BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of: )
Application No. 2003-01 )
SAGEBRUSH POWER PARTNERS, LLC, ) Prehearing Conference
KITTITAS VALLEY WIND POWER PROJECT ) Pages 1 - 38

A prehearing conference in the above matter was held in the presence of a court reporter on June 13, 2006, at 1:37 p.m., at 925 Plum Street S.E., Building 4, Conference Room 308, in Olympia, Washington, before Energy Facility Site Evaluation Councilmembers.

* * * * *

The parties were present as follows:


COUNSEL FOR THE ENVIRONMENT, Michael S. Tribble, Assistant Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, Washington 98504-0100.

KITTITAS COUNTY, James E. Hurson, Kittitas County Prosecutor, Kittitas County Courthouse, Room 213, Ellensburg, Washington 98926.

Reported by:

Shaun Linse, CCR NO. 2029

FLYGARE & ASSOCIATES, INC. 1-800-574-0414
Appearances (cont’d):

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<td>F. STEVEN LATHROP</td>
<td>Jeff Slothower, Attorney at Law, Lathrop, Winbauer, Harrel, Slothower &amp; Denison, LLP, 201 West Seventh Avenue, Ellensburg, Washington 98926</td>
<td>ECONOMIC DEVELOPMENT GROUP OF KITITAS COUNTY, Debbie Strand, Executive Director, 1000 Prospect Street, P.O. Box 598, Ellensburg, Washington 98926.</td>
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15 | CHAIR LUCE: A prehearing conference to continue from our previous--what was the date of our previous hearing? |   |
16 | MR. FIKSDAL: May 30. |   |
17 | CHAIR LUCE: --May 30 is called to order and staff will call the roll. Clerk. |   |
21 | MR. FIKSDAL: I think mainly we've already called the roll. I don't think we need to call roll. We need to have appearances. |   |
24 | CHAIR LUCE: I want to get on the record the fact that all Councilmembers are here either in person or by phone for this record so that's the purpose of my asking for clerk to call the roll. |   |
25 | MR. MILLS: I will do so. Community Trade and Economic Development? |   |

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| MS. PEELPEEES: Darrel Peeples and Tim McMahan representing the Applicant. |  | CHAIR LUCE: A prehearing conference to continue from our previous--what was the date of our previous hearing? |
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| MR. KRUSE: Robert Kruse, Friends of Wildlife and Wind Power. | MS. PEEPLES: I don't think Robert is appearing on this one. | MS. PEEPLES: I don't think Robert is appearing on this one. |
11 | 12 | 13 |
| MS. STRAND: Debbie Strand, Economic Development Group. | MR. FIKSDAL: Mr. Kruse was a party on the Wild Horse Project, but this is the Kittitas Valley. | Mr. Kruse, this is Allen Fiksdal. You are not a party to this proceeding; is that correct? |
14 | 15 | 16 |
| MR. KRUSE: Robert Kruse, Friends of Wildlife and Wind Power. | MS. PEEPLES: I don't think Robert is appearing on this one. | MR. KRUSE: Correct. |
17 | 18 | 19 |
20 | 21 | 22 |
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MS. MAKAROW: Well, with respect to the agenda as you laid out is?

CHAIR LUCE: Ms. Makarow.

MR. HURSON: Last Tuesday, correct.

CHAIR LUCE: Ms. Makarow, the next item on the agenda as you laid out is?

MS. TOWNE: Mr. Hurson, is the Council going to make these hearing dates?

CHAIR LUCE: Dick?

MR. FIKSDAL: That was effective on the 6th of July. 7th of July. The Applicant couldn't agree on the appropriate setbacks and felt there were more setbacks necessary based upon the environmental analysis and disagreed.

MS. TOWNE: So save paper.

MR. PEEPLES: Go ahead and save paper.

MR. HURSON: It may already be on our website. We put on our website the hearing information that goes on. It would be posted on our website. I haven't double checked.

MS. TOWNE: Did they do findings of fact and conclusions of law?

MR. HURSON: Yes.

MR. FIKSDAL: That was effective on the 6th of July. Last Tuesday.

MR. HURSON: Last Tuesday, correct.

CHAIR LUCE: Ms. Makarow, the next item on the agenda as you laid out is?

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CHAIR LUCE: Ms. Towne.

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CHAIR LUCE: Ms. Towne.

MS. TOWNE: Mr. Hurson, is the Council going to make these hearing dates?

CHAIR LUCE: Thank you.

MR. PEEPLES: We plan to file a request for preemption. We plan to file that no later than a week from today.

MR. HURSON: I don't know what you want me to comment on, but, yes, last Tuesday the Board did sign a resolution denying the project and I guess by implication finding it inconsistent with county plans and zoning.

CHAIR LUCE: Thank you. How does the Applicant intend to proceed at this point?

MR. PEEPLES: We plan to file a request for preemption. We plan to file that no later than a week from today.

CHAIR LUCE: Thank you.

MR. HURSON: I don't know what you want me to comment on, but, yes, last Tuesday the Board did sign a resolution denying the application. The County and the Applicant couldn't agree on the appropriate setbacks and felt there were more setbacks necessary based upon the environmental analysis and disagreed.

August 28 would be the absolute deadline for any new submittals and would be the deadline for any amended opening statements. Councilmembers might recall that parties did submit opening statements probably almost a year or so ago and parties may wish to revise some of those.

Then following the hearings the Applicant's post-hearing brief would be due two weeks after the conclusion of the hearing. So that would happen on October 13. Parties' response briefs would be scheduled two weeks after that so it would be October 27. All parties' reply briefs on November 3.

The schedule that I passed around has put August 21 would be the deadline for any motions to strike testimony.

The schedule that I passed around has put to see a copy of the action of the County Commissioners?

MR. PEEPLES: We were planning to attach those to our request for preemption.

MS. TOWNE: So save paper.

MR. PEEPLES: Go ahead and save paper.

MR. HURSON: It may already be on our website. We put on our website the hearing information that goes on. It would be posted on our website. I haven't double checked.

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The schedule that I passed around has put out some dates for the issuance of a final EIS and Council deliberations and those go into January, but those dates, of course, are still in a little bit of flux depending what happens prior.

CHAIR LUCE: First of all, Councilmembers, do you have questions regarding the schedule? Have you checked your calendars? I believe we had this before us last time in more or less this form and will you be able to make these hearing dates?

MS. TOWNE: Yes.

MS. WILSON: Yes.

CHAIR LUCE: Dick?
MR. FRYHLING: Yes.

CHAIR LUCE: Tim?

MR. SWEENEY: Yes, we're okay.

CHAIR LUCE: Hedia, you're fine?

MS. ADELSMAN: Yes, on hearing dates.

CHAIR LUCE: And Patti?

MS. JOHNSON: Yes, the hearing dates are fine.

CHAIR LUCE: Did we ask Patti whether she was on the phone originally?

MS. JOHNSON: Yes, you did.

CHAIR LUCE: All right, Patti. Thank you.

Counsel for the Applicant and Counsel for the County and other counsel comments regarding the hearing schedule?

MR. PEEPLES: I had submitted what I thought was a straw calendar, sent it out last night. I've just received this calendar, and I would like to have time to review it. I don't want to shoot from my hip like immediately on this thing. I'm trying to understand it. So could we have some time for us to review it and discuss it?

CHAIR LUCE: That's fine because we didn't receive your calendar, your strawman calendar until it was just dropped in front of me now.

MR. PEEPLES: I didn't know we were going to get one from the Council so I was trying to put something out for discussion purposes. I didn't realize we were going to get one.

CHAIR LUCE: Council had previously I believe in the last prehearing conference adopted a tentative hearing calendar and this closely reflects what we discussed last time. It's been three and a half years since this project was first proposed, and I believe that the Council's draft calendar is reasonable, but we will go off the record and go into recess for five minutes for parties to review each other's calendars.

MR. PEEPLES: Essentially the calendar I proposed it's just the 11th of September.

CHAIR LUCE: Mr. Hurson?

MR. HURSON: I did want to respond to that particular calendar. I may need to look at it, but I did have something I wanted to bring up with the Council regarding scheduling. I don't know if now is the appropriate time.

CHAIR LUCE: You could bring it up now if you so want.

MR. HURSON: Frankly as I sit here as a lawyer this has the feeling it would be like a judge calling me into court and saying, "Mr. Hurson, I hear you're going to have a lawsuit filed against you within about a week. You're having a trial in less than three months. We're going to work out the briefing scheduling, the hearing schedule, and discovery schedule" before I had a chance to see it.

I don't know what they're going to ask for in the preemption. This is an entire different fact scenario and I think a legal scenario now than we had when there was a preemption request two years ago. The testimony is going to be completely different. The main testimony that the parties filed last time Chris Taylor was Zilkha's main witness. He hasn't been involved in this last hearing process with the County. The County's main testimony was Clay White. He's no longer with the County. He's a planner in a different county. He hasn't been involved in it.

So in essence you're going to have new facts, new testimony, new players, new information. So this is essentially a new hearing, new process, new information that we need to go through. Now, I know that the Council I gathered from the last time is a bit frustrated with the timing of this thing has been here since January of '03.

But from the County's perspective EFSEC got it in January '03. We didn't get an application until the fall of '03 from the County and then a few months later the application was withdrawn and they asked for preemption. So we only had the original application three or four months. Then we had a 14-month gap basically where there wasn't anything for us to look at or review. The Applicant didn't submit anything to us. We went through the Wild Horse process. The County approved Wild Horse in March of '05, and then we got the resubmittal on this particular application in October of '05. So there was a substantial delay there between that and October '05. We basically finally got the follow-up information from the Applicant and the SEPA updates.

We've had a supplemental EIS and addendum to the EIS that we didn't have before. We have the Wild Horse Final EIS that relates to analysis for wind farms in Kittitas County. We have the Desert Claim EIS that relates to environmental analysis for Kittitas County. That's all new information.

We commenced our hearings early this year and now finally have a final decision. The County was trying to work things out with the Applicant. We believed that the decision to deny was justified based upon the environmental analysis and review and so we stand ready to defend it. But the current schedule I don't think gives the County or the public adequate time to prepare. We may...
disagree with the Applicant on whether our decision was right or wrong, but frankly I think the Applicant probably agrees that all the parties need more time. I'm under no illusion that the hearings at the Council are the last step. I'm working under the assumption that the Governor will make a decision one way or the other and it will all be in Supreme Court soon, and I think we owe it to the public to make sure that for the first time in the history of EFSEC which has been going on for years no one's ever asked for a preemption before or received a preemption. So this is a very important thing and I think we need to get our record put together.

The County frankly believes that there's going to be some discovery in order and necessary based upon the testimony and the things that occurred in our hearings. I don't know how much you want me to get into that. I know last time we talked about discovery it was pointed under the APA, well, that's something you can do but it's unusual to do discovery under APA.

This is a very unusual hearing because it's never happened before. We have never had a preemption request in the State of Washington before. I believe that the APA allowance for discovery is in there for just this kind of hearing. This isn't a review of a barber's license with the State Barber's Association as to whether they should keep their license or not. This has GMA implications, EFSEC implications, county government implications, state government implications, and so we're going to need time. I believe I'm going to need to undertake discovery.

I know for the Olympic Pipe Line Application there was discovery allowed. In fact, they even had discovery going on during the hearing based upon the rebuttal testimony that basically opened up new doors; so they allowed more discovery or they actually had discovery while the hearing was going on. Which a one person lawyer--I'm the only lawyer for the County that's involved in this and can deal with this.

Looking at the WACs, 463-28-060 says should an Applicant elect to continue processing the application and file a request with the Council for state preemption, the Council will schedule an adjudicative proceeding hearing on the application. We don't yet have--the first time you've heard, yes, they're going to do it was just now; that, yes, they're going to file a preemption request. What I would suggest is that we wait until they get the preemption request. If you want to give them a deadline as to when they do that, that's fine. Give the County and all the other parties an opportunity to review the preemption request and basically strike the current.
for preemption.

The other thing that I think needs to be considered, and I did have time to review the EFSEC schedule, and I think one of the concerns I have with how it's broken out is it's separating out testimony, supplemental testimony from preemption testimony. Well that's going to be very hard to do because some witnesses are going to be on both.

We have had a substantial change in design of the project. When we went back and reapplied with the County, we shrunk the project in size and eliminated turbines and tried to eliminate as many impacts as we could. So we're going to have to have witnesses testify as to the changes, and some of those witnesses will also be testifying as to the preemption. It will be in the same testimony. So that is one concern I do want to raise about the away the Council is breaking it out.

I think my proposed schedule is simpler, and so people can present their witnesses both supplemental as to potential changes and preemption at the same time. I mean to me that makes a lot more sense in trying to do the testimony rather than separating testimony out on the witnesses. Responding to the discovery issue--

CHAIR LUCE: Point of clarification,

Ms. Makarow, the July 10 date it says application request

for preemption related testimony. Does that also relate to the testimony in chief in this case? Is that correct?

MS. MAKAROW: No, that relates to--

CHAIR LUCE: Preemption testimony.

MS. MAKAROW: And then supplemental testimony by Applicant and all parties that might want to submit supplemental testimony.

CHAIR LUCE: So why doesn't that work?

MR. PEEPLES: Well, I think they're going to be altogether. I guess maybe I misread that. Applicant request for preemption related testimony and supplemental testimony by all parties. Okay. I think I misread that. I apologize. I think I misread that and then we go to--

MS. MAKAROW: I think the intent of the calendar that staff is presented is that we separate out testimony that is being submitted with respect to preemption and the testimony that is being submitted with respect to the project and is not preemption related.

MR. PEEPLES: And I see a lot of that testimony have both within the same witness within the same testimony. Would you see that same thing, Jim, on yours? I mean you're going have to witness testifying for both, aren't you?

MR. HURSON: I haven't seen the preemption request yet, but the last time when we were talking about breaking things out, I think the Council ruled that they wouldn't try to segregate out the testimony because there was an overlap and so you didn't have this is a preemption only section. I remember we tried to bifurcate and basically say here's all the preemption section. If you say don't preempt, then we don't need to go to phase two on the substance and the Council rejected that as its option.

CHAIR LUCE: The Council is going to hear, if I recall correctly, the arguments regarding preemption at the front end of the case. The case will not be bifurcated. We will have the entire hearing. But the front end of the case will be preemption and then we will move to the case in chief.

MR. PEEPLES: So you won't make a ruling on that.

CHAIR LUCE: No, we're not going to make a ruling until the entire case is decided.

MR. HURSON: I believe one of the comments from Applicant's counsel was that they would have in sort of the substance section there were stuff that could arguably have been related to preemption, and so I would be basically potentially cross-examining at any point throughout the hearing because they're saying that some of their substance is also related to preemption so that essentially makes the County part of the same issue.

MR. PEEPLES: I would imagine the County's witnesses will be similar too. I do want to say the 10th, having all our testimony in by the 10th that's really a tight schedule, and I'm just going to tell you that's going to be really difficult reacting for that one.

MR. McMahan: Tim McMahan for the record, if I might just weigh in here. It strikes me sitting here at least that if the Applicant files the preemption request next week, which is our intention, that that provides a little bit more latitude for all the parties, and I think that Mr. Peeples' schedule makes a little bit more sense if we follow that. The County has much more notice for a preemption request than is portrayed in Ms. Makarow's or the Council's schedule. We have it out. We're thinking about our supplemental testimony. So I think it provides a little bit more latitude, and I think we still get to the end of the process reasonably by basically being a week and a couple days plus for the other parties another week or two weeks for even ongoing response testimony.

CHAIR LUCE: Mr. Hurson, do you have any comments? You've had an opportunity to look at the Applicant's proposed schedule.

MR. HURSON: Jim Hurson. One of the problems is there's nothing in here as far as a discovery
order or schedule or motions hearings, and I'm not going
1 to know what to do on that until I've seen it. So that
2 would be one thing I would want to be able to insert. The
3 Applicant's schedule proposes four weeks. I think EFSEC
4 staff proposed three for the County. Frankly, I don't
5 think either is adequate. Last time I believe we asked
6 for eight weeks, the Council gave us six, and that was
7 pretty tight even without taking any depositions. And
8 frankly I see this as a whole new set of information we're
9 going to go through, and I'm going to need--I don't even
10 know what the schedule would be as far as I know you have
to get leave to take depositions or any other sort of
11 discovery. So I would want to have something in the order
12 that could set some sort of a discovery request and
13 response and authorization schedule. I'm a one-man show
14 so it's kind of hard for me to try to do my regular job
15 plus this on top of it.
16    CHAIR LUCE: I understand that.
17    MR. PEEPLES: Could I respond to the
18 discovery? I believe we have a discovery ruling in place
19 in Counsel Order 790, Prehearing Order No. 8. Our hearing
20 examiner has already ruled on that one I believe. So if
21 they have a discovery request, I think they follow that
22 order. It's simple. I don't think we need to confuse
23 what we're doing now on the schedule with that.
24
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25 My schedule I proposed I tried to be as fair
1 as I could be to everyone, and I gave everybody five weeks
2 for us from today to file our testimony and then five
3 weeks for everybody else to respond and then two weeks for
4 rebuttal or reply testimony. So I'm not saying that
5 that's perfect by any means, but I tried to set it out
6 fair. I believe it was six weeks. I think that's right,
7 six weeks, six weeks, and three weeks last time that we
8 had on our schedule, and I reduced that to five weeks,
9 five weeks, two weeks in order to come out to the
10 September 11 date.
11    CHAIR LUCE: I understand. Well, it's up to
12 the Council to determine, but I'm going to put
13 discovery--and, Mr. Hurson, you may have discovery
14 requests that you choose to make, but my recommendation
15 would be the Council would deal with those separately
16 under preexisting orders and bring them to the Council as
17 you feel are appropriate. I'm not inclined to try to
18 insert discovery requests into this particular prehearing
19 order.
20    Do other parties who are a party to this
21 case have any comments regarding these draft calendars?
22 Have you seen the draft calendars?
23    MR. SLOTHOWER: This is Jeff Slothower.
24 It's been difficult to follow the conversations. There's
25

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1 something with the bridge line, something with another
2 conversation occurring on it. But I have not seen--I've
3 seen Mr. Peeples' calendar. I've not seen the other
4 calendar that's been referenced so I can't necessarily
5 comment on it other than to point out that I tend to agree
6 with Mr. Hurson. I would like this thing to be over
7 sooner rather than later, but for a good portion of the
8 last three and a half years the matter has basically
9 stayed at the request of the Applicant while they pursued
10 another project. And we are going to be handing the
11 Governor and maybe ultimately the Supreme Court an issue
12 of first impression in the State of Washington, and I
13 think it would behoove all of us to do it in an
14 expeditious manner but also in a manner which is designed
15 in which allows all the parties to participate and create
16 the record that the Governor is going to need to make her
17 decision and the Supreme Court to review that decision.
18    CHAIR LUCE: I think we all want that. Any
19 other comments by other parties?
20    Council, both of the draft calendars are
21 before us, and, Mr. Hurson, I do understand your statement
22 that the County would like as much time as possible, and
23 that this is a compressed schedule from your point of
24 view. Given the two calendars before us they both,
25 Ms. Makarow, will get us to the hearing on September 11?

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1 MS. MAKAROW: Correct.
2    CHAIR LUCE: Does Council have any thoughts,
3 observations regarding either the schedule proposed by the
4 Applicant in response to our draft schedule or with
5 respect to our draft schedule?
6    MS. TOWNE: You mean we need to make a final
7 decision at this time?
8    CHAIR LUCE: I would like to make a final
9 decision at this time rather than carrying this hearing
10 over. Counsel for the Applicant you indicated that you
11 are going to be filing a request for preemption when?
12    MR. PEEPLES: By no later than next Tuesday.
13    CHAIR LUCE: That would give a month
14 basically. July 18 almost a month to respond.
15    MR. PEEPLES: Yes, I kind of disagree. I
16 understand the argument that we don't know exactly, but
17 everybody knows generally what this is all about. We've
18 already done--the legal issues will be approximately the
19 same. I think between now and next Tuesday people can
20 pretty much have a general idea of what's going on and be
21 contacting the witnesses, and I think you got to know
22 pretty much who your witness is going to be at this point.
23 The project we're dealing with is not a new project, and
24 I'm talking about the reconfigured project. It went
25 through the entire county process. The County knows more
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<td>about that new configuration than the Council does, and we're going on the configuration we presented to the County. CHAIR LUCE: So the project has actually shrunk. MR. PEEPLES: The project shrunk and everybody knows on the County and all the parties I think involved should have a good idea of what that project is because they all participated in the County process. CHAIR LUCE: Ms. Makarow, do you have any thoughts regarding Applicant's request to schedule the changes from our own? Is this from staff's perspective a reasonable schedule to work with? And if not, please tell me why. MR. PEEPLES: May I point out what I consider some deficiencies in my own schedule, and that is I think when you get down to September 5 and on those are really tight. MS. MAKAROW: That was the comment that I was going to make. I think staff's schedule is really focused on getting all of the information together so the Council had a reasonable portion of two weeks giving the holiday to review before they went into hearing. With respect to ruling on motions to strike prefiled testimony, I think it's allowable to be able to do that on the record directly on the first day of hearing on September 11, but I think that was the impetus for the schedule we presented. CHAIR LUCE: Mr. Fiksdal. MR. FIKSDAL: Mr. Peeples I guess and Mr. Hurson or any of the parties, do you think that three weeks is an excessive long time for the hearing and could we take one of those weeks and use it for your purposes rather than the hearing purposes? MR. PEEPLES: I believe so. I believe if we start on the 18th that would help there, and I feel we could reasonably get it done in two weeks. If we don't, we'll have to maybe push it over into October if we don't. But I think starting it on the 18th rather than the 11th would be able to fill out that schedule. I just want to say for the Council that this is for attorneys kind of a real tight schedule, and I think Mr. Hurson has already indicated that. I think it's doable, but it's really tight. I don't think going the 18th is going to hurt anything. That is my view. MS. TOWNE: Mr. Chairman. CHAIR LUCE: I'm going to make a recommendation that the Council recess for a period of 15 minutes to discuss these schedules. My hope and intent we can come back and set a definite schedule for proceeding to the hearing on September 11. MS. TOWNE: My question bears on what we'll be talking about and it goes to the comments made at last week's meeting or the last prehearing that there were conflicts the week of the 11th. If we do move it, would that resolve the conflicts? I believe it was Mr. Carmody, Mr. Lathrop, others. CHAIR LUCE: Mr. Carmody, Mr. Lathrop, did you hear that? MR. CARmODY: Yes, this is Jamie Carmody. It would resolve that issue. MS. TOWNE: Thank you. MR. FIKSDAL: The only question I have if you're going to go into deliberative session we have two Councilmembers on the phone, three, and it's going to be semi difficult to get those. CHAIR LUCE: My recommendation would be that we do have a deliberative session. We do it in my office and the Councilmembers call into my office. MR. FIKSDAL: I don't think that will work. CHAIR LUCE: Why not? MR. FIKSDAL: Because you can't take more than two separate calls on your phone. CHAIR LUCE: Well, we only have two members. MS. MAKAROW: Three.</td>
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<td>MR. MILLS: There's three with Patti.</td>
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<td>MR. PEEPLES: Why don't we clear out and you guys can deliberate.</td>
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<td>MR. FIKSDAL: There's a whole bunch of other people on the line already.</td>
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<td>MS. MAKAROW: Maybe we can take a recess and staff can find out if another bridge line is available for Councilmembers to dial in.</td>
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<td>CHAIR LUCE: That will be helpful; so we will be in recess.</td>
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<td>MR. CARmODY: Can we all drop off the line and come back in 10 minutes or 15 minutes?</td>
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<td>MR. PIERCY: Can I ask one question before you adjourn?</td>
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<td>CHAIR LUCE: Please.</td>
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<td>MR. PIERCY: Is there a reason why the discussion can't take place in public session and has to be in deliberations? This is Darryl Piercy, Kittitas County.</td>
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<td>CHAIR LUCE: I appreciate you asking that question.</td>
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<td>MS. TOWNE: Why don't we just adjourn or recess for five minutes or recess for five minutes.</td>
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<td>12</td>
<td>CHAIR LUCE: We'll recess for five minutes.</td>
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<td>We'll have a break and we'll have the deliberations in</td>
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CHAIR LUCE: We're back on the record. This is a continuation of the prehearing conference with respect to the Kittitas Valley Wind Project. Council has before it two draft calendars, both of which lead to an adjudicative hearing early in September. We've also heard from the County that they would prefer and other parties, intervenors that they would prefer additional time.

Councilmembers, my recommendation would be to the Applicant's schedule. The Applicant is going to be required to put on this case. That we go ahead and change the beginning of the hearing date until September 18, give parties an additional week; then we proceed to adopt the schedule as laid out. I believe it's consistent with other prehearing orders. I certainly haven't heard otherwise. I believe the discovery requests that was raised by Mr. Hurson and maybe other parties can be dealt with consistently with Prehearing Order No. 8, in any case, come back to this Council. If there is a motion for discovery, they will come back to the Council and make that request.

So I'd ask Councilmembers to look at the schedule and comment accordingly.

MR. FIJKSDAL: Before you start, if you're going to move the hearing date to begin on September 18, I guess would the Applicant want to adjust any of his proposed schedule?

MR. PEEPLES: I think they would be okay. You can have ruling on motions to strike and although you could have that same day, but if the witnesses get stricken you've got to make arrangements perhaps not for them to show up. So that pretty much follows my recollection. I don't have my notes. I left them at home, but I took this from the old order. I think that pretty much reflects what Adam did last time except that I was running into September 11 ruling on motions to strike right up to the end. I can't be totally positive on that, but it was real close into days.

MR. FIJKSDAL: So your suggestion would be changing the ruling on motions to strike to the 18th or the beginning?

MR. PEEPLES: No, to the 11th and start on the 18th.

MR. FIJKSDAL: Just checking.

MR. PEEPLES: Because it's hard to show up the day of hearing and get a ruling on a motion to strike.

MR. HURSON: Could I comment on something?

CHAIR LUCE: Let me hear the interchange between staff first and then Mr. Hurson.

MR. FIJKSDAL: We just noted that we've been discussing the Applicant's schedule up to the hearing. The Applicant also has a schedule for post hearing that we may need to discuss a little bit. So before the Council adopts the Applicant's schedule we need to do that, but I think concentrate on the prehearing schedule and then once that's--

MR. PEEPLES: If I may make a suggestion. The briefing schedule does not need to be decided today, and it might be better just to wait until--I put that in just to fill in something later. It might be just as good to wait until Adam Torem gets back and then do the post schedule. That's just a suggestion.

CHAIR LUCE: The post schedule as it's currently laid out by--a musical interlude brought to you by one of the intervenors. We're not sure whom. Could you turn down the radio or the C D. a little bit.

MR. PEEPLES: Somebody is on hold.

MR. HURSON: Somebody pushed the hold button instead of the mute button.

CHAIR LUCE: Can other people hear?

MR. HURSON: Can anybody hear us?

MS. JOHNSON: I'm here. It's not mine.

CHAIR LUCE: Post-hearing briefs we can hold of on setting post-hearing briefs.

MR. PEEPLES: Yes.

CHAIR LUCE: Councilmembers, I need some feedback with respect to the schedule. We presented a schedule. Applicant presented a modified schedule. I would like to get a decision with respect to whether we can go forward on that.

MS. WILSON: Since I'm not the one preparing all this, I'm assuming that they figured out that these are enough days in order to do it, and as long as we're going to not have the hearing until the 18th it seems like it provided enough time to get there.

CHAIR LUCE: Particularly given the fact that there has been a lot of work done previously, even though there may be some changes to the current application which is now shrinking. Do I understand that to be in the form of a motion?

MS. WILSON: Yes.

CHAIR LUCE: Do I have a second?

MS. TOWNE: Second.

MR. FRYHLING: What was the motion?

CHAIR LUCE: The motion was to adopt the modified Applicant's schedule beginning the adjudicative hearing on September 18.

MR. FRYHLING: Second.
MS. WILSON: And not doing the post.

CHAIR LUCE: And not doing the post-hearing briefs until a later period of time.

Councilmembers on the phone?

MR. SWEENEY: I heard the motion.

CHAIR LUCE: There's been a motion, discussion. I think we were pending before that for Council right now for final action. So is the question called for?

MS. WILSON: The question is called for.

CHAIR LUCE: The question has been called for. All in favor of adopting the modified schedule commencing on September 18 say Aye.

COUNCILMEMBERS: Aye. Let it be shown that so far as I can determine the vote was unanimous. Is that correct for those of you who are on the phone?

MS. JOHNSON: Yes.

MR. SWEENEY: Yes.

CHAIR LUCE: And the vote was unanimous here. Thank you. We have a hearing schedule. We do not have a post-hearing reply brief schedule, but we will determine that later.

Mr. Hurson.

MR. HURSON: My comment was going to be as I understood Mr. Peeples' proposal he understood that he was giving the County five weeks to respond. In my reading it's only four. So if the impression was that it gave us five weeks that would be incorrect, and frankly the other comment is more of a personal matter. My in-laws are having their 50th anniversary the weekend of the 11th, 12th, 13th, and 14th, and I was hoping to be there for it, and with the deadline of the 15th I guess I can tell my in-laws I won't see them. What I would prefer is if the Applicant actually intended us to have five weeks that we could slide that due date until the 22nd or maybe even the 18th.

MS. WILSON: You're talking about August?

MR. HURSON: August.

CHAIR LUCE: I think we will stay with the schedule as we currently have it and as the Council has approved it.

MR. HURSON: Okay.

CHAIR LUCE: Okay, what's the next item on the agenda: other?

Mr. Fiksdal, you're looking like you have an idea about what comes.

MR. FIJKSDAL: No, I was just looking for the agenda. Did we give you a copy of the agenda?

CHAIR LUCE: My agenda says other.

MS. MAKAROW: I believe that would be other then.

CHAIR LUCE: Does anybody else have any other things to bring before the Council?

Mr. Fiksdal, you're looking like you have an idea about what comes.

CHAIR LUCE: All right. We'll set a date now for the next prehearing conference. When's the next Council meeting?


CHAIR LUCE: All right. Do we know what the availability of Mr. Torem will be?

MS. MAKAROW: Not yet.

CHAIR LUCE: We'll go ahead and set the next prehearing conference for our next Council meeting day. We will convene that prehearing conference as the first item of business that the Council will deal with on 1:30 on July 12th.

MS. TOWNE: 11th.

MS. WILSON: Mr. Chairman, would that be an opportunity for request for date changes to be made at that time if there was something?

CHAIR LUCE: The parties are always free to make any request they wish. By examination of this schedule, either ours or as adopted the Applicant's modified, given the fact there has been so much work done on this case is that that schedule we've adopted we should be able to make, and I do recognize it may impose some burden on counsel; but I'm sure that you will find a way to make that happen.

MR. PIEPELS: Mr. Chairman, I just want to say when we file our request for preemption there will be a bunch of attachments to that, and it's going to take some document prep time. What I will say to the County as soon as we have the final draft done we will get a copy of that to them. We won't have the attachments, but we will have everything else on it.

CHAIR LUCE: Mr. Hurson, if you could provide us with a copy of the commissioners' final decision.

MR. PIEPELS: That will be attached.

CHAIR LUCE: I assume that will be attached.

MR. PIEPELS: Yes.

CHAIR LUCE: All right. That's fine. With nothing else to come before this Council on the prehearing conference on Kittitas Valley Wind, the prehearing conference is adjourned.

* * * * *

(Whereupon, the prehearing conference was adjourned at 2:34 p.m.)
AFFIDAVIT

I, Shaun Linse, CCR, Certified Court Reporter, do hereby certify that the foregoing transcript prepared under my direction is a true and accurate record of the proceedings taken on June 13, 2006, in Olympia, Washington.

_________________________
Shaun Linse, CCR
CCR NO. 2029.