
 5 Folks, I know there may be some additional
 6 questions, but EFSEC does have another prescheduled
 7 hearing at two o'clock, so I need to adjourn this
 8 prehearing conference. Are there any pressing matters
 9 that need to be taken up on the record with all the
 10 parties today that would merit having everyone hang
 11 around, let EFSEC discuss its rules in a public meeting,
 12 only recessing this prehearing conference and reconvening
 13 it?
 14 I think everybody understood by the tone of
 15 that the appropriate answer is no, so now this prehearing
 16 conference is adjourned.
 17 * * * * *
 18 (Whereupon, the prehearing conference was
 19 adjourned at 2:03 p.m.)
 20
 21
 22
 23
 24
 25

1
 2
 3
 4
 5 A F F I D A V I T
 6
 7 I, Shaun Linse, CCR, Certified Court Reporter,
 8 do hereby certify that the foregoing transcript
 9 prepared under my direction is a true and accurate
 10 record of the proceedings taken on August 10, 2004,
 11 in Olympia, Washington.
 12
 13
 14
 15 _____
 16 Shaun Linse, CCR
 17 CCR NO. 2029
 18
 19
 20
 21
 22
 23
 24
 25