

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 - 62
_____)

A prehearing conference in the above matter was held in the presence of a court reporter on August 17, 2006, at 3:30 p.m., at 925 Plum Street S.E., Building 4, 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, Stoel 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 Ed Garrett, Lay Representative, 19205 64th Avenue S.E.,
 10 Snohomish, Washington 98296.
 11 RENEWABLE NORTHWEST PROJECT, Susan Elizabeth
 12 Drummond, Foster Pepper & Shefelman, PLLC, 1111 Third
 13 Avenue, Suite 3400, Seattle, Washington 98101-3299.
 14 COMMUNITY TRADE AND ECONOMIC DEVELOPMENT, Tony
 15 Usibelli, Assistant Director, Energy Policy Division, P.O.
 16 Box 43173, Olympia, Washington 98504-3173.
 17 * * * * *
 18 CHAIR LUCE: This is a meeting of the
 19 Washington State Energy Facility Site Evaluation Council
 20 held in Olympia on August 17 at 3:35 p.m. The purpose of
 21 this meeting is to conduct a prehearing conference on the
 22 application for Kittitas Valley Wind Power Project. I
 23 believe Sagebrush is the LLC name.
 24 I would ask clerk to call the roll of
 25 Councilmembers at this point in time.

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1 MR. MILLS: Department the Ecology?
 2 MS. ADELSMAN: Hedia Adelsman here.
 3 MR. FRYHLING: Dick Fryhling by phone.
 4 CHAIR LUCE: We got you, Dick.
 5 MR. MILLS: Department of Natural Resources?
 6 MS. WILSON: Judy Wilson, Department of
 7 Natural Resources.
 8 MR. MILLS: Department of Fish and Wildlife?
 9 MS. TOWNE: Chris Towne is here.
 10 MR. MILLS: Utilities and Transportation
 11 Commission?
 12 MR. SWEENEY: Tim Sweeney is here.
 13 MR. MILLS: Kittitas County?
 14 MS. JOHNSON: Patti Johnson.
 15 MR. MILLS: Chair?
 16 CHAIR LUCE: Chair is present. Thank you.
 17 MR. MILLS: All members are present.
 18 CHAIR LUCE: I'm going to turn this hearing
 19 over at this point in time to Judge Adam Torem, our
 20 Administrative Law Judge, who will take the appearances of
 21 the different parties. We will then proceed to adopt the
 22 proposed agenda. Actually let's do that now jumping out
 23 of sequence a little bit.
 24 Councilmembers had an opportunity to review
 25 the proposed agenda?

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1 MS. ADELSMAN: Yes.
 2 CHAIR LUCE: Any discussion, deliberation?
 3 MS. ADELSMAN: No.
 4 CHAIR LUCE: Do I have a motion to adopt the
 5 agenda as proposed?
 6 MS. TOWNE: So moved.
 7 CHAIR LUCE: Second?
 8 MS. ADELSMAN: Second.
 9 CHAIR LUCE: Discussion? No discussion.
 10 Question called for. All in favor say Aye.
 11 COUNCILMEMBERS: Aye.
 12 CHAIR LUCE: We will move now onto Adam for
 13 our roll. Administrative Law Judge Adam Torem, you are in
 14 charge.
 15 JUDGE TOREM: All right. Let me take
 16 appearances first for the Applicant here in the room.
 17 MR. PEEPLES: Darrel Peeples for the
 18 Applicant.
 19 MR. McMAHAN: Tim McMahan.
 20 MS. ANDERSON: Erin Anderson.
 21 JUDGE TOREM: And for the County?
 22 MR. HURSON: Jim Hurson, Deputy Prosecutor.
 23 JUDGE TOREM: And as I hear Mr. Piercy is
 24 also on the line?
 25 MR. PIERCY: That's correct. Also Joanna

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1 Valencia.
 2 JUDGE TOREM: All right. Community, Trade,
 3 and Economic Development? Anybody here from CTED today?
 4 Counsel for the Environment?
 5 MR. TRIBBLE: Mike Tribble present on the
 6 telephone.
 7 JUDGE TOREM: Renewable Northwest?
 8 MS. DRUMMOND: I am Susan Drummond
 9 representing RNP on the telephone.
 10 MR. GAGLIANO: And Troy Gagliano also on the
 11 phone with RNP.
 12 JUDGE TOREM: Mr. Lathrop? Mr. Slothower,
 13 we didn't hear that. I heard a little bit of mumble come
 14 over the phone.
 15 MR. SLOTHOWER: Jeff Slothower present for
 16 Mr. Lathrop. Mr. Lathrop is not present.
 17 JUDGE TOREM: Economic Development Group?
 18 Is the Economic Development Group here?
 19 MS. STRAND: Yes, Debbie Strand.
 20 JUDGE TOREM: Am I missing anybody else,
 21 Clerk?
 22 MS. MAKAROW: ROKT.
 23 JUDGE TOREM: Oh, ROKT.
 24 MR. GARRETT: Ed Garrett is on the line.
 25 JUDGE TOREM: Is Mr. Carmody with us today?

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1 MR. GARRETT: I believe not.
 2 JUDGE TOREM: Any other parties or
 3 intervenors that I'm somehow forgetting?
 4 CHAIR LUCE: Judge Torem, I would like to
 5 take this opportunity to there is Commissioner David Bowen
 6 who I believe is here with us today.
 7 JUDGE TOREM: Thank you, sir, for attending.
 8 MR. BOWEN: My pleasure.
 9 JUDGE TOREM: Any other parties in the room
 10 that need to make their appearances known?
 11 Then we'll move on to what's been adopted in
 12 the agenda to Item No. 4. The main purpose for today's
 13 prehearing conference was a request received, a letter
 14 dated July 26, 2006, and I'm certain everyone has gotten a
 15 copy based on the number of responses. This came from
 16 Renewable Northwest Project, Ms. Drummond, from your
 17 client, and was signed by Mr. Gagliano and also signed on
 18 behalf of Tony Usibelli, the Director of the State
 19 Community, Trade, and Economic Development requesting that
 20 we hold an additional public hearing in Western Washington
 21 in King County I believe.
 22 MS. DRUMMOND: Yes, that is correct.
 23 JUDGE TOREM: What I plan to do first is I
 24 want to hear in sum from you or Mr. Gagliano the reason
 25 for the request and its timing. Then I want to hear from

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1 the Counsel for the Environment and to hear what
 2 Mr. Tribble's response to this is based on representing
 3 the interest of the public. Then I'm going to ask
 4 Mr. Hurson to give us his response from the County's
 5 perspective and then hear from the Applicant and any other
 6 intervenors that feel that their opinions haven't already
 7 been voiced by others tell us their position.
 8 The Council has received a number of letters
 9 mainly against this proposal but a few in support. Those
 10 have all been distributed, and I'm assured that the
 11 Councilmembers have reviewed them, know essentially what
 12 those letters say. And if there's anybody keeping tally,
 13 I'm not sure, but that the main swell of responsiveness
 14 has not been positive.
 15 Let me state up front that I have reviewed
 16 the law on this, and if you look at RCW 80.50.090,
 17 Subparagraph 4 does give the Council ability to hold
 18 additional public hearings on any case that it deems
 19 necessary. So there's not a question of what's lawful or
 20 what's not. It will simply be a question if the Council
 21 deems this appropriate under what it needs to do in this
 22 particular case.
 23 I will also state that as far as I've been
 24 educated by the rest of Councilmembers and our staff, this
 25 is a matter of first impression to be asked to hold an

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1 additional public hearing outside the location of the
 2 actual project or its direct impacts. So it's not to say
 3 that it can't be done. It's just to say that it hasn't
 4 been done, and the Council is aware that this is a matter
 5 of first impression not only, of course, in this case but
 6 in all other cases.
 7 So with those observations and notations in
 8 mind, Ms. Drummond and Mr. Gagliano, can you tell us again
 9 the rationale for the request and its timing.
 10 MR. DRUMMOND: Yes. This is Susan Drummond.
 11 I'd be happy to elaborate. As you've outlined RNP has
 12 requested an additional hearing. I wanted to clarify
 13 particularly some confusion on this; that this would not
 14 be designed to supplant a single day of hearing on the
 15 east side. RNP supports the local hearing process, and
 16 the intention of this extra hearing day on the west side
 17 is simply to provide additional public input and make it
 18 easier for folks on the west side to come and offer their
 19 input regarding the project, and certainly the Council has
 20 statutory authority to do so.
 21 The rationale for this is that I think that
 22 how Washington State meets its energy needs will be one of
 23 the most, if not the most, critical issues over the next
 24 several decades. The current approach to energy is it's
 25 not sustainable over the long term and we're facing

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1 unprecedented environmental and local questions over
 2 energy use over the next few decades, and these issues are
 3 not bounded by the mountain range that divides the east
 4 and west side but impacts all of the citizens of
 5 Washington.
 6 With regard to air quality, many people may
 7 not know, but the state attains roughly 13 percent of its
 8 energy needs from coal, and attaining energy from wind
 9 projects avoids the impacts associated with coal such as
 10 greenhouse gasses, sulfur oxide, nitrogen oxide, etc., as
 11 well as similar compounds from natural gas facilities.
 12 I would point out that throughout the United
 13 States if you look at coal plants that are planned only 16
 14 percent of these are "unclean" coal. Also wind plants
 15 save the state on water usage. For example, a 16-megawatt
 16 project can save approximately 95 million gallons of water
 17 compared to natural gas facilities. 231 million gallons
 18 of water annually compared to coal.
 19 JUDGE TOREM: Ms. Drummond, let me interrupt
 20 for just a moment because much of the background you're
 21 giving me is where Renewable Northwest's position would be
 22 and why it exists. The Council is clear on that and we'll
 23 get to plenty of testimony as to why the wind project
 24 should or shouldn't be treated favorably when we're in
 25 Ellensburg next month.

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1 MS. DRUMMOND: Yes.

2 JUDGE TOREM: What I want you to focus on if

3 you can keep it very precise and to the point of why

4 should we adopt an additional I guess the more process

5 rather than less approach is what I hear the letter

6 suggesting. I'm glad to see you did bring up the

7 clarification to begin with that this proposal was for an

8 additional public hearing. Some of the responses have

9 been a little bit more well concerned that the entire

10 process would be picked up and moved to the west side.

11 That's clearly incorrect and not what your client is

12 asking for. Again, tell me if I'm wrong. You're asking

13 for a public hearing--

14 MS. DRUMMOND: That is correct.

15 JUDGE TOREM: --that will simply allow

16 members of the public that don't choose to travel to

17 Ellensburg or submit written testimony in its place to

18 actually have a face-to-face voice with the Council for

19 their three minutes or whatever we allocate and then sit

20 down and we can hear those perspectives from this side of

21 the mountain range.

22 MS. DRUMMOND: That is correct.

23 JUDGE TOREM: So is there anything else as

24 to what this meeting in King County would do that wouldn't

25 be accomplished in Ellensburg? Perhaps is there a reason

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1 that a number of RNP's clientele or the folks you

2 represent can't travel to Ellensburg or shouldn't?

3 MS. DRUMMOND: Well, certainly RNP is

4 planning to travel to Ellensburg, but RNP doesn't feel

5 that it's not unreasonable to hear from the west side

6 residents or make it easier to hear from those residents.

7 We feel that this is a small request; that it does not put

8 any burden whatsoever on any of the intervenors, but it

9 would make it easier for other members of the public to

10 come and testify should they choose to do so.

11 JUDGE TOREM: Let me note that Tony Usibelli

12 has just walked in and joined us.

13 Ms. Drummond, so I think I understand the

14 RNP request. We've got that now for the record.

15 Let me ask if Counsel for the Environment

16 has a position, and what I'll do for Mr. Usibelli's

17 benefit as a representative signatory on the letter is

18 come back to him last and get his feedback on behalf of

19 Community, Trade, and Economic Development.

20 Mr. Tribble, does CFE have a position on

21 this request?

22 MR. TRIBBLE: This is Mike Tribble. CFE

23 does not have a position on this request solely for the

24 reason that I think this is more of an issue of advocacy,

25 and up to this point our position has been not to

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1 recommend one way or the other making it a regional issue

2 or a local issue as much as it is focusing on the

3 environmental aspects of the project. And so CFE is

4 willing to leave this up to the voices that have been

5 heard and certainly the determination of the Council.

6 JUDGE TOREM: All right. Mr. Hurson, I had

7 you next in line. What does the County feel about having

8 an additional public hearing in addition to everything

9 else that's scheduled in Ellensburg for the Council to

10 pick up some other public feeling on this project?

11 MR. HURSON: Jim Hurson, Deputy Prosecutor.

12 I think Ms. Drummond's argument basically explained that

13 there was no necessity for it, and I think that's one of

14 the questions here is, is this necessary for the process.

15 She has an advocacy position she wants to present, but she

16 really hasn't shown any necessity for this.

17 There would be a cost. If this is going to

18 be part of the hearing process, that would require myself

19 and all the other intervenors to travel over to Western

20 Washington for another hearing. That's travel. That's

21 time. That's expense. That's hotel. That's meals.

22 That's inconvenience. Because that would be part of our

23 process we would need to travel. Anybody who wants to

24 participate or testify or present evidence at the hearing

25 can do so in Ellensburg. If it's too inconvenient for

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1 them to come to Ellensburg, I would suggest that it's not

2 that important to them. They can submit something in

3 writing. If something's important, someone can travel. I

4 came over here for the prehearing conference. The

5 Applicant has all their attorneys here for the prehearing

6 conference. You folks made it. It's all a matter of

7 choice.

8 Frankly, all the written comments you have

9 in the record show that there's not any need for another

10 hearing on the other side. People send in their e-mails.

11 They send in their letters. Their positions were able to

12 be heard, and, frankly, the issue here I'm trying to think

13 of who these unknown people are that supposedly are going

14 to come testify because I haven't heard any new people

15 come and say we need to come testify. All the people that

16 have provided you input for or against in writing are all

17 people who have participated, all people who have made it

18 to hearings in Ellensburg, all people who have been able

19 to participate in this project as far as I can tell unless

20 they managed to find someone who didn't, but that's as

21 best I can tell.

22 So the question here isn't a referendum on

23 wind farm good, wind farm bad, and I know that kind of

24 seems to be RNP's position or theme. But we approved Wild

25 Horse which is one of the biggest wind farms in the state.

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1 So to somehow try to turn this into that kind of a
2 referendum that Kittitas County is trying to fight this
3 simply isn't true, and I'm trying to think of what these
4 unknown, unnamed people what information they could have
5 other than perhaps being a cheerleader.
6 They don't know the things about the site
7 specific land use issues. If they do, they've probably
8 been to our hearings and traveled to Ellensburg and will
9 make the trip.
10 So I think it's an unnecessary expense.
11 Frankly, it will delay the process. If we're going to get
12 this done, let's get it done. It's going to cost the
13 Council. It's going to cost the parties money and time,
14 and I don't believe it will add anything. So it's clearly
15 not necessary.
16 I guess the one thing I did mean to mention
17 is if you're going to do one here, why aren't we doing one
18 in Spokane or in Richland or in Omak or in Vancouver or in
19 Portland or in Sacramento or in Phoenix? because we're all
20 in the western grid.
21 JUDGE TOREM: Within Washington point taken.
22 All right. From the Applicant what's your perspective?
23 MR. PEEPLES: First of all, I want to rebut
24 the issue that this is a first impression. I mean going
25 back in the days of the nukes, pipelines, through Creston

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1 plant, we've always had hearings both in the locality and
2 in Olympia, and in certain situations in other places of
3 the state. So this is not the first time EFSEC would have
4 a hearing up in another place other than the locality. Up
5 to the last probably two applications that was the norm.
6 They have them in other locations including the local
7 location.
8 When you talk about going to Ellensburg, you
9 do cutoff people. Maybe I have the ability to go, but if
10 you have a citizen who has a view and this is something of
11 state-wide importance. It's not merely a local thing.
12 You mentioned the number of people opposing it. There's a
13 number of people who came in opposing it. I think if you
14 check the names, you will find that they are the local
15 opposition. So I don't think you can count numbers and
16 come up with anything.
17 I think the issue of cost, government cost.
18 To open a process up to the people costs. If we want to
19 talk about no cost, then probably the best would have just
20 a hearing in Olympia and limit public participation. That
21 would be less costly. I think EFSEC has always been open
22 to inclusivity of allowing people to voice their opinion
23 in front of the Council. I think this is just another
24 one. I don't think it's of any great adverse effect on
25 anybody to allow another hearing in Olympia or anyplace

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1 else in this state to allow citizens to voice their
2 opinion period.
3 I'm kind of astounded that the County itself
4 who is a public organization would try to say no. This
5 should be only exclusively heard in this County so only
6 our people can conveniently get there. So just on that
7 principle I believe that the decision should be made, and
8 I think the request is reasonable and I believe it should
9 be allowed. This is a state-wide issue. It's just not a
10 local issue. The local land use issue is a local issue.
11 Beyond that it's of state-wide significance.
12 JUDGE TOREM: Other intervenors that want to
13 voice their position on this?
14 Let me start and ask for Mr. Lathrop,
15 Mr. Slothower, do you have comments on his behalf?
16 MR. SLOTHOWER: Yes, just briefly. First of
17 all, the letter that we received initially that made the
18 request indicated that most of the power would be consumed
19 in Western Washington, and I'm not sure that that's
20 accurate. I haven't seen anything in the record to
21 suggest that.
22 More importantly I want to echo and take
23 Mr. Hurson's comments a little further. It is not a
24 referendum on the wind power that we're talking about.
25 This is a siting question. It's not whether we should

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1 have wind power. It's whether we should have wind power
2 in this particular location, and I think that that
3 requires an analysis of the particular location, and
4 individuals who are not familiar with this particular
5 location live in another local and may not know anything
6 about the location, don't have anything to add to that
7 question. It's a siting question. So the siting should
8 be determined locally based upon local impacts of the
9 siting.
10 It's clearly a state-wide question on
11 whether we should use wind energy to augment our power
12 supply, but this is not about that question. The issue
13 that you're going to have to decide is whether this
14 particular site is the appropriate site for this type of
15 facility so we would opposed the request.
16 JUDGE TOREM: All right. Thank you,
17 Mr. Slothower.
18 Ms. Strand, anything from the Economic
19 Development Group?
20 MS. STRAND: Yes. My comment would be that
21 I would think that holding additional hearing would
22 certainly be appropriate. We would certainly want to make
23 certain it wasn't taking away from any kind of hearings
24 here in Ellensburg.
25 JUDGE TOREM: Mr. Garrett, on behalf of

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1 ROKT?

2 MR. GARRETT: Yes, on behalf of ROKT, I

3 would like to say that we oppose this particular thing,

4 and I agree with Mr. Hurson, as well as Mr. Slothower that

5 this is basically an issue over local siting. It's not a

6 referendum on wind power. As far as letters that have

7 come in if you look at the signatures, it's all people

8 local that are opposed to the project. If you look at the

9 handful that came in for these are people that are local

10 people that support it; so I just think that's really not

11 the issue.

12 The other thing is the record as it stands

13 now for this particular project going five years long is

14 already extensive. It's going to contain several bankers

15 boxes. If you open this door up for this particular type

16 of meeting within the Seattle area, just as Susan Drummond

17 starts talking, you're going to have a bunch of people

18 come in and tell you why wind power is good, why coal is

19 bad. We can't count water as a renewable resource even

20 though seven percent of our power comes from water, and

21 this is the type of stuff you're going to hear which is

22 just going to choke up the record even more. I would even

23 doubt the majority of the people who would come to testify

24 even know where Kittitas County is let alone what the

25 issues are. The issue is local siting. So that's what

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1 our position is. Thank you.

2 JUDGE TOREM: All right. Thanks,

3 Mr. Garrett.

4 Councilmembers, I am going to ask

5 Mr. Usibelli and then I'll have you prepare whatever

6 comments you have and we'll deliberate as to whether this

7 is something we want to add in this process.

8 Mr. Hurson, could I have you swap chairs

9 with Tony Usibelli?

10 MR. HURSON: Sure.

11 MR. USIBELLI: For the record, Tony Usibelli

12 with Community, Trade, and Economic Development. First of

13 all, I apologize for arriving late and not having an

14 opportunity to hear everyone speak. As indicated we are a

15 signatory on the letter and believe that holding an

16 additional hearing in this state is a reasonable

17 accommodation. You will note that the letter is not

18 asking for a series of hearings around the state.

19 We were approached by one of the other

20 parties, Renewable Northwest Project, with respect to

21 this, asked about what we thought about it, and thought

22 that our perspective as a state agency is that this is a

23 reasonable accommodation by the Council. There are some

24 costs involved in that, but that they should not be

25 excessive and the opportunity for others to provide

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1 comment. This has moved from a local to a state-wide

2 process, and we find it difficult as a state agency to not

3 allow this.

4 I think the suspicion that people may be

5 more in favor of it on the west side than locally, that's

6 very possible, but you certainly could have other projects

7 that come before EFSEC where you might have a local

8 support and other types of opposition or other opinions.

9 So I think it's not an unreasonable precedent to establish

10 or perhaps if, and I've forgotten this, but perhaps to

11 even reestablish with respect to EFSEC. That is our

12 position.

13 I did speak with RNP, and I believe in the

14 letter there was sort of a factual mistake which said that

15 the power will be used in Western Washington. We do know

16 at least at this point as far as we know there aren't firm

17 contracts. I think the terminology would be may be used

18 by consumers in Western Washington.

19 JUDGE TOREM: Thank you, Mr. Usibelli.

20 Any other intervenors or parties who wish to

21 say anything else before I turn it over to the Council for

22 their deliberations?

23 MR. FRYHLING: This is Dick Fryhling. Can I

24 ask Tony a question?

25 JUDGE TOREM: Please.

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1 MR. FRYHLING: Tony, is this a policy of the

2 energy office?

3 MR. USIBELLI: This is a policy with respect

4 to our division. That's correct.

5 MR. FRYHLING: If you're going to sign this

6 letter why didn't you put it on agency letterhead?

7 MR. USIBELLI: We were another signator. We

8 were asked to be a signator on this. It seemed reasonable

9 so we added our signature to it. You may be right, Dick.

10 It may have been more appropriate to add it and have the

11 same letter on our letterhead.

12 MR. FRYHLING: Well, let me ask you one more

13 question. Are you a member of the Renewable Northwest

14 Project?

15 MR. USIBELLI: We are not.

16 MR. FRYHLING: Then why are you signing on

17 their letter?

18 MR. USIBELLI: Well, we were asked and

19 thought that it was a reasonable issue to support. I

20 guess, Dick, I would just reiterate the points that I made

21 earlier.

22 MR. FRYHLING: Okay.

23 JUDGE TOREM: Other questions for the

24 parties?

25 MR. SWEENEY: Yes, I have a question for

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1 Ms. Drummond or the other requesters of this hearing. Do
2 we anticipate this hearing to address the issue of land
3 use consistency or is there the other elements of the case
4 that it will address? Ms. Drummond?

5 JUDGE TOREM: Ms. Drummond, did you hear the
6 question? Ms. Drummond, are you on the line still or
7 Mr. Gagliano?

8 MR. GAGLIANO: Yes, Gagliano is still here.
9 I don't know what happened to Susan.

10 MS. DRUMMOND: I'm sorry. I am still here.
11 Would you like me to address that question?

12 MR. SWEENEY: I'll reiterate the question.
13 I want to know if this hearing is going to contribute to
14 the land use consistency part of our decision?

15 MS. DRUMMOND: It would potentially address
16 both. It would depend on what the public testified about,
17 but I mean the public could be expected to address land
18 use consistency issues as well as impacts state wide which
19 EFSEC does address in its decision making, not just local
20 interest but state-wide interest as well.

21 MR. PEEPLES: Could I assert something?

22 JUDGE TOREM: Mr. Peeples.

23 MR. PEEPLES: I don't know. I was not
24 really party to the letter request, but it seems to me
25 EFSEC we have adjudicative hearing and then you have a

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1 public comment section where the public can comment on
2 whatever they want to. I'm assuming, and I wasn't part of
3 that request, but I'm assuming what they're requesting was
4 a public comment hearing just like you have a public
5 comment hearing in Ellensburg. It would be the same thing
6 where the public can get up and make any comments they
7 wish which historically EFSEC has never limited as to what
8 is the scope of the comment. It might limit time.

9 MR. SWEENEY: But we have had hearings that
10 are strictly for land use consistency issues and also for
11 the rest of the case. I was just curious as to whether
12 Ms. Drummond was anticipating testimony being addressed to
13 land use consistency. It sounds like she has, she is.

14 The second question I have is that what kind
15 of expectation do you have in terms of numbers of turnout?
16 I mean is this something that you've come to as a result
17 of your members saying that you would like a hearing in
18 King County?

19 MS. DRUMMOND: I think that technically I
20 might be able to speak to that. I do not have an estimate
21 on the numbers of people that might attend. It would be
22 treated like any other public comment session which there
23 would be time limits and whoever wished to provide
24 comments would then be allowed to speak their piece.

25 MR. GAGLIANO: I would, if I may, this is

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1 Troy Gagliano just to add onto that. No, I haven't. I
2 mean I thought or calculated how many people would be
3 there. It's just generally that EFSEC has state-wide
4 jurisdiction. People from across the state should be
5 heard on this. I know there are a lot of organizations
6 and individuals and businesses who are interested in
7 having their word heard on this to EFSEC since it's now an
8 EFSEC state-wide process.

9 JUDGE TOREM: This is Patti Johnson from
10 Kittitas County's representative. My question is why have
11 we not heard of having any public hearings on this side of
12 the state until now? We are approximately 30 days away
13 from the hearing and this is coming up. To me it's a very
14 late date to be bringing this up.

15 MS. DRUMMOND: Well, certainly this process
16 has gone on for a long time, a lot longer than perhaps
17 certainly some other projects I've worked on. But I don't
18 think that--I mean I think there is adequate time. It is
19 not yet September so I do believe that there is adequate
20 time to hold another public meeting, and we did not state
21 a specific date in the letter so there is flexibility on
22 that point as to when it would be scheduled.

23 MS. ADELSMAN: I have another question.
24 This is Hedia Adelsman. If the County did not vote
25 against the project, would you think you would have asked

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1 for the hearing on the west side also?

2 JUDGE TOREM: Ms. Drummond, did you hear
3 that question?

4 MS. DRUMMOND: No, I'm sorry. I did not.

5 JUDGE TOREM: Councilmember Adelsman was
6 asking I think it's fair to say the question is whether
7 you were motivated in asking for this by the county
8 council's decision to not permit the project essentially
9 in its process.

10 MS. DRUMMOND: No, I think the motive for
11 the request was more to provide an additional opportunity
12 for the public, for members of the public that are not on
13 the east side. No, I don't believe the motive had to do
14 with the County's position, no.

15 JUDGE TOREM: Councilmembers, any other
16 questions for the proponents or the opponents of this?

17 Mr. Hurson has something to add. Sir.

18 MR. HURSON: Just I kind of want to make a
19 comment because I'm sitting here and I'm a citizen of this
20 state, and what I'm finding here is a troubling belief
21 apparently that this is an east side versus west side, and
22 I'm not quite sure where that's coming from.

23 MR. FRYHLING: I can't quite hear Jim over
24 the phone.

25 JUDGE TOREM: I'll have him step up, Dick.

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1 MR. HURSON: As I'm listening to the
2 conversation as a citizen of this state, I'm finding this
3 as kind of a troubling characterization because it seems
4 to be trying to be turned into a west side versus east
5 side controversy, and I find that kind of inappropriate.
6 The question is where is it going to impact; where is it
7 suppose to belong. I am hard pressed to figure out where
8 is a more centrally located place in the State of
9 Washington to hold a hearing than Ellensburg, Washington.
10 We're in the middle of the state. If this is a thing that
11 this is one state and one issue, you've already got the
12 perfect location. It's in the center of the state. It's
13 three hours to Spokane, only two hours to Seattle. It's
14 two hours to the Tri-Cities. It's three hours to Walla
15 Walla. So we are centrally located. It's an issue that
16 directly impacts Kittitas Valley. It's centrally located.
17 People can provide their information.
18 And EFSEC stands for Energy Facility Site
19 Evaluation Council, and, frankly, all this is they want a
20 west side thing hoping that RNP can get their people to
21 come and try to pretend that this is some sort of
22 referendum on whether wind farms are good or bad which
23 isn't the issue. So public access is great. We've got
24 public process. We've got public access in Ellensburg.
25 It seems to be just an unnecessary ploy.

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1 MS. DRUMMOND: This is Susan Drummond. I
2 can provide some clarification on that.
3 JUDGE TOREM: Yes, please, if you will.
4 Then I think we'll close the debate on it. Maybe if the
5 Applicant has one further thing after you, Ms. Drummond.
6 MS. DRUMMOND: Okay.
7 JUDGE TOREM: But then I'll have the
8 Council.
9 MS. DRUMMOND: RNP does not view this as a
10 east side versus west side thing. I want to make that
11 very clear. We're very supportive of the local process,
12 believe the hearings should be in Ellensburg in which they
13 are. All that RNP is asking for is one single additional
14 meeting to make it more accessible for other citizens to
15 participate in what is a state-wide review process.
16 That's all.
17 JUDGE TOREM: Mr. Peeples.
18 MR. PEEPLES: I think you should read
19 80.50.010 that sets out the purposes for EFSEC. It is not
20 uncommon at all to have hearings on all sorts of matters
21 that I've been involved with, including ones that EFSEC
22 has had on the east side and on the west side. That's a
23 normal thing that happens, and this affects all the
24 citizens state wide; and it seems to me it's not
25 unreasonable to make it easier for people in different

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1 geographic areas to attend and state their views.
2 JUDGE TOREM: Councilmembers, any other
3 questions for the parties, proponents or opponents of
4 this?
5 Seeing none, then I would ask that the
6 Council have its discussion here, and that at the
7 appropriate time someone move for a vote, and we'll decide
8 what we're going to do.
9 Chairman Luce.
10 CHAIR LUCE: Well, the Chair would yield to
11 other Councilmembers to state their position. I have a
12 position which I will state after others have stated
13 theirs.
14 MS. TOWNE: A question for the Council and
15 the Administrative Law Judge, Mr. Chairman. I did not
16 participate in the initial sessions of the Kittitas Valley
17 Power Project going back three and a half years. I came
18 along at the three-year mark or the six-month mark in the
19 history of this Odyssey. I have heard anecdotally from
20 other Councilmembers and staff that commitments were made
21 that all hearings would be held in Ellensburg. I would
22 like someone to speak to that so I have a clear picture of
23 what was committed to by the Council or whoever was
24 presiding at that time.
25 CHAIR LUCE: This is Mr. Luce. I think I

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1 would say two things. First of all, the commitment was
2 that the hearings would be held in Ellensburg to the
3 greatest extent possible, and I think we've satisfied that
4 commitment. We did not have at that time, and it
5 certainly would have been better if we had at that time, a
6 request for what I would say as a public meeting, open
7 mic, if you will, session to have comments elsewhere, and
8 Renewable Northwest has made their request and it speaks
9 for itself. We have had meetings and hearings with some
10 here in Olympia where people have been able to state
11 whatever their given opinion was on a specific issue.
12 So I guess I would summarize that by saying
13 we committed to have hearings, as many hearings as we
14 could in Ellensburg and we've done that. We've had some
15 meetings in Olympia. The question now before us is should
16 we have an additional public meeting, and I'll say open
17 mic again elsewhere than Ellensburg. It's a reasonable
18 policy question, and Councilmembers will have to express
19 their opinions on that. I don't think we have taken a
20 position that we would not under any circumstances hold
21 another public meeting elsewhere in the state.
22 MR. SWEENEY: I have another question I
23 guess for the Judge. If we decided to hold this hearing
24 is there any idea of how we would work this into the
25 schedule? Would it be before our time in Ellensburg or

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1 after or early September?
2 JUDGE TOREM: I haven't given any thought,
3 Tim, whatsoever to when this would be fit in. The only
4 impact it would have if it's held after the close of the
5 adjudication and the cross-examination of the witnesses,
6 then we wouldn't be able to expect the parties to know
7 what the complete record is until this additional public
8 session, if there is one, is held and perhaps until it's
9 transcribed some weeks later and the record is then out
10 there for folks that don't attend to at least have that
11 portion to review in making their post-hearing briefs. So
12 I don't know. It could impact our post-hearing schedule
13 deadline, but there's no reason it would impact the
14 current items that are set.
15 MR. SWEENEY: Then I'll go ahead and go off
16 of that and make my comments on this. I do believe that
17 we're a state Council and that a reasonable request for a
18 hearing in another locale should be honored. I'm not
19 quite sure exactly how much contribution this will be, but
20 one of the parties is requesting it. I recall several
21 property owners being from the west side so hopefully this
22 will be a convenience to them. They won't have to drive
23 to Ellensburg, but my support would be contingent on this
24 working on the schedule though the request has come late
25 in the process and our schedule is set. And I don't want

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1 this to be one that slows this process down any further
2 than it already has been. Assuming we can put this into
3 the schedule in a rational way, I can support that.
4 CHAIR LUCE: Other Councilmembers care to
5 comment?
6 I'm sorry, Dick. Patti has just raised her
7 hand. You couldn't see that.
8 JUDGE TOREM: We'll take Patti's comments
9 and then yours, Dick.
10 MR. FRYHLING: Okay. Go ahead.
11 MS. JOHNSON: I would like to reiterate what
12 Chris has said. Early on in the process we had talked
13 about having the hearings in Ellensburg in Kittitas County
14 where it is being sited and people have come from King
15 County to Kittitas County to speak. We have heard them.
16 They have submitted written comments, and now we're at the
17 last minute. As I said earlier, we have less than 30 days
18 before the hearings are suppose to start. We are going to
19 try and put in another hearing in another location, and
20 I'm with Tim. I don't want to slow down the process. I
21 mean it's been slow enough. We've been doing this for
22 over three years. I really want to get this thing moving.
23 One way or the other I think we need to make a decision,
24 but I don't want this to slow down the process. We've
25 told people that we were going to have hearings in

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1 Kittitas County. I think we should stick to that.
2 CHAIR LUCE: Judy. I'm sorry, Judy.
3 Dick.
4 MR. FRYHLING: What I want to say is again
5 it's not necessarily a promise, but we mentioned a number
6 of times to the public and meetings in Kittitas we would
7 hold these hearings in Ellensburg as we needed, but if
8 there's other extenuating circumstances we could hold them
9 someplace else. At this point in time I don't think there
10 is extenuating circumstances. Anybody can drive to
11 Ellensburg and preside in these hearings. If you need
12 another hearing, we'll be over there for two weeks. We
13 could have another night available for another hearing
14 then. So I don't see the advantage of us taking a hearing
15 to the west side and making this process any longer than
16 it has been which is three years plus now. So that's my
17 thoughts on this. I don't see an advantage in having
18 anything on the west side at this point in time.
19 CHAIR LUCE: Thank you, Dick.
20 MR. FRYHLING: Up to three years it would
21 have been a good thought but not now.
22 JUDGE TOREM: Thank you, Dick.
23 Judy.
24 MS. WILSON: I guess I'll preface my comment
25 with a question. Is there ever an end to when we take

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1 comments on this adjudicative process?
2 JUDGE TOREM: Certainly we would anticipate
3 closing the record on the last day of the adjudicative
4 proceeding. The statute and the regulations give us a lot
5 of flexibility, Judy, but like Patti has said we need to
6 make a decision at some point and we've had this come up
7 to the brink of having the adjudicative hearing and not
8 doing it. If you look at previous applications, and
9 particularly the Kittitas Valley case, what we did was
10 hold the adjudication and it got shrunk down from the
11 original number of days based on the stipulations and
12 agreements; but we still held our public hearing within
13 the scheduled dates, and the public hearing could have
14 been extended to an additional night if there was
15 sufficient demand; but it would have been done prior to
16 the last scheduled day of the hearing.
17 That's the plan right now as Irina and Allen
18 are working on the schedule, to hold a public hearing, if
19 necessary schedule a second night, and the adjudication
20 would continue thereafter. There will be a deadline set
21 for the submission of written comments, and that will be
22 the final date. The only other items that would come in
23 thereafter won't be part of the factual record, but the
24 arguments from the parties would still be coming in on the
25 briefing schedule that we would set afterward.

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1 MS. WILSON: Well, I would say that I'm new
2 to this process and to this case so I'm not privy to the
3 previous commitments, but I found the request for a public
4 hearing on the west side of the state to be fairly late in
5 this process and we are in an era of technology. We have
6 received e-mails and faxes already, and I think there is
7 ample opportunity for people all over the state to make
8 comments on this process as long as we make it clear how
9 long we are going to take it.
10 However, if we do have an additional public
11 hearing, I think it needs to be prior to the hearing in
12 Ellensburg, and I would suggest we make it as part of our
13 meeting here in September to take the testimony. We are
14 already having a meeting. This is the west side of the
15 state and the testimony could come in at that time, but I
16 think I would hope that as a Council we would set up some
17 kind of future policies around how we determine where
18 hearings are going to be held and at what point in a
19 hearing needs to be requested because I think it makes
20 this difficult. So I would vote that either we don't have
21 a hearing after we have finished in Ellensburg, and if we
22 have one, it needs to be held prior to going to
23 Ellensburg, and I would suggest that we have it at the
24 meeting we have scheduled here in September. That's not a
25 motion. That's just a comment.

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1 MS. ADELSMAN: You're saying here in
2 Olympia?
3 MS. WILSON: Here in Olympia.
4 CHAIR LUCE: Point of clarification. Is the
5 Olympia portion of your suggestion hard and fast? I mean
6 Olympia is the capital of bureaucracy with all due
7 respect. If you look to the left or if you look to the
8 right, there are a lot of bureaucrats around here, and I
9 think one of the advantages to going to Ellensburg, going
10 elsewhere within the state is you actually talk to I'll
11 use the word real people, and that's an advantage from my
12 perspective. Olympia from Puget Sound depending on
13 traffic is as far as it is from Ellensburg to the Puget
14 Sound.
15 MS. WILSON: I guess I'm just really saying
16 that my question whether there's a need to have another
17 hearing on the west side given the comments made about the
18 location of Ellensburg and the ability for people to
19 write, fax, e-mail. I think that there is ample
20 opportunity to provide this Council with comments and we
21 have been reading mountains of paper.
22 So if the concern is that we aren't going to
23 listen to it or read the comments, I think that you should
24 not have that concern. People should not have that
25 concern because they are being read.

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1 The other thing would be why not set up a
2 telephone at the public hearing we schedule for when we're
3 in Ellensburg and if those folks want to call in on the
4 phone, if they want to hear it, they could do that. It's
5 just that we're in an age of technology, and there's
6 really ample ways for people to get information. Just
7 given the late date, I just as soon we do that.
8 CHAIR LUCE: Thank you.
9 Hedia.
10 MS. ADELSMAN: Go to Chris first.
11 CHAIR LUCE: No, you've got to give yourself
12 a chance.
13 MS. ADELSMAN: I think I agree with Judy. I
14 think the request came really late in the process. Really
15 it's very difficult for me to not tie it back to the fact
16 that in this particular case the county was not favorable
17 and some things like maybe I don't know what's behind the
18 request. It didn't seem at least I was convinced there's
19 a necessity for it, and I feel this is a really big issue
20 and has been on the table for so long we should have
21 really had the request at least several months ago, at
22 least even three months ago. So I'm inclined to not go
23 along with the request.
24 CHAIR LUCE: Chris.
25 MS. TOWNE: I listened with care to

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1 Mr. Hurson's characterization of the case as being about
2 where it is, and I certainly agree that having read the
3 transcripts of all the planning commission and county
4 commission sessions leading to the negative decision there
5 was a paucity of testimony and evidence on matters other
6 than siting. Notwithstanding the name of our group, of
7 our Council, I think 80.50.010 is instructive as to other
8 matters that are necessarily of concern to the Council in
9 making its decision.
10 With that said, I guess it's my old city
11 councilman days coming back. I don't think you ever get
12 in trouble for not having more public process. As painful
13 and lengthy as it may be at times I am interested in what
14 RNP and other organizations have to say about the
15 appropriateness of the project, and I do not expect them
16 to talk about setbacks from occupied residences so much as
17 those larger energy issues found in 80.50.010. For that
18 reason, I am prepared to support having such a hearing and
19 also support Ms. Wilson's request that it be held
20 concurrent with the September Council meeting. Thank you.
21 CHAIR LUCE: Okay. I guess I'll offer my
22 comments at this point in time. First of all, I think
23 it's a particularly difficult call because it comes late
24 in the process. If it had come earlier in the process, it
25 wouldn't be anywhere near as difficult from my

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1 perspective. I do believe that we are the State Energy
2 Facility Site Evaluation Council. I do believe with
3 Commissioner Bowen his testimony or his comment in the
4 April 12, 2006 meeting of the Board of County
5 Commissioners where he said, "I remind everybody that it's
6 well founded in terms of land use decision making that the
7 mere existence of opposition or for that matter support
8 does not justify an approval or rejection."
9 I think that was a very appropriate comment
10 at that time and I think it's an appropriate comment at
11 this time. A public meeting we keep using the word
12 hearing or meeting, but this is an open mic opportunity.
13 That's basically what it is. I think if we hold it, it
14 should be held before the case in chief, the adjudicative
15 hearing which obviously and most importantly would be held
16 in Ellensburg.
17 Renewable Northwest and I believe Northwest
18 Energy group also was supporting this request represents
19 significant numbers of individuals and organizations. The
20 State Energy Policy Office has stated that this would
21 benefit members of the public, and I think that that's an
22 important consideration. I think it is not impossible for
23 people to send an e-mail or write or drive over the pass
24 or come from Walla Walla or wherever they may want to come
25 from, but I guess I view this Council as being in a

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1 position where we should err on the side of hearing the
2 public. And by that I mean live testimony as opposed to
3 written remarks, particularly where a project has gotten a
4 lot of public attention, state siting council,
5 particularly where the inconvenience to the Councilmembers
6 is not really great.
7 It would require some adjustment to our
8 schedule, but that to me is not a reason not to proceed.
9 The parties to the adjudication stated some of them that
10 they may be inconvenienced. Well, inconvenience is
11 important, but the overriding issue here is are we making
12 the proper decision based on the evidence and information
13 before us.
14 We've had other situations as Counsel for
15 the Applicant has stated and actually to jump start some
16 of my brain cells in the past where we've had large, large
17 thermal projects where they have been elsewhere in the
18 state. I don't view this as an advocacy issue. Again,
19 this is we'll listen to the public or not listen to the
20 public or listen to the public in writing.
21 So I would err on the side of listening to
22 the public and I would support and do support a public
23 meeting somewhere on the west side to be determined,
24 preferably not in Olympia which I view as the capital of
25 bureaucracy, prior to the hearing in Ellensburg, and so

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1 that constitutes my comment on this particular issue.
2 JUDGE TOREM: Councilmembers, any other
3 discussion?
4 We've gone around the room and essentially
5 had a straw poll of items here. Is there any need for
6 further discussion or are we ready to call the question?
7 MR. SWEENEY: What is the question?
8 JUDGE TOREM: I think someone will need to
9 make a motion as to should we have this, should we grant
10 RNP's request or not.
11 MS. WILSON: I'll move we hold a public
12 meeting on the west side prior to the start of the
13 adjudicative hearing which is September 18, sometime
14 between now and then.
15 JUDGE TOREM: Is there a second for that
16 motion?
17 MS. TOWNE: Second.
18 JUDGE TOREM: All right. It's been
19 seconded. For clarification because of your earlier
20 comments, Judy, can you tell us when the next scheduled
21 EFSEC meeting in September is so the Council knows what
22 else they're putting on their plate.
23 MR. FIKSDAL: I believe it's September 12.
24 It's the second Tuesday of September.
25 MR. FRYHLING: I've got a question on that.

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1 JUDGE TOREM: Yes, Dick.
2 MR. FRYHLING: This is Dick.
3 CHAIR LUCE: We hear you, Dick.
4 MR. FRYHLING: Me?
5 JUDGE TOREM: Yes, go ahead.
6 MR. FRYHLING: If we're going to have it on
7 the normal hearing date are we going to extend our normal
8 meeting date to that evening?
9 JUDGE TOREM: Well, the motion was just to
10 have one. It's not on a date certain. I just want to
11 know now there's actually a motion before the Council to
12 hold a public hearing, an additional public hearing on the
13 west side prior to September 18, which is the first date
14 scheduled for the adjudication.
15 MR. FRYHLING: Okay. It didn't include at
16 our regular meeting.
17 JUDGE TOREM: No, I'm asking so that for the
18 sake of the discussion of this motion which has been
19 seconded if it wants to get narrowed down to a more
20 specific date.
21 Chris seconded it. So is there any
22 discussion about the motion itself or efforts to make it
23 more specific?
24 MS. WILSON: I just said have one now and
25 between the 18th. The motion did not include a date.

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1 JUDGE TOREM: I'm just trying to get more
2 specificity out of the motion.
3 MS. WILSON: Why don't we deal with the
4 motion first and then we'll find a date.
5 JUDGE TOREM: All right. Is there any
6 further discussion just on the concept of having another
7 public meeting prior to September 18?
8 Is the Council ready to vote?
9 CHAIR LUCE: Call for the question.
10 JUDGE TOREM: Let me ask the clerk to take
11 the roll of the Council, and if you vote yes, you're
12 voting to essentially grant RNP's request and have an
13 additional public hearing at which members of the public
14 could speak as Chairman Luce says in an open mic fashion.
15 There will be no cross-examination or anything else, and
16 it will probably be limited to two to three to four
17 minutes depending on attendance.
18 If you vote no, you're essentially voting to
19 keep the status quo that the adjudication and all
20 associated public hearings would be held as scheduled
21 between the 18th and the following Friday. I believe
22 that's the 29th of September in Ellensburg.
23 Clerk, would you call the roll and obtain
24 the votes.
25 MR. MILLS: All right. Community Trade and

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1 Economic Development?
2 MR. FRYHLING: Dick Fryhling votes no.
3 MR. MILLS: Department of Ecology?
4 MS. ADELSMAN: Yes.
5 MR. MILLS: Department of Fish and Wildlife?
6 MS. TOWNE: Chris Towne votes yes.
7 MR. MILLS: Department of Natural Resources?
8 MS. WILSON: Judy Wilson, yes.
9 MR. MILLS: Utilities and Transportation
10 Commission?
11 MR. SWEENEY: Yes.
12 MR. MILLS: Kittitas County?
13 MS. JOHNSON: No.
14 MR. MILLS: Chair?
15 CHAIR LUCE: Yes.
16 You want to announce the results of the
17 vote?
18 MR. MILLS: The vote is five, yes; two, no.
19 JUDGE TOREM: So there will be an additional
20 public hearing. Now, Council, is there a motion having
21 made that decision as a group as to when that meeting
22 should be held? The obvious time you're getting back
23 together is September 12. Whether that is something to be
24 done during the regular Council meeting or if you're
25 attempting to facilitate public participation, what's

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1 typically been done in Ellensburg in all of our public
2 meetings, and again my precedent only goes back a few
3 applications, but it appears to be held after work hours
4 as an evening session in the designated location. So with
5 that in mind, is that a motion?
6 Councilmember Adelsman.
7 MS. ADELSMAN: I think we should have it in
8 the evening. If we're going to have a public meeting, we
9 may as well make it convenient to the public. We are now
10 it looks like we have it in the evening and not have it in
11 Olympia, have it in Seattle is what my motion is to have
12 it the evening and be in Seattle.
13 CHAIR LUCE: Would you amend the motion to
14 say Puget Sound? Here's my thinking. I'd like to find a
15 site in the metropolitan area.
16 MS. TOWNE: Greater Seattle area.
17 CHAIR LUCE: Which could encompass Tacoma
18 for that matter or Everett where we have a--
19 MS. ADELSMAN: Greater Seattle area is fine.
20 CHAIR LUCE: Let me finish my train of
21 thought. --where we can find a site that is convenient to
22 the public that doesn't cost a lot of money.
23 MS. ADELSMAN: It has to be in the evening.
24 It cannot be in the daytime and in the greater Seattle
25 area.

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1 CHAIR LUCE: Okay. That's great.
2 MS. TOWNE: Mr. Chairman, I move that staff
3 having heard the discussion by the Council and its
4 affirmative vote and subsequent comments about time of day
5 and general location, find a spot, find a date keeping in
6 mind the statutory requirements for notice and the cost to
7 the agency, ultimately the Applicant, and so notify the
8 Council.
9 CHAIR LUCE: Would you consider that an
10 amendment to your motion, Hedia?
11 MS. ADELSMAN: Well, I'd still like to have
12 it in the evening.
13 MS. TOWNE: No, I said considering, taking
14 into account that.
15 MS. ADELSMAN: Yes.
16 CHAIR LUCE: So the maker of the motion
17 supports the amendment to the motion. Is there a second
18 to the amended motion?
19 MS. WILSON: Second.
20 CHAIR LUCE: Second.
21 JUDGE TOREM: All right. So essentially
22 this motion in the discussion would be whether you're
23 delegating to staff to find an appropriate time, location,
24 in the evening somewhere in the greater Seattle area. Is
25 that how you understand it?

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1 MS. TOWNE: Yes. Thank you.
2 MS. ADELSMAN: It has to be a location
3 that's going to be convenient to the people that are going
4 to come.
5 JUDGE TOREM: Right. Staff, any comments
6 that you want to address in taking on such responsibility
7 before they vote?
8 MR. FIKSDAL: In our scheduling this do you
9 want to be consulted prior to the time that we schedule or
10 look at your schedules?
11 MS. ADELSMAN: Yes, we do want to look at
12 our schedules.
13 MR. FIKSDAL: Or do you wish us to pick a
14 date and you will commit to be there?
15 MS. WILSON: At this point I think you need
16 to pick a date.
17 MS. ADELSMAN: I'll let you know tomorrow.
18 I don't have my calendar.
19 JUDGE TOREM: We certainly don't know today
20 what facilities will be available, and typically it's ten
21 days published written advance notice; is that correct?
22 MR. FIKSDAL: For an EFSEC special meeting,
23 an open meeting like this is 24 hours is the legal
24 requirement. No, I suspect that we would want at least a
25 week or ten days notification.

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1 CHAIR LUCE: I would think we're going to
2 have a meeting here on September 12. Right?
3 MR. FIKSDAL: During the daytime at 1:30.
4 CHAIR LUCE: Let's do it at night. Let's
5 just do it September 12, find a site in the greater Puget
6 Sound area, and we're going to be here, at least most of
7 us will be here on September 12 anyway, and we'll do it in
8 the evening. So that would be my recommendation to staff.
9 And it is a public meeting so if not every Councilmember
10 can make it, you can read the transcript. I would
11 anticipate we will all be there, but that is an
12 appropriate way to handle issues that come before the
13 Council where somebody is not able to be physically
14 present.
15 JUDGE TOREM: So presuming that there's a
16 location and venue available on the night of September 12
17 is that what you're requesting?
18 CHAIR LUCE: Yes.
19 JUDGE TOREM: Additional discussion?
20 MR. FRYHLING: This is Dick. The 12th or
21 the 13th I would much rather not have to make another trip
22 across the state. So if we could do it on the 12th or the
23 13th of September, then I'd be over there.
24 JUDGE TOREM: So if I understand the way the
25 motion is being recommended to staff, is that staff take

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1 care of it with the preference for the 12th to make
2 economy of those folks that may have already traveled
3 here, whether Council or other interested parties, to
4 Olympia for the regular EFSEC meeting and then any other
5 business that might be conducted but then to hold a
6 separate public hearing the night of the 12th in the
7 greater Puget Sound area. All right. Councilmembers,
8 that seems to be the direction. All those in favor?
9 COUNCILMEMBERS: Aye.
10 JUDGE TOREM: Any opposed?
11 So staff has their direction. As soon as
12 that's available, I anticipate even before the formal
13 notice goes out, Irina, you'll send an e-mail to everybody
14 on the distribution list and we'll get that noticed. I
15 think it would be appropriate to make sure our notice is
16 in the Ellensburg papers as well as the local papers of
17 the community in which the hearing is going to be held if
18 at all possible, but I want to make it clear to those
19 folks that are in Ellensburg that you're certainly going
20 to get one or two nights in Ellensburg of public comment.
21 There's no need for those folks to travel and speak at a
22 meeting on the west side and there's no need for the
23 people on the west side to travel and say again their
24 piece on the east side. Then we're going to get
25 duplicative process, and there's really again as I think

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1 you quoted the commissioner from Ellensburg from Kittitas
2 County, it's not a--we don't weigh the paper at the end of
3 the day or count up of the number of votes pro and con in
4 the making of a decision of this body.
5 CHAIR LUCE: It's not duplicative. It's
6 duplicate.
7 JUDGE TOREM: Okay. Thank you for the
8 grammar.
9 CHAIR LUCE: Just for the record.
10 JUDGE TOREM: That was a military term.
11 CHAIR LUCE: Some of us would agree with you
12 on that.
13 I think if we request a transcript, correct
14 me if I'm wrong, staff, but if we request a transcript be
15 prepared shortly after the public meeting or hearing that
16 that could be, and that's on September 12; that could be
17 prepared and be available to members of the public to look
18 at on September 18 and during that time we're in
19 Ellensburg; is that correct?
20 JUDGE TOREM: The court reporter is nodding
21 her head.
22 CHAIR LUCE: Well, then I would request that
23 the transcript that we produce or is produced as a result
24 of the public meeting be available for members of the
25 public in Ellensburg to examine, and maybe we can make it

<p style="text-align: right;">Page 50</p> <p>1 available in a couple of locations prior to that public 2 meeting in Ellensburg so people can get down and look at 3 it if they choose to do so.</p> <p>4 JUDGE TOREM: If I understand what Chairman 5 is asking, and, Shaun, if you can nod your head if this is 6 feasible, is that when we arrive in Ellensburg on the 7 night of Sunday I think the 17th, that that transcript 8 will have been prepared and sufficient copies can then be 9 distributed, whether to the local library and other places 10 and the public in Ellensburg that feels that they missed 11 something if they didn't travel to the greater Puget Sound 12 area on the 12th or whenever the hearing is has a chance 13 to review that and can then make their own comments 14 perhaps responsive to that if they so choose on the public 15 hearings that would be held later that week or the 16 following week.</p> <p>17 I believe right now we're leaning toward 18 public hearings sometime in the first week of scheduled 19 hearings.</p> <p>20 That will work. All right. We will do that 21 so that we can make sure that no one feels disadvantaged 22 or prejudiced if they didn't travel to the hearing to hear 23 what is said, and they will be able to read about it in 24 the transcript not just in what the press might say.</p> <p>25 Anything else on Item No. 4 then?</p>	<p style="text-align: right;">Page 52</p> <p>1 There was also some issues about economic 2 viability of setbacks. We asked for analysis to prove it. 3 They didn't supply us any so we take that as they've never 4 actually done such analysis, and we'll just see how that 5 plays out in the hearing.</p> <p>6 If they suddenly come up with new 7 information, then we're going to have a question about 8 whether they were in fact responding appropriately to 9 discovery. I don't know how that's going to play out so I 10 want to let you know that. I don't have a formal request.</p> <p>11 There were some other issues regarding some 12 PSE matters. They had some concerns about some of the 13 financial issues. So what I'm going to do is I'm going to 14 send I guess you could say a revised or more focused one 15 because I've been trying to get some background on what 16 the RFPs look like and what's in there to try to just 17 narrow the focus down and try to send that out to them on 18 Monday, and the information would be very narrow in scope</p> <p>19 The first one was fairly broad and just 20 saying, okay, let's not get into your financial but some 21 real basic information about it. If there's a problem 22 with that response, I'll let you know, and I would assume 23 that we'd be able to have that sorted out prior to the 24 next scheduled hearing.</p> <p>25 JUDGE TOREM: Okay.</p>
<p style="text-align: right;">Page 51</p> <p>1 Let's move to Item 5 which is an update on 2 the request for discovery. At our last prehearing 3 conference in Ellensburg there was a question from the 4 County, from you, Mr. Hurson, as to whether there might be 5 an informal discovery request and response. I saw a copy, 6 the Council did not, as to what the response filed by the 7 Applicant was to your discovery, and I also believe in the 8 envelope in front of you is the additional prefiled 9 testimony that came in from a number of parties including 10 the County as the deadline was on Tuesday on the 15th of 11 this month. Did you anticipate that you're going to be 12 filing any additional formal discovery request--or not 13 additional--any formal discovery request that I as the 14 judge might have to make a ruling or get involved on?</p> <p>15 MR. HURSON: I don't know. The informal 16 discovery basically we sent them out. The Applicant sent 17 us a written response and essentially said your answers 18 are in the testimony and, frankly, I'm kind of surprised. 19 But if they're saying the only thing was in the testimony 20 that backs up the assertion, we'll see how that plays out 21 in the hearing. We asked for some mapping documentation 22 to describe turbine layouts. They didn't give us any so I 23 guess they're saying they never actually prepared 65 24 turbine layouts in the entire span of the project, and 25 we'll see how that plays out in the hearings.</p>	<p style="text-align: right;">Page 53</p> <p>1 Mr. Peeples, anything you want to add? It 2 doesn't sound like there's anything formally before me at 3 this point.</p> <p>4 MR. PEEPLES: We will respond when we get 5 something to respond to.</p> <p>6 JUDGE TOREM: The hearing schedule itself we 7 know is scheduled to begin for two weeks on the 18th. Is 8 there any further update from the Applicant on putting 9 together a witness list?</p> <p>10 MR. PEEPLES: I talked with Counsel for the 11 Environment yesterday, and I believe we will get on it 12 real hard as soon as the rebuttal testimony is in. I 13 don't think we can do anything until we have the rebuttal, 14 the next set of testimony. Then we'll know what we have. 15 I think anything we do before that will be kind of 16 fruitless. I plan to use kind of the same form that we 17 used in Wild Horse to send out to the attorneys--how much 18 time, who do you plan to cross-examine and how much 19 time--and then we'll put it together.</p> <p>20 JUDGE TOREM: So at this point I think the 21 rebuttal is next Tuesday?</p> <p>22 MR. PEEPLES: The 31st.</p> <p>23 JUDGE TOREM: 31st. Okay. So we'll have 24 something for sure for the Councilmembers before the 25 regular Council meeting on the 12th.</p>

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1 MR. PEEPLES: Way before then we'll have
2 something out. The 31st, what day is the 31st?
3 MR. HURSON: That's a Thursday.
4 MR. PEEPLES: We'll probably have something
5 out I hope Tuesday.
6 JUDGE TOREM: So shortly after the Labor Day
7 weekend then.
8 MR. PEEPLES: Yes. Yes.
9 JUDGE TOREM: Other procedural matters as
10 needed?
11 I had one item that as I looked through the
12 saga that we've been through to get to this point. We're
13 going to have a hearing starting on the 18th of September.
14 There was brought up at the last prehearing conference in
15 good faith I believe a question as to what is before the
16 Council now in 2006, and as I go through the--I haven't
17 read all of the additional supplemental testimony.
18 Perhaps the answers are in there. What I want to
19 encourage the parties to do is in their opening statements
20 when they file anything supplemental feel free to include
21 some kind of pictorial or illustrative exhibit to show the
22 Council this is the concept for the range or the actual
23 project that's our issue.
24 So for the Applicant if there's some kind of
25 diagram that says this is the current summary of the range

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1 of issues we're doing to help the Council know where they
2 are and be on the same page with you when we start
3 testimony and cross-examination on the 18th. There is I
4 think Judy has the benefit of not having been up and ready
5 to go on the brink of hearing two years ago, but we're
6 back to a point where I want to make sure the Council is
7 focused on exactly what's before it on the KV project and
8 not confuse it with what might have been the KV project
9 two years ago and what was the Wild Horse project last
10 year.
11 But it's an opportunity to say please add a
12 few pages to your opening statements from the Applicant
13 and from the other parties as well if there's something
14 that you can do to summarize or show what your current
15 issues are. If any of those have morphed since the last
16 time around, let's focus on those and make sure that
17 there's something summary for the Council to really hang
18 its hat on as I know what your intervention is about today
19 on September 18, 2006 if it's changed when the original
20 intervention orders were granted some years ago.
21 I just want to make sure that the Council
22 has all the benefit it can to know where the ball is when
23 we start, at least from where all the parties think the
24 ball should be. There may be some varying
25 recommendations.

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1 MR. HURSON: If I could. Just for one, I
2 love the comment because that's frankly one of the
3 concerns that the County's had. But as I understand the
4 timing is all of us are to have our supplemental opening
5 statements due the Tuesday after Labor Day. So it's a
6 simultaneous filing, and it creates an interesting timing
7 because if the Applicant does present to you a visual
8 diagram that shows 65 turbines on it that will be the
9 first time that ever happened.
10 JUDGE TOREM: And we recognize that.
11 MR. HURSON: It kind of puts me at a
12 disadvantage to even do my opening statement.
13 JUDGE TOREM: Well, that's what post-hearing
14 briefing is all about. So when we have surprises, and
15 there may be some, they can be dealt with appropriately.
16 I recognize that this illustration is to have the
17 Applicant to say what has been the effect, if any, and it
18 may be none, over the last couple years of process of stop
19 and start, stop and start, and supplemental EISs along the
20 way.
21 And based on all the process that occurred
22 in Kittitas County there may be something different than
23 is there. I understand a scaled down version presented in
24 the County hearings and the rest. This is just an
25 opportunity to sum it all up and rewrite that opening

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1 statement to what the status is today.
2 Previously I think it was the same
3 disadvantage, Mr. Hurson, that opening statements were due
4 and weren't responsive in any way. People knew what their
5 intervention was about, and that's what their opening
6 statement was about. The cross-examination that's when
7 you can take people to task if you think it's necessary.
8 MR. HURSON: Thank you.
9 JUDGE TOREM: Were there any other
10 procedural issues that the Councilmembers wanted to ask of
11 the parties or did I do that well enough?
12 CHAIR LUCE: You did a good job.
13 JUDGE TOREM: Seeing none from the Council,
14 are there any other procedural matters we need to discuss
15 before September 12, if we need to even have this on the
16 docket for the regular Council meeting?
17 CHAIR LUCE: The only question I guess I
18 would have is do we want to schedule just for planning
19 purposes only another prehearing conference on the 12th?
20 And I'm not suggesting that--I don't know of anything
21 that's going to come up now. All right? I'm just
22 anticipating if there is nothing that comes up, then we
23 scuttle it. If there is anything that comes up, we've got
24 it scheduled. Councilmembers are probably all going to be
25 here anyway. We could postpone that I suppose until

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1 September to figure that out, but just an idea that if you
2 did it now, something comes up, it's done.

3 JUDGE TOREM: It appears to me there's no on
4 the docket really necessary hot issues that are going to
5 come up that have been cited today and the witness
6 schedule is going to come up. If we schedule a prehearing
7 conference as part of or immediately following the regular
8 or immediately before the regular meeting that same day,
9 it makes sense if we need one.

10 Staff, what's the process of a week ahead of
11 hearings that we need to have yet another meeting or will
12 we at least have everything set that needs to be done on
13 the record?

14 MS. MAKAROW: It's been customary to have a
15 prehearing conference the first day of the hearing to tie
16 up any loose ends; so I think the September 12 date would
17 only be if there was something major that came up.

18 JUDGE TOREM: Certainly if there's a request
19 and we have enough time for notice, something comes up
20 before the Labor Day weekend we will know that we want to
21 add something for September 12. If it comes up after the
22 Labor Day weekend, it may as well unless it's a true
23 emergency wait for the first day of hearings.

24 CHAIR LUCE: Okay. We'll defer.

25 JUDGE TOREM: Let me hear from the

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1 Applicant.

2 MR. PEEPLES: One of the things I think you
3 might consider, first of all, having a prehearing
4 conference you can take up whatever is there. You're
5 going to be here and it's just easy to have one as not.
6 That would be the first comment. Nothing behind that.

7 The second thing is when we get the witness
8 list out and the groupings and requests for estimated time
9 of cross-examination, who you're going to cross-examine,
10 etc., you would be able to reference that and probably
11 maybe finite your scheduling a little bit at that point in
12 time. So for that purpose all the parties should have
13 responded by then and we could have discussion on that.
14 That's just the comment.

15 MS. ADELSMAN: Does it have to be a
16 prehearing conference or can it just be part of the
17 meeting? You can just have a discussion about it. Do we
18 have to have a prehearing conference on that?

19 MR. PEEPLES: If they're going to issue an
20 order, yes.

21 JUDGE TOREM: So if I anticipate,
22 Mr. Peeples, you've thinking perhaps we have two weeks
23 scheduled maybe we would know in advance we don't need
24 additional dates, something like that?

25 MR. PEEPLES: It will be a first time.

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1 We'll see.

2 CHAIR LUCE: There's no harm.

3 JUDGE TOREM: Mr. Hurson.

4 MR. HURSON: Jim Hurson, Deputy Prosecutor.
5 I think having one scheduled makes a lot of sense because
6 if something comes up, we've already got a time scheduled.
7 It's the week before. I'd hate to have a situation where
8 there's an issue that's of concern it has to be decided
9 the first day of the hearing, and then it has to be, well,
10 we're already starting this so it's really too late to fix
11 the problem. The 12th you're already having the monthly
12 meeting, and you're going to have the public hearing over
13 here on the west side. So I assume I'll be over here on
14 this side of the state that day anyway. So if you want to
15 set a prehearing conference either when you have the
16 normal agenda or an hour in advance of the public hearing,
17 something like that, then we're already blocked in. Then
18 with public notice you can always notice it and then
19 cancel it at the last minute, but you can't notice it at
20 the last minute. So if he noticed it and if the day
21 before there's nothing to discuss.

22 JUDGE TOREM: It makes sense to have it. If
23 there were any known issues, I would want to know them
24 now. Let me just direct staff to schedule a prehearing
25 conference. Let me leave it to their discretion as to

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1 whether it be in conjunction with the public open mic
2 night. But as you've seen with having telephones, people
3 call in for a prehearing conference. We wouldn't have
4 that sort of set up. We'd only have microphones and a
5 court reporter otherwise, and I don't know that we want to
6 have the phone challenges again. But if they do it,
7 figure out what the rest of the agenda is and whether it
8 should be held in advance of the regular meeting or if the
9 regular meeting is short enough to have that business
10 first and then conduct the prehearing conference. Let me
11 leave that to staff's discretion and still leave enough
12 time for folks to get from wherever we are here to point B
13 later in the evening, whatever that might be.

14 Staff, okay with that?

15 MR. FIKSDAL: Yes.

16 JUDGE TOREM: More discretion.

17 MR. FIKSDAL: Thank you.

18 JUDGE TOREM: It's now nearly ten minutes of
19 5:00. Are there any other matters before we adjourn this
20 prehearing conference today?

21 CHAIR LUCE: Hearing none, adjourned.

22 * * * * *

23 (Whereupon, the prehearing conference was
24 adjourned at 4:50 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 August 17, 2006,
in Olympia, Washington.

Shaun Linse, CCR
CCR NO. 2029.