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:


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
Appearances (cont'd):

F. STEVEN LATHROP, Jeff Slothower, Attorney at Law, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh Avenue, Ellensburg, Washington 98926.

ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY, Debbie Strand, Executive Director, 1000 Prospect Street, P.O. Box 598, Ellensburg, Washington 98926.

RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT), Ed Garrett, Lay Representative, 19205 64th Avenue S.E., Snohomish, Washington 98296.

RENEWABLE NORTHWEST PROJECT, Susan Elizabeth Drummond, Foster Pepper & Shefelman, PLLC, 1111 Third Avenue, Suite 3400, Seattle, Washington 98101-3299.

COMMUNITY TRADE AND ECONOMIC DEVELOPMENT, Tony Usibelli, Assistant Director, Energy Policy Division, P.O. Box 43173, Olympia, Washington 98504-3173.

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CHAIR LUCE: This is a meeting of the Washington State Energy Facility Site Evaluation Council held in Olympia on August 17 at 3:35 p.m. The purpose of this meeting is to conduct a prehearing conference on the application for Kittitas Valley Wind Power Project. I believe Sagebrush is the LLC name.

I would ask clerk to call the roll of Councilmembers at this point in time.

MR. MILLS: Department the Ecology?

MS. ADELSMAN: Hedia Adelsman here.

MR. FRYHLING: Dick Fryhling by phone.

CHAIR LUCE: We got you, Dick.

MR. MILLS: Department of Natural Resources?

MS. WILSON: Judy Wilson, Department of Natural Resources.

MR. MILLS: Department of Fish and Wildlife?

MS. TOWNE: Chris Towne is here.

MR. MILLS: Utilities and Transportation Commission?

MR. SWEENEY: Tim Sweeney is here.

MR. MILLS: Kittitas County?

MS. JOHNSON: Patti Johnson.

MR. MILLS: Chair?

CHAIR LUCE: Chair is present. Thank you.

MR. MILLS: All members are present.

CHAIR LUCE: I'm going to turn this hearing over at this point in time to Judge Adam Torem, our Administrative Law Judge, who will take the appearances of the different parties. We will then proceed to adopt the proposed agenda. Actually let's do that now jumping out of sequence a little bit. Councilmembers had an opportunity to review the proposed agenda?

MS. ADELSMAN: Yes.

CHAIR LUCE: Any discussion, deliberation?

MS. ADELSMAN: No.

CHAIR LUCE: Do I have a motion to adopt the agenda as proposed?

MS. TOWNE: So moved.

CHAIR LUCE: Second?

MS. ADELSMAN: Second.

CHAIR LUCE: Discussion? No discussion.

Question called for. All in favor say Aye.

COUNCILMEMBERS: Aye.

CHAIR LUCE: We will move now onto Adam for our roll. Administrative Law Judge Adam Torem, you are in charge.

JUDGE TOREM: All right. Let me take appearances first for the Applicant here in the room.

MR. PEEPLES: Darrel Peebles for the Applicant.

MR. McMahan: Tim McMahan.

MS. ANDERSON: Erin Anderson.

JUDGE TOREM: And as I hear Mr. Piercy is also on the line?

MR. PIERCY: That's correct. Also Joanna Valencia.

MR. TRIBBLE: Mike Tribble present on the telephone.

JUDGE TOREM: Renewable Northwest?

MS. DRUMMOND: I am Susan Drummond representing RNP on the telephone.

MR. GAGLIANO: And Troy Gagliano also on the phone with RNP.

JUDGE TOREM: Mr. Lathrop? Mr. Slothower, we didn't hear that. I heard a little bit of mumble come over the phone.

MR. SLOTHOWER: Jeff Slothower present for Mr. Lathrop. Mr. Lathrop is not present.

JUDGE TOREM: Economic Development Group?

Is the Economic Development Group here?

MS. STRAND: Yes, Debbie Strand.

JUDGE TOREM: Am I missing anybody else, Clerk?

MS. MAKAROW: ROKT.

JUDGE TOREM: Oh, ROKT.

MR. GARRETT: Ed Garrett is on the line.

JUDGE TOREM: Is Mr. Carmody with us today?
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<td>MS. DRUMMOND: Yes.</td>
<td>recommend one way or the other making it a regional issue or a local issue as much as it is focusing on the environmental aspects of the project. And so CFE is willing to leave this up to the voices that have been heard and certainly the determination of the Council.</td>
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<td>JUDGE TOREM: What I want you to focus on if you can keep it very precise and to the point of why should we adopt an additional process rather than less approach is what I hear the letter suggesting. I'm glad to see you did bring up the clarification to begin with that this proposal was for an additional public hearing. Some of the responses have been a little bit more concerned that the entire process would be picked up and moved to the west side. That's clearly incorrect and not what your client is asking for. Again, tell me if I'm wrong. You're asking for a public hearing--</td>
<td>JUDGE TOREM: All right. Mr. Hurson, I had you next in line. What does the County feel about having an additional public hearing in addition to everything else that's scheduled in Ellensburg for the Council to pick up some other public feeling on this project?</td>
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<td>MS. DRUMMOND: That is correct.</td>
<td>MR. HURSON: Jim Hurson, Deputy Prosecutor. I think Ms. Drummond's argument basically explained that there was no necessity for it, and I think that's one of the questions here is, is this necessary for the process.</td>
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<td>JUDGE TOREM: --that will simply allow members of the public who don't choose to travel to Ellensburg or submit written testimony in its place to actually have a face-to-face voice with the Council for their three minutes or whatever we allocate and then sit down and we can hear those perspectives from this side of the mountain range.</td>
<td>She has an advocacy position she wants to present, but she really hasn't shown any necessity for this. There would be a cost. If this is going to be part of the hearing process, that would require myself and all the other intervenors to travel over to Western Washington for another hearing. That's travel. That's time. That's expense. That's hotel. That's meals. That's inconvenience. Because that would be part of our process we would need to travel. Anybody who wants to participate or testify or present evidence at the hearing can do so in Ellensburg. If it's too inconvenient for</td>
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<td>JUDGE TOREM: That is correct.</td>
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<td>MS. DRUMMOND: That is correct.</td>
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<td>JUDGE TOREM: So is there anything else as to what this meeting in King County would do that wouldn't be accomplished in Ellensburg? Perhaps there is a reason for a public hearing--</td>
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<td>JUDGE TOREM: Let me note that Tony Usibelli has just walked in and joined us. Ms. Drummond, so I think I understand the RNP request. We've got that now for the record. Let me ask if Counsel for the Environment has a position, and what I'll do for Mr. Usibelli's benefit as a representative signatory on the letter is come back to him last and get his feedback on behalf of Community, Trade, and Economic Development. Mr. Tribble, does CFE have a position on this request?</td>
<td>JUDGE TOREM: All right. Mr. Hurson, I had you next in line. What does the County feel about having an additional public hearing in addition to everything else that's scheduled in Ellensburg for the Council to pick up some other public feeling on this project?</td>
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<td>MR. TRIBBLE: This is Mike Tribble. CFE does not have a position on this request solely for the reason that I think this is more of an issue of advocacy, and up to this point our position has been not to</td>
<td>MR. HURSON: Jim Hurson, Deputy Prosecutor. I think Ms. Drummond's argument basically explained that there was no necessity for it, and I think that's one of the questions here is, is this necessary for the process.</td>
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To open a process up to the people costs. If we want to come up with anything, it would be less costly. I think EFSEC has always been open to inclusivity of allowing people to voice their opinion in front of the Council. I think this is just another one. I don't think it's of any great adverse effect on anybody to allow another hearing in Olympia or anyplace else in this state to allow citizens to voice their opinion period.

I'm kind of astounded that the County itself who is a public organization would try to say no. This should be only exclusively heard in this County so only our people can conveniently get there. So just on that principle I believe that the decision should be made, and I think the request is reasonable and I believe it should be allowed. This is a state-wide issue. It's just not a local issue. The local land use issue is a local issue. Beyond that it's of state-wide significance.

JUDGE TOREM: Other intervenors that want to voice their position on this?

Let me start and ask for Mr. Lathrop, Mr. Slothower, do you have comments on his behalf?

MR. SLOTHOWER: Yes, just briefly. First of all, the letter that we received initially that made the request indicated that most of the power would be consumed in Western Washington, and I'm not sure that that's accurate. I haven't seen anything in the record to suggest that.

More importantly I want to echo and take Mr. Hurson's comments a little further. It is not a referendum on the wind power that we're talking about.

This is a siting question. It's not whether we should have wind power. It's whether we should have wind power in this particular location, and I think that that requires an analysis of the particular location, and individuals who are not familiar with this particular location live in another local and may not know anything about the location, don't have anything to add to that question. It's a siting question. So the siting should be determined locally based upon local impacts of the siting.

It's clearly a state-wide question on whether we should use wind energy to augment our power supply, but this is not about that question. The issue that you're going to have to decide is whether this particular site is the appropriate site for this type of facility so we would oppose the request.

JUDGE TOREM: All right. Thank you, Mr. Slothower.

Ms. Strand, anything from the Economic Development Group?

MS. STRAND: Yes. My comment would be that I would think that holding additional hearing would certainly be appropriate. We would certainly want to make certain it wasn't taking away from any kind of hearings here in Ellensburg.

JUDGE TOREM: Mr. Garrett, on behalf of
excessive and the opportunity for others to provide costs involved in that, but that they should not be reasonable accommodation by the Council. There are some that our perspective as a state agency is that this is a issue. The issue is local siting. So that's what this is the type of stuff you're going to hear which is just going to choke up the record even more. I would even doubt the majority of the people who would come to testify even know where Kittitas County is let alone what the issues are. The issue is local siting. So that's what our position is. Thank you.

MR. HURSON: Councilmembers, I am going to ask Mr. Usibelli and then I'll have you prepare whatever comments you have and we'll deliberate as to whether this is something we want to add in this process. Mr. Hurson, could I have you swap chairs with Tony Usibelli?

MR. HURSON: Sure.

MR. USIBELLI: For the record, Tony Usibelli with Community, Trade, and Economic Development. First of all, I apologize for arriving late and not having an opportunity to hear everyone speak. As indicated we are a signatory on the letter and believe that holding an additional hearing in this state is a reasonable accommodation. You will note that the letter is not asking for a series of hearings around the state. We were approached by one of the other parties, Renewable Northwest Project, with respect to this, asked about what we thought about it, and thought that our perspective as a state agency is that this is a reasonable accommodation by the Council. There are some costs involved in that, but that they should not be excessive and the opportunity for others to provide comment. This has moved from a local to a state-wide process, and we find it difficult as a state agency to not allow this.

I think the suspicion that people may be more in favor of it on the west side than locally, that's very possible, but you certainly could have other projects that come before EFSEC where you might have a local support and other types of opposition or other opinions. So I think it's not an unreasonable precedent to establish or perhaps if, and I've forgotten this, but perhaps to even reestablish with respect to EFSEC. That is our position.

I did speak with RNP, and I believe in the letter there was sort of a factual mistake which said that the power will be used in Western Washington. We do know at least at this point as far as we know there aren't firm contracts. I think the terminology would be may be used by consumers in Western Washington.

JUDGE TOREM: Thank you, Mr. Usibelli. Any other intervenors or parties who wish to say anything else before I turn it over to the Council for their deliberations?

MR. FRYHLING: This is Dick Fryhling. Can I ask Tony a question?

JUDGE TOREM: Please.

MR. FRYHLING: Tony, is this a policy of the energy office?

MR. USIBELLI: This is a policy with respect to our division. That's correct.

MR. FRYHLING: If you're going to sign this letter why didn't you put it on agency letterhead?

MR. USIBELLI: We were another signator. We were asked to be a signator on this. It seemed reasonable so we added our signature to it. You may be right, Dick. It may have been more appropriate to add it and have the same letter on our letterhead.

MR. FRYHLING: Well, let me ask you one more question. Are you a member of the Renewable Northwest Project?

MR. USIBELLI: We are not.

MR. FRYHLING: Then why are you signing on their letter?

MR. USIBELLI: Well, we were asked and thought it was a reasonable issue to support. I guess, Dick, I would just reiterate the points that I made earlier.

MR. FRYHLING: Okay.

JUDGE TOREM: Other questions for the parties?

MR. SWEENEY: Yes, I have a question for
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Ms. Drummond or the other requesters of this hearing. Do we anticipate this hearing to address the issue of land use consistency or is there the other elements of the case that it will address? Ms. Drummond?

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

MR. GAGLIANO: Yes, Gagliano is still here.

I don't know what happened to Susan.

MS. DRUMMOND: I'm sorry. I am still here.

Would you like me to address that question?

MR. SWEENEY: I'll reiterate the question.

I want to know if this hearing is going to contribute to the land use consistency part of our decision?

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

MR. PEEPLES: Could I assert something?

JUDGE TOREM: Mr. Peeples.

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

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

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

The second question I have is that what kind of expectation do you have in terms of numbers of turnout? I mean is this something that you've come to as a result of expectation do you have in terms of numbers of turnout?

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

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

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

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

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

MS. ADELSMAN: I have another question. This is Hediea Adelsman. If the County did not vote against the project, would you think you would have asked for the hearing on the west side also?

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

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

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

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

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

MR. HURSON has something to add. Sir.

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

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

JUDGE TOREM: I'll have him step up, Dick.
MR. HURSON: As I'm listening to the conversation as a citizen of this state, I'm finding this as kind of a troubling characterization because it seems to be trying to be turned into a west side versus east side controversy, and I find that kind of inappropriate. The question is where is it going to impact; where is it supposed to belong. I am hard pressed to figure out where is a more centrally located place in the State of Washington to hold a hearing than Ellensburg, Washington. We're in the middle of the state. If this is a thing that this is one state and one issue, you've already got the perfect location. It's in the center of the state. It's three hours to Spokane, only two hours to Seattle. It's two hours to the Tri-Cities. It's three hours to Walla Walla. So we are centrally located. It's an issue that directly impacts Kittitas Valley. It's centrally located.

People can provide their information.

And EFSEC stands for Energy Facility Site Evaluation Council, and, frankly, all this is they want a west side thing hoping that RNP can get their people to come and try to pretend that this is some sort of referendum on whether wind farms are good or bad which isn't the issue. So public access is great. We've got public process. We've got public access in Ellensburg. It seems to be just an unnecessary ploy.

MS. DRUMMOND: This is Susan Drummond. I can provide some clarification on that. JUDGE TOREM: Yes, please, if you will. Then I think we'll close the debate on it. Maybe if the Applicant has one further thing after you, Ms. Drummond.

MS. DRUMMOND: Okay.

JUDGE TOREM: But then I'll have the Council.

MS. DRUMMOND: RNP does not view this as an east side versus west side thing. I want to make that very clear. We're very supportive of the local process, believe the hearings should be in Ellensburg in which they are. All that RNP is asking for is one single additional meeting to make it more accessible for other citizens to participate in what is a state-wide review process. That's all.

JUDGE TOREM: Mr. Peeples.

MR. PEEPLES: I think you should read 80.50.010 that sets out the purposes for EFSEC. It is not uncommon at all to have hearings on all sorts of matters that I've been involved with, including ones that EFSEC has had on the east side and on the west side. That's a normal thing that happens, and this affects all the citizens state wide; and it seems to me it's not unreasonable to make it easier for people in different geographic areas to attend and state their views.

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

Seeing none, then I would ask that the Council have its discussion here, and that at the appropriate time someone move for a vote, and we'll decide what we're going to do.

Chairman Luce.

CHAIR LUCE: Well, the Chair would yield to other Councilmembers to state their position. I have a position which I will state after others have stated theirs.

MS. TOWNE: A question for the Council and the Administrative Law Judge, Mr. Chairman. I did not participate in the initial sessions of the Kittitas Valley Power Project going back three and a half years. I came along at the three-year mark or the six-month mark in the history of this Odyssey. I have heard anecdotaly from other Councilmembers and staff that commitments were made that all hearings would be held in Ellensburg. I would like someone to speak to that so I have a clear picture of what was committed to by the Council or whoever was presiding at that time.

CHAIR LUCE: This is Mr. Luce. I think I would say two things. First of all, the commitment was that the hearings would be held in Ellensburg to the greatest extent possible, and I think we've satisfied that commitment. We did not have at that time, and it certainly would have been better if we had at that time, a request for what I would say as a public meeting, open mic, if you will, session to have comments elsewhere, and Renewable Northwest has made their request and it speaks for itself. We have had meetings and hearings with some here in Olympia where people have been able to state whatever their given opinion was on a specific issue.

So I guess I would summarize that by saying we committed to have hearings, as many hearings as we could in Ellensburg and we've done that. We've had some meetings in Olympia. The question now before us is should we have an additional public meeting, and I'll say open mic again elsewhere than Ellensburg. It's a reasonable policy question, and Councilmembers will have to express their opinions on that. I don't think we have taken a position that we would not under any circumstances hold another public meeting elsewhere in the state.

MR. SWEENEY: I have another question I guess for the Judge. If we decided to hold this hearing is there any idea of how we would work this into the schedule? Would it be before our time in Ellensburg or...
after or early September?

JUDGE TOREM: I haven't given any thought, Tim, whatsoever to when this would be fit in. The only impact it would have if it's held after the close of the adjudication and the cross-examination of the witnesses, then we wouldn't be able to expect the parties to know what the complete record is until this additional public session, if there is one, is held and perhaps until it's transcribed some weeks later and the record is then out there for folks that don't attend to at least have that portion to review in making their post-hearing briefs. So I don't know. It could impact our post-hearing schedule deadline, but there's no reason it would impact the current items that are set.

MR. SWEENEY: Then I'll go ahead and go off of that and make my comments on this. I do believe that we're a state Council and that a reasonable request for a hearing in another locale should be honored. I'm not quite sure exactly how much contribution this will be, but one of the parties is requesting it. I recall several property owners being from the west side so hopefully this will be a convenience to them. They won't have to drive to Ellensburg, but my support would be contingent on this working on the schedule though the request has come late in the process and our schedule is set. And I don't want this to be one that slows this process down any further than it already has been. Assuming we can put this into the schedule in a rational way, I can support that.

CHAIR LUCE: Other Councilmembers care to comment?

I'm sorry, Dick. Patti has just raised her hand. You couldn't see that.

JUDGE TOREM: We'll take Patti's comments and then yours, Dick.

MR. FRYHLING: Okay. Go ahead.

MS. JOHNSON: I would like to reiterate what Chris has said. Early on in the process we had talked about having the hearings in Ellensburg in Kittitas County where it is being sited and people have come from King County to Kittitas County to speak. We have heard them. They have submitted written comments, and now we're at the last minute. As I said earlier, we have less than 30 days before the hearings are suppose to start. We are going to try and put in another hearing in another location, and I'm with Tim. I don't want to slow down the process. I mean it's been slow enough. We've been doing this for over three years. I really want to get this thing moving. One way or the other I think we need to make a decision, but I don't want this to slow down the process. We've told people that we were going to have hearings in Kittitas County. I think we should stick to that.

CHAIR LUCE: Judy. I'm sorry, Judy.

MR. FRYHLING: What I want to say is again it's not necessarily a promise, but we mentioned a number of times to the public and meetings in Kittitas we would hold these hearings in Ellensburg as we needed, but if there's other extenuating circumstances we could hold them somewhere else. At this point in time I don't think there is extenuating circumstances. Anybody can drive to Ellensburg and preside in these hearings. If you need another hearing, we'll be over there for two weeks. We could have another night available for another hearing then. So I don't see the advantage of us taking a hearing to the west side and making this process any longer than it has been which is three years plus now. So that's my thoughts on this. I don't see an advantage in having anything on the west side at this point in time.

CHAIR LUCE: Thank you, Dick.

MR. FRYHLING: Up to three years it would have been a good thought but not now.

JUDGE TOREM: Thank you, Dick.

Judy.

MS. WILSON: I guess I'll preface my comment with a question. Is there ever an end to when we take comments on this adjudicative process?

JUDGE TOREM: Certainly we would anticipate closing the record on the last day of the adjudicative proceeding. The statute and the regulations give us a lot of flexibility, Judy, but like Patti has said we need to make a decision at some point and we've had this come up to the brink of having the adjudicative hearing and not doing it. If you look at previous applications, and particularly the Kittitas Valley case, what we did was hold the adjudication and it got shrunk down from the original number of days based on the stipulations and agreements; but we still held our public hearing within the scheduled dates, and the public hearing could have been extended to an additional night if there was sufficient demand; but it would have been done prior to the last scheduled day of the hearing.

That's the plan right now as Irina and Allen are working on the schedule, to hold a public hearing, if necessary schedule a second night, and the adjudication would continue thereafter. There will be a deadline set for the submission of written comments, and that will be the final date. The only other items that would come in thereafter won't be part of the factual record, but the arguments from the parties would still be coming in on the briefing schedule that we would set afterward.
MS. WILSON: Well, I would say that I'm new to this process and to this case so I'm not privy to the previous commitments, but I found the request for a public hearing on the west side of the state to be fairly late in this process and we are in an era of technology. We have received e-mails and faxes already, and I think there is ample opportunity for people all over the state to make comments on this process as long as we make it clear how long we are going to take it.

However, if we do have an additional public hearing, I think it needs to be prior to the hearing in Ellensburg, and I would suggest we make it as part of our meeting here in September to take the testimony. We are already having a meeting. This is the west side of the state and the testimony could come in at that time, but I think I would hope that as a Council we would set up some kind of future policies around how we determine where hearings are going to be held and at what point in a hearing needs to be requested because I think it makes this difficult. So I would vote that either we don't have a hearing after we have finished in Ellensburg, and if we have one, it needs to be held prior to going to Ellensburg, and I would suggest that we have it at the meeting we have scheduled here in September. That's not a motion. That's just a comment.

MS. ADELSMAN: You're saying here in Olympia?

MS. WILSON: Here in Olympia.

CHAIR LUCE: Point of clarification. Is the Olympia portion of your suggestion hard and fast? I mean Olympia is the capital of bureaucracy with all due respect. If you look to the left or if you look to the right, there are a lot of bureaucrats around here, and I think one of the advantages to going to Ellensburg, going elsewhere within the state is you actually talk to I'll use the word real people, and that's an advantage from my perspective. Olympia from Puget Sound depending on traffic is as far as it is from Ellensburg to the Puget Sound.

MS. WILSON: I guess I'm just really saying that my question whether there's a need to have another hearing on the west side given the comments made about the location of Ellensburg and the ability for people to write, fax, e-mail. I think that there is ample opportunity to provide this Council with comments and we have been reading mountains of paper.

So if the concern is that we aren't going to listen to it or read the comments, I think that you should not have that concern. People should not have that concern because they are being read.

The other thing would be why not set up a telephone at the public hearing we schedule for when we're in Ellensburg and if those folks want to call in on the phone, if they want to hear it, they could do that. It's just that we're in an age of technology, and there's really ample ways for people to get information. Just given the late date, I just as soon we do that.

CHAIR LUCE: Thank you.

Hedia.

MS. ADELSMAN: Go to Chris first.

CHAIR LUCE: No, you've got to give yourself a chance.

MS. ADELSMAN: I think I agree with Judy. I think the request came really late in the process. Really it's very difficult for me to not tie it back to the fact that in this particular case the county was not favorable and some things like maybe I don't know what's behind the request. It didn't seem at least I was convinced there's a necessity for it, and I feel this is a really big issue and has been on the table for so long we should have really had the request at least several months ago, at least even three months ago. So I'm inclined to not go along with the request.

CHAIR LUCE: Chris.

MS. TOWNE: I listened with care to

Mr. Hurson's characterization of the case as being about where it is, and I certainly agree that having read the transcripts of all the planning commission and county commission sessions leading to the negative decision there was a paucity of testimony and evidence on matters other than siting. Not withstanding the name of our group, of our Council, I think 80.50.010 is instructive as to other matters that are necessarily of concern to the Council in making its decision.

With that said, I guess it's my old city councilman days coming back. I don't think you ever get in trouble for not having more public process. As painful and lengthy as it may be at times I am interested in what RNP and other organizations have to say about the appropriateness of the project, and I do not expect them to talk about setbacks from occupied residences so much as those larger energy issues found in 80.50.010. For that reason, I am prepared to support having such a hearing and also support Ms. Wilson's request that it be held concurrent with the September Council meeting. Thank you.

CHAIR LUCE: Okay. I guess I'll offer my comments at this point in time. First of all, I think it's a particularly difficult call because it comes late in the process. If it had come earlier in the process, it wouldn't be anywhere near as difficult from my perspective.
perspective. I do believe that we are the State Energy Facility Site Evaluation Council. I do believe with Commissioner Bowen his testimony or his comment in the April 12, 2006 meeting of the Board of County Commissioners where he said, "I remind everybody that it's well founded in terms of land use decision making that the mere existence of opposition or for that matter support does not justify an approval or rejection."

I think that was a very appropriate comment at that time and I think it's an appropriate comment at this time. A public meeting we keep using the word hearing or meeting, but this is an open mic opportunity. That's basically what it is. I think if we hold it, it should be held before the case in chief, the adjudicative hearing which obviously and most importantly would be held in Ellensburg.

Renewable Northwest and I believe Northwest Energy group also was supporting this request represents significant numbers of individuals and organizations. The State Energy Policy Office has stated that this would benefit members of the public, and I think that that's an important consideration. I think it is not impossible for people to send an e-mail or write or drive over the pass or come from Walla Walla or wherever they may want to come from, but I guess I view this Council as being in a position where we should err on the side of hearing the public or listen to the public in writing. This is we'll listen to the public or not listen to the thermal projects where they have been elsewhere in the state. I don't view this as an advocacy issue. Again, this is we'll listen to the public or not listen to the public or listen to the public in writing. So I would err on the side of listening to the public and I would support and do support a public meeting somewhere on the west side to be determined, preferably not in Olympia which I view as the capital of bureaucracy, prior to the hearing in Ellensburg, and so

that constitutes my comment on this particular issue.

JUDGE TOREM: Councilmembers, any other discussion?

We've gone around the room and essentially had a straw poll of items here. Is there any need for further discussion or are we ready to call the question?

MR. SWEENEY: What is the question?

JUDGE TOREM: I think someone will need to make a motion as to should we have this, should we grant RNP's request or not.

MS. WILSON: I'll move we hold a public meeting on the west side prior to the start of the adjudicative hearing which is September 18, sometime between now and then.

JUDGE TOREM: Is there a second for that motion?

MS. TOWNE: Second.

JUDGE TOREM: All right. It's been seconded. For clarification because of your earlier comments, Judy, can you tell us when the next scheduled EFSEC meeting in September is so the Council knows what else they're putting on their plate.

MR. FIKSDAL: I believe it's September 12. It's the second Tuesday of September.

MR. FRYHLING: I've got a question on that.
JUDGE TOREM: I'm just trying to get more specificity out of the motion.

MS. WILSON: Why don't we deal with the motion first and then we'll find a date.

JUDGE TOREM: All right. Is there any further discussion just on the concept of having another public meeting prior to September 18?

Is the Council ready to vote?

CHAIR LUCE: Call for the question.

JUDGE TOREM: Let me ask the clerk to take the roll of the Council, and if you vote yes, you're voting to essentially grant RNP's request and have an additional public hearing at which members of the public could speak as Chairman Luce says in an open mic fashion. There will be no cross-examination or anything else, and it will probably be limited to two to three to four minutes depending on attendance.

If you vote no, you're essentially voting to keep the status quo that the adjudication and all associated public hearings would be held as scheduled between the 18th and the following Friday. I believe that's the 29th of September in Ellensburg.

Clerk, would you call the roll and obtain the votes.

MR. MILLS: All right. Community Trade and Economic Development?

MR. FRYHLING: Dick Fryhling votes no.

MR. MILLS: Department of Ecology?

MS. ADELSMAN: Yes.

MR. MILLS: Department of Fish and Wildlife?

MS. TOWNE: Chris Towne votes yes.

MR. MILLS: Department of Natural Resources?

MS. WILSON: Judy Wilson, yes.

MR. MILLS: Utilities and Transportation Commission?

MR. SWEENEY: Yes.

MR. MILLS: Kittitas County?

MS. JOHNSON: No.

MR. MILLS: Chair?

CHAIR LUCE: Yes.

You want to announce the results of the vote?

MR. MILLS: The vote is five, yes; two, no.

JUDGE TOREM: So there will be an additional public hearing. Now, Council, is there a motion having made that decision as a group as to when that meeting should be held? The obvious time you're getting back together is September 12. Whether that is something to be done during the regular Council meeting or if you're attempting to facilitate public participation, what's typically been done in Ellensburg in all of our public meetings, and again my precedent only goes back a few applications, but it appears to be held after work hours as an evening session in the designated location. So with that in mind, is that a motion?

Councilmember Adelsman.

MS. ADELSMAN: I think we should have it in the evening. If we're going to have a public meeting, we may as well make it convenient to the public. We are now it looks like we have it in the evening and not have it in Olympia, have it in Seattle is what my motion is to have it the evening and be in Seattle.

CHAIR LUCE: Would you amend the motion to say Puget Sound? Here's my thinking. I'd like to find a site in the metropolitan area.

MS. TOWNE: Greater Seattle area.

CHAIR LUCE: Which could encompass Tacoma for that matter or Everett where we have a--

MS. ADELSMAN: Greater Seattle area is fine.

CHAIR LUCE: Let me finish my train of thought. --where we can find a site that is convenient to the public that doesn't cost a lot of money.

MS. ADELSMAN: It has to be in the evening.

It cannot be in the daytime and in the greater Seattle area.

CHAIR LUCE: Okay. That's great.

MS. TOWNE: Mr. Chairman, I move that staff having heard the discussion by the Council and its affirmative vote and subsequent comments about time of day and general location, find a spot, find a date keeping in mind the statutory requirements for notice and the cost to the agency, ultimately the Applicant, and so notify the Council.

CHAIR LUCE: Would you consider that an amendment to your motion, Hedia?

MS. ADELSMAN: Well, I'd still like to have it in the evening.

MS. TOWNE: No, I said considering, taking into account that.

MS. ADELSMAN: Yes.

CHAIR LUCE: So the maker of the motion supports the amendment to the motion. Is there a second to the amended motion?

MS. WILSON: Second.

CHAIR LUCE: Second.

JUDGE TOREM: All right. So essentially this motion in the discussion would be whether you're delegating to staff to find an appropriate time, location, in the evening somewhere in the greater Seattle area. Is that how you understand it?
MS. TOWNE: Yes. Thank you.

MS. ADELSMAN: It has to be a location that's going to be convenient to the people that are going to come.

JUDGE TOREM: Right. Staff, any comments that you want to address in taking on such responsibility before they vote?

MR. FIKSDAL: In our scheduling this do you want to be consulted prior to the time that we schedule or look at your schedules?

MS. ADELSMAN: Yes, we do want to look at our schedules.

MR. FIKSDAL: Or do you wish us to pick a date and you will commit to be there?

MS. WILSON: At this point I think you need to pick a date.

MS. ADELSMAN: I'll let you know tomorrow. I don't have my calendar.

JUDGE TOREM: We certainly don't know today what facilities will be available, and typically it's ten days published written advance notice; is that correct?

MR. FIKSDAL: For an EFSEC special meeting, an open meeting like this is 24 hours is the legal requirement. No, I suspect that we would want at least a week or ten days notification.

CHAIR LUCE: I would think we're going to have a meeting here on September 12. Right?

MR. FIKSDAL: During the daytime at 1:30.

CHAIR LUCE: Let's do it at night. Let's just do it September 12, find a site in the greater Puget Sound area, and we're going to be here, at least most of us will be here on September 12 anyway, and we'll do it in the evening. So that would be my recommendation to staff, and it is a public meeting so if not every Councilmember can make it, you can read the transcript. I would anticipate we will all be there, but that is an appropriate way to handle issues that come before the Council where somebody is not able to be physically present.

JUDGE TOREM: So presuming that there's a location and venue available on the night of September 12 is what you're requesting?

CHAIR LUCE: Yes.

JUDGE TOREM: Additional discussion?

MR. FRYHLING: This is Dick. The 12th or the 13th I would much rather not have to make another trip across the state. So if we could do it on the 12th or the 13th of September, then I'd be over there.

JUDGE TOREM: So if I understand the way the motion is being recommended to staff, is that staff take care of it with the preference for the 12th to make economy of those folks that may have already traveled here, whether Council of other interested parties, to Olympia for the regular EFSEC meeting and then any other business that might be conducted but then to hold a separate public hearing the night of the 12th in the greater Puget Sound area. All right. Councilmembers, that seems to be the direction. All those in favor?

COUNCILMEMBERS: Aye.

JUDGE TOREM: Any opposed?

So staff has their direction. As soon as that's available, I anticipate even before the formal notice goes out, Irina, you'll send an e-mail to everybody on the distribution list and we'll get that noticed. I think it would be appropriate to make sure our notice is in the Ellensburg papers as well as the local papers of the community in which the hearing is going to be held if at all possible, but I want to make it clear to those folks that are in Ellensburg that you're certainly going to get one or two nights in Ellensburg of public comment. There's no need for those folks to travel and speak at a meeting on the west side and there's no need for the people on the west side to travel and say again their piece on the east side. Then we're going to get duplicative process, and there's really again as I think you quoted the commissioner from Ellensburg from Kittitas County, it's not a--we don't weigh the paper at the end of the day or count up of the number of votes pro and con in the making of a decision of this body.

CHAIR LUCE: It's not duplicative. It's duplicate.

JUDGE TOREM: Okay. Thank you for the grammar.

CHAIR LUCE: Just for the record.

JUDGE TOREM: That was a military term.

CHAIR LUCE: Some of us would agree with you on that.

I think if we request a transcript, correct me if I'm wrong, staff, but if we request a transcript be prepared shortly after the public meeting or hearing that that could be, and that's on September 12; that could be prepared and be available to members of the public to look at on September 18 and during that time we're in Ellensburg; is that correct?

JUDGE TOREM: The court reporter is nodding her head.

CHAIR LUCE: Well, then I would request that the transcript that we produce or is produced as a result of the public meeting be available for members of the public in Ellensburg to examine, and maybe we can make it
There was also some issues about economic viability of setbacks. We asked for analysis to prove it. They didn’t supply us any so we take that as they’ve never actually done such analysis, and we’ll just see how that plays out in the hearing.

If they suddenly come up with new information, then we’re going to have a question about whether they were in fact responding appropriately to discovery. I don’t know how that’s going to play out so I want to let you know that. I don’t have a formal request.

There were some other issues regarding some PSE matters. They had some concerns about some of the financial issues. So what I’m going to do is I’m going to send I guess you could say a revised or more focused one because I’ve been trying to get some background on what the RFPs look like and what’s in there to try to just narrow the focus down and try to send that out to them on Monday, and the information would be very narrow in scope.

The first one was fairly broad and just saying, okay, let’s not get into your financial but some real basic information about it. If there’s a problem with that response, I’ll let you know, and I would assume that we’d be able to have that sorted out prior to the next scheduled hearing.

JUDGE TOREM: Okay.

Mr. Peeples, anything you want to add? It doesn’t sound like there’s anything formally before me at this point.

MR. PEEPLES: We will respond when we get something to respond to.

JUDGE TOREM: The hearing schedule itself we know is scheduled to begin for two weeks on the 18th. Is there any further update from the Applicant on putting together a witness list?

MR. PEEPLES: I talked with Counsel for the Environment yesterday, and I believe we will get on it real hard as soon as the rebuttal testimony is in. I don’t think we can do anything until we have the rebuttal, the next set of testimony. Then we’ll know what we have.

I think anything we do before that will be kind of fruitless. I plan to use kind of the same form that we used in Wild Horse to send out to the attorneys—how much time, who do you plan to cross-examine and how much time—and then we’ll put it together.

JUDGE TOREM: So at this point I think the rebuttal is next Tuesday?

MR. PEEPLES: The 31st.

JUDGE TOREM: 31st. Okay. So we’ll have something for sure for the Council Members before the regular Council meeting on the 12th.

available in a couple of locations prior to that public meeting in Ellensburg so people can get down and look at it if they choose to do so.

JUDGE TOREM: If I understand what Chairman is asking, and, Shaun, if you can nod your head if this is feasible, is that when we arrive in Ellensburg on the night of Sunday I think the 17th, that that transcript will have been prepared and sufficient copies can then be distributed, whether to the local library and other places and the public in Ellensburg that feels that they missed something if they didn’t travel to the greater Puget Sound area on the 12th or whenever the hearing is has a chance to review that and can then make their own comments perhaps responsive to that if they so choose on the public hearings that would be held later that week or the following week.

I believe right now we’re leaning toward a public hearing sometime in the first week of scheduled hearings.

That will work. All right. We will do that so that we can make sure that no one feels disadvantaged or prejudiced if they didn’t travel to the hearing to hear what is said, and they will be able to read about it in the transcript not just in what the press might say.

Anything else on Item No. 4 then?

Let’s move to Item 5 which is an update on the request for discovery. At our last prehearing conference in Ellensburg there was a question from the County, from you, Mr. Hurson, as to whether there might be an informal discovery request and response. I saw a copy, the Council did not, as to what the response filed by the Applicant was to your discovery, and I also believe in the envelope in front of you is the additional prefiled testimony that came in from a number of parties including the County as the deadline was on Tuesday on the 15th of this month. Did you anticipate that you’re going to be filing any additional formal discovery request—or not additional—any formal discovery request that I as the judge might have to make a ruling on or get involved on?

MR. HURSON: I don’t know. The informal discovery basically we sent them out. The Applicant sent us a written response and essentially said your answers are in the testimony and, frankly, I’m kind of surprised. But if they’re saying the only thing was in the testimony that backs up the assertion, we’ll see how that plays out in the hearing. We asked for some mapping documentation to describe turbine layouts. They didn’t give us any so I guess they’re saying they never actually prepared 65 turbine layouts in the entire span of the project, and we’ll see how that plays out in the hearings.
MR. PEEPLES: Way before then we'll have something out. The 31st, what day is the 31st?
MR. HURSON: That's a Thursday.
MR. PEEPLES: We'll probably have something out I hope Tuesday.
JUDGE TOREM: So shortly after the Labor Day weekend then.
MR. PEEPLES: Yes. Yes.
JUDGE TOREM: Other procedural matters as needed?
I had one item that as I looked through the saga that we've been through to get to this point. We're going to have a hearing starting on the 18th of September. There was brought up at the last prehearing conference in good faith I believe a question as to what is before the Council now in 2006, and as I go through the--I haven't read all of the additional supplemental testimony. Perhaps the answers are in there. What I want to encourage the parties to do is in their opening statements when they file anything supplemental feel free to include some kind of pictorial or illustrative exhibit to show the Council this is the concept for the range or the actual project that's our issue.
So for the Applicant if there's some kind of diagram that says this is the current summary of the range of issues we're doing to help the Council know where they are and be on the same page with you when we start testimony and cross-examination on the 18th. There is I think Judy has the benefit of not having been up and ready to go on the brink of hearing two years ago, but we're back to a point where I want to make sure the Council is focused on exactly what's before it on the KV project and not confuse it with what might have been the KV project two years ago and what was the Wild Horse project last year.
But it's an opportunity to say please add a few pages to your opening statements from the Applicant and from the other parties as well if there's something that you can do to summarize or show what your current issues are. If any of those have morphed since the last time around, let's focus on those and make sure that there's something summary for the Council to really hang its hat on as I know what your intervention is about today on September 18, 2006 if it's changed when the original intervention orders were granted some years ago.
I just want to make sure that the Council has all the benefit it can to know where the ball is when we start, at least from where all the parties think the ball should be. There may be some varying recommendations.
MR. PEEPLES: It will be a first time.

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

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

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

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

CHAIR LUCE: Okay. We'll defer.

JUDGE TOREM: Let me leave it to their discretion as to when we get the witness list out and the groupings and requests for estimated time of cross-examination, who you're going to cross-examine, etc., you would be able to reference that and probably maybe finite your scheduling a little bit at that point in time. So for that purpose all the parties should have responded by then and we could have discussion on that. That's just the comment.

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

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

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

MR. PEEPLES: It will be a first time.
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 August 17, 2006, in Olympia, Washington.

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Shaun Linse, CCR
CCR NO. 2029.