BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:  
Application No. 2003-01  
SAGEBRUSH POWER PARTNERS, LLC,  
KITTITAS VALLEY WIND POWER PROJECT

Prehearing Conference  
Pages 1 - 43

A prehearing conference in the above matter was held in the presence of a court reporter on July 12, 2006, at 4:00 p.m., at 512 North Poplar Street, Kittitas Valley Events Center, West Youth Craft Meeting Room, in Ellensburg, 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
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<td>1. <strong>Appearances (cont’d):</strong></td>
<td>1. <strong>M. Lathrop:</strong> Steve Lathrop on behalf of myself.</td>
<td>1. <strong>Judge Torem:</strong> All right. We have with us today the Administrative Law Judge Adam Torem. At this point in time I'm going to turn the proceedings over to our Administrative Law Judge for the balance of the hearing. Judge Torem, you can handle the agenda from here forward.</td>
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<td>2. F. STEVEN LATHROP, F. Steven Lathrop, Attorney at Law, Lathrop, Winbauer, Harrel, Slothower &amp; Denison, LLP, 201 West Seventh Avenue, Ellensburg, Washington 98926</td>
<td>3. <strong>Mr. Garrett:</strong> Ed Garrett, representing ROKT.</td>
<td>2. There's yellow sheets in front of those that are here this afternoon in person in Ellensburg and this is the proposed agenda. We're going to add between number three and four putting on the record some ex-parte contacts that I'll take care of as well as another Councilmember. Any other agenda items besides the update on prehearing filings and an update from the Applicant regarding the witness scheduling for the hearing in September? Any other items that we need to put on right away?</td>
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<td>5. ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY, Debbie Strand, Executive Director, 1000 Prospect Street, P.O. Box 598, Ellensburg, Washington 98926.</td>
<td>4. <strong>Mr. Ufkes:</strong> I'm John Ufkes with Cone Gilreath, but I'm just observing.</td>
<td>3. <strong>Mr. Tribble:</strong> Just as a point of order, Judge, this is Mike Tribble on the telephone. I don't have an agenda; so if as you go through the agenda, if you could identify pretty clearly what it is that we're addressing I'd appreciate that.</td>
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<td>7. RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT), Ed Garrett, Lay Representative, 19205 64th Avenue S.E., Snohomish, Washington 98296.</td>
<td>5. <strong>Chair Luce:</strong> Milt, thank you very much.</td>
<td>4. <strong>Judge Torem:</strong> All right. Thank you.</td>
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<td>8. <strong>Chair Luce:</strong> The Washington State Energy Facility Site Evaluation Council will come to order. This is a prehearing conference in the matter of Kittitas Valley Wind Power Project, Application No. 2003-01. My name is Jim Luce and I'm the Chair of the Energy Facility Site Evaluation Council. We are meeting today on Wednesday, July 12, at the Kittitas Valley Events Center at the Kittitas County Fairgrounds.</td>
<td>6. <strong>Judge Torem:</strong> Anybody else on the line?</td>
<td>5. <strong>Chair Luce:</strong> Councilmembers absent have been excused. Right?</td>
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<td>10. <strong>Chair Luce:</strong> Staff, could we have an identification of staff who are present here today.</td>
<td>7. <strong>Chair Luce:</strong> Councilmembers absent have been excused, is that correct, Mr. Fiksdal?</td>
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<td>11. <strong>Chair Luce:</strong> Milt Johnston with the Department of Natural Resources.</td>
<td>8. <strong>Mr. Tribble:</strong> I'm Allen Fiksdal.</td>
<td>7. <strong>Chair Luce:</strong> Councilmembers absent have been excused, is that correct, Mr. Fiksdal?</td>
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<td>12. <strong>Chair Luce:</strong> Mike Mills.</td>
<td>9. <strong>Chair Luce:</strong> That's correct. Mr. Sweeney has been excused. Right?</td>
<td>8. <strong>Chair Luce:</strong> That's correct. Mr. Sweeney has been excused. Right?</td>
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<td>13. <strong>Chair Luce:</strong> Chris Towne, Department of Fish and Wildlife.</td>
<td>10. <strong>Chair Luce:</strong> Good. Thank you very much.</td>
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<td>11. <strong>Chair Luce:</strong> Thank you very much.</td>
<td>10. <strong>Chair Luce:</strong> Good. Thank you very much.</td>
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<td>15. <strong>Chair Luce:</strong> Ms. Adelsman from the Department of Ecology.</td>
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<td>16. <strong>Chair Luce:</strong> Sure.</td>
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one missing in there. That's rebuttal testimony which is to be filed two weeks after the 15th.

JUDGE TOREM: I don't see that date in there.

MR. PEEPLES: It's not in there.

JUDGE TOREM: So perhaps we need to clarify that. Let me make sure that other parties to this proceeding have got that August 15 deadline on their calendars and are working toward meeting that. Again, I was about to say that may be dependent on what is filed by the Applicant if you feel there's any need for supplementing, but being ready to get that when it comes in next week.

MR. HURSON: I don't know at what point you want me to raise some issues I have.

JUDGE TOREM: This is probably it because it would be other parties so, Mr. Hurson.

MR. HURSON: Jim Hurson, Deputy Prosecutor

Kittitas County. The current schedule calls for what is being referred to as the supplemental testimony due on August 15. Supplemental may be technically correct, but I think for practical purposes this is a whole new process, a whole new preemption, a whole new set of testimony. I have submitted some informal discovery requests to the Applicant as I understand is under Order 790. That was covered in our last Thursday and I have received no response back from them. So I was going to file a formal discovery request which I understand under that rule is to be received by the Council by noon on Monday and then Judge Torem makes a ruling by Thursday and then based upon that we proceed.

Frankly, I see this as probably the first discovery request, and frankly I don't think that the current schedule is realistic the County can meet an August 15 deadline when we need to undergo some discovery on this. I understand discovery is unusual in the EFSEC process, but this is also the first time anybody has ever asked for a preemption request; and I believe it's incumbent upon that the Council have all the information they need, and it's also important that I have all the information I need to represent my client, and our discovery request revolve around that.

I know that's a different issue, but this is going to relate to basically the scheduling and whether this is even a reasonable schedule. Because frankly when it's all said and done, I later on plan to ask that you strike the current hearing date so we can set a more reasonable time frame. This is a big issue with a lot of issues. One of the issues that the Applicant was supposed to be able to present is that all other potential locations within the County have been examined and rejected. Their preemption request just basically says, well, the comp. plan doesn't want them anywhere so there isn't anything. I believe as we all saw in Wild Horse there are potential sites in this county that are viable. Wild Horse is an excellent site. That's why we approved it from the County and that's why EFSEC approved it too. It frankly defies our I think imagination that other wind farm companies are not interested in looking at other potential sites, and this County probably has many, many potential sites for expansion of Phase 2 of Wild Horse which we anticipate that is being investigated, perhaps infill of Wild Horse, perhaps expansion of Wild Horse. We talked about the other wind farm that has contacted Kittitas County about another wind farm. That's another alternative site within the County, and part of our request from the Applicant is to tell us everything they know about what they're looking at and anybody else is looking at for other potential sites because frankly we believe there's probably many, many sites that are good viable sites properly mitigated.

The one that they propose in this case isn't, but we believe there's many other potential sites that are potentially out there and they should be required to demonstrate it, but it doesn't look they're going to.

So we want to demonstrate that there are many other sites and therefore preemption is inappropriate. So some of the discovery goes along that line. Others go essentially to the good faith arguments. I'm kind of just trying to talk in big, round terms because I know this isn't the forum to get the discovery requests approved.

But as far as good faith, it's still unclear to the County what is even being proposed. They say there's a 65-turbine proposal, but we've never even seen a 65-turbine proposal. They have never mapped a 65-turbine proposal. They've never said these are the locations for these turbines. There are things like, well, they will be somewhere in these string lines and we'll figure it out later. That kind of ignores all the environmental impact and what you can do, and this has become a key issue because they've asserted that anything beyond a 1,320-foot setback from residents would make this economically nonviable. I believe we have a right to investigate whether that is in fact true and/or whether they could be properly mitigated and set back with a proper location in there, and so we've asked some requests on that line.

One of the confusing things as I was looking through the history, 2003 EFSEC Application the Applicant asked for a 181.5-megawatt project. That's what their cover letter said. In order to seek consistency with the
County, the 2006 development application draft that they sent to us called for a 246-megawatt project. So they're trying to seek consistency but asked for a project that's actually larger than the one that they've asked EFSEC to approve as far as what it will produce. They later on reduce it. Okay, we'll reduce it to a 65 turbine, but their project has always asked for up to three megawatts. That's a 190-megawatt project which is still larger than the initial EFSEC application.

The preemption request says, however, that they're asking for approximately a 120-megawatt project. We've never seen a 120-megawatt project proposed. The smallest thing they proposed is 65 three megawatts. What it looks like they're looking at now is they're looking at a ceiling maximum of 65 1.8-megawatt turbines, and the basic engineering as it's been explained to me by the wind folks over the period of time is smaller turbines could be placed closer together because the wing span is smaller and the wind turbulence vortex goes away. The smaller ones like in State Line you put them closer together. The bigger ones have to be spaced out more.

So if they're really asking for 1.8-megawatt turbines but they were proposing us three megawatts, that means they should be able to squeeze all other things being equal the turbines closer together. If you can squeeze them closer together, you should then be able to remove some of our outer turbine lines that are in close proximity to people's homes, and you could still have a project and you could be properly set back and mitigated.

We would like to see what, if any, analysis they've done on that point because they've given us a map that showed the 2,500-foot setback for columns that they say will make it completely nonmarketable. If you overlay that setback over the 2003 application, they can put up 65 turbines.

So it's really kind of very confused. I can't figure out what they're applying for. It's all very kind of slippery slope, mystical what they're asking for, why they can't do it nonspecific information, and this is a huge issue to ask for preemption and it should not be rushed.

I would trust the Council would want to know this information too during our hearing. We would ask them where are those turbines going to go. They wouldn't tell us. We had asked them how is this not economically viable. They wouldn't tell us. Have you done any other analysis? They won't tell us. We think we're entitlement to that.

So we do intend to submit a formal discovery request which I understand would then mean at the earliest there would be an order next Thursday for you to direct them to supply information. I don't know what the delay will be to get that done.

JUDGE TOREM: Let me ask first: All of these issues substantively may be part of the Council's evidentiary hearing in September if it stays on schedule. The underlying idea is that there was an informal discovery request and in the last week you've heard nothing back. Let me have just a response directly to that from the Applicant.

MR. PEEPLES: I'll respond a little bit and then I'm going to turn it over to Tim. I saw that request late Thursday about four o'clock and it's long. A week hasn't even ran. I think any expectation by anyone for us to respond to that request in less than a week is absolutely ridiculous period. We are also in the middle of trying to get our testimony on the 18th. We do plan to respond, and I think the response will take care of part of it. Part of it will be a legal response; part of it will be an information response. To at this point say, well, I gave you an informal request five days ago and you haven't responded so now I can go ahead and get a formal discovery request is just passing strange to me. It really is.

JUDGE TOREM: Well, I understand both sides.

MR. PEEPLES: But we can't respond that quick period.

JUDGE TOREM: Maybe Mr. McMahan will tell me when the response will be out. I'm not going to play shepherd here as to when is a formal discovery request. We have a tight schedule coming and I can appreciate pushing the deadlines as much as you can to get a response from the other side. That much I can appreciate. But the Council if it's going to entertain any motions to strike hearing dates and continue will want to know that a response was filed and an unreasonable amount of time went by and no response was forthcoming and there's a requirement for a delay.

So with that in mind, let me have Mr. McMahan explain what the Applicant's position is.

MR. McMahan: Thank you, Your Honor. I do just for the record want to object to Mr. Hurson trying his case here when you asked about a discovery request and we're not going to respond to that. I mean that's what the adjudicatory hearing is for. We're not going to go there right now.

Beyond that I will just note in Order No. 790 there's some verbiage in there from March of '04 with Mr. Peeples indicating historically prefilled testimony has tended to address discovery issues. In unusual circumstances additional discovery can be sought and...
obtained. Here we are filing prefiled testimony on
Tuesday. Quite frankly we believe that much of that
prefiled testimony is going to be responsive to these
discovery requests. I'm sure Mr. Hurson won't be entirely
satisfied but that's okay. That's what your process is
for per Order 790. We will submit a response early next
week. Monday or Tuesday is our intention. We are indeed
focusing right now on getting prefiled testimony in and
having it be of a quality that can move this process
forward. That is our first priority, and that is what we
intend to do. So I don't think that it's timely right now
to request that an order be entertained by Monday given
the timing here in the order.

JUDGE TOREM: I think in deference to
Mr. Hurson's schedule--and I'm not recalling exactly what
790 says right now. Much has past since we've wrote and
issued that order--what I'm thinking is if Monday you want
to file a formal discovery request and put that time line
in motion, then on Tuesday you'll have a response of some
sort. What I might suggest is that on Thursday, and I'm
just trying to visualize what my calender for next week
is, Thursday or Friday of next week we have a telephonic
discussion with the parties. If we do that, it would
probably just be with me and the parties as sort of a it
will be on the record of some sort. We'll tape record the

MR. HURSON: If I could, just part of the
parties that want to we can work it with a bridge line as
well, and we'll send out an electronic notification if we
choose to do it. Let me see the formal request actually
come in. Let me see a response come out.

Mr. Hurson, if there's still a need for the
motion for you to review briefy materials and see what
you think might be missing, then we'll have a
teleconference and figure out where it can go to fit the
schedule of 790. If you need a quick decision, you'll
have to review what their response is and tell me what you
think is still missing and determine what it is you're
asking me to have them produce and get a response to that.

Getting me to issue an order by Thursday may be premature
given the schedule we've laid out today, but having the
discussion about it Thursday or Friday if we can fit it
into everyone's schedule might be more appropriate and
then getting a directed response the following week.

So next week is the week of the 17th to the
22nd I think it is. Hopefully then by the week of the
25th we will have clarified this and we'll still be coming
up on the August 15 deadline and see if there's any reason

to hold a more formal prehearing conference with the rest
of the parties if there's going to be any extension of any
deadlines for supplemental testimony.

But I understand your concern. I understand
the time lines we're working under, but I think the
Council was fairly clear in late May, and I understand
from reading what happened last time again in mid June
that we're going to work everything we can to get these
hearing dates to be the hearing dates and the final
hearing dates, and unless there's incredible showings that
this is prejudicial to one of the parties and won't allow
them a fair adjudication to go forward, those will be the
hearing dates. That's what I'm hearing from the Council
both in May and in mid June. Unless somebody is changing
that today, I would be surprised, but it's premature to
make a motion to strike the dates yet. If you want to, you
may today. Whether the Council will act on it or

table it, we'll see. But I appreciate making the issue
known today while we're all together.

MR. HURSON: Jim Hurson again for the
record. I mean they say I didn't give them enough time,
but then we have how much time?

JUDGE TOREM: Time is scarce.

MR. HURSON: That's I guess is my point is

apparently this is inadequate for them. Yet under the
rule I had this and then there's suppose to be a ruling by
Thursday, and I think that's probably an unreasonable
short period of time for you to make your decisions, but
that's what it says. And I guess it appears that the
Applicant and their four attorneys are overwhelmed. I'm
the only one.

JUDGE TOREM: Well, no one said that,
Mr. Hurson. Well, let's see what comes in on Monday and
Tuesday. That again as Mr. Peeples and McMahan said that
very well may answer most, if not all, of the mail. If it
doesn't, let me know. Send an e-mail to me and to
Mr. Peeples and the rest of his compatriots. If we need
to, we'll schedule something for Thursday or Friday on
short notice and we'll discuss what's still missing from
that formal discovery request that you're going to file on
Monday and we'll let the process work.

MR. HURSON: Okay.

JUDGE TOREM: Today we have a maybe. So
let's see what we have at the end of next week, middle of
next week, and then if there's something to go forward on
we will.

MR. HURSON: If I could, just part of the
frustration here is apparently the Applicant is frustrated
because they have to get their prefiled in. My
futility is going to be if their prefilled is going to be in my lap next week, we've already seen what their preemption request was like and to expect me to be able to efficiently and timely respond to whatever they intend to file next Tuesday and run a discovery request and filing and get everything taken care of by August 15, I frankly just think this is--I realize that the Council set it, but I think from representing my clients there's just a fundamental issue of a process that we should be able to properly research it, and I would hope that the Council would want to have all the information too. This has been going on. I know this has been going on for three years, but I still don't know where they're going to put the turbines. They have not told in three years where the turbines will go, just in generic concepts.

JUDGE TOREM: Let me just interrupt and ask from the Applicant, do you think that the testimony will clarify some of the substantive issues?

MR. PEEPLES: Well, it's really hard for us not to start into substantive argument now.

JUDGE TOREM: You can just give me a yes or no. Will the locations of the turbines be known?

MR. PEEPLES: I think it will from our point of view be reasonable answers to the reasonable questions that he has asked. Now, I want to point out that we didn't have exact locations at Wild Horse either. Okay? We had corridors without exact locations. So this is doing it to a certain extent exactly like we did at Wild Horse. And the other thing I want to point out is we started out trying to compromise this, and we came back last fall and reapplied. We were going from the 65 to 80 approximate turbines in the middle of the hearing. We were basically requested and suggested that we reduce it to 65. We did that as part of the county hearing process. So it's not like this thing came out of nowhere when we reduced it.

JUDGE TOREM: Mr. Peeples, the Council is well aware that the application they saw initially in 2003 has changed a number of times, and personally I've set those things, those binders aside and will pick them back up later this month and next month to really spin of what was and what is to make sure those issues are straight in my mind to run this show in September and Councilmembers will do the same.

MR. PEEPLES: We will have the testimony showing where they are.

JUDGE TOREM: I want to reassure Mr. Hurson and the rest of the parties that as much confusion and changes and other items that are possible when it comes down to the hearing itself the same burdens of proof will apply, the same procedures will apply, and I certainly don't expect it to be near as friendly as the Wild Horse project came out to be. But this Council has to be convinced as to what it's certifying if it's going to do so or what it's rejecting if it chooses to do that and be able to articulate those reasons to the very same governor that approved the last project and was here to dedicate that today.

So this Council still answers to the same boss with the same standards. So all of the reasons that you're suggesting, Mr. Hurson, that there might be delays, if the Council doesn't think it can tell the Governor enough to justify its reasoning one way or the other, it will then set the hearing aside to ask for more time. If it thinks it has enough information or can tell the Governor that the parties didn't provide enough, then Council will make that decision as well; but today isn't the day to move the hearing dates or not.

Let's follow the process. If there is a true discovery dispute to be resolved next week, I'll do it according to the procedure in 790. It may be off by another week. If that again impacts the reason to move it, we'll deal with that when the time comes up. For other parties present is there any other issues as to witness availability, other issues that have come up now that you've had time to digest those hearing dates or deadlines to get their prefilled supplemental testimony in? I'm not seeing any from the other parties.

Mr. Lathrop.

MR. LATHROP: I would just simply indicate that again the volume of the preemption request is such that we certainly, I will be supplementing my testimony and that of certain witnesses. The time frame is certainly short. We too have an interest in seeing what is disclosed through discovery and also what the supplemental prefilled testimony the Applicant turns out to be and have similar concerns as the County as to the compressed time frames to be able to come up with what we think would be adequate information to address those items.

JUDGE TOREM: I just want to remind the parties I don't think that these time frames as they're set out were all that more compressed than the initial round of filings, and if they're compressed at all, it's due to what we call the supplement nature. So we've been here at the cusp with the preemption request before. All of us have been here before, and now we're back again with some different information. I think the two binders that we got that are sizable many of them are transcriptions of what occurred in front of the Board of County
JUDGE TOREM: All right. Other prehearing the setbacks. It will be but we cannot violate whatever the setbacks are. So the corridors have been pointed out and what controls is with regard to the number of turbines issue, the corridors have been pointed out and what controls is the ability and the idea preemption is one that revolves around a consistent application and a consistent approach. The County is entitled to have and consider an application and that is something that the EFSEC board is equally entitled to have a review of exactly what the County got; otherwise, we're talking about apples and oranges. And we're confused because they don't appear to be the same. And so to contest preemption when there is lack of clarity on the consistency of what

was given to the County to be reviewed versus what you're being asked to review that's the primary area of concern.

JUDGE TOREM: I understand that and certainly it's something that will be subject to the litigation on the couple of days when we talk about preemption. We can't satisfy those discussions now, but I appreciate you putting that out there.

Mr. Peeples, anything else from the Applicant on this one?

MR. PEEPLES: I just want to point out that except for 30 pages it was the County record. Everybody has seen that in this room. So there's nothing new in our request for preemption. A lot of the testimony will merely be, much of it will be referring to things that were provided to the County during the County hearings process.

With regard to the number of turbines issue, the corridors have been pointed out and what controls is the setbacks. The setbacks control where we put it. We can't move a turbine there and violate the setback. Okay? There will be micrositing. There will be stuff happening, but we cannot violate whatever the setbacks are. So the setbacks will control not a point on the map. It will be the setbacks.

JUDGE TOREM: All right. Other prehearing
JUDGE TOREM: All right. Excellent. So other parties if you have specific requests for time let Mr. Peeples know, but I think if you will copy Mr. Tribble on the e-mail as well, you'll know that your efforts are in good hands; and even if you're adverse to the project, you don't have to feel as though you're waiting I guess the fox and the henhouse comes to mind that your issue is set to some day which appears less important than another. But Mr. Tribble will make sure that the appearance of witnesses is equally fair or unfair for everyone as the case may be.

Thanks, Mike, for taking that on. It takes it out of the Council's realm and makes the parties work together. That worked quite well when John Lane did it.

MR. PEEPLES: What I think we did last time is we did group it by subject area, we circulated that, and then people who had witnesses with problems on the schedule got back and we rearranged people.

JUDGE TOREM: Because certainly we're going to have enough to do with motions to strike and other issues that come up in discovery, if we can have you and Mr. Tribble be the point people on that, that takes one thing off of our schedule and gets it done.

MR. PEEPLES: Yes.

JUDGE TOREM: Excellent. So that takes us to the other issues. Are there any other issues today?

From the Applicant first.

MR. PEEPLES: No.

JUDGE TOREM: From the County, Mr. Hurson?

MR. HURSON: Just wanted to go back in essence to make sure on the disclosure that Patti Johnson made.

JUDGE TOREM: Yes, sir.

MR. HURSON: I'm deputy prosecutor. Patti Johnson is the solid waste director for the County. She's also the interim public works director right now because our public works director is gone so I do have communications with her on a fairly regular basis on these things; so I want people to be aware of that.

In fact, I think it was yesterday or the day before I was talking to her about a public works issue and I saw the prefiled, and I basically made the suggestion to her at that point in time that the prior contact with the wind farm people needs to be brought forth, should I do that or should you, and she said she wanted to do that. So I just wanted that because that could be considered an ex-parte contact also because we did--that was the first time we ever talked about anybody related to a wind farm application so I wanted that on the record.

I guess from a County perspective the one

overlap from one or two or three topics, but the majority would be scheduled by topic.

Mr. Tribble, would you be willing take on the responsibility of working with Mr. Peeples and Mr. McMahan to make sure that the schedule is set up? The two of you set the agenda, if you will, and then make sure that you communicate with the other parties so that when their issue comes up it works for them as well.

MR. TRIBBLE: You mean all the other named parties, not just the witnesses that we plan on putting on?

JUDGE TOREM: Correct. We look at that because many of these issues are environmental related and although you may not be bringing the witnesses you work on the schedule for the presentation because you may be cross-examining or supplementing the questioning of those witnesses. I want to make sure that Mr. Peeples--as much as I would trust him to set up a schedule that's fair for all, I want to also maintain the appearance of fairness that another party that's everybody's party, if you will, being the Counsel for the Environment, works with them to do it, and Mr. Lane did that quite gracefully when we set it up the last time.

MR. TRIBBLE: Yes, I have no problem with that.
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<td>thing I want to note, I want clear is one of the things and rejected, and now I don't remember the exact words but that concept, that is going to be part of our case.<strong>JUDGE TOREM:</strong> I certainly would anticipate that.<strong>MR. HURSON:</strong> And I wouldn't necessarily need Patti Johnson to testify because she had one conversation with the developer, but I know that Mr. Piercy has also. But if somebody sees that's a conflict and was going to challenge her, then the County would need to know sooner rather than later because we need to have someone on the Council. Like I believe Chris Towne is no longer on the Council except for this one and I assume that's for some continuity of knowledge; and so if that is an issue with Patti Johnson, the County would need to know very quickly.<strong>JUDGE TOREM:</strong> Part of the purpose of putting that on the record today was to make sure at the next possible meeting that anybody that sees this as a need to make a motion to disqualify her otherwise would make it as soon as possible. It's out there today on July 12 as soon as we could. If there is something, and again I've looked at it and I discussed it with Patti, I don't see something, but someone else may have a different angle on it and they're welcome to bring that forward. We'll consider it at that time.<strong>MR. PEEPLES:</strong> I just want to say categorically the Applicant is not going to bring that forward. We don't think there's a conflict there, and we're not going to do it.<strong>JUDGE TOREM:</strong> Well, we'll let someone else make that case.<strong>MR. HURSON:</strong> Frankly, I just wanted to make it real clear so there wasn't ambiguity. We don't need a challenge a month from now.<strong>JUDGE TOREM:</strong> You're not aware as County counsel that there's any reason the County would be asking for a substitute.<strong>MR. HURSON:</strong> No. The only reason would be if somehow based upon their testimony I believe it would be necessary to have Patti called as a substantive witness.<strong>JUDGE TOREM:</strong> I imagine that would only be in the case of clarifying what the discussion was or something else; so, again, we'll leave that. If something comes up and it needs to be aired out, we'll do it in the appropriate forum.<strong>MR. HURSON:</strong> Okay.<strong>JUDGE TOREM:</strong> Anybody else with other issues today procedurally for keeping us on track?<strong>MR. FIKSDAL:</strong> Judge Torem, Allen Fiksdal, staff. We are going to schedule a public portion of the adjudicated hearings and our initial thought was to schedule for the second week, and we wanted to ensure that we didn't have to come back. Is this process going to last more than one week? Should we schedule the public session for the evening during the first week or the second week? We want some sense that nobody thinks that this is going to end after three days, and we may have to come back the next week just for the public hearing. Should we schedule the first week or the second week?<strong>MR. PEEPLES:</strong> I would schedule it the first.<strong>CHAIR LUCE:</strong> The first week and if we have to come back, we have to come back.<strong>JUDGE TOREM:</strong> I would almost suggest that we--my observation from watching what's gone on in the newspapers here and what our experience was in the Wild Horse project is that we really had much of a love fest with Wild Horse and as much as people wanted to turn out most of what they wanted to have said about the Wild Horse project had already been said and become part of the record and therefore very few people spoke at that public hearing. It was quiet. I don't think we're going to have that this time around, Mr. Fiksdal. There's a lot more people that</td>
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MR. HURSON: Their normal meeting time is on Tuesday afternoons.

MR. FIKSDAL: So Tuesday evenings would be okay or Tuesday and Wednesday or Wednesday and Thursday. There's nothing to conflict with the County.

MR. HURSON: The planning commission has night meetings on Monday and Tuesdays and then you might run into the Ellensburg--

MR. FIKSDAL: We will try to schedule Wednesday, Thursday then.

MR. HURSON: Okay. Because Ellensburg is going through the conference of planning review process which is causing a lot of public input; so there may be some people that have conflicts.

JUDGE TOREM: So, Mr. Hurson and Mr. Piercy, if you will check the County calendar for Wednesday the 20th and Thursday the 21st for evening sessions, one or both of those, and let Mr. Fiksdal know that may be part of the schedule if people want to start rounding up the troops those would be the evenings to pencil in.

MR. PIERCY: Darryl Piercy for the record.

I can essentially say that there's no land use issues pending for either of those nights so there would be no public hearings schedules.

MR. FIKSDAL: Thank you.


MR. GARRETT: Ed Garrett from ROKT. I assume these are going to be open hearings for the public.

The concern I have in putting them on two different nights is for most people the public they want to have a total picture of the information before they respond, and to have one public hearing early on when not too much has been decided already and then come back and have another one is one issue I request to have it just done at the end where everybody has a total picture. They can make up their minds, their comments, and get it on the record because everything is out there.

If you go do two of them, unlike what has happened with us in the county, is that once you sign on the list to speak for the first night, you come back on the second night to listen and all of a sudden you want to comment on something that was in the night before, you're not allowed to speak. So I would assume you're going to have two open hearings, do one earlier and one later, but then people who still want to speak again they have that opportunity.

JUDGE TOREM: I can't promise you what the format will be. The interest will be to make sure that the due process concerns of an open meeting are served, that we're able to hear from everybody, but let me reassure you as I did the folks that spoke early on at the last public hearing and because we had time could get back up to clarify, there's always the opportunity to send in a written comment to round out comments or make sure.

The Council did a great job with Kittitas Valley on early items on making sure everybody was heard. They did a great job with Wild Horse in reviewing all the written comments that came in after the hearing. Again, we can't predict where the adjudication will necessarily be when we hold these, and it's not a comment on what's happening at the adjudication per se as on what the application and other environmental documents say.

Believe it or not it's harder for the Council, it's the hardest for the Council to get everything reignited when it's all submitted, but we do have to close the door at some point. Our job is to find the fairest way to do that and trust me we'll try to do it.

Other parties anything else today?

All right. Seeing none, Council, is there a need right now to set a next prehearing conference?

Maybe I should direct that to staff. Does the staff think we need to meet again on a formal basis right now and schedule something?

MR. FIKSDAL: Prior to the hearing beginning on the 18th?

MS. MAKAROW: I think we might. Maybe we can do a check-in at the end of next week when Judge Torem has his conversation with the parties regarding the discovery issues.

JUDGE TOREM: Right now I don't think there's a need to schedule anything. I'm not hearing any demands. It may be helpful sometime after September 8 after the motions to strike or September 11 after they're issued to have one more let's check in and hear if anybody's got sick or ill on the witness schedules and know if we need to put them by telephone in an emergency.

We know that today is probably the best phone day we've had for an EFSEC procedure in Ellensburg. It hasn't been this pretty where folks have been on the line and been able to participate and not do it, and when the bigger meetings come it gets harder.

So right now we won't schedule one. If something comes out of discovery and it turns into a true dispute and it can't be resolved without the other parties, we'll let you know. If we do issue a ruling on discovery, everybody will get a copy of it. Again, if you individually have an issue with discovery look back to Order 790 and follow those procedures, but send your e-mails in and we'll get cooking from there.

Parties, Council members, anything else?
All right. Then we are adjourned at five minutes to 5:00.

* * * * *

(Whereupon, the prehearing conference was adjourned at 4:55 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 July 12, 2006, in Ellensburg, Washington.

_________________________
Shaun Linse, CCR
CCR NO. 2029