

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:

SAGEBRUSH POWER PARTNERS, LLC, Darrel Peeples,
Attorney at Law, 325 Washington Street N.E., Suite 440,
Olympia, Washington 98501 and Timothy McMahan, Attorney at
Law, Stole Rives, LLP, 805 Broadway Street, Suite 725,
Vancouver, Washington 98660.

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

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1 Appearances (cont'd):
 2 F. STEVEN LATHROP, Jeff Slothower, Attorney at
 3 Law, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP,
 4 201 West Seventh Avenue, Ellensburg, Washington 98926
 5 ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY,
 6 Debbie Strand, Executive Director, 1000 Prospect Street,
 7 P.O. Box 598, Ellensburg, Washington 98926.
 8 RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT),
 9 James C. Carmody, Attorney at Law, Velikanje, Moore & Shore,
 10 P.S., P.O. Box 22550, Yakima, Washington 98907.
 11 RENEWABLE NORTHWEST PROJECT, Susan Drummond,
 12 Foster Pepper & Shefelman, P.L.L.C., 1111 Third Avenue,
 13 Suite 3400, Seattle, Washington 98101-3299.
 14 * * * * *
 15 CHAIR LUCE: A prehearing conference to
 16 continue from our previous--what was the date of our
 17 previous hearing?
 18 MR. FIKSDAL: May 30.
 19 CHAIR LUCE: --May 30 is called to order and
 20 staff will call the roll. Clerk.
 21 MR. FIKSDAL: I think mainly we've already
 22 called the roll. I don't think we need to call roll. We
 23 need to have appearances.
 24 CHAIR LUCE: I want to get on the record the
 25 fact that all Councilmembers are here either in person or

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1 by phone for this record so that's the purpose of my
 2 asking for clerk to call the roll.
 3 MR. MILLS: I will do so. Community Trade
 4 and Economic Development?
 5 MR. FRYHLING: Dick Fryhling.
 6 MR. MILLS: Department of the Ecology?
 7 MS. ADELSMAN: Hedia Adelsman here by phone.
 8 MR. MILLS: Department of Fish and Wildlife?
 9 MS. TOWNE: Chris Towne is here.
 10 MR. MILLS: Department of Natural Resources?
 11 MS. WILSON: Judy Wilson.
 12 MR. MILLS: Utilities and Transportation
 13 Commission?
 14 MR. SWEENEY: Tim Sweeney.
 15 MR. MILLS: Kittitas County?
 16 MS. JOHNSON: Patti Johnson.
 17 MR. MILLS: Chair?
 18 CHAIR LUCE: Chair is present.
 19 MR. MILLS: There is a quorum.
 20 CHAIR LUCE: Thank you very much. We do
 21 have a quorum. Can I please have the parties identify
 22 themselves whether they are pro se or represented by
 23 counsel, and if counsel is present who they represent.
 24 MR. PEEPLES: Darrel Peeples and Tim McMahan
 25 representing the Applicant.

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1 MR. HURSON: James Hurson, Kittitas County.
 2 MR. CARMODY: James Carmody representing
 3 ROKT.
 4 MR. SLOTHOWER: Jeff Slothower representing
 5 Steven Lathrop.
 6 MS. DRUMMOND: Susan Drummond on behalf of
 7 Renewable Northwest Project or RNP.
 8 MR. PIERCY: Darryl Piercy, Kittitas County.
 9 MR. GARRETT: Ed Garrett for ROKT.
 10 MR. TRIBBLE: Mike Tribble, Counsel for the
 11 Environment.
 12 MS. STRAND: Debbie Strand, Economic
 13 Development Group.
 14 MR. PECK: Dana Peck, Horizon Wind Energy.
 15 CHAIR LUCE: Any others?
 16 MS. POTTER: Joy Potter, Horizon Wind.
 17 MR. KRUSE: Robert Kruse, Friends of
 18 Wildlife and Wind Power.
 19 MS. PEEPLES: I don't think Robert is
 20 appearing on this one.
 21 MR. FIKSDAL: Mr. Kruse was a party on the
 22 Wild Horse Project, but this is the Kittitas Valley.
 23 Mr. Kruse, this is Allen Fiksdal. You are
 24 not a party to this proceeding; is that correct?
 25 MR. KRUSE: Correct.

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1 CHAIR LUCE: Thank you. We appreciate you
 2 listening in.
 3 Irina, you have a report for us, and we are
 4 continuing the earlier hearing in which we adopted a
 5 tentative schedule, and I would like Irina to review that
 6 draft schedule that we've previously discussed and let's
 7 go from there.
 8 MS. MAKAROW: I think probably previous to
 9 that we should just review the proposed agenda. A
 10 proposed agenda was sent out to the various parties today.
 11 Is there anybody who needs a copy of the agenda? I don't
 12 see any hands.
 13 After adoption of the proposed agenda we'll
 14 have an update from the Applicant and Kittitas County on
 15 their process to resolve the land use consistency issues.
 16 Then we'll talk about scheduling of additional submittals
 17 and other procedural issues with respect to the
 18 adjudicative hearings. We have an other item which is
 19 blank, left to be filled up as needed, and our next
 20 prehearing conference.
 21 So with that, Chair Luce, I would recommend
 22 that the Applicant and Kittitas County give us an update
 23 as to where the Board of County Commissioners have ended
 24 up with respect to the land use issues.
 25 CHAIR LUCE: Thank you, Ms. Makarow. That

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1 would be entirely appropriate. I'll let Mr. Peeples
 2 proceed on behalf of the Applicant and then I'll ask
 3 Mr. Hurson to comment.
 4 MR. PEEPLES: I'll defer to Tim McMahan.
 5 MR. McMAHAN: Tim McMahan, for the record,
 6 Attorney of the Stole Rives Law Firm for the Applicant.
 7 Very simply the County, the Board of County Commissioners
 8 entered a resolution denying the project and I guess by
 9 implication finding it inconsistent with county plans and
 10 zoning.
 11 CHAIR LUCE: Thank you. How does the
 12 Applicant intend to proceed at this point?
 13 MR. PEEPLES: We plan to file a request for
 14 preemption. We plan to file that no later than a week
 15 from today.
 16 CHAIR LUCE: Thank you.
 17 Mr. Hurson.
 18 MR. HURSON: I don't know what you want me
 19 to comment on, but, yes, last Tuesday the Board did sign a
 20 resolution denying the application. The County and the
 21 Applicant couldn't agree on the appropriate setbacks and
 22 felt there were more setbacks necessary based upon the
 23 environmental analysis and disagreed.
 24 CHAIR LUCE: Ms. Towne.
 25 MS. TOWNE: Mr. Hurson, is the Council going

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1 to see a copy of the action of the County Commissioners?
 2 MR. HURSON: Certainly. If you would like
 3 us to send a copy, we can do that.
 4 MR. PEEPLES: We were planning to attach
 5 those to our request for preemption.
 6 MS. TOWNE: So save paper.
 7 MR. PEEPLES: Go ahead and save paper.
 8 MR. HURSON: It may already be on our
 9 website. We put on our website the hearing information
 10 that goes on. It would be posted on our website. I
 11 haven't double checked.
 12 MS. TOWNE: Did they do findings of fact and
 13 conclusions of law?
 14 MR. HURSON: Yes.
 15 MR. FIKSDAL: That was effective on the 6th
 16 I believe.
 17 MR. PEEPLES: Last Tuesday.
 18 MR. HURSON: Last Tuesday, correct.
 19 CHAIR LUCE: Ms. Makarow, the next item on
 20 the agenda as you laid out is?
 21 MS. MAKAROW: Well, with respect to
 22 scheduling of additional submittals as directed by Judge
 23 Torem at the last prehearing conference, I did circulate
 24 copies of a prehearing order in which the schedule was
 25 addressed, and based on those prehearing orders I pulled

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1 together a draft calendar which is just being distributed
 2 to those in the room to the Councilmembers and parties
 3 laying out what might be an approach to future submittals
 4 in this case.
 5 For the record, the hearings in this matter
 6 were scheduled for three weeks in September. The weeks
 7 starting September 11, 18, and 25, and then based on those
 8 three weeks I offset submittals as follows:
 9 For July 10, and this is not withstanding
 10 the Applicant's mentioned just a few moments that they
 11 would be submitting their request to preemption in two
 12 weeks--or one week from today, the Council foresaw that
 13 the Applicant would submit requests for production and
 14 related testimony no later than July 10 and parties would
 15 submit any supplemental testimony and the Applicant as
 16 well as would be discussed later in today's prehearing
 17 conference also on July 10.
 18 July 24 objections to supplementation of
 19 prefiled nonpreemption related would be submitted.
 20 July 31 the County and the parties'
 21 responses to the preemption request.
 22 August 14, the Applicant would reply to all
 23 supplemental testimony and preemption responses.
 24 August 21 would be the deadline for any
 25 motions to strike testimony.

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1 August 28 would be the absolute deadline for
 2 any new submittals and would be the deadline for any
 3 amended opening statements. Councilmembers might recall
 4 that parties did submit opening statements probably almost
 5 a year or so ago and parties may wish to revise some of
 6 those.
 7 Then following the hearings the Applicant's
 8 post-hearing brief would be due two weeks after the
 9 conclusion of the hearing. So that would happen on
 10 October 13. Parties' response briefs would be scheduled
 11 two weeks after that so it would be October 27. All
 12 parties' reply briefs on November 3.
 13 The schedule that I passed around has put
 14 out some dates for the issuance of a final EIS and Council
 15 deliberations and those go into January, but those dates,
 16 of course, are still in a little bit of flux depending
 17 what happens prior.
 18 CHAIR LUCE: First of all, Councilmembers,
 19 do you have questions regarding the schedule? Have you
 20 checked your calendars? I believe we had this before us
 21 last time in more or less this form and will you be able
 22 to make these hearing dates?
 23 MS. TOWNE: Yes.
 24 MS. WILSON: Yes.
 25 CHAIR LUCE: Dick?

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1 MR. FRYHLING: Yes.
 2 CHAIR LUCE: Tim?
 3 MR. SWEENEY: Yes, we're okay.
 4 CHAIR LUCE: Hedia, you're fine?
 5 MS. ADELSMAN: Yes, on hearing dates.
 6 CHAIR LUCE: And Patti?
 7 MS. JOHNSON: Yes, the hearing dates are
 8 fine.
 9 CHAIR LUCE: Did we ask Patti whether she
 10 was on the phone originally?
 11 MS. JOHNSON: Yes, you did.
 12 CHAIR LUCE: All right, Patti. Thank you.
 13 Counsel for the Applicant and Counsel for
 14 the County and other counsel comments regarding the
 15 hearing schedule?
 16 MR. PEEPLES: I had submitted what I thought
 17 was a straw calendar, sent it out last night. I've just
 18 received this calendar, and I would like to have time to
 19 review it. I don't want to shoot from my hip like
 20 immediately on this thing. I'm trying to understand it.
 21 So could we have some time for us to review it and discuss
 22 it?
 23 CHAIR LUCE: That's fine because we didn't
 24 receive your calendar, your strawman calendar until it was
 25 just dropped in front of me now.

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1 MR. PEEPLES: I didn't know we were going to
 2 get one from the Council so I was trying to put something
 3 out for discussion purposes. I didn't realize we were
 4 going to get one.
 5 CHAIR LUCE: Council had previously I
 6 believe in the last prehearing conference adopted a
 7 tentative hearing calendar and this closely reflects what
 8 we discussed last time. It's been three and a half years
 9 since this project was first proposed, and I believe that
 10 the Council's draft calendar is reasonable, but we will go
 11 off the record and go into recess for five minutes for
 12 parties to review each other's calendars.
 13 MR. PEEPLES: Essentially the calendar I
 14 proposed it's just the 11th of September.
 15 CHAIR LUCE: Mr. Hurson?
 16 MR. HURSON: I did want to respond to that
 17 particular calendar. I may need to look at it, but I did
 18 have something I wanted to bring up with the Council
 19 regarding scheduling. I don't know if now is the
 20 appropriate time.
 21 CHAIR LUCE: You could bring it up now if
 22 you so want.
 23 MR. HURSON: Frankly as I sit here as a
 24 lawyer this has the feeling it would be like a judge
 25 calling me into court and saying, "Mr. Hurson, I hear

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1 you're going to have a lawsuit filed against you within
 2 about a week. You're having a trial in less than three
 3 months. We're going to work out the briefing scheduling,
 4 the hearing schedule, and discovery schedule" before I had
 5 a chance to see it.
 6 I don't know what they're going to ask for
 7 in the preemption. This is an entire different fact
 8 scenario and I think a legal scenario now than we had when
 9 there was a preemption request two years ago. The
 10 testimony is going to be completely different. The main
 11 testimony that the parties filed last time Chris Taylor
 12 was Zilkha's main witness. He hasn't been involved in
 13 this last hearing process with the County. The County's
 14 main testimony was Clay White. He's no longer with the
 15 County. He's a planner in a different county. He hasn't
 16 been involved in it.
 17 So in essence you're going to be having new
 18 facts, new testimony, new players, new information. So
 19 this is essentially a new hearing, new process, new
 20 information that we need to go through. Now, I know that
 21 the Council I gathered from the last time is a bit
 22 frustrated with the timing of this thing has been here
 23 since January of '03.
 24 But from the County's perspective EFSEC got
 25 it in January '03. We didn't get an application until the

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1 fall of '03 from the County and then a few months later
 2 the application was withdrawn and they asked for
 3 preemption. So we only had the original application three
 4 or four months. Then we had a 14-month gap basically
 5 where there wasn't anything for us to look at or review.
 6 The Applicant didn't submit anything to us. We went
 7 through the Wild Horse process. The County approved Wild
 8 Horse in March of '05, and then we got the resubmittal on
 9 this particular application in October of '05. So there
 10 was a substantial delay there between that and October
 11 '05. We basically finally got the follow-up information
 12 from the Applicant and the SEPA updates.
 13 We've had a supplemental EIS and addendum to
 14 the EIS that we didn't have before. We have the Wild
 15 Horse Final EIS that relates to analysis for wind farms in
 16 Kittitas County. We have the Desert Claim EIS that
 17 relates to environmental analysis for Kittitas County.
 18 That's all new information.
 19 We commenced our hearings early this year
 20 and now finally have a final decision. The County was
 21 trying to work things out with the Applicant. We believed
 22 that the decision to deny was justified based upon the
 23 environmental analysis and review and so we stand ready to
 24 defend it. But the current schedule I don't think gives
 25 the County or the public adequate time to prepare. We may

<p style="text-align: right;">Page 14</p> <p>1 disagree with the Applicant on whether our decision was 2 right or wrong, but frankly I think the Applicant probably 3 agrees that all the parties need more time. I'm under no 4 illusion that the hearings at the Council are the last 5 step. I'm working under the assumption that the Governor 6 will make a decision one way or the other and it will all 7 be in Supreme Court soon, and I think we owe it to the 8 public to make sure that for the first time in the history 9 of EFSEC which has been going on for years no one's ever 10 asked for a preemption before or received a preemption. 11 So this is a very important thing and I think we need to 12 get our record put together.</p> <p>13 The County frankly believes that there's 14 going to be some discovery in order and necessary based 15 upon the testimony and the things that occurred in our 16 hearings. I don't know how much you want me to get into 17 that. I know last time we talked about discovery it was 18 pointed under the APA, well, that's something you can do 19 but it's unusual to do discovery under APA.</p> <p>20 This is a very unusual hearing because it's 21 never happened before. We have never had a preemption 22 request in the State of Washington before. I believe that 23 the APA allowance for discovery is in there for just this 24 kind of hearing. This isn't a review of a barber's 25 license with the State Barber's Association as to whether</p>	<p style="text-align: right;">Page 16</p> <p>1 date, set a prehearing a couple weeks after we get the 2 preemption request there so all the parties can come back 3 and give the Council an idea of the issues involved, the 4 discovery that would be necessary, briefing schedules. 5 This probably will only extend this out a few months, but 6 I think it's an important issue that deserves that kind of 7 time and consideration.</p> <p>8 I realize that the Council feels frustrated 9 that this has been going on so long, but I kind of feel 10 like somehow the County we've had very little time where 11 it's actually been in our court to do this. Frankly, 12 because I'm in a public hearing process I haven't been 13 able to talk to my clients about anything having to do 14 with preemption request or anything else because they're 15 the ones making the decision. So I haven't even been able 16 to discuss this with my clients since the application has 17 been submitted to the County. So I need to get caught up 18 to speed. The Applicant obviously isn't so constrained 19 and they could have been discussing strategies on 20 preemption over the last two years if they wanted to. 21 I've been constrained in that.</p> <p>22 So what I would ask is that the Council 23 strike the current hearing time frame because, frankly, 24 Mr. Peeples' schedule proposes that we would have four 25 weeks to respond and I think that EFSEC's staff schedule</p>
<p style="text-align: right;">Page 15</p> <p>1 they should keep their license or not. This has GMA 2 implications, EFSEC implications, county government 3 implications, state government implications, and so we're 4 going to need time. I believe I'm going to need to 5 undertake discovery.</p> <p>6 I know for the Olympic Pipe Line Application 7 there was discovery allowed. In fact, they even had 8 discovery going on during the hearing based upon the 9 rebuttal testimony that basically opened up new doors; so 10 they allowed more discovery or they actually had discovery 11 while the hearing was going on. Which a one person 12 lawyer--I'm the only lawyer for the County that's involved 13 in this and can deal with this.</p> <p>14 Looking at the WACs, 463-28-060 says should 15 an Applicant elect to continue processing the application 16 and file a request with the Council for state preemption, 17 the Council will schedule an adjudicative proceeding 18 hearing on the application. We don't yet have--the first 19 time you've heard, yes, they're going to do it was just 20 now; that, yes, they're going to file a preemption 21 request. What I would suggest is that we wait until they 22 get the preemption request. If you want to give them a 23 deadline as to when they do that, that's fine. Give the 24 County and all the other parties an opportunity to review 25 the preemption request and basically strike the current</p>	<p style="text-align: right;">Page 17</p> <p>1 proposes three weeks to respond.</p> <p>2 MR. PEEPLES: I thought mine said four or 3 five, five, five. I'm giving you five weeks to develop 4 testimony.</p> <p>5 CHAIR LUCE: Five weeks or four weeks or 6 three weeks I hear you, Mr. Hurson. The Council is I 7 wouldn't say frustrated. I would say the Council is ready 8 to proceed to hearing and to set a hearing schedule. Now 9 whether we set a hearing schedule and what that hearing 10 schedule is today will depend on the other Councilmembers.</p> <p>11 I guess I would have a question for the 12 Applicant, and that is does the Applicant intend 13 substantial changes from the application that it made to 14 EFSEC previously because we have had prefiled testimony in 15 this case? Admittedly some things have changed. We've 16 had prefiled testimony and we've had an application. Are 17 we going to be looking at a substantial change when you 18 file your request for preemption?</p> <p>19 MR. PEEPLES: I believe that--and I don't 20 know what's substantial. I'll tell you what the change is 21 going to be from what you had before. To me the 22 application for preemption will be much simpler this time. 23 It's on the policy issues because we were denied and we 24 believe we took all reasonable efforts, and so from that 25 standpoint I think it's going to be a much simpler request</p>

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1 for preemption.
2 The other thing that I think needs to be
3 considered, and I did have time to review the EFSEC
4 schedule, and I think one of the concerns I have with how
5 it's broken out is it's separating out testimony,
6 supplemental testimony from preemption testimony. Well,
7 that's going to be very hard to do because some witnesses
8 are going to be on both.
9 We have had a substantial change in design of
10 the project. When we went back and reapplied with the
11 County, we shrunk the project in size and eliminated
12 turbines and tried to eliminate as many impacts as we
13 could. So we're going to have to have witnesses testify
14 as to the changes, and some of those witnesses will also
15 be testifying as to the preemption. It will be in the
16 same testimony. So that is one concern I do want to raise
17 about the way the Council is breaking it out.
18 I think my proposed schedule is simpler, and
19 so people can present their witnesses both supplemental as
20 to potential changes and preemption at the same time. I
21 mean to me that makes a lot more sense in trying to do the
22 testimony rather than separating testimony out on the
23 witnesses. Responding to the discovery issue--
24 CHAIR LUCE: Point of clarification,
25 Ms. Makarow, the July 10 date it says application request

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1 for preemption related testimony. Does that also relate
2 to the testimony in chief in this case? Is that correct?
3 MS. MAKAROW: No, that relates to--
4 CHAIR LUCE: Preemption testimony.
5 MS. MAKAROW: And then supplemental
6 testimony by Applicant and all parties that might want to
7 submit supplemental testimony.
8 CHAIR LUCE: So why doesn't that work?
9 MR. PEEPLES: Well, I think they're going to
10 be altogether. I guess maybe I misread that. Applicant
11 request for preemption related testimony and supplemental
12 testimony by all parties. Okay. I think I misread that.
13 I apologize. I think I misread that and then we go to--
14 MS. MAKAROW: I think the intent of the
15 calendar that staff is presented is that we separate out
16 testimony that is being submitted with respect to
17 preemption and the testimony that is being submitted with
18 respect to the project and is not preemption related.
19 MR. PEEPLES: And I see a lot of that
20 testimony have both within the same witness within the
21 same testimony. Would you see that same thing, Jim, on
22 yours? I mean you're going have to witness testifying for
23 both, aren't you?
24 MR. HURSON: I haven't seen the preemption
25 request yet, but the last time when we were talking about

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1 breaking things out, I think the Council ruled that they
2 wouldn't try to segregate out the testimony because there
3 was an overlap and so you didn't have this is a preemption
4 only section. I remember we tried to bifurcate and
5 basically say here's all the preemption section. If you
6 say don't preempt, then we don't need to go to phase two
7 on the substance and the Council rejected that as its
8 option.
9 CHAIR LUCE: The Council is going to hear,
10 if I recall correctly, the arguments regarding preemption
11 at the front end of the case. The case will not be
12 bifurcated. We will have the entire hearing. But the
13 front end of the case will be preemption and then we will
14 move to the case in chief.
15 MR. PEEPLES: So you won't make a ruling on
16 that.
17 CHAIR LUCE: No, we're not going to make a
18 ruling until the entire case is decided.
19 MR. HURSON: I believe one of the comments
20 from Applicant's counsel was that they would have in sort
21 of the substance section there were stuff that could
22 arguably have been related to preemption, and so I would
23 be basically potentially cross-examining at any point
24 throughout the hearing because they're saying that some of
25 their substance is also related to preemption so that

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1 essentially makes the County part of the same issue.
2 MR. PEEPLES: I would imagine the County's
3 witnesses will be similar too. I do want to say the 10th,
4 having all our testimony in by the 10th that's really a
5 tight schedule, and I'm just going to tell you that's
6 going to be really difficult reacting for that one.
7 MR. McMAHAN: Tim McMahan for the record, if
8 I might just weigh in here. It strikes me sitting here at
9 least that if the Applicant files the preemption request
10 next week, which is our intention, that that provides a
11 little bit more latitude for all the parties, and I think
12 that Mr. Peeples' schedule makes a little bit more sense
13 if we follow that. The County has much more notice for a
14 preemption request than is portrayed in Ms. Makarow's or
15 the Council's schedule. We have it out. We're thinking
16 about our supplemental testimony. So I think it provides
17 a little bit more latitude, and I think we still get to
18 the end of the process reasonably by basically being a
19 week and a couple days plus for the other parties another
20 week or two weeks for even ongoing response testimony.
21 CHAIR LUCE: Mr. Hurson, do you have any
22 comments? You've had an opportunity to look at the
23 Applicant's proposed schedule.
24 MR. HURSON: Jim Hurson. One of the
25 problems is there's nothing in here as far as a discovery

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1 order or schedule or motions hearings, and I'm not going
2 to know what to do on that until I've seen it. So that
3 would be one thing I would want to be able to insert. The
4 Applicant's schedule proposes four weeks. I think EFSEC
5 staff proposed three for the County. Frankly, I don't
6 think either is adequate. Last time I believe we asked
7 for eight weeks, the Council gave us six, and that was
8 pretty tight even without taking any depositions. And
9 frankly I see this as a whole new set of information we're
10 going to go through, and I'm going to need--I don't even
11 know what the schedule would be as far as I know you have
12 to get leave to take depositions or any other sort of
13 discovery. So I would want to have something in the order
14 that could set some sort of a discovery request and
15 response and authorization schedule. I'm a one-man show
16 so it's kind of hard for me to try to do my regular job
17 plus this on top of it.

18 CHAIR LUCE: I understand that.

19 MR. PEEPLES: Could I respond to the
20 discovery? I believe we have a discovery ruling in place
21 in Counsel Order 790, Prehearing Order No. 8. Our hearing
22 examiner has already ruled on that one I believe. So if
23 they have a discovery request, I think they follow that
24 order. It's simple. I don't think we need to confuse
25 what we're doing now on the schedule with that.

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1 My schedule I proposed I tried to be as fair
2 as I could be to everyone, and I gave everybody five weeks
3 for us from today to file our testimony and then five
4 weeks for everybody else to respond and then two weeks for
5 rebuttal or reply testimony. So I'm not saying that
6 that's perfect by any means, but I tried to set it out
7 fair. I believe it was six weeks. I think that's right,
8 six weeks, six weeks, and three weeks last time that we
9 had on our schedule, and I reduced that to five weeks,
10 five weeks, two weeks in order to come out to the
11 September 11 date.

12 CHAIR LUCE: I understand. Well, it's up to
13 the Council to determine, but I'm going to put
14 discovery--and, Mr. Hurson, you may have discovery
15 requests that you choose to make, but my recommendation
16 would be the Council would deal with those separately
17 under preexisting orders and bring them to the Council as
18 you feel are appropriate. I'm not inclined to try to
19 insert discovery requests into this particular prehearing
20 order.

21 Do other parties who are a party to this
22 case have any comments regarding these draft calendars?
23 Have you seen the draft calendars?

24 MR. SLOTHOWER: This is Jeff Slothower.
25 It's been difficult to follow the conversations. There's

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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. Peeple's 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 been
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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1 about that new configuration than the Council does, and
2 we're going on the configuration we presented to the
3 County.
4 CHAIR LUCE: So the project has actually
5 shrunk.
6 MR. PEEPLES: The project shrunk and
7 everybody knows on the County and all the parties I think
8 involved should have a good idea of what that project is
9 because they all participated in the County process.
10 CHAIR LUCE: Ms. Makarow, do you have any
11 thoughts regarding Applicant's request to schedule the
12 changes from our own? Is this from staff's perspective a
13 reasonable schedule to work with? And if not, please tell
14 me why.
15 MR. PEEPLES: May I point out what I
16 consider some deficiencies in my own schedule, and that is
17 I think when you get down to September 5 and on those are
18 really tight.
19 MS. MAKAROW: That was the comment that I
20 was going to make. I think staff's schedule is really
21 focused on getting all of the information together so the
22 Council had a reasonable portion of two weeks giving the
23 holiday to review before they went into hearing. With
24 respect to ruling on motions to strike prefiled testimony,
25 I think it's allowable to be able to do that on the record

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1 directly on the first day of hearing on September 11, but
2 I think that was the impetus for the schedule we
3 presented.
4 CHAIR LUCE: Mr. Fiksdal.
5 MR. FIKSDAL: Mr. Peeples I guess and
6 Mr. Hurson or any of the parties, do you think that three
7 weeks is an excessive long time for the hearing and could
8 we take one of those weeks and use it for your purposes
9 rather than the hearing purposes?
10 MR. PEEPLES: I believe so. I believe if we
11 start on the 18th that would help there, and I feel we
12 could reasonably get it done in two weeks. If we don't,
13 we'll have to maybe push it over into October if we don't.
14 But I think starting it on the 18th rather than the 11th
15 would be able to fill out that schedule. I just want to
16 say for the Council that this is for attorneys kind of a
17 real tight schedule, and I think Mr. Hurson has already
18 indicated that. I think it's doable, but it's really
19 tight. I don't think going the 18th is going to hurt
20 anything. That is my view.
21 MS. TOWNE: Mr. Chairman.
22 CHAIR LUCE: I'm going to make a
23 recommendation that the Council recess for a period of 15
24 minutes to discuss these schedules. My hope and intent we
25 can come back and set a definite schedule for proceeding

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1 to the hearing on September 11.
2 MS. TOWNE: My question bears on what we'll
3 be talking about and it goes to the comments made at last
4 week's meeting or the last prehearing that there were
5 conflicts the week of the 11th. If we do move it, would
6 that resolve the conflicts? I believe it was Mr. Carmody,
7 Mr. Lathrop, others.
8 CHAIR LUCE: Mr. Carmody, Mr. Lathrop, did
9 you hear that?
10 MR. CARMODY: Yes, this is Jamie Carmody.
11 It would resolve that issue.
12 MS. TOWNE: Thank you.
13 MR. FIKSDAL: The only question I have if
14 you're going to go into deliberative session we have two
15 Councilmembers on the phone, three, and it's going to be
16 semi difficult to get those.
17 CHAIR LUCE: My recommendation would be that
18 we do have a deliberative session. We do it in my office
19 and the Councilmembers call into my office.
20 MR. FIKSDAL: I don't think that will work.
21 CHAIR LUCE: Why not?
22 MR. FIKSDAL: Because you can't take more
23 than two separate calls on your phone.
24 CHAIR LUCE: Well, we only have two members.
25 MS. MAKAROW: Three.

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1 MR. MILLS: There's three with Patti.
2 MR. PEEPLES: Why don't we clear out and you
3 guys can deliberate.
4 MR. FIKSDAL: There's a whole bunch of other
5 people on the line already.
6 MS. MAKAROW: Maybe we can take a recess and
7 staff can find out if another bridge line is available for
8 Councilmembers to dial in.
9 CHAIR LUCE: That will be helpful; so we
10 will be in recess.
11 MR. CARMODY: Can we all drop off the line
12 and come back in 10 minutes or 15 minutes?
13 MR. PIERCY: Can I ask one question before
14 you adjourn?
15 CHAIR LUCE: Please.
16 MR. PIERCY: Is there a reason why the
17 discussion can't take place in public session and has to
18 be in deliberations? This is Darryl Piercy, Kittitas
19 County.
20 CHAIR LUCE: I appreciate you asking that
21 question.
22 MS. TOWNE: Why don't we just adjourn or
23 recess for five minutes or recess for five minutes.
24 CHAIR LUCE: We'll recess for five minutes.
25 We'll have a break and we'll have the deliberations in

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1 public session.
2 MR. PIERCY: Thank you.
3 (Recess taken.)
4 CHAIR LUCE: We're back on the record. This
5 is a continuation of the prehearing conference with
6 respect to the Kittitas Valley Wind Project. Council has
7 before it two draft calendars, both of which lead to an
8 adjudicative hearing early in September. We've also heard
9 from the County that they would prefer and other parties,
10 intervenors that they would prefer additional time.
11 Councilmembers, my recommendation would be
12 the Applicant's schedule. The Applicant is going to be
13 required to put on this case. That we go ahead and change
14 the beginning of the hearing date until September 18, give
15 parties an additional week; then we proceed to adopt the
16 schedule as laid out. I believe it's consistent with
17 other prehearing orders. I certainly haven't heard
18 otherwise. I believe the discovery requests that was
19 raised by Mr. Hurson and maybe other parties can be dealt
20 with consistently with Prehearing Order No. 8, in any
21 case, come back to this Council. If there is a motion for
22 discovery, they will come back to the Council and make
23 that request.
24 So I'd ask Councilmembers to look at the
25 schedule and comment accordingly.

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1 MR. FIKSDAL: Before you start, if you're
2 going to move the hearing date to begin on September 18,
3 guess would the Applicant want to adjust any of his
4 proposed schedule?
5 MR. PEEPLES: I think they would be okay.
6 You can have ruling on motions to strike and although you
7 could have it that same day, but if the witnesses get
8 stricken you've got to make arrangements perhaps not for
9 them to show up. So that pretty much follows my
10 recollection. I don't have my notes. I left them at
11 home, but I took this from the old order. I think that
12 pretty much reflects what Adam did last time except that I
13 was running into September 11 ruling on motions to strike
14 right up to the end. I can't be totally positive on that,
15 but it was real close into days.
16 MR. FIKSDAL: So your suggestion would be
17 changing the ruling on motions to strike to the 18th or
18 the beginning?
19 MR. PEEPLES: No, to the 11th and start on
20 the 18th.
21 MR. FIKSDAL: Just checking.
22 MR. PEEPLES: Because it's hard to show up
23 the day of hearing and get a ruling on a motion to strike.
24 MR. HURSON: Could I comment on something?
25 CHAIR LUCE: Let me hear the interchange

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1 between staff first and then Mr. Hurson.
2 MR. FIKSDAL: We just noted that we've been
3 discussing the Applicant's schedule up to the hearing.
4 The Applicant also has a schedule for post hearing that we
5 may need to discuss a little bit. So before the Council
6 adopts the Applicant's schedule we need to do that, but I
7 think concentrate on the prehearing schedule and then once
8 that's--
9 MR. PEEPLES: If I may make a suggestion.
10 The briefing schedule does not need to be decided today,
11 and it might be better just to wait until--I put that in
12 just to fill in something later. It might be just as good
13 to wait until Adam Torem gets back and then do the post
14 schedule. That's just a suggestion.
15 CHAIR LUCE: The post schedule as it's
16 currently laid out by--a musical interlude brought to you
17 by one of the intervenors. We're not sure whom. Could
18 you turn down the radio or the C D. a little bit.
19 MR. PEEPLES: Somebody is on hold.
20 MR. HURSON: Somebody pushed the hold button
21 instead of the mute button.
22 CHAIR LUCE: Can other people hear?
23 MR. HURSON: Can anybody hear us?
24 MS. JOHNSON: I'm here. It's not mine.
25 CHAIR LUCE: Post-hearing briefs we can hold

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1 of on setting post-hearing briefs.
2 MR. PEEPLES: Yes.
3 CHAIR LUCE: Councilmembers, I need some
4 feedback with respect to the schedule. We presented a
5 schedule. Applicant presented a modified schedule. I
6 would like to get a decision with respect to whether we
7 can go forward on that.
8 MS. WILSON: Since I'm not the one preparing
9 all this, I'm assuming that they figured out that these
10 are enough days in order to do it, and as long as we're
11 going to not have the hearing until the 18th it seems like
12 it provided enough time to get there.
13 CHAIR LUCE: Particularly given the fact
14 that there has been a lot of work done previously, even
15 though there may be some changes to the current
16 application which is now shrinking. Do I understand that
17 to be in the form of a motion?
18 MS. WILSON: Yes
19 CHAIR LUCE: Do I have a second?
20 MS. TOWNE: Second.
21 MR. FRYHLING: What was the motion?
22 CHAIR LUCE: The motion was to adopt the
23 modified Applicant's schedule beginning the adjudicative
24 hearing on September 18.
25 MR. FRYHLING: Second.

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1 MS. WILSON: And not doing the post.
2 CHAIR LUCE: And not doing the post-hearing
3 briefs until a later period of time.
4 Councilmembers on the phone?
5 MR. SWEENEY: I heard the motion.
6 CHAIR LUCE: There's been a motion,
7 discussion. I think we were pending before that for
8 Council right now for final action. So is the question
9 called for?
10 MS. WILSON: The question is called for.
11 CHAIR LUCE: The question has been called
12 for. All in favor of adopting the modified schedule
13 commencing on September 18 say Aye.
14 COUNCILMEMBERS: Aye. Let it be shown that
15 so far as I can determine the vote was unanimous. Is that
16 correct for those of you who are on the phone?
17 MS. JOHNSON: Yes.
18 MR. SWEENEY: Yes.
19 CHAIR LUCE: And the vote was unanimous
20 here. Thank you. We have a hearing schedule. We do not
21 have a post-hearing reply brief schedule, but we will
22 determine that later.
23 Mr. Hurson.
24 MR. HURSON: My comment was going to be as I
25 understood Mr. Peeples' proposal he understood that he was

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1 giving the County five weeks to respond. In my reading
2 it's only four. So if the impression was that it gave us
3 five weeks that would be incorrect, and frankly the other
4 comment is more of a personal matter. My in-laws are
5 having their 50th anniversary the weekend of the 11th,
6 12th, 13th, and 14th, and I was hoping to be there for it,
7 and with the deadline of the 15th I guess I can tell my
8 in-laws I won't see them. What I would prefer is if the
9 Applicant actually intended us to have five weeks that we
10 could slide that due date until the 22nd or maybe even the
11 18th.
12 MS. WILSON: You're talking about August?
13 MR. HURSON: August.
14 CHAIR LUCE: I think we will stay with the
15 schedule as we currently have it and as the Council has
16 approved it.
17 MR. HURSON: Okay.
18 CHAIR LUCE: Irina, what's the next item on
19 the agenda: other?
20 Mr. Fiksdal, you're looking like you have an
21 idea about what comes.
22 MR. FIKSDAL: No, I was just looking for the
23 agenda. Did we give you a copy of the agenda?
24 CHAIR LUCE: My agenda says other.
25 MS. MAKAROW: I believe that would be other

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1 then.
2 CHAIR LUCE: Does anybody else have any
3 other things to bring before the Council?
4 All right. We'll set a date now for the
5 next prehearing conference. When's the next Council
6 meeting?
7 MR. FIKSDAL: It's July 12. No, 11th. July
8 11.
9 CHAIR LUCE: All right. Do we know what the
10 availability of Mr. Torem will be?
11 MS. MAKAROW: Not yet.
12 CHAIR LUCE: We'll go ahead and set the next
13 prehearing conference for our next Council meeting day.
14 We will convene that prehearing conference as the first
15 item of business that the Council will deal with on 1:30
16 on July 12th.
17 MS. TOWNE: 11th.
18 MS. WILSON: Mr. Chairman, would that be an
19 opportunity for request for date changes to be made at
20 that time if there was something?
21 CHAIR LUCE: The parties are always free to
22 make any request they wish. By examination of this
23 schedule, either ours or as adopted the Applicant's
24 modified, given the fact there has been so much work done
25 on this case is that that schedule we've adopted we should

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1 be able to make, and I do recognize it may impose some
2 burden on counsel; but I'm sure that you will find a way
3 to make that happen.
4 MR. PEEPLES: Mr. Chairman, I just want to
5 say when we file our request for preemption there will be
6 a bunch of attachments to that, and it's going to take
7 some document prep time. What I will say to the County as
8 soon as we have the final draft done we will get a copy of
9 that to them. We won't have the attachments, but we'll
10 have everything else on it.
11 CHAIR LUCE: Mr. Hurson, if you could
12 provide us with a copy of the commissioners' final
13 decision.
14 MR. PEEPLES: That will be attached.
15 CHAIR LUCE: I assume that will be attached.
16 MR. PEEPLES: Yes.
17 CHAIR LUCE: All right. That's fine. With
18 nothing else to come before this Council on the prehearing
19 conference on Kittitas Valley Wind, the prehearing
20 conference is adjourned.
21 * * * * *
22 (Whereupon, the prehearing conference was
23 adjourned at 2:34 p.m.)
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A F F I D A V I T

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.