

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:)	
Application No. 2003-01)	
)	Adjudicative
SAGEBRUSH POWER PARTNERS, LLC,)	Hearing
)	
<u>KITTITAS VALLEY WIND POWER PROJECT</u>)	Pages 561 - 773
)	

An adjudicative hearing in the above matter was held in the presence of a court reporter on September 20, 2006, at 9:05 a.m., at Kittitas County Fairgrounds, 512 North Poplar Street, Fine Arts Building, in Ellensburg, Washington, before Energy Facility Site Evaluation Councilmembers.

* * * * *

The parties were present as follows:

SAGEBRUSH POWER PARTNERS, LLC, Darrel Peoples, Attorney at Law; Timothy L. McMahan, Attorney at Law; Erin L. Anderson, Attorney at Law, 325 Washington Street N.E., Suite 440, Olympia, Washington 98501.

COUNSEL FOR THE ENVIRONMENT, Michael 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

1 Appearances (cont'd):

2 RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT),
3 James C. Carmody, Velikanje, Moore & Shore, P.S., 405 East
4 Lincoln Avenue, P.O. Box 22550, Yakima, Washington 98907.

5 F. STEVEN LATHROP, Jeff Slothower, Attorney at
6 Law; and F. Steven Lathrop, Attorney at Law, Lathrop,
7 Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh
8 Avenue, Ellensburg, Washington 98926.

9 ECONOMIC DEVELOPMENT GROUP, Debbie Strand,
10 Executive Director, 1000 Prospect Street, P.O. Box 598,
11 Ellensburg, Washington 98926.

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

15 * * * * *

16 JUDGE TOREM: All right. It's now five
17 minutes after 9:00, and we're going to call to order the
18 third day of the Kittitas Valley Wind Power Project
19 proceedings. It is Wednesday, September 20, 2006, and
20 this morning's agenda is six witnesses, and we have some
21 preliminary issues to take care of, and I see that
22 Mr. Taylor is already seated at the table. We'll get to
23 him shortly, but I want to go through a couple of
24 preliminaries first.

25 Yesterday afternoon off the record we had a

1 discussion among interested parties as to where the site
2 visit would go tomorrow afternoon. It may actually turn
3 into tomorrow morning. So I want to make it clear now on
4 the record that tomorrow morning we're starting at 9:00
5 a.m. There are three witnesses it appears for
6 cross-examination. It could be done within an hour. So I
7 want to announce that the site visit will begin as early
8 as 10:00 a.m. but no earlier. It will be begin
9 immediately after we're done tomorrow.

10 I'm also informed that most of the parties
11 don't feel a need to accompany the site visit, but I want
12 to also make clear it's a part of the public meeting and
13 I'm not discouraging any attendance. So that anybody that
14 wants to go may go, whether they're a party or from the
15 public. But to go you need to provide your own
16 transportation. I suggest that you check with Irina
17 Makarow and make sure that you have the appropriate maps
18 and understand where the site visit is going.

19 Joy Potter put together a site map. I
20 believe there are seven or perhaps eight sites I believe
21 that we're going to stop at. Those were suggested and
22 agreed to by the parties. There was a discussion as to
23 whether there should be a script with exact language read,
24 and it was determined that no script was necessary; that
25 the landscape will speak for itself. And so long as it

1 was taken in context with I'll call it the prime viewing
2 directions that those were noted on the directions for
3 each stop Councilmembers will be directed as to which way
4 was north or south or west pointed out by staff, but
5 beyond that there will be no discussion at the sites and
6 that Council would be free to spend a few moments at each
7 of the eight stops and observe what they could.

8 The map does include a projection of the
9 60-some-odd turbine layouts so that where you're stopped
10 on the map most people get the general directions. They
11 will be able to look in all directions, including those
12 specifically where turbines are proposed. So the
13 Councilmembers are all planning on going in one van. I'll
14 be accompanying them and staff will be driving and however
15 many cars decide to go. Just let us know so we can have
16 sort of an attendance roster on who's officially on the
17 site visit during that part of the record.

18 Those who want to observe the proposed maps
19 this morning Staff Member Mike Mills seated to Irina
20 Makarow's right has copies. The pieces of paper are going
21 to show a map of the area. I believe the Desert Claim
22 project has been indicated on the map with some yellow
23 shading and there is a mark--I think it's a blue line that
24 shows the intended route and there are numbers as to each
25 of the stops that are labeled. The directions are on a

1 separate piece of paper, and it's my intention that the
2 directions then would contain the additional prime viewing
3 directions, if you will, to look at once we get to those
4 sites. Finally there's an aerial view, sort of a GIS map
5 area view of what the project area looks like. So that
6 can be held up in context as well when people are there.
7 We'll also take with us the oversize exhibit that we had
8 all the post-it notes on yesterday for the proposed stops.

9 But I believe that's going to be the extent
10 of evidentiary material that accompanies the
11 Councilmembers on tomorrow's visit. Again, if you have
12 further input on that, I'd appreciate at this morning's
13 break we do that.

14 Second, this afternoon for the Central
15 Washington University portion of our telephone testimony
16 any of the parties that are presenting a witness and you
17 need one of these easels behind me, let Irina know if she
18 needs to bring those with her this afternoon. If so, let
19 staff know to brings easels or not. And if you're
20 bringing any oversize exhibits, we're asking that if you
21 bring them, you be responsible for your party's exhibits
22 if those are going to be necessary.

23 From what I gleaned from the rest of the
24 parties and their attorneys it doesn't seem that's going
25 to be the case today; so we're not at this point planning

1 on bringing any easels unless you tell Irina or Allen to
2 bring them, and they'll do their best to accommodate that
3 request.

4 For directions to the Central Washington site
5 there are some handouts in the back and you've got maps.
6 We'll try to have some signs up as well that will guide
7 you once you get to the general building so we can find
8 the room. So Irina says that by hopefully 12:45 signs of
9 that nature will be displayed around the building and
10 hopefully we'll get everybody in there.

11 I understand that this afternoon,
12 Mr. Slothower, you wanted to waive your right to
13 cross-examine Mr. Randy Hardy.

14 MR. SLOTHOWER: That's correct, Your Honor.

15 JUDGE TOREM: He's on the regional energy
16 needs. So you were along with Counsel for the
17 Environment, the County, and ROKT. Let me strike you from
18 that list of cross-examiners. You indicated that frees
19 you up from any obligations to cross-examine this
20 afternoon.

21 MR. SLOTHOWER: That's correct.

22 JUDGE TOREM: So it's my understanding that
23 you and Mr. Lathrop need not attend this afternoon and
24 that's your choice.

25 MR. SLOTHOWER: That's correct. That's our

1 choice.

2 JUDGE TOREM: We'll miss you and hope we
3 won't see you this afternoon then. Also this morning
4 there is a request for the Council to look at Mike
5 Pappalardo's testimony. He is Witness No. 23. He's
6 scheduled for the afternoon, and I wasn't certain if
7 Councilmembers would be ready right away this morning or
8 at the break this morning if you need more time to take a
9 look at Exhibit 23, determine if there is a need for
10 cross-examination, and let us know. Then I could find out
11 from Counsel for the Environment as well.

12 This is the geology and storm water witness
13 that Counsel for the Environment is listed as a
14 cross-examiner. If neither the Council nor the Counsel
15 for the Environment has any questions for Mr. Pappalardo,
16 we'll adopt the affidavit procedure to bring his exhibits
17 into the record. So maybe I'll just put that out there
18 for now and remind you at the break; then we'll take a
19 look at that issue at that time.

20 Mr. Tribble.

21 MR. TRIBBLE: I can answer that question on
22 behalf of Counsel for the Environment. My questions for
23 Mr. Pappalardo were along the same lines as Ms. O'Neill.
24 Because of the stipulation in place I will not have any
25 questions for him.

1 JUDGE TOREM: As a reminder the stipulation
2 for Ms. O'Neill was as to the appropriate mitigation being
3 assured by the Applicant if this project was built as to
4 wetlands. That would also apply for the geology and storm
5 water use?

6 MR. TRIBBLE: That's correct, related to
7 environmental monitoring and compliance.

8 JUDGE TOREM: So it's simply the monitoring
9 of the mitigation measures and compliance that was
10 stipulated to yesterday for Ms. O'Neill. Is it the same
11 then for this witness?

12 MR. TRIBBLE: Yes.

13 JUDGE TOREM: Let me just confirm that with
14 the Applicant's attorney. Does that stipulation stand for
15 this witness as well?

16 MR. PEEPLES: Yes. I mean we're going to
17 propose that as part of the environmental monitoring.

18 JUDGE TOREM: Let me then suggest the
19 Council take at the next break rather than rush it, take a
20 look at those things, see if with that stipulation who
21 does the compliance monitoring and who the employee is
22 which we discussed yesterday that affects any need for
23 cross-examination or otherwise you have questions you want
24 to ask Mr. Pappalardo. He's scheduled to be available
25 this afternoon in the two o'clock group.

1 Any other preliminary matters, Council, that
2 we need to go over today? Any other issues?

3 All right. Then I believe we're ready for
4 David Taylor's testimony. This is Exhibit 101.
5 Mr. Taylor, I'll have Mr. Slothower go through the
6 preliminaries with you and then see who the
7 cross-examination
8 is coming from.

9 (David Taylor sworn on oath)

10 JUDGE TOREM: Gentlemen, if you use the
11 microphones, that would be great.

12 DAVID TAYLOR,
13 being first duly sworn on oath,
14 testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. SLOTHOWER:

18 Q. Would you please state your full name for the
19 record.

20 A. My name is David Vincent Taylor.

21 Q. Where do you reside?

22 A. I reside at 1661 Beane, B-e-a-n-e, Road,
23 Moxee, M-o-x-e-e, Washington 98936.

24 Q. Mr. Taylor, you're sponsoring Exhibits 101
25 and 102-R; is that correct?

1 (Exhibit Nos. 101.0 and 102-R identified for
2 the record)

3 A. That is correct.

4 BY MR. SLOTHOWER:

5 Q. Today under oath if asked those questions you
6 would answer that your answers would be the same?

7 A. Yes, sir.

8 Q. Are you able to be cross-examined on these
9 documents?

10 A. Yes, sir.

11 MR. SLOTHOWER: I have no further questions.
12 I'd move for admission of the documents.

13 JUDGE TOREM: Mr. Slothower, I think that
14 exhibit was yesterday in my confusion with Mr. Lathrop.
15 This is Exhibit 102 that you referred I think to 102-R was
16 stricken in its entirety by Order 802 of the Council.

17 MR. SLOTHOWER: Actually, Your Honor, I
18 believe it was 101 which was Mr. Taylor's direct testimony
19 that was stricken per Order 802. I believe that 102-R was
20 not stricken.

21 JUDGE TOREM: So I'm looking at least how I
22 marked it up and maybe staff can pull Order 802 at least
23 for our reference. It looks like on page 4 of Exhibit
24 101, lines 13 that start with the question all the way
25 through page 5, line 3 was stricken. And then also just

1 at least that one question and answer was stricken from
2 101, and then I thought that this additional item it had
3 been stricken in its entirety.

4 MR. SLOTHOWER: I'm looking at the exhibit
5 list that was prepared, and it shows 101 was struck and
6 102 does not appear to be struck. Mr. Peeples has
7 provided me with your order which shows that on Exhibit
8 101 beginning on page 4 to line 13 and ending page 5, line
9 13 that was struck under Evidence Rule 704 and was not to
10 be considered by the Council. I do see your order does
11 reference Mr. Taylor's prefiled rebuttal testimony as
12 being stricken so you are correct. When I looked at the
13 order, it looks like--

14 JUDGE TOREM: It's split up in two places,
15 the discussion a little bit.

16 MR. SLOTHOWER: Right.

17 JUDGE TOREM: So I think for the record we
18 can move 102 in for the purpose of showing it's stricken
19 so it becomes part of the record as stricken.

20 MR. SLOTHOWER: That would be my request.

21 JUDGE TOREM: So, Council, then the motion
22 in front of you is to take Exhibits 101 and 102-R and have
23 it labeled subject to the restrictions of Orders 790 and
24 802 which strike those portions that we were just
25 discussing. If you have any confusion about that, I know

1 there was a one-page handout that showed you which
2 portions of testimony were stricken. I've confirmed with
3 staff that our discussion right now that that is correct.
4 So with those constraints all those in favor of bringing
5 in this testimony into the record say aye.

6 COUNCILMEMBERS: Aye.

7 JUDGE TOREM: Any opposed?

8 (Exhibit Nos. 101.0 and 102-R admitted into
9 evidence.)

10 JUDGE TOREM: Thank You, Mr. Slothower.

11 Now cross-examination--I'll find my piece of
12 paper--for Mr. Taylor is scheduled the Applicant, Counsel
13 for the Environment, Mr. Carmody on behalf of ROKT, and
14 the County. Who would be first?

15 MR. PEEPLES: We reserve cross. If nobody
16 cross's, we don't have cross.

17 Mr. Hurson?

18 MR. HURSON: No questions.

19 JUDGE TOREM: Mr. Tribble?

20 MR. TRIBBLE: No questions.

21 JUDGE TOREM: Mr. Carmody, did you intend to
22 cross-examine this witness?

23 MR. CARMODY: No questions.

24 JUDGE TOREM: The parties have essentially
25 reserved their rights to cross examination or waived it

1 entirely.

2 Councilmembers, for Mr. Tailor on preemption
3 land use issues did you have any questions for the
4 remaining testimony in Exhibit 101?

5 Ms. Wilson, none.

6 Ms. Adelsman?

7 MS. ADELSMAN: No.

8 JUDGE TOREM: Ms. Towne?

9 MS. TOWNE: Yes. I'm hoping that I can work
10 from Exhibit 101, page 6, starting at line 19. You assert
11 that "the DEIS lacks the appropriate identification and
12 disclosure for potential impacts associated with the
13 proposed project."

14 THE WITNESS: Yes, ma'am.

15 MS. TOWNE: Did you participate in the EIS
16 scoping or comments sessions?

17 THE WITNESS: Not directly, no, ma'am. At
18 the time the DEIS was prepared at least in part I was
19 employed by Kittitas County as the planning director and
20 had removed myself from the process through a conversation
21 with the commissioners in order to provide them with
22 staffing, via staffing.

23 MS. TOWNE: You go on to say, "In addition,
24 many of the mitigation measures proposed by the Applicant
25 or identified in the DEIS would be identified as

1 conditions of approval through any meaningful review
2 process." Now, is this the review process undertaken by
3 the county commissioners?

4 THE WITNESS: The review process that I was
5 referencing in that statement was the general review
6 process that any permit application would go through; that
7 not simply just one with an environmental impact statement
8 but any process.

9 MS. TOWNE: Well, we're still in the middle
10 of the process. Would you normally expect that the
11 mitigations proposed in the Draft EIS would be
12 incorporated in the condition of approval or development
13 agreement or whatever instrument or vehicle is used to
14 undertake the project?

15 THE WITNESS: If I'm understanding your
16 question correctly, typically, yes; however, first, I
17 should say that I was viewing the permitting process at
18 the County level different than at this level.

19 Second, as far as mitigation being
20 identified through the SEPA process and then become a
21 condition of approval, in 1995, there was House Bill 1724
22 passed which was regulatory reform, and within that bill
23 it created the idea that you could not rely on SEPA itself
24 if something is already being regulated by another statute
25 or vice versa. So the legislature didn't think they

1 removed the opportunity for jurisdictions to say, for
2 example, we want to protect this particular wetland
3 through our critical areas, but we want to do it even at a
4 greater detail through SEPA. They removed that oral. So
5 there's--if that clears up the question.

6 MS. TOWNE: Well, I think it's a matter of
7 timing. The implication in your response starting on 6 is
8 that somebody failed to do something early on that would
9 have incorporated the proposed mitigation or suggested
10 mitigation into something that it looks as if I'm to
11 think, oh, this was an unreasonable permitting process
12 because it didn't incorporate the SEPA mitigation.

13 THE WITNESS: I see what you're saying. My
14 intent was not for that to come across that way. The
15 intent it was simply to say, yes, during any standard
16 permit review process you're going to identify impacts and
17 mitigate those impacts. The Draft EIS that was put out
18 and proposed by the Applicant didn't go into my feeling
19 what that next step was; that was identifying over and
20 above what you typically look for as impacts.

21 MS. TOWNE: Try that one again.

22 THE WITNESS: Okay. When a standard
23 development application comes into a jurisdiction, the
24 review is taken place not only for compliance with local
25 codes and state regulations but also for potential impacts

1 associated with the specific development. At which point
2 if there's SEPA involved the determination that
3 is--determination is not the right word because it's not
4 as clean cut--but a decision is made with whoever is
5 reviewing the application that the impacts that you see
6 can be adequately mitigated and are adequately mitigated
7 through the standards of SEPA. Now, as you know through
8 your EIS process and your scoping that the issues broaden
9 and the depth of review and the potential mitigation
10 broadens.

11 MS. TOWNE: Okay. All right. Thank you.

12 JUDGE TOREM: Any further questions?

13 Councilmember Johnson?

14 MS. JOHNSON: No.

15 JUDGE TOREM: Fryhling?

16 MR. FRYHLING: No.

17 JUDGE TOREM: Sweeney?

18 And Councilmember Luce.

19 Okay. Anything else from the parties
20 hearing the discussion with Councilmember Towne and
21 Mr. Taylor?

22 MS. ANDERSON: Not from the Applicant, sir.

23 JUDGE TOREM: Seeing none, Mr. Taylor, thank
24 you very much for your testimony. It's been moved into
25 the record.

1 Any redirect?

2 MR. SLOTHOWER: No, no redirect. Is this
3 witness excused then?

4 JUDGE TOREM: He is.

5 MR. SLOTHOWER: Thank you.

6 JUDGE TOREM: Our next witness this morning
7 is Mr. Barton DeLacy. I've been informed that Mr. DeLacy
8 suffered a stroke less than three months ago and is
9 recovering very well and yet his speech may be a little
10 bit slower than we would wish today. So I'm going to
11 encourage the Councilmembers and those parties that in
12 listening to him to give him the benefit of the doubt if
13 he needs to restate something and let him take his time
14 and communicate whatever needs to be about his testimony
15 today.

16 So, Mr. DeLacy, thank you for making the
17 extra effort to be here despite the challenges it presents
18 with.

19 We're going to switch binders of testimony
20 so we'll give everybody a moment just to switch between
21 the intervenor binder and the Applicant binder.
22 Councilmembers, this would be Exhibit 36.

23 MS. TOWNE: Prefiled supplemental, rebuttal,
24 and direct testimony?

25 JUDGE TOREM: There's the original Exhibit

1 36 and its supporting exhibits. There's a 36-SUP and I
2 believe there's a 36-SUP-Rebuttal. So there's those three
3 exhibits, as well as the supporting documents that were
4 referred to.

5 MS. TOWNE: There is also 36-2, PBD-2.

6 JUDGE TOREM: Correct. That's a supporting
7 exhibit to the original testimony, and this is the
8 technical memorandum from Mr. DeLacy.

9 Mr. DeLacy if you're ready, I'll swear you.

10 (P. Barton DeLacy sworn on oath)

11 JUDGE TOREM: Mr. McMahan.

12 MR. McMAHAN: Thank you, Your Honor.

13 P. BARTON DeLACY,

14 being first duly sworn on oath,

15 testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. McMAHAN:

19 Q. Mr. DeLacy, you have in front of you the
20 three exhibits that Judge Torem identified a moment ago?

21 (Exhibit Nos. 36.0, 36.1, 36.2, 36-SUP,
22 36-SUP-R identified for the record.)

23 A. I believe I do.

24 BY MR. McMAHAN:

25 Q. And do each of those exhibits represent your

1 testimony before this siting Council today?

2 A. Yes, they do.

3 Q. Regarding those exhibits is there any change
4 that you would like to make a correction on any exhibits
5 including your address?

6 A. Yes. Initially I was employed at PGP
7 Consulting and that address appears on the documents. In
8 fact, since mid 2004 I've been with Cushman & Wakefield,
9 and its address is 200 Southwest Market Street, Suite 200,
10 Portland, 97201.

11 Q. And you would also amend your name card.

12 A. Yes.

13 Q. Would your answers be the same today if asked
14 those questions other than what you mentioned?

15 A. Yes, they would.

16 Q. Are you available for cross-examination?

17 A. Yes, I am.

18 MR. McMAHAN: I move to admit those
19 exhibits, Your Honor, plus all the attachments that are
20 identified on the exhibit list

21 JUDGE TOREM: Any objections from parties?

22 Seeing none, Councilmembers there's a motion
23 for you for Exhibits 36, 36-SUP, and 36-SUP-Rebuttal as
24 corrected with new addresses and clarifying Mr. DeLacy's
25 position. Any objections, concerns?

1 All right. All those in favor?

2 COUNCILMEMBERS: Aye.

3 JUDGE TOREM: Any opposed?

4 Those exhibits are now part of the record.

5 (Exhibit Nos. 36.0, 36.1, 36.2, 36-SUP,
6 36-SUP-R admitted into evidence.)

7 JUDGE TOREM: Scheduled examination for
8 Mr. DeLacy is from Mr. Lathrop, Mr. Slothower, Mr. Hurson,
9 and from Mr. Carmody on behalf of ROKT.

10 Mr. Hurson, you will be first.

11 MR. HURSON: Thank you

12 CROSS-EXAMINATION

13 BY MR. HURSON:

14 Q. Mr. DeLacy, I think I have just a few
15 questions here. On page--I guess it doesn't matter. But
16 anyway your testimony indicates that you would expect
17 impacts on property values and sales would occur within
18 two miles of the project site. Correct?

19 A. I'm sorry. Could you restate that.

20 Q. I'm sorry. Yes. Exhibit 36-SUP, page 2.
21 All right?

22 A. Yes.

23 Q. Line 13 and 14, you indicate you would expect
24 that most impacts on property values and sales would occur
25 within two miles of the project site. Correct?

1 A. Correct.

2 Q. And you would expect that impact because of
3 the physical looking of the project I would take it?

4 A. We expect that impact because in the studies
5 we've done beyond two miles there simply is no
6 demonstrable evidence that property values would be
7 adversely impacted by undesirable land uses.

8 Q. So within two miles you would expect to see a
9 negative impact and I take it from a wind farm perspective
10 that is due to the change in the visual. Correct?

11 A. Correct.

12 Q. Correct me if I'm wrong, is your testimony
13 that in your opinion there will not be a negative impact
14 on property values at all by Kittitas County as a result
15 of the placement of the wind farm here?

16 A. Counsel, my testimony is that we have no
17 evidence that property lying within the view shed of wind
18 turbines will be adversely affected either way.

19 Q. How about the properties not on the
20 broad-based view shed, but say, for instance, the
21 properties within a half a mile in that close proximity?

22 A. We have studies now that have looked at that
23 and we do not have transactional evidence that that will
24 necessarily diminish property values; and this is in part
25 because there are so many influences which affect property

1 value, particularly residential property values,
2 everything from the color of a kitchen counter, to the
3 design of the home, to the availability of a shed in the
4 back.

5 I mean there are just the, you know, the
6 convention which appraisers use to evaluate single-family
7 residential homes is that in fact those properties are a
8 commodity when in fact every site is unique and in fact
9 incomparable. But we have to adopt some standards in
10 order to sensibly value a home, and we find that some
11 characteristics such as how big the house is, how many
12 bedrooms, general location will influence value.

13 But in general we have found that it's the
14 macro-economic factors that affect a location, that impact
15 a location that will affect property values. So that if
16 you have a home--I mean if you're in a neighborhood or in
17 an area where employment is dependent on a single employer
18 or a mill and the mill closes, well, property values will
19 be adversely impacted there because demand goes, people
20 may leave town, and there won't be a demand for the homes.

21 But just on the other side of that where we
22 have a strong economy and a high demand for homes you will
23 find that real property is very, particularly residential
24 properties, are very resilient and will appreciate along
25 with other properties in the area notwithstanding one

1 influence or another.

2 Q. I'm sorry. I can't even remember what my
3 question was. I don't believe it was responded to, but
4 what I'm trying to figure out here is the proximity. I'm
5 trying to figure out so you're not sure frankly what the
6 values will happen because you don't have adequate
7 statistical data for purchases of within say a half a mile
8 of wind farms. Correct?

9 A. We don't in KV at this time.

10 Q. Well, when you're doing--for instance, if you
11 have a negative visual and it drives a property down, you
12 would agree that with the values down that can reduce the
13 number of sales because it's a less attractive property
14 and people aren't going to buy it.

15 A. The view is one aspect that will influence
16 property values among many.

17 Q. Well, for instance, I would take it that a
18 waterfront home on Lake Washington or Mercer Island being
19 the same lot size, if you're waterfront that's worth a lot
20 more than the house maybe even just across the street that
21 has no view. Correct?

22 A. Could be. But somebody might be--it's
23 personal preference. Somebody else might not like the
24 proximity to the water, may be concerned about safety, may
25 be concerned about flooding, any number of things. In

1 general you're correct.

2 Q. But in general, yes, so the view does matter.
3 But, well, let me put it this way. How about this? There
4 seems to be some uncertainty. So if, for instance, one of
5 the commissioners in the testimony--it's in the
6 record--referenced a study from another wind farm where
7 there were some concerns about property values, and what
8 the wind farm company did is they purchased the properties
9 next door or in the vicinity adjacent to it. So in
10 essence the wind farm company took the financial risk of
11 whether there would be a negative property value. You
12 would you agree that would be an approach that could be
13 used to make sure that if there is a loss in value, that
14 it's the wind farm company that pays your loss of value
15 and not the adjacent property owner.

16 A. I would agree.

17 Q. So would you then recommend, for instance,
18 that if the Council was going to preempt the local land
19 use that a reasonable condition of requirement of the
20 Council would be that the wind farm company purchase all
21 the lands within say 2,500 feet so that then the wind farm
22 company became the one that owned the adjoining land and
23 that be a condition of approval?

24 A. Well, that sounds like a policy. It's kind
25 of beyond my level of expertise. I mean that certainly is

1 a strategy that could be pursued. I'm not aware
2 personally of a wind farm situation where that has
3 occurred.

4 Q. But if the transcript record reflects that
5 Commissioner Crankovich was reading from a study that said
6 that's what a wind farm company did is it bought the land
7 next door, you would agree then that would be an
8 appropriate--

9 MR. McMAHAN: I'm going to object to this
10 unless Mr. Hurson can show us exactly where this is in the
11 record so we can all make sure this isn't taken out of
12 context.

13 JUDGE TOREM: Mr. Hurson it appears to be
14 prepared to do so.

15 BY MR. HURSON:

16 Q. I would like to draw attention to the March
17 29, 2006 transcript, page 17.

18 JUDGE TOREM: March 29, 2006 transcript of
19 the Board of County Commissioners hearings; is that
20 correct?

21 MR. HURSON: Yes.

22 JUDGE TOREM: It's page 17?

23 Let's give Mr. DeLacy a chance to review
24 that, and then when he's ready, he'll give you a signal
25 and proceed with your question again.

1 MR. McMAHAN: Mr. Hurson, where are you
2 referring to?

3 MR. HURSON: Actually it begins at the
4 bottom of page 16, line 25. Mr. Crankovich is saying on
5 the next page it's part of a mitigation by project
6 proponents. This has to be with Curran County and I'll
7 read it verbatim whole.

8 "In Curran County some residents located on
9 rural properties complained about the plan to locate wind
10 turbines near their properties. They argued that they had
11 bought their properties with the expectation of a view of
12 grazing land and not a wind farm. To solve the problem,
13 the wind developer paid them for the property and the
14 people moved." It does go on to say that in that case
15 "the wind developer then sold the property, although the
16 property values did not decrease." So did you have a
17 chance to review that?

18 A. Yes, I did.

19 Q. So as a professional as far as land value
20 would it be your professional opinion if you give advice
21 to your client that this mitigation that was mentioned by
22 Commission Crankovich and apparently used in this previous
23 wind farm would be a strategy or an advice that you could
24 give to them that would be an appropriate thing for them
25 to do?

1 A. That strikes me as a political solution. It
2 might make sense. Again, I'm not here to really comment
3 on that.

4 Q. But from the appraisal standpoint based upon
5 your professional opinion you don't have any evidence that
6 this would create a financial risk to your client to do
7 this. Correct?

8 A. That's correct.

9 Q. And this option having been presented by
10 Commissioner Crankovich are you aware of the applicants
11 inserting into the record or trying to discuss that as a
12 possible means of working through the process with the
13 County towards an agreement?

14 A. No, I'm not.

15 MR. HURSON: Thank you. Nothing else.

16 JUDGE TOREM: Mr. Slothower.

17 MR. SLOTHOWER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. SLOTHOWER:

20 Q. Good morning.

21 A. Good morning.

22 Q. I read your testimony and the studies,
23 technical reports that you attached to them, and I noticed
24 that you used the phrase transactional data. I want to
25 make sure that I understand how you were using the phrase

1 transactional data. Am I correct that transactional data
2 is data developed between or from sales of real state
3 within a given area?

4 A. Correct.

5 Q. And you also rely on some studies. None of
6 those studies are based upon transactional data in
7 Kittitas County; is that correct?

8 A. Yes.

9 Q. Mr. DeLacy, would you agree that perhaps the
10 best way to determine the impact of an event on property
11 values is to appraise the property before the event and
12 then appraise it again after the event and then compare
13 the appraised the values?

14 A. Yes.

15 Q. Typically when you appraise property you look
16 at comparable sales; is that correct?

17 A. That's correct.

18 Q. In fact, with residential property that's
19 really the only way to ascertain transactional data; is
20 that right?

21 A. Yes.

22 Q. In reviewing your testimony in its entirety I
23 could find no place where you performed appraisals on
24 property in Kittitas County; is that correct?

25 A. Yes, I considered sales that were within the

1 sales that were reported by multiple listing and Betsy
2 Williger's Real Estate Service that were both the upper
3 and lower county, and I looked at the trends, as well as I
4 looked at sales of properties that were within the
5 affected area of the Wild Horse. So we did look at the
6 transactions themselves but we did not appraise specific
7 properties before and after.

8 Q. It's for that reason that you indicate in
9 your testimony that you can't really say whether there
10 will be an impact until the project is actually built; is
11 that correct?

12 A. That's correct.

13 Q. So the impact to local property values as a
14 result of the construction of this project will be
15 uncertain and will remain uncertain until the turbines are
16 actually constructed and the project is complete; is that
17 correct?

18 A. That's a fair statement.

19 Q. Thank you. In fact, it would remain
20 uncertain for a period of time after the project is
21 completed because you will need to develop that
22 transactional data after the project is completed; is that
23 right?

24 A. Yes.

25 Q. And you are not able to at this point tell us

1 when the impact, whether it's positive or negative, on
2 property values will become certain; is that correct?

3 A. Yes.

4 Q. In fact, when you testified before I believe
5 it was the Kittitas County Planning Commission or perhaps
6 the Board of County Commissioners--we'll strike that.

7 Assuming hypothetically that the impact on
8 local property values as a result of the construction of
9 this project is negative, when will we know that?

10 A. The difficult thing about isolating the wind
11 turbines as the cause of a diminution in value is that we
12 find in other communities and particularly those where
13 they have been impacted by wind turbines is that the
14 health of the general real estate economy is much more
15 important.

16 So, for example, if the interest rates went
17 up or if we have an energy crisis because of oil and for
18 things absolutely having nothing to do with KV at all,
19 under those circumstances we might find that real estate
20 values in Ellensburg and Seattle are declining.

21 In fact, we have some evidence now that the
22 market has been overheated and that may occur, although
23 interestingly not in Ellensburg yet. So there could be
24 many causes for general diminishment of property values
25 that would have nothing to do with turbines themselves.

1 Q. But, Mr. DeLacy, when you look at an
2 appraisal and you perform an appraisal using accepted
3 appraisal practices you make adjustments for all those
4 factors; is that correct?

5 A. They're very subjective.

6 Q. Exactly.

7 MR. SLOTHOWER: No further questions.

8 JUDGE TOREM: Mr. Carmody, you intend to
9 cross-examine?

10 MR. CARMODY: No, I have no questions.

11 JUDGE TOREM: Councilmembers, look at the
12 testimony and Exhibits 36 and see if you have any
13 questions. I don't believe any other parties are
14 scheduled to cross-examine.

15 I'll start with Councilmember Johnson.

16 MS. JOHNSON: No.

17 JUDGE TOREM: Councilmember Fryhling?

18 Mr. Sweeney?

19 MR. SWEENEY: No.

20 JUDGE TOREM: Councilmember Wilson?

21 MS. WILSON: Yes, I have a question.

22 JUDGE TOREM: Shall we pass you the
23 microphone?

24 MS. WILSON: That would be a good idea.

25 Hopefully I have a question. I'm looking at page 7 of

1 Exhibit 36-2. It's the paragraph regarding the sales of 9
2 of 12 properties on Bettas Road.

3 MR. McMAHAN: If you could give him a chance
4 to find that, please. So it's 36--was that the original
5 testimony?

6 MS. WILSON: The 36-2.

7 JUDGE TOREM: It looks like this is the
8 report from December 29, 2005.

9 MS. WILSON: PBD. It looks like this.

10 MS. ADELSMAN: It's attached to that. It's
11 a technical memorandum.

12 MS. WILSON: Technical memorandum dated
13 December 29, page 7.

14 JUDGE TOREM: It's looks like you're trying
15 to find that third full paragraph on page 7.

16 THE WITNESS: Okay.

17 MS. WILSON: And I don't know if you will
18 know the answer to some of this, but this refers to I
19 guess it was a new subdivision that the County approved
20 after the wind farm permit was applied for, and it shows
21 that 9 of 12 parcels on Bettas Road sold even though they
22 had full disclosure that the turbines were being placed
23 there.

24 THE WITNESS: Yes.

25 MS. WILSON: I'm assuming, and at least it

1 looks like from here, that the prices that they sold for
2 were what the seller was asking. They didn't sell for
3 less than they were asking.

4 THE WITNESS: No.

5 MS. WILSON: And I believe, if I remember
6 this previous testimony, that the turbines in that area
7 have now been eliminated; is that correct? Do you know if
8 that is correct?

9 THE WITNESS: I believe some of them have.
10 I think there might still be two or three that will be
11 viewed but not as directly impacting.

12 MS. WILSON: Thank you.

13 JUDGE TOREM: Councilmember Adelsman?

14 MS. ADELSMAN: No.

15 JUDGE TOREM: Councilmember Towne?

16 MS. TOWNE: Yes. On Exhibit 36-SUP-Rebuttal
17 the appended technical memorandum dated August 30, 2006.
18 In the second paragraph you talk about the Hoen report.

19 THE WITNESS: Yes.

20 MS. TOWNE: Do we have that in evidence? I
21 couldn't find that, but it may be there.

22 THE WITNESS: I'm not--I don't know. This
23 was only available this summer. We knew about it late in
24 the spring and I finally got a copy of it this summer for
25 review here.

1 MR. McMAHAN: The answer is no.

2 MS. TOWNE: No. I just thought I'd missed
3 it.

4 MR. McMAHAN: No.

5 MS. TOWNE: In that same paragraph you said,
6 Mr. Hoen was able to conduct a hedonic regression
7 analysis. I hate to admit my ignorance. What is it and
8 do we care?

9 THE WITNESS: Well, yes, we do. Thank you.
10 The Hoen study finally was able--it took place in upstate
11 New York. Actually I should say Western New York, and I
12 actually had an opportunity to view the development there.
13 It's around in a town called Fenner in Madison County
14 which is south of Rochester. It's an area frankly not
15 unlike the Kittitas Valley. It's very hilly, it's green,
16 it's predominantly dairy farms, and then there are homes
17 up on hilltops. And then it's punctuated you can see the
18 distance I think Lake Ontario, then there are the finger
19 lakes to the southwest.

20 But in New York State there's been
21 settlement in this area for almost 200 years. So, in
22 fact, you don't have parcels much larger than 200 acres,
23 and, in fact, along all the roads you will see the kind of
24 thing that we try to control in the Northwest here with
25 growth management where people sold off five- or ten-acre

1 tracts along the roads, and you have lots of houses along
2 all the roadways and the interiors are dairy farms or
3 wetlands or wood lots or something like that.

4 And this is an area that's very windy and so
5 the Fenner Project was built about 2001. And Hoen,
6 Mr. Hoen who was a doctoral student at Bard College which
7 is in Annandale, New York, and he wrote this for his
8 doctoral thesis so he really wasn't in the employ of one
9 side or the other. But then didn't have enough
10 transactional evidence before and after the turbines
11 became operational in order to test whether a
12 characteristic, in this case proximity to a wind turbine
13 would explain property value.

14 Now, the other variables that go in this is
15 a multiple-regression analysis and the other variables
16 that will go into this when you have data are things like
17 age of the house, number of bedrooms, number of bath, and
18 appraisers are people who will tell you that these are
19 reliable predictors of value. A larger house all things
20 equal will sell for more than a smaller house.

21 What Mr. Hoen was able to do was to then he
22 did sight proofing. So he went to every house that had
23 sold. I believe he worked with about 280 or 300
24 transactions, and indeed if we had that kind of volume
25 here in Kittitas Valley it would be great, but we don't

1 have it yet. So we have to go someplace that does, and he
2 was able to look at the views of the turbines.

3 Some properties because of topography didn't
4 have views; others did. He was able to rate the views by
5 whether you just saw the tip of the wind turbine or the
6 windmill or whether you saw the whole tower and then he
7 graded by distance. So he was able to factor those
8 characteristics in along with the other traditional
9 characteristics that influence, you know, home prices.
10 You would I think agree that most appraisals that they are
11 critical.

12 As a result of running the model he found
13 that the presence or absence of wind turbines, of views of
14 winds turbines did not explain or did not affect the sale
15 prices either way up or down. And there have been other
16 studies that have inferred that that is in fact the case
17 but have not had that kind of transactional analysis in a
18 controlled environment to really test it.

19 So Madison County is not Kittitas County and
20 yet it had many characteristics similar to what we have
21 here. And, in fact, it had the virtue from a professional
22 or an academic point of view of having enough transactions
23 to really test the thesis of do wind farms in fact
24 adversely impact value or not, and his conclusion was that
25 they do not based on that study.

1 MS. ADELSMAN: Can I just ask a quick
2 question. What was the closest--I'm sorry. Chris is
3 next.

4 MS. TOWNE: Oh, no, that's okay.

5 MS. ADELSMAN: What was the closest distance
6 between say a residence and the tower in the case?

7 THE WITNESS: That's a good question. I
8 believe I don't think there were too many that were
9 within--there were some within a half mile but not much
10 less than half a mile as far as I could tell from the maps
11 in the study, and I didn't look at it that closely. There
12 could have been some closer, but when I was out there what
13 you see is that they're up on a ridge top. It's 3,000
14 feet. It's an incredible view and so they're prominent;
15 yet because of their placement I don't believe there were
16 homes much closer than within a half mile, what would be
17 2,500 feet of the turbines.

18 MS. TOWNE: That's it.

19 JUDGE TOREM: Any other Councilmembers to my
20 right questions?

21 Group to the left any questions for
22 Mr. DeLacy?

23 JUDGE TOREM: Mr. McMahan, any redirect?

24 MR. McMAHAN: Yes. Thank you, Your Honor.

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REDIRECT EXAMINATION

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BY MR. McMAHAN:

Q. Mr. DeLacy, regarding the question Mr. Hurson asked you concerning the impact within two miles of the project site, if you would please go to Exhibit 36-SUP and the attached memo. The memorandum is your December 29.

A. I will have to look at yours.

Q. That's fine. You can look at mine. All right. So the question is on Page 3 and the attached memo is there, and specifically referring to page 6, would it be fair to say is that sentence in that section there summarizing your attached analysis of the memo?

A. Yes.

Q. All right. And the two-mile radius could you point to where that is found within the memo itself and what you were talking about with that two-mile radius?

A. Yes, it's on page 6 of that memo, and I'm talking about studies that were older studies that looked at in fact were toxic. You know, they were EPA superfund sites where there were demonstrable health impacts for properties located close to in one case a closed lead smelter. I'm also referring or have referred earlier to testimony to the experience at Three-Mile Island, and, in fact, while the impacts were in an urban area could be measured within two miles of the source they were

1 negligible beyond.

2 That doesn't mean that two miles is
3 necessarily going to impact values, particularly in a
4 rural area where the larger your tract that the impacts
5 are simply much less discernible. There simply we don't
6 have, of course, the volume of transactional data, but
7 more importantly in rural areas we find people don't
8 necessarily always locate there for livability. They're
9 there because of, you know, the quality of the soil. It
10 may be a lifestyle, but it may more to be able to keep
11 three generations of used trucks in the back yard. I mean
12 just have space that you can use however you want and not
13 have neighbors real close that you have to bother.

14 And so the point is in a rural context the
15 two-mile radius really doesn't make that much difference.
16 In fact, the difference of when something is in your view,
17 I'm not sure that there's much difference whether it's
18 1,000 feet or half a mile in a rural context.

19 Q. So is there any evidence that you're aware of
20 for wind projects that there is a value impact within a
21 two-mile radius?

22 A. No, there is not.

23 Q. On developed property?

24 A. No, there is not.

25 Q. Now, regarding the 2,500-foot area are you

1 aware, do you have knowledge of other projects where there
2 has been developments within kind of an area of 1,000
3 feet, for 2,500 feet?

4 A. Well, in New York State where there is an
5 abundant of wind farm development there's a large project
6 in Lowville which is--I can't recall the County name at
7 this time. This was the area that is somewhat south.
8 Well, it's west of the Adirondack Mountains and South of
9 Lake Erie--no, Lake Ontario I guess. It's inland quite a
10 ways, very scenic, hilly, and in that area there has been
11 settlement for 200 years. So I believe the buffer between
12 turbines and homes has been established at 1,200 feet and
13 the turbines have been built.

14 Q. So how close are turbines to homes in that
15 project?

16 A. Well, within a 1,200-foot level.

17 Q. Do you have any idea how many homes are
18 located within a quarter mile of the project turbines?

19 A. It's a pretty extensive project. It
20 encompasses that would be it went from Wild Horse to KV,
21 and it's that kind of a place, and I think there were over
22 200 turbines. And I would estimate there are 35 and 50
23 residences, rural residences that are within that
24 1,200-foot buffer that are lying within, you know, as
25 ultimate views of turbines.

1 Q. Have you looked at the values of those homes
2 before and after construction of the project?

3 A. We actually did. We looked at that as a test
4 case. We were looking at another project in upstate New
5 York. It's called Maple Ridge. The Maple Ridge Project
6 had become operational about a year ago. So we were able
7 to get some data, transactional information and speak to
8 local appraisers. We spoke to local realtors, and not
9 only we didn't find there was any negative impact reported
10 at all, home prices continued to escalate.

11 But let me say what was really the dominant
12 influence in that area on property value was Fort Drum
13 which is located up 50 miles north. Fort Drum has become
14 very important with the war in Iraq and so there's high
15 demand for housing, and this has caused a housing boom in
16 Lowville notwithstanding this very large wind farm
17 development because people needed housing and so prices
18 have gone up. And it's a good example of kind of a macro
19 event that has much more important influence on property
20 values than, for example, the one like the wind farm.

21 JUDGE TOREM: Before we move on,
22 Mr. McMahan, just for clarification. Mr. DeLacy, do you
23 know how large the wind turbine towers in the Maple Ridge
24 Project you're describing are? so that if we're mentioning
25 Wild Horse in comparison with towers that I believe are up

1 to 410 feet in height.

2 THE WITNESS: I believe they are that
3 height. I believe those were 2.3 megawatt turbines. So
4 are those that are planned here.

5 BY MR. McMAHAN:

6 Q. Mr. Slothower asked you to confirm that
7 property values are uncertain until construction. Could
8 you clarify that opinion based on the analysis you did for
9 this project.

10 A. Well, you know, appraisals are dated and I've
11 often joked it should be written in disappearing ink
12 because they are based on the expert's experience and
13 judgment, based on the information available at that given
14 time. And there is always going to be uncertainty in real
15 estate markets looking forward because of unforeseen
16 events.

17 I've been in this business 30 years. I've
18 been through a couple cycles, and we could spend all day
19 here talking about well-intended investments that were
20 made to, you know, what we were they thinking or things
21 changed. So I think there is an environment of
22 uncertainty which is always present looking forward for
23 reasons I've explained. It can change the prospects of a
24 particular location and make it more desirable or less
25 desirable, but isolating one particular influence is very

1 difficult.

2 If you took two identical homes, supposedly
3 identical, and one looked at a wind turbine and one
4 didn't, you know, you couldn't necessarily say that the
5 one looking at the wind turbine would sell for less than
6 the one that didn't; and that has much to do with the fact
7 that the market is--we have a fiction that the market is
8 perfect and everybody will act that way. But the fact is
9 the house that looks at the wind turbine might have a
10 kitchen that's more attractive to a buyer than the house
11 that doesn't. And so even though you would think that the
12 house maybe if you take that as a negative the house with
13 the turbine would sell for less that isn't necessarily the
14 case. And this happens and there are callous examples of
15 this, and all an appraiser can do is try to use the best
16 information available and try to replicate what the market
17 will decide given the fact that the market makes--there's
18 leaving a great deal of leeway to personal preference. So
19 some people like to live in the woods and some people like
20 to live in open areas without trees. It's personal
21 preference.

22 Q. In terms of characteristics of this site for
23 the Council can you just describe the relation of homes
24 there that you've observed versus the location of the
25 turbines and how that may influence the effects.

1 A. Well, this is very open landscape. So you
2 live in it at your risk, and you can be influenced not
3 only by the wind turbines but by your neighbor and by what
4 implements they may choose to keep out in their yard and,
5 you know, many factors. If you don't like that, you can
6 go live in the woods where you can be sequestered and not
7 see anything 50 yards away.

8 So what I found was that indeed the landscape
9 is still very rural. Settlement is very sparse, and, in
10 fact, the situation is not that much different than what
11 we found out at Wild Horse where, you know, there were not
12 a lot of impacted properties. There's a little more
13 settlement around the Kittitas Valley Project, but, again,
14 it would hardly be characterized as anything but very low
15 density rural settlement.

16 MR. McMAHAN: I have nothing further. Thank
17 you.

18 JUDGE TOREM: Further recross from any of
19 the parties?

20 Mr. Slothower.

21 MR. SLOTHOWER: Briefly.

22 JUDGE TOREM: While he's coming up,
23 Mr. DeLacy, would it be fair to say though that for folks
24 here, whether at Wild Horse or Kittitas Valley at the
25 proposed project, that the market that includes people

1 that might buy these homes in the future that don't want
2 to view wind power they're now going to be excluded from
3 the potential list of buyers? There's going to be some
4 impact on the available spectrum of buyers.

5 THE WITNESS: I can't suggest one way or the
6 other but potentially could be.

7 JUDGE TOREM: Mr. Slothower.

8 MR. SLOTHOWER: Thank you.

9 RECROSS-EXAMINATION

10 BY MR. SLOTHOWER:

11 Q. I wanted to bring you back to Washington
12 State and let's talk about your testimony on the sales
13 that you referenced on Bettas Road. You don't know if
14 those were priced, those properties were priced based upon
15 the fact that turbines were coming, do you?

16 A. I spoke to the broker and they were aware of
17 the turbines and he priced it at the highest price he
18 thought he could get.

19 Q. But you don't whether that price took into
20 account the possibility of turbines there or not, do you?

21 A. It was my assumption that it did.

22 Q. But that's just an assumption. Correct?

23 A. Yes.

24 Q. You mentioned in looking at that briefly as
25 the questions were being asked those were 3 to 20 acre

1 parcels; is that correct?

2 A. That's my understanding.

3 Q. The total price for the parcels ranged from
4 \$20,000 to \$47,000; is that correct?

5 A. Yes.

6 Q. Based upon your review of prices in the area
7 that is fairly inexpensive for that size of acreage.
8 Correct?

9 A. I thought it was a fair value for properties
10 that remote.

11 Q. Now, when you say a fair value, that's not
12 really responsive to my question. There are properties in
13 the area that were significantly more expensive, are there
14 not?

15 A. I'm not aware of that.

16 Q. So you've viewed specific data on the price
17 of property within the project area?

18 A. Oh, yes, I did. I'm not aware of--these
19 prices struck me as in the upper end of the range which I
20 found in the area.

21 Q. This Hoen study--and I don't know if I'm
22 pronouncing that right. It's H-o-e-n.

23 A. Correct.

24 Q. That's not in the record; is that right?

25 A. I don't believe so.

1 Q. That was a site-specific study on the impact
2 in New York. It didn't take into account the impact
3 nationwide; is that correct?

4 A. Well, I guess it dealt with this project in
5 New York. That was the scope of the project.

6 MR. SLOTHOWER: Okay. Thank you. No
7 further questions.

8 JUDGE TOREM: Any other cross-examination
9 for this witness?

10 MR. CARMODY: Just a couple questions.

11 RECROSS-EXAMINATION

12 BY MR. CARMODY:

13 Q. Mr. DeLacy, how many residences are within
14 2,500 feet of the Wild Horse Project?

15 A. Wild Horse just to clarify?

16 Q. Yes.

17 A. I would have to go back and review my notes,
18 but it was my recollection it was--well, I don't believe
19 there were more than 10 or 12 that we felt were affected
20 and I cannot recall the precise distance of those
21 referenced from the turbines placement.

22 Q. Of those 10 or 12 when you say were affected
23 by that project do you have any sense of what the distance
24 was of those affected properties?

25 A. I recollect my understanding was they were at

1 least a half a mile or more away from.

2 Q. So properties that are half a mile or more
3 away from a project such as Wild Horse would be affected
4 in your judgment.

5 A. Well, I went up there this week and there was
6 a brand new subdivision right across the gate from the
7 entrance of Wild Horse for 25 lots that are right under
8 the power line, and, you know, go off. You know, that
9 wasn't in place when the project was being planned so that
10 would lead me to believe that either people in the market
11 don't care or somebody thinks that's a pretty place to
12 live anyway.

13 Q. Would you disagree with my understanding of
14 the record that there's only a single house within a mile
15 and a half of the Wild Horse Project?

16 A. Now, that it's up that might be the case.

17 Q. And your testimony is that that environment
18 is the same environment that you see on these maps here?

19 A. On balance it's not that much different.

20 Q. What is the predominant parcel size of Wild
21 Horse?

22 A. Well, as I understand it Wild Horse was they
23 were able to place it on a rather large, you know, within
24 a 25,000-acre holding, and the parcels around it
25 are--well, except for parcels that have been subdivided.

1 I haven't updated my account. There's been a couple new
2 subdivisions up there since we did the study. At the time
3 we did the study there was only one. There were no
4 subdivisions adjacent to it as there appear to be today.

5 Q. Are you suggesting that the parcelization
6 around Kittitas Valley is comparable to the parcelization
7 around Wild Horse?

8 A. In many areas, not in all.

9 Q. And you're certain of that.

10 A. Well, it's a pretty big area. For example, I
11 know that there's smaller parcels around Ellensburg Ranch
12 Estates, mobile homes. Those are the kind of small
13 parcels. Bettas Road has now since the project has been
14 announced has partitioned and subdivided for larger
15 tracts. But I'm not familiar with terribly lots of
16 subdivision that has gone on, you know, in other areas of
17 the proposed site on the northeast side.

18 Q. Do you know what the zoning is for this
19 particular area?

20 A. My understanding was it was all agriculture
21 zone predominantly.

22 Q. You're sure about that?

23 A. Yes.

24 Q. What subdivision opportunities are available
25 in the existing zoning of these properties?

1 A. I believe you can parcelize them into, you
2 know, into smaller tracts. I don't have the zoning code
3 in front of me. I don't recall.

4 Q. Do you know what the minimum lot size would
5 be on a subdivision activity in this area?

6 MR. CARMODY: Could you use the microphone
7 please, Mr. Carmody. We can't hear you.

8 MR. CARMODY: I'm sorry.

9 BY MR. CARMODY:

10 Q. Do you know what the minimum lot size is for
11 subdivisions in this area?

12 A. Well, I believe it varies.

13 Q. Do you have any idea what the minimum lot
14 size is in this area?

15 A. Well, I've observed lots from as small as one
16 and two acres up to large parcels that would be working
17 farms.

18 Q. Are you familiar with any of the cluster
19 subdivision opportunities that are available in this area?

20 A. Yes.

21 Q. What are those?

22 A. Well, I understand this is what was done up
23 the Bettas Road, for example.

24 Q. I think it's actually Bettas Road.

25 A. Bettas Road.

1 JUDGE TOREM: Mr. Carmody, anything else?

2 MR. CARMODY: I don't know that there was an
3 answer, was there?

4 A. I said I was familiar. That was my
5 understanding of Bettas Road and that was what the
6 developer had wanted. That was the way it was developed
7 on that site.

8 BY MR. CARMODY:

9 Q. Do you have an opinion as to whether the
10 placement of the wind farm in this area would adversely
11 affect property owners' ability to subdivide and market
12 smaller parcels in the area?

13 A. Frankly, the evidence we have doesn't
14 indicate that there would be an impact either way.

15 Q. So that properties immediately surrounded by
16 the wind turbines in your judgment would have no impact on
17 property values or potential development of those
18 properties.

19 A. Yes, that's my opinion.

20 MR. CARMODY: I have no further questions.

21 JUDGE TOREM: Any other cross for this
22 witness?

23 MR. McMAHAN: No.

24 JUDGE TOREM: Seeing none from the parties--

25 MR. McMAHAN: Sorry. I wasn't cross. No

1 redirect.

2 JUDGE TOREM: Council, anything further for
3 Mr. DeLacy?

4 Mr. DeLacy, thank you for you testimony. It
5 is now 10:15 and rather than be criticized for how long
6 I've run until the break, we will now take one. Be back
7 in 15 minutes.

8 (Recess taken.)

9 JUDGE TOREM: We're back on the record. It's
10 about 10:35. Before we get to the next witness,
11 Mr. Usibelli, during the break one of the Councilmembers
12 made it known to me that Mr. DeLacy's reference to this
13 Hoen report, and I inquired to Mr. McMahan and found that,
14 yes, in fact he did have a copy of it in his binder, all
15 62 pages. And the Councilmembers are aware that it's not
16 in the record, but it's referenced by Mr. DeLacy's
17 testimony and property valuation that apparently is very
18 key to the process and has an interest today as comparing
19 the study of Madison County, New York versus what might
20 happen here in Kittitas County, Washington.

21 I talked to some of the other attorneys as
22 well what objections might they have of this coming in at
23 this late date if it was offered and as requested by the
24 Council, and we've already been through this be careful
25 what you ask for in the last two days. I believe the

1 agreement is that if this is offered into evidence, that
2 it would only be subject to their review of it. Of
3 course, they haven't seen the actual report yet either and
4 also a question as to how if there is further
5 cross-examination needed we go about getting Mr. DeLacy
6 back.

7 I've been informed that he's been here the
8 last two days and this morning returned back to Portland
9 immediately after his testimony as is understandable given
10 medical conditions and the other therapy that he's
11 getting. My suggestion to the parties is that if this
12 needs to come in and I want Mr. McMahan also to explain
13 when it became to available him and when it became
14 available to Mr. DeLacy and why perhaps it wasn't included
15 in the record already. Then have the other counsel tell
16 me if this agreeable to work it out perhaps with a
17 telephone session of the adjudication next week. We had
18 all this week and next week reserved, and I checked my
19 schedule at the office. They haven't reassigned me to
20 anything next week so my schedule remains flexible.

21 Councilmembers were told not to let those
22 days all go yet so we'll see what needs to be prepared for
23 Mr. DeLacy's schedule and have a telephone session again
24 where he would be available for further cross-examination
25 as needed. That being the proposal, I'll note that the

1 report cover here says it's dated April 30, 2006; so
2 within the last four to six months this was published.

3 Mr. McMahan, what more can you shed on the
4 timing of this now coming into the record?

5 MR. McMAHAN: Thank you, Your Honor. Just to
6 explain kind of the sequence of events here, I attend
7 annually the American Energy Conference. It's all around
8 the country and it was early June of this year in
9 Pennsylvania. That study was discussed in one of the
10 committees that I sit on, and there was a pile of them
11 there so I grabbed one of those. It was sort of I think
12 it was early June I grabbed a copy of it. I took it back
13 to my office, it was out in my credenza for several weeks,
14 and I didn't read it.

15 Then Barton had a stroke on June 28 and we
16 were trying to get him prepared for testimony, and I had
17 intended to get that to Barton, and, you know, things
18 happen. He was absolutely AWOL for a month, a little over
19 a month. I mean he wasn't returning phones or e-mail
20 messages which was making us kind of freak out a little
21 bit in terms of getting him ready.

22 So Barton's access to that report as soon as
23 he started returning my telephone calls, which again was
24 challenging, he promised he would look at it; and by the
25 time he looked at it, it was virtually on the eve of us

1 helping get the technical memo to us that we could attach
2 to the testimony and making sure he had reviewed
3 short-cover testimony so we could move this forward not
4 withstanding his condition.

5 So, in terms of sequence of events, it came
6 to us pretty late time, it came to Barton even later, and
7 then his ability to actually read it and understand and
8 digest it was after that. So this was fairly late in the
9 game, and, quite frankly, part of his analysis there's of
10 sites, a lot of studies, there's a long bibliography in
11 all his testimonies--not all of his testimonies are long
12 bibliographies. So this was just kind of one of those.
13 He talked about a series of studies. This was of the key
14 interest you heard about here in this methodology and its
15 currency. So that is just I don't know. That is the
16 sequence of events, and I apologize that it wasn't
17 attached but that's why.

18 JUDGE TOREM: Mr. Slothower, can you give me
19 perhaps yours and I know you spoke to Mr. Carmody and he
20 may want to speak directly. Let me hear from
21 Mr. Slothower first and then if the other two want to
22 chime in, let me know what your feelings are on this.

23 MR. SLOTHOWER: Sure. I am speaking just for
24 my client. I'll let Mr. Carmody and Mr. Hurson speak to
25 you. We're concerned because we haven't had a chance to

1 review the report. I'm sensitive to the Council wanting
2 to develop as much information as they possibly can. At
3 the same time it should have arguably been disclosed
4 sooner.

5 I understand Mr. McMahan's problems with the
6 witness who has a medical condition such as that. I fully
7 understand that, but they had it in time to get the
8 prefiled testimony out. It would have been nice to give
9 us that so we had the opportunity to use it in developing
10 cross-examination. I can't comment on whether we would
11 have questions until I read it. I don't know what it
12 says. I've heard Mr. DeLacy relate back portions of it.
13 I don't know what other things are said or unsaid. So we
14 have some concerns about it coming in. There was a pretty
15 bright line rule of seven days and I understand the
16 request comes from the Council and, again, I'm sensitive
17 to that.

18 JUDGE TOREM: I'm certainly willing to make
19 sure the seven-day rule is applied. I won't schedule his
20 testimony no sooner than seven days after this day for
21 further cross-examination to give preparation time and
22 observe that. Perhaps it's backwards a little bit, but
23 still pay at least the spirit of that rule so that folks
24 have seven days to get ready. I don't know that excuses
25 or makes up for the fact that this wasn't in the original

1 prefiled testimony.

2 MR. SLOTHOWER: Again, Your Honor, I am
3 reluctant to make a strenuous objection right now because
4 I don't know what's in that report. It's New York. It's
5 thousands of miles away. I don't know whether it's
6 comparable or not. I have no idea. I can't really
7 comment until I've had a chance to read it.

8 JUDGE TOREM: My proposal is to make sure
9 that everybody gets a copy of that report in by close of
10 business today and takes it home with them; then we'll
11 tentatively schedule something for next week and determine
12 if that procedure will still allow you to renew your
13 objections next week whenever we have Mr. DeLacy's
14 availability for telephone cross-examination. I'll hear
15 renewed objections at that time I guess, but is there a
16 strenuous objection to that procedure as recommended that
17 allows you to prepare? I'm trying to give some deference
18 to the Council as well.

19 MR. SLOTHOWER: No, I don't object to the
20 procedure. If the copies are made today, I did note that
21 the copy that Mr. McMahan shared with me had some
22 highlighting in it, and I don't believe the highlighting
23 should be provided to the Council.

24 JUDGE TOREM: I concur with that.

25 MR. SLOTHOWER: I didn't look at it in great

1 detail as to what was highlighted, but I just think that
2 that would be inappropriate.

3 JUDGE TOREM: It looked like Mr. McMahan had
4 been extremely reluctant to highlight much of the report
5 so it's only a few items of testimony.

6 MR. SLOTHOWER: Maybe that's a good thing.

7 JUDGE TOREM: It could cut either way. We
8 want to make sure the Council would get a clean copy of
9 this if it's going to come into evidence. I understand
10 there's a website from which it can be pulled and maybe
11 the copies that everybody else gets today may have the
12 residue of whatever comes through on the copier of
13 Mr. McMahan's highlighting. For sure if it comes into the
14 record on a motion next week by the Applicant through
15 Mr. DeLacy at the Council's request, then it would be a
16 clean copy that's distributed and put in the record with
17 no editorial markings whatsoever.

18 Mr. Hurson, any feelings on this or do you
19 echo what Mr. Slothower says?

20 MR. HURSON: I haven't seen the document.

21 JUDGE TOREM: Nobody has.

22 MR. HURSON: And I'm kind of at a loss to
23 how to respond to it. Frankly, from his testimony I was
24 kind of gathering this thing in New York he was talking to
25 he was walking through the hills and describing things,

1 but I'm understanding from the characterization it sounds
2 like the study somebody else did it and he has no personal
3 knowledge.

4 JUDGE TOREM: Somebody did the study, but I
5 believe his testimony was that he actually visited the
6 site and made his own conclusions and drew other
7 conclusions from this study so I think you're correct.
8 But in all respect no one has seen this. He was there and
9 he read this report as well. Perhaps this is the reason
10 he went there. I don't know the date of his visit to New
11 York was before or after this. That may be a further
12 cross-examination question to clarify just what he thinks
13 about the report.

14 MR. HURSON: If I could, I would like to
15 reserve my arguments and position, whatever, until I can
16 at least see what the document is. Although, frankly, one
17 of the things here though is, and I don't know if it
18 would, but it maybe then open it where the County or some
19 other party then need to have them call a witness to
20 respond to a study they didn't see before.

21 JUDGE TOREM: I think the only answer I have
22 for that is I believe this would have been referenced only
23 in his supplemental rebuttal testimony which would have
24 been the last date of filing, and, again, while this could
25 have been filed seven days ago as a supplement of that

1 supplemental rebuttal testimony and therefore put the
2 County on notice, that might be fair to allow an
3 additional study. What I will tell you is we're going to
4 run out of seven days next Friday for the possible
5 advance.

6 If you're aware of that once you take a look
7 at this, let me know on Friday I believe. Call Irina or
8 Allen and let them know if there's going to be something
9 that another party, Mr. Slothower, Mr. Lathrop, you come
10 up with something or Mr. Carmody on behalf of your clients
11 that says, "Well, we get to put in this study. We want to
12 put in some other studies." I think that would be fair,
13 but the Council is the one asking because of the stress on
14 this, and I want to defer to the members of the Council
15 that if they want this and if they think it will help them
16 make a better decision.

17 Whichever way this is going to go, I want to
18 see if we can accommodate that and make sure that none of
19 the parties are prejudiced. I may not like it based on
20 our discussion about Benton County and Klickitat County
21 yesterday, but I went back to the Councilmembers and let
22 them know a little about what we would put on the record
23 during the break. From the discussions they said, well,
24 let's try to make it work. So they what they're getting
25 into here, and I think that would be a reasonable

1 accommodation.

2 Mr. Carmody, do you have anything else to
3 add to the discussion or do you want to echo the two of
4 them?

5 MR. CARMODY: I agree with what your
6 approach is on it. I'd like an opportunity to review the
7 document, I'd like an opportunity to cross-examine
8 Mr. DeLacy with respect to the document, and I would like
9 to submit rebuttal material having reviewed it. With
10 those that would be acceptable.

11 JUDGE TOREM: Let me get staff to take this
12 now and perhaps send it out for copying for the parties.
13 The Council will not get a copy of it yet because it's not
14 coming into the record. Hopefully by the end of the
15 telephone session today every--how many people want it?
16 So I've got Counsel for the Environment, a copy or two for
17 ROKT, a copy or two for the County, and a copy or two for
18 Mr. Lathrop and his attorney. So we need probably to make
19 ten copies because I would like to review it as well and
20 perhaps our attorney general. Make sure that we take a
21 look at it and see if there's any questions and what might
22 be appropriate for rebuttal so we're better able to judge
23 the offense.

24 I know there's a public meeting tonight, but
25 there should be some time tomorrow for the review. Then I

1 understand that as far as Council's field trip and site
2 visit that you won't all be accompanying us. Hopefully 60
3 pages here in an hour- or hour-and-a-half review will tell
4 you if want to respond to it, and at that point you can
5 start looking for what studies might be out there. I
6 won't put a hard deadline Friday, but Friday close of
7 business if you can get a message into staff and there may
8 be given the transit back to Olympia on Friday a cell
9 phone number or something that you can make--I can make my
10 cell phone number available for those of you that think
11 you need to get a hold of me and let me know. Then we'll
12 know the end of business day what else might be coming.

13 I'll ask Mr. McMahan to get in touch with
14 Mr. DeLacy later today and then tomorrow sometime during
15 the morning session let us know if he's available on
16 Wednesday, Thursday, or Friday, or all of those days next
17 week. We'll choose the best mutually agreeable time to
18 schedule a telephone resumption of this procedure.

19 Now, we've noticed that the procedure is
20 going to be here in Ellensburg so I'm going to use today
21 as the notice to say the adjudication will be going on for
22 a telephonic session sometime next week. I'll mention
23 that at the public hearing tonight and tomorrow if I'm
24 reminded please by staff to do so; that the hearing will
25 close in Ellensburg on Thursday, that one limited

1 testimony is going to go there, and I wanted to get the
2 parties to nod in agreement this is okay to have this one
3 limited cross-examination done outside of the valley where
4 it was earlier promised to do things in the valley for the
5 adjudication. But I see this as an exceptional
6 circumstance. Unless there's a very good reason for an
7 exception, I would rather not bring everybody back and all
8 the logistics back and Mr. DeLacy travel yet again from
9 Portland for this.

10 Is there any concern with making an
11 exception to that promise that the Council made to hold
12 the adjudication here?

13 All right. Seeing none then, we'll let the
14 public know this is by agreement of everybody in the room
15 that is an intervenor or party to this case, and we'll
16 have a limited session by phone there. And if there's a
17 need or an interest, I'll have them get in touch with
18 staff so they might be able to call in and hear this if
19 they so desire. The public attendance for Mr. DeLacy's
20 testimony was limited. I can only imagine that the
21 further cross will be that much more interest publicly.

22 Any other procedural items?

23 MR. PEEPLES: We asked about Mr. Pappalardo
24 if we can do him by declaration.

25 JUDGE TOREM: Councilmembers, have you come

1 up with cross-examination questions for Mr. Pappalardo
2 this afternoon?

3 I seen none to my right. Any to my left?

4 All right. It appears that Mr. Pappalardo's
5 testimony I believe it's Exhibit 23; is that correct?

6 MR. PEEPLES: I believe so.

7 JUDGE TOREM: So the motion is to allow that
8 to come in by affidavit as long as that's supplied no
9 later than next Friday, September 19. All those in favor?

10 COUNCILMEMBERS: Aye.

11 JUDGE TOREM: So you can let Mr. Pappalardo
12 know he doesn't need to appear by phone this afternoon at
13 the two o'clock session.

14 MR. PEEPLES: Thank you.

15 JUDGE TOREM: I don't know what occurred
16 during the break because I had some of your attention for
17 this issue as to the Hoen report with the site visit. Has
18 everybody got their inputs to staff as to anything else
19 they wanted to the documents that are to be given to
20 Council or participating members on the site visit
21 tomorrow?

22 MR. FIKSDAL: I don't believe anybody is.

23 JUDGE TOREM: I think maybe people didn't
24 get a chance. So I'm going to ask you to still keep that
25 open for folks to look at. Again, it's a map, the aerial

1 view, and the directions, and all I'm looking for is if
2 you have something you want in the way of script as to
3 look south or look southwest that those be added to the
4 directions so that we can get those printed up at the
5 appropriate time before they're handed out tomorrow.

6 MR. SLOTHOWER: I did not get a chance to do
7 that.

8 JUDGE TOREM: Clearly I have your attention,
9 Mr. Slothower. So why don't you get a copy next break and
10 get those back to Ms. Makarow and Mr. Fiksdal.

11 We're ready for our next witness. That's
12 going be Mr. Tony Usibelli. Mr. Usibelli respecting the
13 state fund did not bring a lawyer with him so I'm going to
14 do my best to play lawyer for the introduction of Exhibit
15 60 and its supporting documents and Exhibit 60-SUP which
16 is also yours.

17 (Tony Usibelli sworn on oath.)

18 TONY USIBELLI,
19 being first duly sworn on oath,
20 testified as follows:

21
22 DIRECT EXAMINATION

23 BY JUDGE TOREM:

24 Q. Mr. Usibelli, you have prefiled testimony
25 that's noted Exhibit 60 and several attached supporting

1 exhibits and then Exhibit 60-SUP; is that correct?

2 (Exhibit Nos. 60.0 through 60.8 and 60-SUP
3 identified for the record.)

4 A. That is correct.

5 BY JUDGE TOREM:

6 Q. Have you reviewed that testimony before
7 offering it again today?

8 A. Yes, I have.

9 Q. Would your answers still be the same to the
10 questions as stated in those two documents?

11 A. Yes, they would.

12 Q. Would you still intend for all these exhibits
13 to come before the Council for their consideration?

14 A. I do.

15 Q. Would there be any changes or updates to your
16 prefiled testimony?

17 A. There may be some updates in some of the data
18 or something of that nature, but nothing at this point.

19 Q. Nothing that would dramatically change the
20 representations contained therein?

21 A. No, there would not.

22 JUDGE TOREM: Councilmembers, there's a
23 motion then before you to admit to the record Exhibit 60
24 and its supporting documents and Exhibit 60-SUP. All
25 those in favor?

1 COUNCILMEMBERS: Aye.

2 JUDGE TOREM: Any opposed?

3 All right. Exhibit 60 and Exhibit 60-SUP
4 and its supporting exhibits are now in the record.

5 (Exhibit Nos. 60.0 through 60.8 and 60-SUP
6 admitted into evidence.)

7 JUDGE TOREM: Mr. Usibelli, I'll direct your
8 attention to the cross-examination table where Mr. Hurson
9 and Mr. Piercy are seated and they'll be starting the
10 cross-examination. Also cross-examining on this witness
11 will be Counsel for the Environment, Mr. Lathrop, and
12 ROKT.

13 Mr. Hurson.

14 MR. HURSON: Thank you.

15 CROSS-EXAMINATION

16 BY MR. HURSON:

17 Q. Just for clarification, you sent in a
18 document entitled Opening Statement Exhibit 60. I got it
19 on September 11. That's not part of the prefiled that
20 we're talking about?

21 JUDGE TOREM: Those should be opening
22 statements and not offered as evidence. Although it
23 appears to be labeled as an exhibit, that's correct,
24 Mr. Usibelli labeled it as such. It was an opening the
25 same as any other party's. It's considered argument and

1 introduction rather than evidence.

2 MR. HURSON: The reason I wanted
3 clarification is to deal with the opening statement has a
4 question-and-answer format to it like testimony so I just
5 wanted to clarify.

6 JUDGE TOREM: Thank you. Mr. Usibelli, you
7 agree with me that that was meant to be an overview of the
8 case?

9 THE WITNESS: That's correct. We chose that
10 procedure, but it was not intended to be an additional
11 exhibit.

12 MR. LATHROP: Which exhibit was that? I
13 guess I missed the number.

14 JUDGE TOREM: This is Exhibit 60 and 60-SUP.
15 Mr. Usibelli submitted an opening statement that was
16 Exhibit 60--I don't remember what the exact number was.

17 MR. HURSON: It said Exhibit 60 opening
18 statement.

19 THE WITNESS: Opening statement.

20 JUDGE TOREM: So it's not necessarily an
21 exhibit, but it's part of the record but as an opening
22 statement.

23 BY MR. HURSON:

24 Q. Mr. Usibelli, you understand the difference
25 between factual testimony and basically an argument?

1 A. I do.

2 Q. Would it be fair to characterize your
3 testimony however as basically an opinion or argument as
4 far as what you believe the Council should do?

5 A. I think that's fair supported by my
6 professional judgment and the facts that I think pertain
7 to that, yes.

8 Q. But as far as the facts related to this
9 project, you wouldn't be the one in the position to
10 explain or add any basically factual substance to the
11 record regarding the wind project work where it's located,
12 what kind of setbacks, the details of the discussion with
13 the County, none of those issues.

14 A. Well, I think in general that's the case.
15 Although I believe in certain aspects of certainly this
16 project would be part of the energy supply, potentially be
17 part of the energy supply system in the State of
18 Washington, and I believe I can speak to those issues
19 specifically.

20 Q. So that's basically what your testimony was
21 about.

22 A. Principally, yes.

23 Q. Now, you're with the Energy Policy Division
24 of Community, Trade, and Economic Development.

25 A. That's correct.

1 Q. And Community, Trade, and Economic
2 Development has a number of different divisions.

3 A. It does have.

4 Q. Yours only relates to--your testimony relates
5 to your division. Correct?

6 A. It relates principally to my division,
7 although I have been approved to participate as an
8 intervenor in this by the director of the agency so she is
9 familiar with that.

10 Q. You were authorized to intervene, but the
11 positions you're taking are related to the Energy Division
12 and not the other divisions.

13 A. I believe I would characterize that as
14 principally the expertise we bring forward is related to
15 the Energy Division, but we are intervening on behalf of
16 Community, Trade, and Economic Development as the agency.
17 I believe that the agency has the ability to specifically
18 intervene as a subdivision of the agency, but, again, I
19 think that's more of a legal question.

20 JUDGE TOREM: Mr. Hurson, I believe if you
21 refer back to Prehearing Order No. 1, it's Council Order
22 No. 777, and it's on page 6. In the approval of the
23 petitions for intervention in Subparagraph A. of that
24 page, in addressing this the Council found that the
25 Washington State Department of the Community, Trade, and

1 Economic Development which already had a representative on
2 EFSEC is entitled to party status in the Council's
3 adjudicative proceedings as a matter of right, and there
4 were citations to the WAC and to the RCW as well, and it
5 wasn't limited to the policy division or the energy policy
6 office. It was just the agency as a whole intervened;
7 however, it was limited to the issue that it supported the
8 application as consistent with Washington Energy Policy,
9 which is to encourage renewable energy resources as such
10 issues generally involve CTED's jurisdiction in Washington
11 State.

12 So the scope of intervention was granted to
13 the agency, and I know this was some years ago, but that's
14 the scope that Mr. Usibelli made it clear as time went
15 what his particular position is one division. So he is
16 here on behalf of CTED as a whole, but yet his specific
17 job as he's clarified is to one division.

18 BY MR. HURSON:

19 Q. But it's on Energy Policy Division not the
20 Growth Management Division.

21 A. I am not representing the expertise of the
22 Growth Management Division. That's correct.

23 Q. Thank you. In looking at your testimony it
24 looks like you support wind farms.

25 A. In general, we're supportive of wind farms

1 and we do site some statutory support beyond that.

2 Q. You think that wind farms should be approved
3 in this state.

4 A. Yes, that's correct.

5 Q. For instance, if a meteorological study
6 showed that you could have a viable wind farm on Lake
7 Washington and you could put up 150, 410-foot tall
8 turbines in Lake Washington at a 1,000-foot setback from
9 the shoreline homes, you would support that kind of
10 proposal too, wouldn't you?

11 A. Again, if you will notice in my testimony we
12 talk about the fact and I testified to the fact we do
13 support the development of wind projects, but that's not
14 a--I can't remember precisely the words I used, but it's
15 essentially that that wasn't in all cases in all
16 locations. It is a site-specific issue, and that is the
17 nature of the siting process before EFSEC to make that
18 kind of a determination.

19 Q. Let's say if our Kittitas County one is a
20 1,320-foot setback they're asking for, what would be the
21 reason that you wouldn't support a wind farm on Lake
22 Washington at 1,320 setback from all the waterfront
23 properties there?

24 A. Well, certainly a setback would not
25 necessarily be the only criteria against which you would

1 look at the location of a wind farm or any other type of
2 energy producing facility. It's certainly one of them.

3 Q. You can't think of any particular reason
4 right now why that would be objectionable from your
5 standpoint?

6 A. Again, I think it would be specific. Again,
7 you're speaking in hypothetical terms. It may or may not
8 be objectionable in a given location.

9 Q. So this is all very site specific.

10 A. Absolutely.

11 Q. You didn't participate in any of the county
12 hearings.

13 A. I did not.

14 Q. In fact, you haven't been really at the
15 hearing this hearing process until today. Right?

16 A. That's correct.

17 Q. The wind farm here you're aware that there's
18 no purchaser for the power right now?

19 A. I don't know that for certain. I have not
20 seen whether there are contracts or not. I would
21 certainly that may well be the case, yes.

22 Q. Assuming there is none--strike that. The
23 Klickitat Wind Farm are you familiar with that one?
24 There's a wind farm that was approved in Klickitat in the
25 energy policy.

1 A. Yes.

2 Q. Correct me in understanding this. That power
3 is all being sold to three California public utilities.

4 A. I don't know that for certain. That could
5 certainly be the case. I don't know the contractual
6 arrangements on that wind farm, per se.

7 Q. Your support for this wind farm would it
8 change if the power generated here was going to be sold to
9 California public utilities?

10 A. I would say probably not. I think it's
11 important to recognize that the electricity system is an
12 integrated system in the Western United States and
13 specifically along the West Coast of the United States.
14 So at times we provide significant power to California and
15 at times they provide significant power to us.

16 Q. But I guess my question is if this power was
17 going to be sold to the State of Oregon, would that change
18 your opinion in supporting this project and supporting
19 preemption?

20 A. No.

21 Q. So you would support preemption if the power
22 was going to be used in Oregon.

23 A. Yes.

24 Q. You would support under the State Energy
25 Policy if this power is going to be used in Oregon.

1 A. Yes.

2 Q. Doesn't that position conflict with your
3 division policy? Isn't the Energy Policy Division's goal
4 to deliver economically and environmentally sound energy
5 for the State of Washington and its citizen?

6 A. Well, again, yes, it is. But, again, it's
7 important to recognize that the electrical system is part
8 of an integrated system. The fact that we exchange power
9 and move power in the Western United States as opposed to
10 just confining it to the boundaries of the State of
11 Washington in fact brings significant economic benefit to
12 the State of Washington. Our electricity is cheaper
13 because of the nature of those interconnections and the
14 fact that power moves back and forth. Were we on an
15 island the citizens of this state would be experiencing
16 higher power prices. So I think you need to look at it in
17 that context.

18 Q. But the statutory regulatory mandate is that
19 the goal, the object of your office is to see to it the
20 State of Washington and its citizens have power. Isn't
21 supporting wind energy for Oregon or Idaho or California
22 or Nevada in essence exceeding the legislative authority?

23 A. I would not agree with that interpretation.
24 I would stand by my previous comment.

25 Q. Correct me if I'm wrong, but in looking at

1 the CTED website Washington State currently produces about
2 125 percent of the power that it needs.

3 A. That obviously varies from year to year
4 because we are dependent on the hydroelectric system.
5 During a typical year that would be probably about the
6 right number. In a low water year it could be
7 significantly less than that. In a high water year it may
8 actually be more than that.

9 Q. So Washington State's actually a net exporter
10 of power.

11 A. Again, under typical conditions that is the
12 case. In some instances we are actually--we can be in a
13 situation where we are a net importer of power as well.

14 Q. But overall perhaps our energy problem is
15 that in essence Washington is exporting power out. We're
16 a net exporter, aren't we?

17 A. In general, again, it applies to the specific
18 conditions that we are in and, again, I would argue the
19 premise that the state has excess capacity and we should
20 limit our power sales just within the State of Washington
21 does not recognize that the very real reliability,
22 economic, and operational benefits of being part of a
23 connected system.

24 Q. Is there projections to when perhaps the
25 state would become not a net exporter?

1 A. Well, again, you're bounding this around a
2 system that has significant year-to-year variability. So
3 there are certain periods and certain years that we can
4 cite when the state has been a net importer. It depends
5 on the time frame that you're talking about.

6 JUDGE TOREM: Mr. Usibelli, I'm going to
7 have Mr. Hurson just focus the question as to what he
8 means by overall or in general. Can you pick a time frame
9 like the average year?

10 MR. HURSON: I'm just talking a typical
11 because I understand these are kind of big picture items.

12 JUDGE TOREM: Clearly Mr. Usibelli is saying
13 that at sometimes we import power so he wants that
14 qualification. Maybe I'll just do it for you. On an
15 annual basis is it more likely than not that Washington is
16 selling excess power than again on a full calender year
17 for all the seasons involved by the IRS are we more likely
18 to be exporting or importing power in this state?

19 THE WITNESS: On an annual basis I would say
20 that is probably the case that the generating facilities
21 located within the State of Washington would typically be
22 a net exporter.

23 BY MR. HURSON:

24 Q. Are there any studies or things done that
25 there's a time in the future--I don't know, 15, 20 years

1 down the road--that there's a concern that this state
2 would not be basically a net exporter?

3 A. Again, probably the best work that is being
4 done on looking at future power needs in the Pacific
5 Northwest not just within the State of the Washington,
6 and, again I think that's the correct boundary to draw on
7 this, are being done and have been done by the Northwest
8 Power Conservation Council as part of their statutory
9 requirements; and they have looked at the needs of the
10 region on a 20-year time horizon into the future in
11 determining what the region needs on the order of about
12 300 megawatts of additional power each year on average.

13 JUDGE TOREM: Mr. Usibelli, do you know how
14 much more that's needed in Washington State? I think
15 that's the thrust of the question. Quarter? Half?

16 THE WITNESS: Again, it's a relatively
17 complex question because you have utilities, for example,
18 that are serving the State of Washington where a
19 significant portion of their power, their contracted,
20 long-term power comes from out-of-state sources. You also
21 have generators located in the State of Washington that's
22 not affiliated with the utility who sell to other parts of
23 the west. So, again, I think defining it around a state
24 boundary is difficult to do.

25 So I think the answer to your question would

1 be that I guess I would not put it in those terms and it
2 would be a difficult question to determine precisely how
3 that would work given those characteristics in the
4 electric system.

5 JUDGE TOREM: It appears to me the thrust of
6 Mr. Hurson's question is get to the ultimate issue of if
7 this wind farm is not built will Washington run out of
8 energy at some point because of that decision?

9 THE WITNESS: Well, it's very clear looking
10 at the work of the Northwest Power Conservation Council,
11 which I believe is the best technical work available on
12 power needs in the region that the region, will need on
13 the order of 300 average megawatts of new power each year.
14 We represent approximately half of the total load in the
15 Pacific Northwest so you can do the math and say 150
16 average megawatts of power would be needed in order to
17 meet what the projected demands are in the region and in
18 the state. So I hope that get's to the crux.

19 BY MR. HURSON:

20 Q. Well, there's no projection that we're going
21 to run short of power by year 2010.

22 A. Well, again, if we were in a situation where
23 we were low hydroelectric conditions, we certainly could,
24 yes.

25 Q. Long term.

1 A. We've encountered that problem. Beginning in
2 it's pretty clear that by 2010 and 2011 there will likely
3 be a need for significant power on an overall basis.
4 Individually utilities may have needs much sooner than
5 that.

6 Q. You talked about the low water years now and
7 then that causes a reduction in the power. Right?

8 A. That's correct.

9 Q. So if you have a low wind year, you're not
10 going to produce as much power. Correct?

11 A. Of course.

12 Q. There's a lot of variation there.

13 A. There could be. I don't think we have merely
14 as much information on the long-term nature of the wind
15 resource as compared to the hydro resource, but most of
16 what I'm familiar with would indicate that year-to-year
17 variation is not as significant as it is with the
18 year-to-year precipitation and snowfall variation.

19 Q. Part of the reason I'm asking is some of your
20 testimony seems to be we need to approve this and we need
21 to approve this now right away. You said this has been on
22 long enough. It's time to approve it.

23 A. Yes.

24 Q. You would agree though say if it took an
25 extra month or two to go through the approval process,

1 it's not going to cause a problem with the policy
2 directions you're looking at for--whatever the policy
3 directions are an extra month or two wouldn't put us
4 behind in able to make the policy goals.

5 A. I don't think an extra month or two, no, not
6 in that case situation.

7 Q. If during the County hearings if there had
8 been a need to take an extra couple weeks, a month or two
9 to submit some new information, work out issues, maybe let
10 the public have another go around in some public hearings
11 so that the commissioners can make a decision, that would
12 not have caused a problem or conflict with the energy
13 policy that you're looking for.

14 A. I think that's probably a fair statement.
15 Again, we did not participate in the County process, per
16 se, so I can't speak to that directly.

17 MR. HURSON: That's fine. Thank you.

18 JUDGE TOREM: Another scheduled cross exam
19 for Mr. Usibelli is the Counsel for the Environment,
20 Mr. Tribble.

21 Mr. Slothower, were you going to have any
22 questions for this witness?

23 MR. SLOTHOWER: I believe Mr. Carmody on
24 behalf of ROKT has several. Mine are very brief and I may
25 not ask them depending on what Mr. Carmody asks.

1 JUDGE TOREM: I understood that there might
2 be an objection from the Applicant as to the scope of
3 intervention on behalf of ROKT. I wasn't remembering,
4 Mr. Peeples, if that would apply here, but we'll get to
5 that. If you're going to make that, I want you to prepare
6 after Mr. Tribble is done.

7 MR. PEEPLES: I'm not going to object to
8 Mr. Slothower's question. We talked about that. Quite
9 frankly, on retrospect I don't know if I can object
10 because I'm not an attorney for CTED. That's another
11 reason.

12 JUDGE TOREM: Well, certainly, but all the
13 parties can object to the scope of intervention so I'm not
14 holding that. We haven't stood to that ceremony in the
15 past.

16 We'll have Mr. Tribble's questions and then
17 we'll press and see if there are any such objections to be
18 lodged today.

19 CROSS-EXAMINATION

20 BY MR. TRIBBLE:

21 Q. Mr. Usibelli, can you give the Council and
22 the record an overview of the environmental benefits of
23 diversified renewable energy sources within the state.

24 A. Sure.

25 MR. HURSON: Your Honor, if I might, and the

1 only reason I'm raising the objection is based upon what
2 counsel for the Applicant did yesterday about softballs
3 and that's the biggest softball I've seen tossed out in
4 the hearing.

5 JUDGE TOREM: I'm going to allow this
6 because of CFE's specific statutory role to do this; then
7 perhaps following your cross-examination that might be
8 done by CTED's own attorney had they brought one. Given
9 CFE's role in this to look at public interest, I'll allow
10 the question. But I'll make sure that Mr. Tribble is
11 doing this more as rehabilitation; that it's short. He
12 may actually have some cross or what would typically be
13 adversarial questions as well. I don't know that, but
14 we'll keep this line of softball questions to a minimum,
15 and that will satisfy CFE's role in my view in this
16 proceeding as on behalf of all people and the environment
17 here.

18 So, Mr. Usibelli, would you give us that
19 brief review.

20 A. I will. I believe my testimony does
21 specifically speak to this issue, and we use examples of
22 the benefit to the electrical system of having a
23 diversified supply of resources dependent on different
24 sources; for example, hydroelectricity which has
25 variability over time is largely decoupled from the

1 availability of wind. So there are clear advantages and
2 benefits to the operation of the electrical system for
3 having a variety of different sources of electricity
4 generation.

5 From an environmental perspective, renewable
6 resources, wind for example, represents significant
7 environmental benefits in that there are no criteria for
8 air emissions. Water impacts are either nonexistent or
9 minimal, and then particularly in my testimony I mentioned
10 that what I would argue is the largest energy impact issue
11 that we will be dealing, are dealing with in the State of
12 Washington and will be dealing with in the State of
13 Washington are greenhouse gas emissions. So any source
14 such as wind or other renewable resources that do not
15 generate greenhouse gases has a substantial benefit to the
16 environment of the State of Washington and, frankly, the
17 environment of the world.

18 Q. Outside of wind what are the other available
19 energy production, renewable energy production
20 technologies?

21 A. Wind is certainly the most--and, again, I'm
22 presuming you're asking about electricity and not related
23 to fuels.

24 Q. Correct.

25 A. So with respect to the electricity, wind is

1 certainly the most popular, most economically viable
2 currently. In other parts of the country there's a lot of
3 development going on for solar technologies. California,
4 for example, has committed 1.2 billion dollars to the
5 development of solar system on their residences over the
6 next ten years. It's not developed as much in the State
7 of Washington.

8 There are locations where geothermal
9 development, again, pretty site specific depending on
10 where that is available to generate electricity, and
11 another resource that's significant renewable resources is
12 the use of biomass and those kinds of things as a
13 generating resource. So those would probably be the major
14 ones.

15 Q. You had an opportunity to talk about the
16 environmental benefit of wind. Do you also concede that
17 there may be some environmental detriment to wind
18 production in certain areas of our state?

19 A. Absolutely. There is no energy producing
20 technology that does not have some environmental impacts.
21 I believe it's a matter of degree and that I think is one
22 of the reasons why you have organizations such as the
23 siting council to review this and to establish conditions
24 to minimize those environmental impacts.

25 Q. What specific environmental detriments are

1 you aware of associated with wind?

2 A. Well, you could, again, for wind projects in
3 general the construction of wind project you will have
4 some land impacts and so forth depending on where that
5 project is located that would vary by location: Are there
6 streams there? What kinds of land uses are present in
7 that area?

8 Certainly there are that people have raised
9 and I think one of the major concerns in this process
10 about the aesthetics of wind; what are the impact the view
11 shed. But in genuine represents significantly less
12 environmental impact than a comparable fossil fuel
13 production plant.

14 MR. TRIBBLE: Thank you. No further
15 questions.

16 JUDGE TOREM: Mr. Carmody.

17 MR. PEEPLES: Your Honor, I would like to
18 raise this issue now at least to get it on the table and
19 get it resolved. To a certain extent I'm going to object
20 to Mr. Carmody cross-examining my witness Randy Hardy as
21 outside of ROKT's area of intervention, and I don't want
22 to adversely affect that right to object to that. It's
23 fairly similar.

24 I would like to point out ROKT's area of
25 intervention as stated in the intervention order is proper

1 location and alternative locations, perimeter defined, and
2 consolidated statement of issues by the CFE, not this CFE
3 by the prior CFE, was electromagnetic, vibration, soil
4 contamination, shadow flicker, and blade glint. So that's
5 what it said. I think the Council can make a
6 determination for this witness as they may, but I will be
7 reserving my right to object to Mr. Carmody's
8 cross-examination of our witness, Mr. Hardy.

9 JUDGE TOREM: All right. So your objection
10 is just putting Mr. Carmody on notice for later this
11 afternoon for the three o'clock group of call-in witnesses
12 or are you making a specific objection as to his ability
13 to examine Mr. Usibelli?

14 MR. PEEPLES: No, I'm not, but if the
15 Council desires to do that, they can make up their mind.

16 JUDGE TOREM: I don't expect the Council to
17 object, but I will let Mr. Carmody know it is my intention
18 as the witnesses get further afield from his stated
19 intervention grounds of the proper location for a wind
20 farm and ultimate locations that I'll be asking you to
21 define your questions to that is reasonable to that
22 degree.

23 MR. CARMODY: As far as Mr. Hardy is
24 concerned I agree not to cross-examine him.

25 JUDGE TOREM: As to this witness as well I

1 just want to make sure we stick to the limits of the
2 intervenors, and, again, if it's proper location and
3 alternate locations ask away. If it's outside that scope,
4 I may sur sponte strike the question.

5 MR. CARMODY: He had a testimony also in
6 respect to preemption which is a locational choice and
7 that is one area I would like to explore with him.

8 JUDGE TOREM: As long as it sticks to the
9 locational choice, I agree.

10 MR. CARMODY: Thank you.

11 CROSS-EXAMINATION

12 By MR. CARMODY:

13 Q. Mr. Usibelli, for whom are you speaking today
14 in presenting this testimony?

15 A. I'm representing the Department of Community,
16 Trade, and Economic Development.

17 Q. Your particular division or the entire
18 department?

19 A. As stated earlier, we have intervened as the
20 state agency, and our specific area is focusing on the
21 areas that we presented in our testimony.

22 Q. Has your prefiled and supplemental testimony
23 been reviewed and approved by department heads?

24 A. The intervention has been approved by the
25 head of the agency. That's correct.

1 Q. My question was has your prefiled testimony
2 and supplemental testimony been reviewed and approved by
3 department heads?

4 A. Not the specific testimony, no.

5 Q. Did you review your testimony with any other
6 department representative prior to filing it in this
7 action?

8 A. On the supplemental testimony we had some
9 discussions with members of our local government division
10 growth management.

11 Q. And they approved your testimony?

12 A. They approved us--they had no objection to us
13 supporting the preemption. That's correct.

14 Q. You also filed with the Council a request
15 where you're the identifying representative for Renewable
16 Northwest Project; is that correct?

17 JUDGE TOREM: Mr. Carmody, I think you're
18 referring to the request for the public hearing that was
19 held last Tuesday?

20 MR. CARMODY: Yes.

21 JUDGE TOREM: What's the nature of the
22 question then?

23 MR. CARMODY: I want to know if he's
24 speaking in that capacity today as well?

25 A. I am not. What we did was we along with

1 Renewable Northwest Project we submitted a letter to the
2 Council requesting an additional public hearing. We were
3 one of the signators to that letter.

4 BY MR. CARMODY:

5 Q. In that letter you were speaking and
6 representing RNP with respect to that request.

7 A. No, we were signing that letter as an
8 additional party. We were not representing RNP. It would
9 be much like a letter that we might sign on any number of
10 things where there would be other parties indicating that
11 we support that request.

12 Q. I'm going to follow that line. That request
13 was for a hearing in Seattle.

14 A. That's correct.

15 Q. Let me ask you this: Did you provide
16 testimony in any of the Kittitas County land use
17 proceedings in this matter?

18 A. No, we did not.

19 Q. Did you provide any testimony in any of the
20 local land use proceedings for the Desert Claim Project?

21 A. No.

22 Q. Did you provide any testimony in local
23 proceedings with respect to Wild Horse?

24 A. No.

25 Q. Why didn't you?

1 A. Largely because of a resource decision on our
2 part and ability to have resources to do that. We have to
3 pick where we think we can emphasize our policy points and
4 we did not choose to prioritize those.

5 Q. So the department position was it was not
6 significant enough to provide testimony to the County that
7 you're providing to the Council.

8 A. We've been an intervenor in the EFSEC process
9 when this project was proposed to them and decided that we
10 only have the resources to really engage in that process.
11 That's correct.

12 Q. But in your prefiled testimony you're
13 critical of that local process, but you chose not to
14 participate in that process. Correct?

15 A. I would not say that we were necessarily
16 critical of the process. We have tracked the process
17 through EFSEC, have heard the Applicant and the County
18 regularly reporting back to EFSEC in their efforts to
19 reach resolution on that. They were unable to reach
20 resolution and our belief is that once the Applicant came
21 to EFSEC that is the appropriate venue to make these kinds
22 of overall decisions on the project, and had EFSEC on the
23 face of it accepted the land use decision then they would
24 have made a de facto decision against the project.

25 Q. You have registered no objections through

1 that process to either the process or the determinations
2 made by the County.

3 A. That's correct.

4 Q. In your prefiled supplemental testimony you
5 are critical of the ordinance and comprehensive plan
6 provisions under which the County process the local
7 applications; is that correct?

8 A. We comment on that provision, yes.

9 Q. Your position is that it's noncompliant and
10 inconsistent for purposes for preemption; isn't that
11 correct?

12 A. Can you state that question.

13 Q. It's your position that the local
14 comprehensive plan ordinance provisions with respect to
15 siting the wind farms is inconsistent and noncompliant for
16 purposes of preemption.

17 A. I think I understand your question, and I
18 believe the answer to that would be, yes.

19 Q. And the reason that you stated in your
20 prefiled supplemental testimony is that the County has not
21 specifically identified a zoning district for wind farms.

22 A. That was one of our principal concerns, yes.

23 Q. And that remains a concern in your position
24 with respect to preemption.

25 A. Yes.

1 Q. Let me ask you this: Is it your
2 understanding that this comprehensive plan provision was
3 submitted to CTED for comment prior to its adoption by
4 Kittitas County?

5 A. I believe that's the case. I don't know that
6 for certain, but I believe that is the case.

7 Q. Normal procedure under the Growth Management
8 Act requires submission of that and a 60-day comment by
9 CTED, wouldn't it?

10 A. I believe that is correct, yes. Again, I'm
11 not an expert on growth management. That's my
12 understanding from talking with growth management staff.

13 Q. Are you aware of any objections that your
14 department made to that particular comprehensive plan
15 provision and ordinance procedure?

16 A. I am not.

17 Q. In your testimony, prefiled testimony you
18 testified as to a variety of areas of policy, economics,
19 environmental impacts associated with the energy supply
20 system. Is it a fair statement that your observations and
21 comments in your prefiled testimony are policy level and
22 generic observations about wind power in general?

23 A. I would say that's predominantly the case,
24 yes.

25 Q. And it's not particularly driven. Any of

1 those policies are not particularly driven by local siting
2 choices.

3 A. I guess I would say, yes, they are to some
4 degree driven by local siting choices because any power
5 generating facility has a local component. It has to be
6 located in some area. In the case of something such as
7 wind it has to be located in an area with a sufficient
8 wind regime in order to make it technically and
9 economically viable.

10 Q. So within Kittitas County the Wild Horse
11 Project would be in support of your basic policy
12 propositions with respect to wind power.

13 A. I think that's a fair statement.

14 Q. And there are significantly other areas of
15 Kittitas County where a wind farm could be sited that
16 would also meet those criteria.

17 A. My understanding in reviewing the Draft
18 Environmental Impact Statement is that there are other
19 locations that would meet the technical criteria. Whether
20 they would meet the economic criteria that a private
21 developer would be able to come up with an economically
22 viable project, I think that depends on the nature of the
23 economics that the developer is facing. But there are
24 technically other locations in the County where projects
25 could be developed as I understand it.

1 Q. A wind farm within the city limits of
2 Ellensburg could meet your policy directives as well,
3 couldn't it?

4 A. It may in general meet the policy directives,
5 but I would have to go back to some previous testimony
6 saying that our support for a wind project is by no means
7 unconditional. There are very desirable characteristics
8 for a wind project, again, because it's a very
9 site-specific thing, and you make the determination on a
10 site-by-site basis. So if there were a proposal in the
11 City of Ellensburg you could look at it carefully. My
12 professional judgment would be that there would probably
13 be significantly more land use conflict and environmental
14 concerns associated with that than a comparable rural
15 area.

16 Q. Would you agree with me that your
17 department's position with respect to the Growth
18 Management Act is that land use decision making processes
19 are matters of local jurisdiction as opposed to state
20 jurisdiction?

21 A. Oh, again, I'm not an expert on the Growth
22 Management Act and certainly the state has a role with
23 respect to land use. Many of the land use decisions in
24 the State of Washington are a local responsibility, but
25 certainly the state has reserved some ability to have

1 influence on those local land use decisions, but, again, I
2 can't speak as an expert on that.

3 Q. Would you agree with me that growth
4 management provides specific discretion authority to local
5 decision makers to make these type of determinations?

6 A. It does but I can't speak to the extent of
7 that.

8 Q. Would you also agree with me that your
9 department position with respect to the Growth Management
10 Act is that land use planning is a bottom-up process that
11 begins with the citizens of the community in a decision
12 making process?

13 A. Again, I think as a general statement that is
14 the general conditions and the general approach for growth
15 management. That's about as far as I can go.

16 Q. Is your prefiled testimony in this matter in
17 your judgment inconsistent in any respect with your
18 department's position with respect to application of the
19 Growth Management Act?

20 A. I wouldn't say not having consulted with our
21 growth management and my director on that issue
22 specifically.

23 Q. Are you familiar with any other permitted
24 wind farm projects within the state that would meet
25 policy, your policy goals with respect to energy

1 production?

2 A. There are certainly other operating wind
3 projects within the State of Washington, yes.

4 Q. How many are there?

5 A. Off the top of my head I would say there are
6 four or five. I don't recall. I would have to look that
7 up to know precisely.

8 Q. Do you know what the production level is?

9 A. It varies from project to project. The State
10 Line Wind Project rated it is the largest in the State of
11 Washington and Oregon and it has a rated capacity of
12 approximately 350 megawatts.

13 Q. Are you familiar with any permitted projects
14 that have not yet been constructed?

15 A. There are several projects such as Nine Mile
16 Canyon that are in the process of considering expansion.
17 I don't know specifically where they are in the permitting
18 process.

19 Q. Are you familiar with any of the wind farm
20 projects that have been permitted in Klickitat County, for
21 example?

22 A. Well, certainly the wind project Wild Horse
23 has been permitted by the county and my understanding is
24 that that project is actually under construction.

25 JUDGE TOREM: He referred to Klickitat as

1 opposed to Kittitas.

2 A. Oh, Klickitat. Yes, I'm sorry. I'm
3 forgetting. Yes, there are projects there, but I don't
4 recall any of them off the top of my head.

5 BY MR. CARMODY:

6 Q. Does the availability or level of
7 contribution to the energy system from those projects bear
8 upon your testimony in any respect today?

9 A. Certainly it does, yes.

10 Q. If I understood your testimony right, now the
11 State of Washington is a net exporter of electricity.

12 A. It is a net exporter of electricity on an
13 average situation, but, again, I would say that's really
14 the wrong way to bound the energy supply problem. The
15 energy supply situation for electricity is that we are
16 dependent on out-of-state sources for electricity just as
17 some out-of-state sources are dependent on us for
18 electricity. So looking at it from that perspective, I
19 would argue is not the correct framework.

20 Q. So our excess capacity helps absorb on
21 average shortfalls in other regions of the country.

22 A. Well, the excess capacity in California
23 during our winter period helps absorb some of the
24 shortfall that we have at times encountered in the
25 Northwest and in the State of Washington; so, yes, that's

1 a fair statement.

2 Q. And you don't know specifically how many
3 projects, permitted projects, specifically wind farms
4 projects are currently queued up to come into production
5 to add to that excess capacity, do you?

6 A. I don't have that--I don't have those figures
7 in front of me. That information is relatively readily
8 available. I just don't have it at my fingertips.

9 Q. Would you agree that those projects in
10 Klickitat County are substantial?

11 A. I would argue that any wind project with
12 approximately 100 megawatts or above is a relatively
13 substantial project. That's correct. It represents a
14 hundred million dollars plus investment, yes.

15 JUDGE TOREM: Mr. Carmody, this is starting
16 to take significantly longer than the 15 minutes you had
17 reserved.

18 MR. CARMODY: Yes. Let me just double check
19 something. I think I am done.

20 JUDGE TOREM: Mr. Slothower, any questions?

21 MR. SLOTHOWER: We do not have any
22 questions.

23 JUDGE TOREM: Thank you.

24 Mr. Usibelli, there's really no way to
25 redirect since you don't have an attorney so thank you.

1 Unless the Councilmembers have questions for you we will
2 be done. Let me poll the Council and see where we are.

3 Councilmember Johnson?

4 MS. JOHNSON: Yes. I would like to refer to
5 your testimony, your 60 supplemental.

6 THE WITNESS: Yes.

7 MS. JOHNSON: On page 3 you talk about some
8 negative impacts are expected and acceptable. What do you
9 considerable acceptable negative impacts?

10 THE WITNESS: Well, I think as I stated
11 earlier I think there are no energy generating projects
12 that don't have some negative consequences so there will
13 certainly be impacts during the construction period. I
14 think in general those could be--I'll use an example.
15 Those could be recognizing those impacts are there and
16 there are ways to mitigate those types of impacts. So
17 there might be, for example, slight erosion or something
18 like that. We need to make sure that you do the best that
19 you can to mitigate those impacts.

20 I would also say as I've mentioned earlier
21 that there may be aesthetic issues with windmills as there
22 are with any kind of a power plant. Do you actually want
23 to see a coal-fired power plant, a gas generator, or a
24 series of windmills? People will see those and those are
25 I would argue that in this case that those are very real

1 impacts, but that they are relatively minor compared to
2 the environmental and energy values of such a project.

3 MS. JOHNSON: Thank you.

4 MR. SWEENEY: Help me out, Mr. Usibelli.
5 The county investor-owned utilities and publicly-owned
6 utilities how many electric providers are in the State of
7 Washington roughly?

8 THE WITNESS: The State of Washington has 63
9 utilities.

10 MR. SWEENEY: Can you tell me or at least in
11 ball park how many of those in acquiring resources either
12 by mandate by their owners or by customers have to acquire
13 some amount of alternative electricity as part of their
14 future portfolio?

15 THE WITNESS: Two parts to answer that. The
16 17 largest utilities in the state are required to offer an
17 optional green-power purchase to their customers. So I
18 believe all of those in one form or another are purchasing
19 some alternative power on behalf of their customers.
20 Those are the 17 largest utilities representing over 80
21 percent of the total load in the state, and then I would
22 say the majority of the other utilities within the state
23 are looking at acts, significant acts of conservation as
24 well as alternative resources.

25 MR. SWEENEY: So what I heard is a quite bit

1 of discussion about what are the future power needs for
2 this state and the region. Isn't there also an additional
3 sub-market demand for alternative electricity for
4 Washington utilities?

5 THE WITNESS: Absolutely.

6 MR. SWEENEY: How would you describe in a
7 supply-and-demand situation for that going forward?

8 THE WITNESS: It obviously one varies from
9 utility to utility. Some utilities are long in supply;
10 some utilities are short in supply. For the utilities,
11 particularly some of the larger utilities that are short
12 in supply, they've gone and I think you're familiar in
13 wearing your other hat with the least cost integrated
14 resource planning approach. In those they've determined
15 that in many instances renewable resources such as wind
16 represent the least cost from an environmental and
17 economic cost resource for them to acquire and those
18 utilities are out acquiring those kinds of resources and
19 several wind farms have been developed or purchased by
20 Washington based utilities.

21 MR. SWEENEY: Now, going to the specific
22 siting, and I don't want a long answer here, what
23 specifically given your information on the Kittitas Valley
24 Project make this site an attractive project?

25 THE WITNESS: Well, two of the key facts

1 that are also pointed in the environmental impact
2 statement are good wind regime, sixteen miles an hour or
3 better. You have to have that or they aren't going to be
4 able to produce electricity and also one of the other
5 major factors is proximity to being able to move that
6 electricity with transmission lines, and this site as I
7 understand it has three high-voltage transmission lines
8 that are available there.

9 MR. SWEENEY: Thank you.

10 CHAIR LUCE: Mr. Usibelli, just a couple of
11 questions. Your testimony, if I read it correctly,
12 supports preemption in this case.

13 THE WITNESS: It does, yes

14 CHAIR LUCE: And that's the position of the
15 Commerce, Trade, and Economic Development Agency.

16 THE WITNESS: As I said, that was our
17 position on preemption was approved by our director.

18 CHAIR LUCE: Thanks. And your position on
19 the specific siting will depend upon particular
20 characteristics of the site.

21 THE WITNESS: That's absolutely correct.

22 CHAIR LUCE: You're familiar with other
23 energy projects throughout the State of Washington.

24 THE WITNESS: I am.

25 CHAIR LUCE: Are you familiar with the

1 Chehalis Gas Project, combined cycle gas turbine project?

2 THE WITNESS: Yes, I am.

3 CHAIR LUCE: Would you characterize that as
4 being in an urban area with residences nearby?

5 THE WITNESS: I believe, if I'm recalling
6 from years back on that, that's an industrial site, but it
7 is in a more urban area than I'd say this site is.

8 CHAIR LUCE: Are there residences nearby, do
9 you know, to your knowledge?

10 THE WITNESS: Yes, there are.

11 CHAIR LUCE: Would those be visually
12 impacted?

13 THE WITNESS: Yes, they would.

14 CHAIR LUCE: Now, a couple of questions on
15 the integrated system. There has been a lot of discussion
16 about the Washington long or short relative to energy
17 supply situation. During the winter heating season are we
18 an importer or an exporter of electricity?

19 THE WITNESS: In general, we are a net
20 importer of electricity.

21 CHAIR LUCE: During the summer there are
22 events at times when we are as a system in the State of
23 Washington stretched in terms of the ability to provide
24 energy; is that correct?

25 THE WITNESS: That is correct, yes.

1 CHAIR LUCE: Are you familiar with an event
2 even this summer, July 28 I believe it was, during which
3 there was an issue regarding energy supply in the State of
4 Washington?

5 THE WITNESS: Yes. It was an issue related
6 not just to the State of Washington but certainly
7 throughout the West Coast.

8 CHAIR LUCE: Does that go to the notion that
9 we're an integrated system?

10 THE WITNESS: It absolutely does.

11 CHAIR LUCE: Could you describe that event
12 and how close in your opinion we were to I'll call losing
13 the system, others might say putting the lights out.

14 THE WITNESS: Essentially that event, to be
15 very brief about it, they recorded record temperature
16 conditions in California well above 100 degrees that put
17 major stress on their system. They had to draw on all of
18 the resources that they had available plus drawing on a
19 number of the resources from the Pacific Northwest. That
20 did put a strain on the Northwest system. I think people
21 are still in the process of analyzing precisely what went
22 on and so forth. We were not in a situation where
23 fortunately the lights went out. We were able to avoid
24 that, but it did place the system in some concern that
25 they could have gone out and it also dramatically drove up

1 the slot price of electricity.

2 CHAIR LUCE: Just to meet the needs during
3 that period of time was it necessary to your knowledge to
4 draw additional water through the hydro system?

5 THE WITNESS: There was some additional
6 water drawn through the hydro system. I don't know the
7 magnitude of that.

8 CHAIR LUCE: Would that have any affect on
9 another part of the environment called fish?

10 THE WITNESS: It certainly could, given that
11 the summer period is when the region has federal mandates
12 to provide certain levels of stream flow.

13 CHAIR LUCE: So in your opinion to the
14 general sense the addition of additional energy sources
15 such as wind power or other renewable resources might take
16 pressure off the hydro system and better allow us to meet
17 our other environmental needs for fish.

18 THE WITNESS: It certainly could, yes.

19 CHAIR LUCE: Thank you.

20 JUDGE TOREM: Other Councilmembers?
21 Councilmember Adelsman.

22 MS. ADELSMAN: Mr. Usibelli, just to follow
23 up to Mr. Sweeney's question, how much of the region's
24 power need is expected to be met with conservation which
25 is considered part of the green power?

1 THE WITNESS: That's correct. A significant
2 portion of the region.

3 MS. ADELSMAN: Like what percent?

4 THE WITNESS: Boy, I don't know that I know
5 off the top of my head what percentage. I guess I could
6 provide you with some historical information. If you look
7 over the last 20 years in the Pacific Northwest, not just
8 the State of Washington, and you look at all the resources
9 that have been brought on, if you view conservation as a
10 resource just as you would just a gas plant or wind or
11 something like that, the estimates are that about 25
12 percent of our needs, 20 to 25 percent of our needs were
13 met by the conservation activities that we undertook over
14 that 20-year period. I hope that gets to your questions.

15 MS. ADELSMAN: I know there was some figures
16 given by the Northwest Power Conservation Council but you
17 don't have those percentages.

18 THE WITNESS: The historic percentage?

19 MS. ADELSMAN: No, I'm talking about--

20 THE WITNESS: That comes from them.

21 MS. ADELSMAN: By 2020.

22 THE WITNESS: It is a significant number.
23 Again, I don't know it off the top of my head in
24 percentage terms, but they have identified that the major
25 resource for the next 20 years for the region, the most

1 cost effective resource is additional investment in energy
2 efficiency. That's correct.

3 MS. ADELSMAN: Thank you.

4 JUDGE TOREM: Councilmembers, any other
5 questions?

6 All right. Seeing none, Mr. Usibelli, thank
7 you for your time. It is now--

8 Mr. Hurson.

9 MR. HURSON: Just a couple questions.

10 JUDGE TOREM: I'm not sure that it's open to
11 recross. Is it something that the Councilmembers asked?

12 MR. HURSON: I'm sorry. I thought you were
13 going to excuse Mr. Usibelli.

14 JUDGE TOREM: I was. I wanted to know
15 why--I wasn't opening it to recross because there was no
16 redirect so I didn't want to bounce it back. Did you want
17 to comment on something that Councilmembers had that it
18 raised another question?

19 MR. HURSON: Correct.

20 JUDGE TOREM: Okay. I think given some of
21 the questions by Council that may be fair. If you can
22 keep it short because my intention is that it's now ten
23 minutes to 12:00. We do have witnesses calling in at one
24 o'clock, and my intention is to move Mr. Bastasch to the
25 afternoon session and include him in that one o'clock

1 period, and I don't think there's going to be much in the
2 way of cross-examination for Mr. Erickson; so I would like
3 to get him on and off before lunch and we'll see if
4 Mr. Nierenberg can get put on, on and off before lunch in
5 that order.

6 MR. HURSON: A couple questions.

7 CONTINUED CROSS-EXAMINATION

8 BY MR. HURSON:

9 Q. Mr. Sweeney asked a question about I guess
10 this check-off process.

11 JUDGE TOREM: Go ahead.

12 MS. ADELSMAN: There's a crisis here: food.

13 JUDGE TOREM: They're worried about lunch.
14 I'll get them fed. You ask your question.

15 MR. HURSON: This should literally not take
16 very long.

17 BY MR. HURSON:

18 Q. He'd asked about this check off. Something
19 about the renewables and people have a check-off system
20 you said for producing.

21 A. What I was referring to that there is a
22 requirement for the largest utilities in the state of
23 which currently there's 17 utilities I think. They have a
24 requirement to offer a green power purchase option to
25 their customers, and as a result I believe all of those

1 utilities have acquired some amount of green power to meet
2 that requirement. Utilities have also acquired power to
3 meet, renewable power to meet the base-load requirements
4 of all their customers.

5 Q. I guess as I understand the program you check
6 off and then the purchaser agrees to pay like ten percent
7 more on their utility bill.

8 A. It varies from less than one third of a cent
9 to approximately two cents depending on the utility.

10 Q. So they're checking if you're going to buy
11 wind renewable energy you're paying more money.

12 A. Yes, from that point three to about two
13 cents.

14 Q. Then as far as CTED you're aware that CTED
15 has a policy, for instance, governing state agencies
16 correspondence in the Growth Management Act, aren't you?

17 A. I'm sorry.

18 Q. Are you aware that CTED has principles
19 governing state agency correspondence in the Growth
20 Management Act?

21 A. I'm not familiar with the details of that.

22 Q. So you don't know what the policies or
23 procedures are for your agency's comment on Growth
24 Management Act issues?

25 A. I do know they comment on Growth Management

1 Act issues, but I don't know the specifics.

2 Q. I'm asking you. You're aware that there's a
3 policy, principles governing the state agency
4 correspondence under the Growth Management Act. Correct?

5 A. I am, yes.

6 Q. Do you know what those policies are?

7 A. No, I do not.

8 Q. So you don't know if you have complied with
9 your state policies and whether you have the authority to
10 speak on behalf of CTED, do you?

11 A. As I indicated with respect to growth
12 management and preemption we consulted with our growth
13 management group, and also that our position on preemption
14 was approved by the director of our agency.

15 Q. Do you know if you've complied with your own
16 other internal state guidelines on how you comment on
17 Growth Management Act issues?

18 A. Personally I do not.

19 Q. You do not. Do you know if CTED has ever
20 sent any written correspondence to the County related to
21 preemption or growth management or its interplay?

22 A. I do know that the growth management in
23 consultation with them has sent a number of comments, but
24 I am not familiar with the substance of those comments.

25 MR. HURSON: Thank you.

1 JUDGE TOREM: Is there any other need for
2 recross of this witness?

3 All right. Seeing none, Mr. Usibelli,
4 you're excused. I would like to have Wally Erickson come
5 forward and we'll swear you in. It's now about five
6 minutes to 12:00. For those that are worrying about
7 lunch, I'm not going to run anywhere past 12:15, although
8 we may end up having lunch down to essentially a half hour
9 plus 15 minutes to get in place for one o'clock.

10 (Wally Erickson sworn on oath.)

11 JUDGE TOREM: Councilmembers, we're looking
12 at Exhibit 29 and then also 29-R. Those were both
13 original prefiled by Erickson in 2004; is that correct?

14 THE WITNESS: Yes.

15 JUDGE TOREM: Did you file supplemental
16 testimony this year?

17 THE WITNESS: No.

18 JUDGE TOREM: All right. The only scheduled
19 cross-examination that I have I believe is by Counsel for
20 the Environment.

21 Mr. Peeples, are you going to be moving the
22 admission of the exhibits?

23 MR. PEEPLES: Yes.

24 JUDGE TOREM: He's been sworn and we've
25 identified the exhibits as 29 and 29-R.

1 (Exhibit Nos. 29.0, 29.1, and 29-R
2 identified for the record.)

3 WALLY ERICKSON,
4 being first duly sworn on oath,
5 testified as follows

6
7 DIRECT EXAMINATION

8 BY MR. PEEPLES:

9 Q. You have those testimonies, do you not? If
10 you were asked all those questions would the answers be
11 same?

12 A. Yes.

13 MR. PEEPLES: Move for admission.

14 JUDGE TOREM: All those in favor?

15 COUNCILMEMBERS: Aye.

16 JUDGE TOREM: Any opposed?

17 (Exhibit Nos. 29.0, 29.1, and 29-R admitted
18 into evidence.)

19 JUDGE TOREM: All right. Mr. Tribble.

20 MR. TRIBBLE: I'll try to be as brief as
21 possible.

22 CROSS-EXAMINATION

23 BY MR. TRIBBLE:

24 Q. Mr. Erickson, can you discuss the potential
25 threat that windmills in the Kittitas Valley Project would

1 have to avian species.

2 A. Well, with all wind projects impacts from
3 wind projects result in potential for collision with
4 turbines, collision with the moving blades. There's also
5 an impact on habitat direct loss of habitat from the
6 footprint of the facility, and then there's also some
7 potential for disturbance or displacement of avian
8 species.

9 Q. Are you concerned about any of the species
10 known to inhabit the area? Are you concerned about
11 mortality?

12 A. I guess we in our testimony we provided
13 predictions of what those levels of mortality would be.
14 If the concern is over individual bird mortality, if
15 that's what you're asking, do we have a concern over
16 individual bird mortality, I would say that--let me
17 clarify. There will be some bird mortality. There is a
18 potential for mortality to one listed species, the bald
19 eagle. So I guess my concern would primarily be in that
20 area.

21 Q. What type of specific mitigation measures are
22 put in place, suggested to be put in place for this
23 project that would affect this?

24 A. The biggest one is the acquisition of
25 habitat. The Applicant has--

1 Q. If you just limit the scope to avian
2 mortality.

3 A. Okay. I'll do that. I mean the application
4 of habitat could be construed as potential mitigation for
5 mortality because if you're improving habitat for birds on
6 that site you may be improving the production of those
7 birds. You might be increasing the abundance of those
8 birds and that would be a potential mitigation for some of
9 the mortality.

10 But as far as the other measures that are in
11 place the Applicant has agreed to use unguayed
12 meteorological towers. The permanent met towers that are
13 going to be on site will be unguayed. We've done research
14 in some other projects and notice met towers have actually
15 higher mortality than some of the wind turbines or most of
16 the wind turbines on a particular site in Wyoming.

17 Other measures to reduce or mitigate
18 mortality I think the reduction in the number of turbines
19 from the original design should result in fewer
20 fatalities. I don't know if it's directly considered
21 mitigation, but the Applicant has proposed a technical
22 advisory committee using a similar model to Wild Horse for
23 evaluating monitoring data that comes in, and if any sort
24 of unique or something comes up that wasn't anticipated
25 that the TAC can make recommendations to you, the Council,

1 on additional mitigation measures that may be necessary.

2 Q. In your testimony on page 7, and this is your
3 direct testimony, you discuss particular threat to two
4 species, do you know?

5 A. I do.

6 Q. What are those?

7 A. Basically there has been--my testimony
8 suggests there won't be any population-level consequences
9 for the species expected to be impacted. For example, the
10 two raptor species that are likely to be the most common
11 fatality is red-tailed hawk and American kestrel. Those
12 two species are two of the most common raptor species in
13 the U.S. There are estimates of several hundred thousand
14 to a million birds across the U.S. Our mortality
15 estimates are less than six or so raptors per yer for the
16 project, and so generally speaking we don't anticipate any
17 population-level consequences. No population-level
18 consequences have been documented at any other wind
19 project.

20 Q. When you say these fatality rates or even
21 significantly higher fatality rates would not be expected
22 to have population-consequences for the likely species
23 impacted when you're talking about population level
24 consequences in what zone are we talking about, physical?

25 A. It really--really people define

1 populations--you can't define population levels
2 differently. If you defined a population as a very
3 localized population, say if you drove all the way around
4 the wind project, I would say that that's not the typical
5 approach. I mean you're typically talking about a
6 biological population. So red-tailed hawks on the other
7 side of the Cascades or red-tail hawks--that's one way to
8 do it. Another way would be red-tailed hawks across North
9 America.

10 JUDGE TOREM: Why don't you just tell us how
11 you did when you answer the question.

12 THE WITNESS: Basically we were thinking of
13 something larger than a local population, larger than if
14 you drew the boundary around a wind project which doesn't
15 have any really biological basis.

16 JUDGE TOREM: Is there a particular
17 ecosystem you were looking at? Was there a range within
18 this side of the Cascades out to Spokane? Or give me an
19 idea on the boundaries so that it will answer
20 Mr. Tribble's question.

21 THE WITNESS: Generally speaking you're
22 typically thinking about the Columbia Basin or Eastern
23 Oregon, Washington.

24 BY MR. TRIBBLE:

25 Q. On page 8 of your testimony states, "Based on

1 the results of studies of other wind projects in the west,
2 we expect approximately two bat fatalities per turbine per
3 year, with most of the fatalities consisting of hoary and
4 silver-haired bats." What were the specific other wind
5 projects in the west that you're referring to?

6 A. At the time it was the Vancycle Wind Project,
7 the Foot Creek Rim project in Wyoming, Buffalo Ridge, a
8 Minnesota wind project. Those were projects that been had
9 been completed and had fatality information at those
10 sites. They were new generation facilities.

11 Q. In studies at those other projects was there
12 also similar to this project very little information
13 available with regard to bat populations?

14 A. Did you say bat populations?

15 Q. Yes.

16 A. Yes. Basically in those studies there was
17 little pre-project data collected on bats.

18 Q. And you have found across the board two bat
19 fatalities per year per project.

20 A. It ranged from one to three roughly speaking,
21 but it was a relatively consistent number at those
22 projects.

23 Q. Did you analyze the specific topography for
24 bat habitat on a project-by-project basis?

25 A. In some sense, yes. The Foot Creek Rim

1 Project is an example where it's located in shrub-steppe
2 habitat near the Snowy Range. In the north end of the
3 Snowy Range Mountain Range has two great corridors on
4 either side. I would say it's probably similar in
5 topography, somewhat similar in topography and sort of the
6 habitat types in the area. Buffalo Ridge Minnesota is
7 more of an agricultural area, but it is located in an area
8 with water sources. It's in the prairie pothole region.

9 The other thing that we considered in the
10 estimation of anticipated impacts to bats is the fact that
11 the fatalities that have occurred at these other projects
12 have been during fall migration. The bat fatalities
13 almost exclusively have occurred during fall migration.
14 We believe that they're migrant bats, not local resident
15 bats, and technologies to try to study migrant bat
16 populations are very undeveloped; and so that was another
17 reason why we focused on using existing information which
18 is a typical approach at a lot of these projects.

19 Q. Let's talk about monitoring. Your testimony
20 talks about when you talk about impacts to various species
21 that monitoring will provide direct measures for mortality
22 rates; is that correct?

23 A. Yes.

24 Q. What's the scope of monitoring that you would
25 recommend?

1 A. I would stick with I believe the Wild Horse
2 monitoring project is a good model. That is a minimum of
3 two years of fatality monitoring, and, you know, it's
4 fatality searches on a systematic basis at turbines. It
5 studies to understand how well people pick up carcasses to
6 do trials to determine whether people have a 50 percent
7 chance, 25 percent chance, 75 percent chance of finding
8 carcasses. You also do carcass removal studies, and those
9 are studies where you're placing carcasses in the field,
10 fresh carcasses to try to get a handle on how quickly
11 scavengers remove carcasses, and those are two
12 adjustments. The search efficiency and the scavenging are
13 applied to what you find to come up with these estimates.

14 I think, again, the Wild Horse model is a
15 good example, a good approach. The typical monitoring at
16 these projects--and the Wild Horse is an example. The
17 State Line Project is another example that's used this
18 sort of the model--you collect information on one or two
19 years initially standardized fatality monitoring and then
20 if nothing unique shows up, you might go towards only an
21 incidental monitoring system for the life of the project.

22 These projects do have this incidental
23 monitoring system in place where you're monitoring large
24 events. It's a self-reporting system similar to what you
25 have in the electric utility power lines. But that's done

1 for the life of the project. So for large raptors,
2 eagles, things like that that sort of system is pretty
3 good to be able to document that sort of large bird
4 mortality. For small birds it's not an effective tool,
5 long-term tool for estimating fatality rates with the
6 incidental monitoring system.

7 Q. If bird mortality was a higher rate than
8 expected for a particular turbine, particular string, or a
9 particular time of year to a particular turbine string
10 that was recognized, what would you recommend?

11 A. It would really depend on the species.
12 Initially and, you know, higher than expected I would
13 still want to look at whether it's at a level of concern.
14 So is it higher than was expected but is it at a level of
15 concern and is it involving species that people are maybe
16 more concerned with than others; for example, bald eagle,
17 golden eagle, things like that. I would recommended that
18 the TAC look at the information and determine whether
19 there's a cause. One of the things we've done when those
20 sort of events occur is that you maybe provide a more
21 detailed monitoring program for those affected turbines
22 and then look at that information, maybe monitor for an
23 extra year at those sites and make some decisions on
24 whether you should mitigate for them in some way; where at
25 State Line, for example, because of some of the raptor

1 mortality, nest sites, nest platforms have been used to
2 create nesting habitat away from the wind project. But
3 I'd leave it up to the TAC. I think the TAC and EFSEC has
4 the ability to propose changes, increase mitigation if
5 that occurs.

6 Q. Still on page 8 near the bottom you state,
7 "Construction impacts to wintering big game are expected
8 to be low, given that most of the heavy construction such
9 as road and foundation construction will occur outside the
10 critical winter months." Was the rest of your testimony
11 along with this section under the assumption that the
12 heavy construction would occur outside the winter months?

13 A. Yes.

14 MR. TRIBBLE: Thank you.

15 JUDGE TOREM: Mr. Carmody, do you have any
16 questions that are for this witness?

17 MR. CARMODY: No.

18 JUDGE TOREM: I'll ask the Councilmembers.
19 Councilmember Wilson?

20 MS. WILSON: No.

21 JUDGE TOREM: Councilmember Adelsman?

22 MS. ADELSMAN: No.

23 JUDGE TOREM: Councilmember Towne?

24 MS. TOWNE: Yes. I wonder, Mr. Erickson,
25 could you give us an update on the habitat conservation

1 plan. Is it still--

2 THE WITNESS: It's in the office of Fish and
3 Wildlife Service. Frank Curves I talked to him recently
4 at the Wild Horse Technical Advisory Meeting. He
5 basically said that he does not have the staff right now,
6 and this is a low priority for him right now. Part of the
7 reason I think he says that is bald eagles have been
8 proposed for delisting for quite some time, and I think
9 it's my opinion that the data supports delisting. It's
10 just that it hasn't been done yet. So I think that's part
11 of the hold up. Plus I think Fish and Wildlife Service
12 staff is overextended and hasn't been able to get at it.

13 MS. TOWNE: Thank you. Starting at the
14 bottom of page 1 of your rebuttal testimony, you're
15 responding to some comments from--anyway you distinguish
16 between research for abundance and population
17 characteristics versus designing a project to minimize or
18 reduce risks. Can you elaborate a little bit on that. I
19 hadn't seen that distinction before.

20 THE WITNESS: Well, we are not enumerating
21 exactly how many red-tailed hawks, for example, are in the
22 project area. The difficulty with that is you're dealing
23 with both resident birds and in the wintertime migrant
24 birds have come in from other places. During the
25 migration season you have birds passing over the site on

1 their migration to other places.

2 So what we do is we generate metric,
3 standardized metrics which is the number of red-tailed
4 hawk observations per 20-minute survey and compare that to
5 other sites. Those are, again, the distinction we don't
6 have absolute numbers of red-tailed hawks that are in the
7 area.

8 Now, for breeding red-tailed hawks we do
9 have some information that might be tied more to abundance
10 which would be nest density. We did aerials, helicopter
11 aerial surveys of red-tailed hawk nests within two miles
12 of the project and identified six active red-tailed hawk
13 nests. So I would say at least that component is more of
14 a direct measure of abundance. But these other measures
15 we see a bird one day week one and we see them again on
16 week two. We don't know if that's the same bird or not.
17 So we can't enumerate exactly how many red-tailed hawks
18 are unique red-tailed hawks being there.

19 MS. TOWNE: So assuming there are red-tailed
20 hawks what do you do with the design to minimize risk to
21 that hawk or those hawks?

22 THE WITNESS: Yes. Well, one thing we can
23 do is, for example, the nesting data. The monitoring plan
24 and mitigation plan proposes to do an additional nest
25 search. We've identified where the nests are so far, but

1 those change over time. The plan is to go out and redo
2 that survey and to identify nests within close proximity
3 to construction areas. For example, you'd limit
4 construction during the breeding season. So that's one
5 way of doing it, one way of using the information.

6 Another way of using it is to look at the
7 flight paths of the red-tailed hawks and that information
8 generally has supported putting the turbines on the top of
9 the ridge line and not on the windward side of the ridge
10 line. Because the general raptor behavior is the use of
11 updrafts along ridge lines. So if you have westerly winds
12 and northwest winds, you tend to be concentrated on the
13 west or the windward side of ridge lines and that's
14 another way that could be used to minimize the impact.

15 MS. TOWNE: Thank you. That's helpful.

16 JUDGE TOREM: Councilmembers to my left any
17 questions?

18 All right. Seeing none, any there other
19 redirect or recross for this witness?

20 MR. PEEPLES: No.

21 JUDGE TOREM: All right. It's now 12:15.
22 So we've kept my promise. Thank you, counsel.
23 Mr. Erickson, you're excused. I believe before we break
24 for lunch we do have a one o'clock call-in for the
25 remaining two witnesses. That's Mr. Sterzinger and

1 Mr. Jorgensen. My hope is Mr. Nierenberg we'll get you on
2 in that grouping immediately following them. The promise
3 at least the listing of predictions to be brief.

4 Mr. Bastasch, if we can fit you in at one
5 o'clock, great; otherwise, you will likely be at the three
6 o'clock time. If you want to work that out with
7 Mr. Peeples as to specific times, I will take Mr. Peeples'
8 consideration after lunch.

9 If you have any further input on the site
10 visit get that to Allen Fiksdal right now. Irina Makarow
11 is going to be busy getting our phone set up at one
12 o'clock, and we'll come back and finalize that at some
13 point on the record this afternoon. Thank you. We're
14 adjourned until one o'clock.

15 (Lunch recess taken from 12:16 p.m. to 1:10
16 p.m.)

17 (George Sterzinger appearing by telephone.)

18 JUDGE TOREM: It's now almost ten minutes
19 after 1:00. We're continuing the Kittitas Valley Wind
20 Power Project adjudication this afternoon on Wednesday,
21 September 20. This afternoon's session is mainly
22 telephonic witnesses after some short technical
23 explanations which we never would have guessed we now have
24 the conference line working.

25 This is Administrative Law Judge Adam Torem,

1 and the entire Council that was present at the last two
2 and a half days is now reassembled here at Central
3 Washington University's Student Union building in Room
4 301, the board room. Certain members of the intervening
5 parties indicated they would not be here this afternoon,
6 but the Applicant is here with the witnesses as scheduled
7 calling in on the phone. There are also two carryover
8 witnesses from this morning that we will be using. At
9 this point Tim McMahan is going to bringing in the
10 testimony of Mr. George Sterzinger. He's on the line.

11 Mr. Sterzinger, can you hear me?

12 MR. STERZINGER: I can.

13 JUDGE TOREM: Knowing that this is a
14 telephonic conference and it's going to be a little bit
15 difficult, I'm going to hopefully have only one person
16 talking at a time and you'll be able to hear them clearly.
17 If by any stretch of the imagination there's an objection
18 this afternoon and you hear it, just wait and let us
19 discuss it, rule on it, and then continue with your
20 testimony as dictated by the ruling. I know I think
21 you're in New York; is that right?

22 MR. STERZINGER: Washington, D.C.

23 JUDGE TOREM: Washington, D.C. Well, long
24 distance raise your right hand.

25 MR. STERZINGER: I got it raised.

1 JUDGE TOREM: I think you're still by
2 telephone within my jurisdiction for the oath.

3 (George Sterzinger sworn on oath.)

4 JUDGE TOREM: I'm going to have Mr. Tim
5 McMahan on behalf of the applicant go through and identify
6 which exhibits you're offering and the testimony and then
7 Mr. James Hurson is going to switch places with him and do
8 the cross-examination as scheduled.

9 MR. McMAHAN: Thank you, Your Honor.

10 GEORGE STERZINGER

11 being first duly sworn on oath,

12 testified as follows:

13

14 DIRECT EXAMINATION

15 BY MR. McMAHAN:

16 Q. Mr. Sterzinger, Tim McMahan here. Are you
17 familiar with Exhibit No. 35 called Applicant's prefiled
18 direct testimony with Witness No. 16, George Sterzinger?

19 (Exhibit Nos. 35.0 and 35.1 identified for
20 the record.)

21 A. Yes, I am.

22 Q. Is that your testimony?

23 A. Yes, it is.

24 Q. Is there anything in that testimony that has
25 changed or that you need to amend since its writing?

1 A. No.

2 Q. Are you prepared to answer any questions
3 regarding that testimony?

4 A. Yes, I am.

5 MR. McMAHAN: I would move for admission of
6 that exhibit, Your Honor, plus the attachments as well as
7 the documents that are referenced there on Page 2.

8 JUDGE TOREM: And the documents you're
9 referencing on page 2 are the ones that are contained in
10 the Application for site certification.

11 MR. McMAHAN: As well as the clarification
12 information Attachment 10.

13 JUDGE TOREM: Councilmembers, do you
14 understand the exhibits accompanying and supporting
15 Exhibit 35 that are being offered? Any questions?

16 Seeing none, all Councilmembers in favor of
17 admitting this to the record?

18 COUNCILMEMBERS: Aye.

19 JUDGE TOREM: Any opposed?

20 (Exhibit Nos. 35.0 and 35.1 identified into
21 the record.)

22 JUDGE TOREM: Thank you, Mr. McMahan.
23 Mr. Sterzinger, hang on the line. We're just going to
24 switch places and have Mr. Hurson come to ask you his
25 cross examination.

1 THE WITNESS: All right.

2 CROSS-EXAMINATION

3 BY MR. HURSON:

4 Q. Actually I just have a couple questions.
5 Your testimony relates just to kind of a generalized
6 discussion of property values impacts.

7 A. The affect of wind development, of past wind
8 development projects on property values.

9 Q. You haven't done any assessment on values on
10 Kittitas County though.

11 A. No, I have not.

12 Q. Have you been to Kittitas County?

13 A. No.

14 Q. Do you know where Kittitas County is?

15 A. It's in the State of Washington in the
16 eastern part of the state.

17 Q. Other than that do you have any other frame
18 of reference?

19 A. No, not really.

20 MR. HURSON: Okay. Thank you.

21 JUDGE TOREM: I see that Mr. Ed Garrett is
22 here on behalf of ROKT this afternoon and he's informed
23 me, Mr. Garrett, correct me if I'm wrong, that your
24 attorney Jamie Carmody is not going to attend this
25 afternoon's session and that therefore you're not

1 attempting to ask any questions to applicants so therefore
2 ROKT waives its cross.

3 MR. GARRETT: Yes.

4 JUDGE TOREM: So that's all the parties
5 cross-examination, Mr. Sterzinger. Let me see if
6 Mr. McMahan has any redirect and then I'll shift to the
7 Council. I'll poll Councilmembers. Mr. McMahan is
8 shaking his head that he'd rather have me do that first.

9 Councilmember Wilson?

10 MS. WILSON: No.

11 JUDGE TOREM: Johnson?

12 MS. JOHNSON: No.

13 JUDGE TOREM: Towne?

14 MS. TOWNE: No.

15 JUDGE TOREM: Fryhling?

16 MR. FRYHLING: No.

17 MS. ADELSMAN: No.

18 JUDGE TOREM: Adelsman, no.

19 Sweeney?

20 MR. SWEENEY: No.

21 JUDGE TOREM: Chairman Luce?

22 CHAIR LUCE: No.

23 JUDGE TOREM: Well, Mr. Sterzinger it was
24 nice speaking to you to get our phone off the ground here
25 today, but I think you are now free to go back to your

1 business there at the end of the day in Washington, D.C.

2 THE WITNESS: All right. Thank you very
3 much.

4 JUDGE TOREM: All right. Thank you, sir. I
5 believe we are waiting for Jorgensen to call in and,
6 Mr. Jorgensen, are are on the line?

7 MR. PEEPLES: What I suggest is that ROKT
8 was the only party that was going to cross-examine Henrik
9 Jorgensen who's calling in from Denmark, Michael Bernay,
10 and then Dan Kammen, and I would move to be allowed to do
11 those by declaration and dispense with it.

12 JUDGE TOREM: All right. In the meantime
13 I'm going to ask for us to arrange a seating arrangement.
14 Maybe I could have the Councilmembers on this side or
15 Ms. Adelsman maybe you could switch places and move down.
16 I'll put a witness here and an attorney here and take care
17 of Mr. Nierenberg's testimony next.

18 MS. ADELSMAN: Sure.

19 JUDGE TOREM: While we're setting that up
20 let me see if I can look and summarize the testimony.
21 Mr. Peeples, Mr. Jorgensen's testimony was going to be on
22 the tower and turbine safety.

23 MR. PEEPLES: Mechanical design.

24 JUDGE TOREM: His exhibits were No. 37.

25 MR. PEEPLES: I believe so. I have them

1 here.

2 JUDGE TOREM: I don't see any supplemental
3 testimony that was filed.

4 MR. PEEPLES: There is no supplemental
5 testimony.

6 JUDGE TOREM: Councilmembers, I don't recall
7 that this body had any presubmitted questions to me in
8 cross-examination for Mr. Jorgensen on tower and turbine
9 safety and engineering. Are any other parties present
10 that would object to using the affidavit procedure for
11 Mr. Jorgensen assuming he doesn't call in? Are there any
12 other cross-examination questions?

13 Seeing none, Councilmembers, is there any
14 need to have Mr. Jorgensen available if for some reason he
15 doesn't call in? Do we need to make alternate
16 arrangements or are you comfortable with an affidavit?

17 COUNCILMEMBERS: Affidavit.

18 JUDGE TOREM: All those in favor of bringing
19 in Exhibit 37 by affidavit say aye.

20 COUNCILMEMBERS: Aye

21 JUDGE TOREM: Any opposed?

22 Seeing none, Mr. Peeples, please let me know
23 if you need an extension of the next Friday's deadline if
24 you want to bring that in. If you want to submit a fax
25 copy first given the international, we'll substitute

1 evidence if you can get it faxed in by Friday.

2 MR. PEEPLES: Thank you. Maybe just PDF it
3 in. Could we ask for the same thing of Bernay and Kammen
4 and have them released so they don't have to call in? We
5 can call them right now.

6 JUDGE TOREM: Exhibit 38 and Exhibit 39.
7 First, Mr. Bernay's Exhibit 38 is wind farm related risk
8 from an insurance perspective. I think we heard the same
9 witness for those that participated in the Wild Horse
10 proceeding. It's Exhibit 38 and there is no supplemental
11 testimony.

12 Mr. Kammen's is a wind farm risk analysis,
13 and that's Exhibit 39, and it has some attachments to it
14 with some studies that I believe was a--39-1 was his
15 resume, but 39-2--oh, I thought there was another one
16 there.

17 MR. PEEPLES: I don't think so. I think he
18 just had the resume, Your Honor.

19 MS. WILSON: 39-2 is an analysis of
20 potential risks.

21 JUDGE TOREM: The resume runs for several
22 pages and it was updated in 2003, but this one is, yes, a
23 four or five page document about safety risks and I think
24 it addresses things such as ice throw and figuring how far
25 it might go.

1 So, Councilmembers, with that in mind let me
2 again survey the parties that are in attendance this
3 afternoon for Mr. Bernay, Exhibit 38; Mr. Kammen, Exhibit
4 39. Are there any objections to those coming in by
5 affidavit?

6 JUDGE TOREM: Seeing none, Councilmembers,
7 do you have any objections to them coming in by affidavit?

8 COUNCILMEMBERS: No.

9 JUDGE TOREM: All right. Then a motion has
10 been made by the Applicant for your consideration. May
11 Exhibits 37, 38, and 39--we've already addressed 37--so
12 just 38 and 39 come in by affidavit? All those in favor?

13 COUNCILMEMBERS: Aye.

14 JUDGE TOREM: Any opposed?

15 All right. Then 38 and 39 may come in by
16 affidavit as well. At this time let me direct
17 Councilmembers to turn back to Exhibit 26 and I'll ask
18 Mr. Nierenberg to take this seat between Councilmembers
19 Fryhling and Sweeney, neither of which have shown any
20 propensity to bite people in the past.

21 CHAIR LUCE: Lunch was a little short, you
22 know.

23 JUDGE TOREM: But we did cut their lunch
24 hour so we'll see what happens.

25 MR. PEEPLES: Just a second.

1 JUDGE TOREM: You take your time and when
2 you're ready, we'll swear in Mr. Nierenberg at that
3 moment.

4 MR. PEEPLES: Thank you for that
5 Mr. Nierenberg--

6 JUDGE TOREM: Let me swear him in and then
7 we'll go from there.

8 MR. PEEPLES: Excuse me.

9 (Ron Nierenberg sworn on oath.)

10 JUDGE TOREM: Again, thank you for
11 accommodating the shift of your testimony after lunch.
12 Mr. Peeples.

13 RON NIERENBERG,
14 being first duly sworn on oath,
15 testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. PEEPLES:

19 Q. You've reviewed your testimony which is
20 Exhibit No. 26. Correct?

21 (Exhibit Nos. 26.0 and 26.1 identified for
22 the record.)

23 A. Yes.

24 Q. Here's a copy you can have in front of you if
25 you have any questions. If I asked you all those

1 questions, would those be your answers?

2 A. Yes, they would.

3 MR. PEEPLES: I move the entry of that
4 document. I believe his resume is attached to that I
5 believe is the only exhibit. Let me double check over
6 here.

7 JUDGE TOREM: You're correct.

8 Councilmembers, the motion before you is to
9 take Exhibit 26 into the record.

10 Is there any parties that have opposition to
11 Mr. Nierenberg's testimony coming in?

12 All those in favor?

13 COUNCILMEMBERS: Aye.

14 JUDGE TOREM: Opposed?

15 All right. Exhibit 26 and its supporting
16 resume document is also admitted to the record.

17 (Exhibit Nos. 26.0 and 26.1 admitted into
18 evidence.)

19 JUDGE TOREM: Cross-exam is scheduled for--

20 MR. PEEPLES: I think the only person, the
21 only party to cross-exam was going to be ROKT and their
22 attorney is not here.

23 JUDGE TOREM: Counsel for the Environment I
24 believe also has potential questions and he's right behind
25 you.

1 MR. TRIBBLE: I am going to reserve pending
2 questions by the Council.

3 MR. PEEPLES: I'm sorry. On the list I had
4 him marked off. I can't keep them straight anymore.

5 JUDGE TOREM: Council, I know in regards to
6 the weather. Right? Mr. Bastasch is noise. As to
7 weather I don't remember if there were any specific
8 questions.

9 Councilmember Wilson?

10 MS. WILSON: I didn't turn in all my
11 questions in advance.

12 JUDGE TOREM: That's all right.

13 MS. WILSON: I had a question regarding the
14 statement on page 8, line 22. You want me to ask about
15 19?

16 MS. TOWNE: No, same paragraph.

17 MS. WILSON: Same paragraph. And it's
18 relative to the--

19 MR. PEEPLES: May I look over my witness's
20 shoulder or can I look at yours? Thank you.

21 MS. WILSON: It says based on your
22 experience in prospecting the State of Washington there
23 are fewer than six economically viable and developable
24 sites. Could you further explain to me what makes the
25 site economically developable for larger than 50

1 megawatts?

2 THE WITNESS: Well, you need a combination
3 of maybe three elements. One is, of course, land that has
4 a wind resource that's adequate. Typically we're looking
5 at a 16-mile-an-hour annual average as being adequate, but
6 that's not written in stone. It depends on elevation.
7 For instance, a site of 10,000 feet where the air density
8 is lower would need a higher wind resource. Generally we
9 have to be within a few miles of a power line that can
10 take the power to an area where it's needed. So that's
11 sort of a second constraint, and then, you know, the other
12 constraints, of course, is that it's an environmentally
13 acceptable area. But from my perspective the main thing
14 would be the wind resource.

15 MS. WILSON: As I recall, I think it was you
16 who did studies on where wind was available for
17 16-mile-an-hour winds 12 months out of the year, type of
18 thing.

19 THE WITNESS: Yes, here and throughout the
20 county and throughout the state.

21 MS. WILSON: This site in Kittitas County is
22 it the only site in Kittitas County that meets this
23 qualification that is not yet developed?

24 THE WITNESS: Oh, that is not yet developed.
25 Well, with the caveat of the 50 megawatts it's certainly

1 the best of the sites that are remaining, and it may be
2 the only site possibly as well. I'm dancing a little bit
3 because I work for two other clients who have potential
4 projects here and I'm bound by confidentiality agreements
5 with them, but I would say it's the remote possibility
6 that there's a second site, but I'm not certain.

7 MS. WILSON: Thank you.

8 JUDGE TOREM: Mr. Nierenberg, when you
9 answered is that recognizing that the Wild Horse Project
10 is already built?

11 THE WITNESS: Yes.

12 JUDGE TOREM: Would the Wild Horse Project
13 be considered a better site than what's been explained to
14 you for the Kittitas Valley site?

15 THE WITNESS: Yes, it's slightly better.

16 JUDGE TOREM: And that's based on the wind
17 resource alone.

18 THE WITNESS: Yes. Based strictly on, yes,
19 energy production at the potential wind speeds.

20 JUDGE TOREM: So that's not taking into
21 account whether there is transmission lines closer or
22 father away from any particular wind resource.

23 THE WITNESS: I don't really know the exact
24 distances of the facility power line at Wild Horse. I
25 know it's relatively close as is the one with Kittitas.

1 So it's really looking at the wind resource.

2 JUDGE TOREM: Councilmember Johnson.

3 MS. JOHNSON: When you were talking about
4 the other sites that are available in Kittitas County and
5 you were led to believe that are permitted is that taking
6 into consideration the two that have been applied for
7 already in Kittitas County, and the one that we know is
8 coming in or are you talking that there is also another
9 site?

10 THE WITNESS: Well, the sites that I'm
11 thinking of are the Desert Claim, and there's a site that
12 people are looking at fairly close to Wild Horse that's
13 sometimes called Vantage, but it's really just sort of
14 down the hill and below Wild Horse.

15 MS. JOHNSON: All right. Thank you.

16 JUDGE TOREM: Other Councilmembers questions
17 for Mr. Nierenberg on the meteorological data?

18 MS. TOWNE: Just a follow-up question. In
19 your response to inquiry from the Council you said that
20 land with a 16-mile-per-hour average is a primary criteria
21 threshold.

22 THE WITNESS: Yes,

23 MS. TOWNE: That's average. On line 16,
24 right after that you say a site must have an average wind
25 speed of at least 16 miles per hour, and then you say a

1 site with wind speed of 15 miles per hour I'm presuming
2 that means average.

3 THE WITNESS: That would be an annual
4 average, right. And that's also at hub height where the
5 center line of the turbine is.

6 MR. FRYHLING: I have a very simplistic
7 question. If you were to evaluate the Kittitas Valley
8 Wind Site and we did it on a scale of one to ten and this
9 one was the worst and ten was the best would this be a 7,
10 8, 9, 10? Is this a 10 site?

11 THE WITNESS: In the context of the world,
12 the nation, or the county?

13 MR. FRYHLING: In Kittitas County.

14 THE WITNESS: Oh, well, I suppose in
15 Kittitas County, Wild Horse would be a 10 maybe and
16 Kittitas or--what is it called?

17 MR. FRYHLING: Kittitas Valley.

18 THE WITNESS: Kittitas Valley might be an 8.

19 MR. FRYHLING: Thank you.

20 JUDGE TOREM: Other Councilmembers? All
21 right. Let me see if we have other cross-examination. It
22 was reserved by Counsel for the Environment. Would you
23 like to ask any questions, sir?

24 MR. TRIBBLE: One follow-up question.

25 ///

1 CROSS-EXAMINATION

2 BY MR. TRIBBLE:

3 Q. In the context of the Western United States
4 what would you characterize this on a scale of one to ten?

5 A. Oh, it would be in the middle range. Maybe a
6 five. You know, are you including Texas in the Western
7 United States?

8 Q. Only the states that are hooked up to the
9 western grid.

10 A. I don't know if Texas where it falls. If we
11 exclude Texas maybe then we're really at a five or maybe
12 even a high five. Texas would push us down because
13 there's huge resources in Texas.

14 JUDGE TOREM: Mr. Hurson, you're indicating
15 a desire to ask a few questions?

16 MR. HURSON: Yes.

17 JUDGE TOREM: I know you weren't on the
18 list. Are there any strong objections?

19 MR. PEEPLES: I'll object.

20 JUDGE TOREM: On what basis: just that he
21 hasn't--

22 MR. PEEPLES: He has not reserved cross.

23 JUDGE TOREM: Mr. Hurson, did something come
24 up today that raises something?

25 MR. HURSON: Response to the questions from

1 the Councilmember.

2 JUDGE TOREM: Seeing that you couldn't
3 anticipate, then I'll hopefully limit the scope and
4 overrule the objection.

5 CROSS-EXAMINATION

6 BY MR. HURSON:

7 Q. Your testimony indicated that there were six
8 other economically viable sites in the state.

9 MR. PEEPLES: I'm going to object. That was
10 already in the testimony.

11 MR. HURSON: Just clarifying.

12 BY MR. HURSON:

13 Q. Is Desert Claim a viable site in the state?

14 MR. PEEPLES: Again, that was within the
15 testimony.

16 JUDGE TOREM: I'm going to allow it,
17 Mr. Peeples.

18 MR. PEEPLES: Okay.

19 A. I'm on very shaky ground here because that's
20 a client that I have. I'm not an economist. I don't
21 think it's a viable site, but there are other people that
22 think it is, and it's hard to answer that question without
23 knowing, you know, what kind of power purchase agreement
24 they might obtain, you know, which determines how much
25 they get paid per kilowatt hour. So without knowing that

1 half of the equation, it's hard to give you a definitive
2 yes or no.

3 Q. Is the Invenergy site an economically viable
4 site?

5 A. I don't know that there is an Invenergy site.

6 Q. That's the one near Vantage.

7 A. I heard that they just lost their lease out
8 there so I don't know if that's true or not.

9 CHAIR LUCE: Could you repeat that, please.
10 Just lost a what?

11 THE WITNESS: A land lease.

12 CHAIR LUCE: Oh, okay.

13 BY MR. HURSON:

14 Q. That's a rumor.

15 A. Yes, I would characterize that as a rumor.

16 Q. Are you aware that DNR just issued a SEPA
17 notice last week regarding the leases on the property for
18 that particular site?

19 A. I'm not aware of that.

20 Q. So you don't really have any specific
21 first-hand information regarding the leases and the
22 distance of leases or any of that.

23 A. No, not per se.

24 Q. So you don't know if Invenergy is a viable
25 site or not.

1 A. It depends on how--you know, it depends on a
2 lot of variables that are outside the realm of
3 meteorology, but it's possible it could be viable; but it
4 may not exceed say a 50-megawatt threshold and developers
5 typically are not developing anything under about 100
6 megawatts. It puts it into a sort of gray area in terms
7 of viability.

8 Q. So for you to reach a generalization of there
9 only being six sites that may be your perspective but
10 others could differ.

11 A. Yes, and six is an approximate number. It's
12 not written in stone. It could be seven. It could be
13 five.

14 Q. But to actually figure out whether a site is
15 viable or not you need to have I understand wind farm
16 companies do a lot of meteorological data backup.

17 A. Of course.

18 Q. And that's where you can determine that.

19 A. Well, that's, you know, my what my role is.
20 I can't define what a person or an entity will pay for
21 that electricity, and that's the other half of the
22 equation that I can't judge.

23 Q. And I understand I've been told that
24 meteorological data is sort of among the most protected
25 business information that wind farm folks have.

1 A. Pretty much.

2 Q. So other wind farm folks could have all sorts
3 of protected meteorological data that would show other
4 viable wind sites that just you're not aware of.

5 A. I work for almost all the developers that are
6 in this part of the county in the United States, including
7 the parties that are looking at those other wind farms.

8 Q. So you have access to it but you're not at
9 liberty to discuss it.

10 A. Exactly.

11 Q. So you're going to testify knowing
12 information but aren't able to disclose it.

13 A. In part. There is public domain information
14 that, you know, the basis of my saying before that one's
15 viable and one's not viable is based on some wind
16 information that is in the public domain.

17 Q. Is State Line a site?

18 A. Well, State Line is one that is already built
19 so I don't know if I'd count it as one of the six.

20 MR. PEEPLES: I'm going to object at this
21 point. This is cross that could have been done prior.
22 Again, I just renew my objection.

23 JUDGE TOREM: So, Mr. Hurson, I know we
24 started with the response to the Council, and I think it's
25 still within the scope of that, but I believe we're

1 driving at knowing and clarifying Mr. Nierenberg's
2 comments as to how many sites. And if you want to now
3 clarify, including those that are built, maybe it would
4 help all the Councilmembers to know out of the built sites
5 where does KV rank in buildability or viability from his
6 meteorological perspective. And I'm getting nods from
7 Councilmembers they were going to go there anyway.

8 BY MR. HURSON:

9 Q. Actually where I was going with it is I asked
10 about State Line. You said you weren't sure if that's one
11 of the six, and I'm a little confused here because you say
12 there's six, but you aren't sure which ones you're talking
13 about.

14 A. No, I think I was referring to the six
15 undeveloped sites which would exclude State Line.

16 Q. So State Line isn't able to expand? It's
17 been like about six different phases I understand.

18 A. There is one expansion area that I know that
19 would be one of those six, yes. Sorry about that.

20 Q. And then Klickitat County has expandable
21 sites?

22 A. Well, I mentioned specifically the Columbia
23 Hills is one of those sites. All the sites in Klickitat
24 County are in the Columbia Hills

25 Q. Wild Horse can be expanded?

1 A. I don't know if it can or it can't be.

2 MR. HURSON: Nothing further.

3 JUDGE TOREM: Thank you, Mr. Hurson.

4 Councilmembers, additional questions?

5 MR. SWEENEY: We didn't get that ranking
6 question in.

7 JUDGE TOREM: Well, he didn't ask it. I'll
8 ask it on the Council's behalf then.

9 Mr. Nierenberg, as thinking of all the sites
10 that you know that are built or unbuilt sites left--first,
11 how many built sites as to how many unbuilt sites are you
12 aware of that you can talk about in the State of
13 Washington for wind power?

14 THE WITNESS: Well, I haven't worked on
15 Hopkins Ridge so I can't really comment on it or Nine Mile
16 Canyon or Nine Canyon. But I have worked on State Line,
17 and I'm thinking of what's built. And I think there's
18 also the Big Horn and one adjacent to it which I did not
19 work on that are both sort of near the Roosevelt are what
20 I consider part of the Columbia Hills those are built.

21 So to rank them all my guess is that most of
22 the built sites would rank slightly better than Kittitas.
23 The problem with State Line which is the biggest strictly
24 from a wind resource it was far better, but the actual
25 performance of the wind farm is far worse than what we

1 expect Kittitas to do, you know, due to purely mechanical
2 failures of the wind turbines. So part of the problem
3 with evaluating performance of one site versus another is
4 completely outside of my area because it has to do with
5 turbine mechanics. If the machine is working and
6 electrical wires not melting which has happened over
7 there.

8 In terms of the undeveloped sites, again, I
9 would say it's one of the best both in the county and the
10 state.

11 JUDGE TOREM: Councilmembers, any other
12 questions? I know we didn't get a 10, 9, 8 rating but it
13 doesn't sound like that may be possible there.

14 MR. PEEPLES: I would like to point out that
15 he does have some--I think he's been straightforward with
16 you that he does have a relationship with most of these
17 people.

18 JUDGE TOREM: Clearly, I don't think anybody
19 is contesting that, Mr. Peeples, and I've recognized the
20 constraints that may put on releasing confidential and
21 unsharable information.

22 Councilmember Adelsman.

23 MS. ADELSMAN: Just quick a clarification.
24 Before you said Kittitas Valley may be a number five plus,
25 but now you say it's one of the best of undeveloped. When

1 it was one of the five plus did you include the developed
2 one in that?

3 THE WITNESS: Well, that was a question
4 about the entire Western United States. So within the
5 Western United States it ranks as a five in this range
6 from 1 to 10.

7 MS. ADELSMAN: And then you gave a number 8
8 for the Kittitas.

9 THE WITNESS: That's within Kittitas County.

10 MS. ADELSMAN: I just wanted to know.

11 THE WITNESS: And an 8 would be high, that 8
12 from the back, but from 10 being high.

13 MS. ADELSMAN: I understand. Correct.

14 JUDGE TOREM: Any redirect?

15 MR. PEEPLES: No.

16 JUDGE TOREM: Councilmembers, any other
17 questions for this witness?

18 All right. It's now 1:35, a little bit
19 after that. I think we have enough to take Mr. Bastasch.
20 Are you here, sir?

21 Come on up and switch places with
22 Mr. Nierenberg.

23 Thank you, sir.

24 THE WITNESS: You're welcome. Thank you.

25 JUDGE TOREM: If Councilmembers would direct

1 their attention to Exhibit 25. It has a supporting
2 Exhibit 25-2. There is also Exhibit 25-SUP. We will
3 swear in Mr. Mark Bastasch.

4 (Exhibit Nos. 25, 25.1, 25.2 and 25-SUP
5 identified for the record.)

6 (Mark Bastasch sworn on oath.)

7 JUDGE TOREM: Mr. Peeples, if you'd go
8 through the preliminaries.

9 MARK BASTASCH,

10 being first duly sworn on oath,

11 testified as follows:

12

13 DIRECT EXAMINATION

14 BY MR. PEEPLES:

15 Q. Exhibit 25 was your basic analysis with
16 regard to the old configuration and Exhibit 25-SUP is your
17 analysis for the new configuration then.

18 A. Correct.

19 Q. At the time of the old configuration had I
20 asked you all the questions with regard to Exhibit 25
21 would those be your responses?

22 A. They would.

23 Q. In regard to the new configuration the
24 questions asked and answered in the Exhibit 25-SUP would
25 they be the same?

1 A. They are.

2 Q. Thank you.

3 MR. PEEPLES: I move to enter these two
4 exhibits.

5 JUDGE TOREM: Councilmembers, Exhibit 25 and
6 Exhibit 25-SUP and supporting documents with those are now
7 before you.

8 Are there any parties who object to the
9 admission of those documents?

10 Seeing none, Councilmembers, all those in
11 favor of admitting those documents say aye.

12 COUNCILMEMBERS: Aye.

13 JUDGE TOREM: Any opposed?

14 Exhibits 25 and 25-SUP are now part of the
15 record.

16 (Exhibit Nos. 25, 25.1, 25.2 and 25-SUP
17 admitted into evidence.)

18 JUDGE TOREM: Scheduled cross-examination--

19 MR. PEEPLES: Just ROKT.

20 JUDGE TOREM: ROKT has waived that. That's
21 correct. So they're not going to cross-examine this
22 afternoon.

23 Councilmembers, your questions for
24 Mr. Bastasch. I know I had some that were presubmitted.

25 MR. SWEENEY: I can do mine.

1 JUDGE TOREM: All right. Mr. Sweeney.

2 MR. SWEENEY: Hi, there.

3 THE WITNESS: Good afternoon.

4 MR. SWEENEY: I had some questions about
5 your model. If I understand correctly, you used the wind
6 turbine hub height of you used meters but I interpret that
7 217 feet--

8 THE WITNESS: Correct.

9 MR. SWEENEY: --.75, something like that.

10 THE WITNESS: Right.

11 MR. SWEENEY: How does it compare to the
12 height range of the hub heights that we're talking about
13 for this project? I understand there's a range and in one
14 of the ranges it's actually higher by maybe 50 feet.

15 THE WITNESS: Hub height actually doesn't
16 play in the overall results very much; so we could have
17 varying hub heights but the resulting noise level
18 correlates more with distance from the turbine than it
19 does with hub height.

20 MR. SWEENEY: So you're anticipating my
21 follow-up question.

22 THE WITNESS: Okay. And no matter what hub
23 height we have we've got to comply with the WAC and the
24 project will comply with the WAC which is 50 dBA.

25 MR. SWEENEY: Okay. That's my next

1 question. The WAC you're referring to is the state WAC?

2 THE WITNESS: Correct.

3 MR. SWEENEY: Are you familiar with any
4 county noise ordinance?

5 THE WITNESS: I am not.

6 MR. SWEENEY: That's all I have.

7 JUDGE TOREM: I'm looking at what you
8 submitted to me, Mr. Sweeney.

9 MR. SWEENEY: I might have forgotten
10 something.

11 THE WITNESS: That is okay.

12 JUDGE TOREM: I have them in front of me so
13 let me hand them to you and see if you still think these
14 matters that are bracketed are items that you still wanted
15 to ask.

16 MR. SWEENEY: Oh, yes. Gosh, thank you.
17 There was you had a maximum sound power and then you also
18 stated the maximum wind speed, but you didn't correlate
19 whether the maximum sound power occurred at the maximum
20 wind speed.

21 THE WITNESS: It can vary a little bit based
22 on the actual turbine, but generally at maximum wind speed
23 you are at or very close to maximum sound power. On some
24 turbines actually the maximum sound power will occur at
25 slightly less than the maximum wind speed. There's a

1 little bit of a tail. So when we do our modeling we do it
2 based on the maximum sound power level rather than the
3 maximum wind speed. That way we can be predicting
4 worst-case conditions under anyone's speed.

5 MR. SWEENEY: So it is possible that you can
6 end up with the maximum sound power at a speed lower than
7 the maximum wind speed.

8 THE WITNESS: It is possible. There are
9 some curves that have a slight, but, again, we're talking
10 in the data that's available for review on the order of
11 one or two decibels difference which is not really
12 perceivable.

13 MR. SWEENEY: I apologize for not reviewing
14 your testimony this morning but did you determine how many
15 days it would be at the maximum hour?

16 THE WITNESS: No, we looked at, you, know
17 worst-case condition occurring.

18 MR. SWEENEY: But not a determination of how
19 long the worst-case scenario would be.

20 THE WITNESS: No. We did not do a
21 percentile of days or histogram.

22 MR. SWEENEY: Is it possible to do that with
23 your friend over here, the meteorology guy?

24 MS. JOHNSON. He's gone.

25 MR. SWEENEY: He's gone? Okay.

1 MR. PEEPLES: He's out of here.

2 THE WITNESS: I suppose it would be possible
3 but, again, from a regulatory standpoint we have to meet
4 the WAC, and we want to meet the WAC under the worst-case
5 conditions so that we're covered under all conditions.

6 MR. SWEENEY: And your position is you never
7 exceeded the WAC.

8 THE WITNESS: Correct. So that's why we
9 look at the worst-case condition. We based our analysis
10 on that occurring.

11 JUDGE TOREM: Councilmember Adelsman and
12 then Councilmember Towne.

13 MS. ADELSMAN: Just quickly follow up. If
14 the project is constructed are you recommending some
15 monitoring and keeping some of your receptors for a
16 certain period of time to see where they were?

17 THE WITNESS: No.

18 MS. ADELSMAN: Let me ask you in general.
19 What's your recommendation for monitoring to see whether
20 your modeling, the information that's coming from the
21 modeling is actually going to happen on the ground?

22 THE WITNESS: Generally we haven't done
23 post-construction monitoring on projects. There hasn't
24 been drivers for doing so. Generally we found that our
25 models are accurate and tend to be conservative.

1 Post-construction monitoring can be difficult because if
2 we're wanting to monitor the worst-case condition, we've
3 got to wait for the winds to occur for those to correlate
4 with the worst-case sound power level data, and sometimes
5 that will occur under relatively windy conditions. So you
6 have to take into account what is the noise coming from
7 the project versus what is the noise from the brush that's
8 blowing in the wind as well.

9 So it tends to be more of a modeling
10 exercise than it does to be a monitoring exercise. The
11 turbine input data that we use in our model that can be
12 verified as part of the contractual arrangements with the
13 vendor.

14 MS. TOWNE: Just a quick question,
15 Mr. Bastasch. On your chart Table 3.12-5 after the names
16 or identifiers of the properties some are blacked out. Am
17 I to assume that means no structure?

18 THE WITNESS: Correct. It shows as light
19 shading in the original photocopy. When we photocopied
20 it, it's not readable.

21 MS. TOWNE: Okay. Thank you.

22 JUDGE TOREM: Councilmember Wilson?

23 MS. WILSON: I'm sorry, but I cannot find
24 the exact number of this exhibit, but we received a couple
25 of DVDs from the public comment, and I don't know if you

1 actually had a chance to see that DVD. It was about the
2 wind farm. Did you see that?

3 THE WITNESS: I don't recall seeing
4 anything.

5 MS. WILSON: Then I won't ask you any
6 questions about it. Thank you.

7 JUDGE TOREM: I believe she's referring to
8 what came in through public comment. Someone had put onto
9 burn your own DVD or CD ROM presentation a video
10 presentation to the Councilmembers. Some of them have
11 already viewed it, but it's part of the record, and I
12 think it's safe to say it's fairly critical of the noise
13 levels and it would counter what you're suggesting today.

14 Let me see if I can ask a question that will
15 be able to put into relation what the Councilmembers might
16 be seeing there with your thoughts. At the end of your
17 initial testimony page 7 of Exhibit 25.

18 MS. WILSON: Could you speak up, sir.

19 JUDGE TOREM: Sorry.

20 MS. WILSON: It's hard to hear. It's
21 getting old.

22 JUDGE TOREM: Pardon me for the acoustics in
23 the room. I will speak up.

24 It says that the predicted property line
25 noise levels are less than 60 decibels, nonparticipating

1 residential daytime levels are required not to exceed 60
2 and nighttime not to exceed 50, and you had Exhibit 21-2
3 is what you were referring to. The project will comply
4 with the more restrictive nighttime limit at all existing
5 residential structures owned by nonparticipating
6 landowners.

7 So give us an idea as to what 50 decibels
8 would be to show compliance with this. What would
9 somebody living a quarter mile away as a nonparticipating
10 landowner, I believe that's the closest residence here,
11 that they don't hear already from the wind as a result of
12 constructing this facility when it's operating?

13 THE WITNESS: It's not something that's
14 easily reproduceable and it's not something you can
15 actually reproduce well on a DVD that would be viewed
16 because you don't know how to adjust your volume.

17 The best analogy would be really to go out
18 to an operating plant at that distance and observe it.
19 That's really the only way I can suggest. Now, if we're
20 talking about 50 dBA in general, if we are sitting
21 underneath that fan we're probably close to that with my
22 calibrated ear. It would be somewhere we would be in that
23 range.

24 JUDGE TOREM: Now, would adding the wind
25 farm and its towers create an increase in the noise level

1 at the home or are you telling me also in your earlier
2 testimony that the existing wind blowing through whatever
3 vegetation or otherwise is there mask that and you
4 wouldn't notice a difference in the noise level at the
5 home?

6 THE WITNESS: We may not notice a difference
7 in the absolute noise level depending on the wind speed
8 and amount of wind noise, but because it's going to sound
9 different than the wind it would be audible. It's not as
10 if at a quarter you would potentially never hear it.

11 JUDGE TOREM: What's the likelihood of a
12 resident a quarter mile away in their home with the
13 windows and doors closed and just average sound insulation
14 from the normal construction materials used in this region
15 of them still being able to hear a wind farm a quarter
16 mile away?

17 THE WITNESS: That is hard to evaluate with
18 certainty. With the windows open the general rule of
19 thumb is that you'd have a 10-decibel reduction and that
20 with the windows closed you'd have a 20-decibel reduction.
21 So if we were at 50, we're down into the 30 to 35 range
22 with the windows closed. Depending on the level of noise
23 inside the structure and how the noise is outside the
24 structure there is the potential for it still to be
25 audible inside.

1 JUDGE TOREM: So I guess I'm wondering if
2 it's a reasonably quiet area, and I'm led to believe that
3 given the rural and agricultural nature there may not be a
4 lot of other ambient other than that produced by the wind,
5 that would somebody that lives there now and enjoys the
6 area for quiet and the solitude, maybe they get a good
7 night's sleep, is this the sort of thing, have you ever
8 run into considerations where people have complained about
9 not being able to get a good night sleep because the added
10 noise from the wind farm? Are you aware of any such
11 anecdotal evidence?

12 THE WITNESS: Well, I think annoyance is
13 subjective.

14 JUDGE TOREM: Clearly.

15 THE WITNESS: And that it's a subjective
16 standard and with this project as with any conventional
17 fired project the standard in Washington is that of the
18 WAC, and so the project will be constructed to achieve
19 compliance with the WAC.

20 JUDGE TOREM: I think that's a fair and
21 honest answer.

22 See if there's other Councilmembers what
23 have follow-up questions?

24 MR. SWEENEY: I'm not sure if you answered
25 his question though because he asked you if you were aware

1 of any complaint, folks who were disturbed by that by a
2 wind power project. In your experience working with other
3 wind power projects around the country or what have you,
4 has noise become, is noise an issue with residents?

5 THE WITNESS: I've not worked on any project
6 where noise has become an issue or complaint with
7 residents.

8 MR. SWEENEY: My question has to do with and
9 it sounds a little bit off base, but have you ever done
10 any noise analysis of substation power, the power
11 substations, you know, the ones in neighborhoods? There's
12 a distinct hum that comes out of those things.

13 THE WITNESS: Right, the 120-cycle hertz.

14 MR. SWEENEY: Yes. Are you familiar with
15 that sound power and what kind of dBA comes out of that?

16 THE WITNESS: It varies on the substation.

17 MR. SWEENEY: And also on the meteorological
18 conditions as well.

19 THE WITNESS: Yes. So it would vary on the
20 size of the substation. In a typical residential
21 environment where you're talking about a small substation
22 that serves the adjacent community, you probably are in
23 the similar level of 50 dBA at the property line of that
24 substation. That would generally be a rule of thumb.

25 MR. SWEENEY: Thank you.

1 JUDGE TOREM: Councilmember Adelsman and
2 then Councilmember Wilson.

3 MS. ADELSMAN: I have just something I would
4 like to clarify a little bit. Looking at your table it
5 seems like--I'm sorry. It's Table 3.12-5, and I'm looking
6 at page--just a second. Okay. It's the second page and
7 I'm looking at Garrett.

8 MR. GARRETT: That's all right.

9 MS. ADELSMAN: Sorry, Mr. Garrett, my
10 mistake. I actually picked it up purely by coincidence.

11 It says it's about 538 feet from the
12 property line to a turbine, and then there's a level about
13 45 to 50 and you go to the last property, Meyer, and it
14 says it's 2,740 and again it's within 40 to 45. So it
15 seems like there's no correlation between the distance and
16 the noise. Okay?

17 So my question to you is how would you
18 construct, how would you deal with that in order to comply
19 with Ecology's 60 noise? If there is no correlation given
20 the distance between the turbine and the property how
21 would you actually in this project ensure compliance?

22 THE WITNESS: Well, I guess when I look at
23 that we're showing at Garrett which we say is about 540
24 feet where the predicted levels are between 45 and 50 and
25 then we look down at the Meyer residence we're predicting

1 lower levels father away.

2 MS. ADELSMAN: A little bit lower.

3 THE WITNESS: So I would say that there is
4 some correlation with distance there.

5 JUDGE TOREM: Am I correct just to clarify
6 for Councilmember Adelsman, this is a logarithmic scale so
7 from 50 to 40 is a ten times difference?

8 THE WITNESS: Yes.

9 JUDGE TOREM: So the range of 40 to 50
10 really it could be an appreciable decrease.

11 THE WITNESS: Correct. The model predicts
12 it based on the number of turbines and the exact location
13 of the turbines. So if you are 500 feet off the end of
14 one turbine that's different than if you're 500 feet off
15 of the middle of the string.

16 MS. ADELSMAN: So can you design a project
17 that will actually comply with Ecology 60 and how would
18 you know that if there's no monitoring that would happen
19 when the project is constructed?

20 THE WITNESS: Well, I think we can show
21 pretty clearly with calculations that 60 is clearly
22 achieved.

23 MS. ADELSMAN: Okay.

24 MS. WILSON: I hope this is not a totally
25 stupid question.

1 JUDGE TOREM: Just speak up because the
2 court reporter is--

3 MS. WILSON: Can you hear me?

4 JUDGE TOREM: The sound is directing across
5 the table.

6 MS. WILSON: Okay, yes. And it's getting
7 sucked into this room.

8 I don't see here where you have actual
9 background noise levels from the site. Do you have that?
10 I didn't see it in here. I don't know if you did that:
11 where you went out there today with noise meters to find
12 out what the existing background is.

13 THE WITNESS: Measurements were conducted
14 and that data is in the DEIS.

15 MS. WILSON: Okay. Thank you. So I knew I
16 saw it somewhere, but I couldn't find it here. So when we
17 talk about 45 and 50 or the 35 and 40 are we talking about
18 adding that to the existing noise level? Is that 45 more
19 than is current or are we talking about a turbine creates
20 this much noise?

21 THE WITNESS: The model results that we were
22 looking at is our turbine noise level.

23 MS. WILSON: The turbine creates this much
24 noise. Is that going to be added to the background or
25 does some of it get absorbed in the background?

1 THE WITNESS: I'm not sure I understand the
2 question. I believe I think you're asking if there is a
3 cumulative effect from two different sources.

4 MS. WILSON: That's what I'm asking.

5 THE WITNESS: We really don't have two
6 different sources here. We've got wind which is somewhat
7 of a source, but it's not as if there is another
8 industrial industry that clearly emits a noise level that
9 you could then clearly add to a turbine noise level. The
10 background levels will fluctuate quite a bit and that
11 would make doing so difficult.

12 MS. WILSON: Thank you.

13 JUDGE TOREM: Councilmember Johnson.

14 MS. JOHNSON: Yes, I would like to go back
15 to the previous Councilmember's question and let you
16 elaborate a little more. You started to on location of a
17 residence compared to a string of turbines or to the end
18 of a turbine string and only one turbine. If there are
19 two turbines next to a house or a house is in the middle
20 and there's a turbine on each side how does sound model?

21 THE WITNESS: The model takes that all into
22 account in more or less a worst-case unrealistic scenario.
23 The model assumes downwind propagation from all sources to
24 the receiver. So when you have a string of turbines, the
25 wind can only be coming in one direction. The model

1 actually assumes that it's coming in from multiple
2 directions and the downwind direction. So a house may be
3 in reality cross-wind, upwind, and downwind from various
4 turbines but the model assumes downwind from all turbines.

5 JUDGE TOREM: There is a lot questions,
6 Mr. Bastasch, about how can we be sure that these models
7 will work and the rest and I don't know that there's a
8 mitigation measure. But more of a compliance question for
9 a permitting authority, whether it be the County that may
10 permit a wind farm or EFSEC, would that best be measured
11 by going out after it's built and determining if the
12 models really worked and if that particular frequency of
13 noise that's being generated is actually at and in
14 compliance with the WAC at the appropriate property line?
15 Is that the method that we do? If we permit this as a
16 body and we want to go out after it's built to
17 Mr. Garrett's residence or somebody else that's fairly
18 close to whatever the final tower location is and measure
19 the sound, what would happen if it's 52 decibels?

20 THE WITNESS: Well, first, I think if we
21 look at the property line, the property line standard for
22 the WAC that would really be 70 decibels which is a lot
23 higher than 50.

24 JUDGE TOREM: Well, take my hypothetical and
25 put it in Mr. Garrett's bedroom window and exceeding 50

1 decibels at night. What would be the remedy for someone
2 like that that brings that to the attention either of
3 EFSEC or the County as the body in charge of the
4 compliance with the project if it's permitted?

5 THE WITNESS: So the question I believe
6 you're asking is what can be done after a project is built
7 and it's found that the 50 decibel level is clearly
8 exceeded?

9 JUDGE TOREM: Correct.

10 THE WITNESS: Well, that's probably a
11 question that I'm not the most qualified to answer, but
12 turbines can be controlled and their rotational speed can
13 be controlled. Their operation can be controlled. So
14 that there are remedies that could be implemented to
15 control.

16 JUDGE TOREM: If the reality doesn't play
17 out as the model does, it's possible you say for the
18 programming to be done. We were told about shadow
19 flicker. They could be programmed to turn off at certain
20 times of the day. You could also program these turbines
21 at the predicted violative noise levels based on rotation
22 or wind speed or other conditions to be shut off and then
23 not generate that.

24 THE WITNESS: Correct. There would be
25 operational controls similar to that in the control system

1 used for shadow flicker that could be applied to noise.

2 JUDGE TOREM: Councilmembers, I recognize
3 the phone is making some beeps. There may be somebody
4 joining us, but we'll deal with that when we're done with
5 Mr. Bastasch. Are there any other questions for him?

6 Mr. Hurson, in the limitation of what's been
7 asked by Councilmembers or myself.

8 MR. HURSON: I intend to.

9 JUDGE TOREM: All right, sir.

10 MR. HURSON: And I apologize if I feel like
11 I'm lurking back here. I'm trying to be able to hear.

12 JUDGE TOREM: Looming.

13 MR. HURSON: Looming is a much better term.

14 Thank you.

15 CROSS-EXAMINATION

16 BY MR. HURSON:

17 Q. If I understood you said somebody asked like
18 what's this fan sound and you said that's about if you
19 stood under about 50 decibels. I know you don't have a
20 meter.

21 A. Yeah, I mean that's my--

22 Q. That's your best estimate.

23 A. --best estimate for a correlation.

24 Q. And that's up kind of on the other end of the
25 room.

1 A. Correct.

2 Q. So I assume where we're sitting is less than
3 50 decibels.

4 A. Yes.

5 Q. And so I mean with everybody's ability to
6 hear what's going on here if I would understand how this
7 all works how much less than 50 decibels or is that just
8 too much?

9 A. Well, I think we can. A normal conversation
10 is about 65 decibels.

11 Q. Okay.

12 A. So we could still have a normal conversation
13 underneath that source. It would just be more difficult
14 for those to hear who are farther away.

15 Q. Right. Okay. But we're basically talking in
16 an area that has less than 50 decibels right here in
17 background noise.

18 A. Yes, that would be my estimate.

19 Q. If somebody was in a 60-decibel, level which
20 is what I believe the WAC will allow just so the Council
21 has a perception, at a 60-decibel level that would mean
22 the noise would be ten times louder than we're currently
23 hearing from the fan. Correct?

24 A. No, it's not ten times louder. Perception is
25 different than the log. A ten decibel increase is

1 perceived doubling loud.

2 Q. So it would be twice as loud.

3 A. Right.

4 Q. And then at the 70-decibel reading, which you
5 had talked about as being what the WAC would allow at a
6 property line, you said something like that that would
7 sound how much louder than what the Council is hearing
8 right now? Would that be like four times greater than the
9 50 then?

10 A. Yes. Assuming our assessment of where we're
11 at now is approximate

12 Q. So assuming that you're--and as the sound
13 expert assuming you're right, that a person under your
14 understanding of the WACs could be or a location could be
15 subjected to sound four times greater than we are having
16 right now and that would be in compliance.

17 A. That's the property line. That would be the
18 interpretation of a property line standard, but what we've
19 said in our project is that we're going to comply with the
20 most restrictive limitation of 50 decibels at the
21 residence.

22 Q. So basically what you're saying is the noise
23 won't be at 60 decibels. It won't be any worse than twice
24 as loud as what we're having right now if you comply with
25 the WACs.

1 A. No, I think I said that we're going to comply
2 with 50 decibels. That's what our--

3 Q. I thought that was the nighttime sound.

4 A. Well, if that's the nighttime sound, that's
5 what we would comply with during the day as well.

6 JUDGE TOREM: So, Mr. Hurson, I think what
7 he's saying is this 50-decibel background noise that we've
8 agreed to in the room would be the expected level of the
9 project worst-case scenario; is that correct?

10 THE WITNESS: Yeah, I mean it would not
11 sound exactly like that because we're listening to a
12 turbine, but in terms of dBA that's probably the
13 approximate level.

14 JUDGE TOREM: For a worst-case scenario for
15 a project that's the level.

16 THE WITNESS: Yeah, that's the level that
17 the Applicant has said we're going to comply with at the
18 residence.

19 JUDGE TOREM: Chairman Luce.

20 CHAIR LUCE: In the worst-case scenario that
21 being the level of noise how it's perceived by someone
22 would also be affected by the fact the wind is blowing at
23 a rather brisk pace. Right?

24 THE WITNESS: Correct.

25 CHAIR LUCE: And that a tractor might be

1 furrowing or dragging a plow behind somewhere in the
2 vicinity of that. Right?

3 THE WITNESS: Correct.

4 CHAIR LUCE: A car could be driving by.
5 Right?

6 THE WITNESS: Correct. For example, the
7 cars, the Washington State Department of Transportation's
8 threshold is 66 for residents.

9 CHAIR LUCE: Thanks.

10 JUDGE TOREM: Mr. Sweeney.

11 MR. SWEENEY: I guess I suffer from having
12 this being blacked out.

13 JUDGE TOREM: Speak up, please. Come to at
14 least 65 decibels.

15 MS. ADELSMAN: We appreciate that order.

16 MR. SWEENEY: We're talking about
17 residences, existing residences, is that correct, when the
18 project will exceed that? What about in situations where
19 new residences could be constructed? There are properties
20 that are closer that don't have residences, and I can't
21 see in your whatever it was.

22 THE WITNESS: In the areas that have been
23 photocopied that are showing up as black in your report
24 there's nothing there. It was just shaded as gray.

25 MR. SWEENEY: In the situation let's say

1 pick on Mr. Garrett where he has property 500 feet away
2 roughly and has plans to perhaps build a house there
3 sometime in the future, was there any measurement or any
4 analysis to show what the noise would be to his potential
5 home?

6 THE WITNESS: Well, we showed in there a
7 table, a list of levels at the property line. So that the
8 noise level would be less when you got further away from
9 that property line.

10 MR. SWEENEY: Okay. So we're still good.

11 THE WITNESS: We can't anticipate where that
12 home would be located. That's why we did look at property
13 line levels.

14 MR. SWEENEY: Okay.

15 THE WITNESS: No project, wind or
16 conventional fire, can necessarily look at what isn't
17 there.

18 JUDGE TOREM: Councilmember Adelsman

19 MS. ADELSMAN: Just the model that you used
20 is that a model ecology pretty much accepts that?

21 THE WITNESS: It's the international
22 standard ISO 9613.

23 JUDGE TOREM: Is sounds official.

24 MS. ADELSMAN: Yes, anything that has ISO.

25 JUDGE TOREM: Any other Council questions?

1 Any redirect?

2 MR. PEEPLES: Yes.

3 JUDGE TOREM: And I see Mr. Tribble has his
4 hand up for cross as well. Do you want him to ask that
5 first?

6 MR. PEEPLES: Let me do my redirect and then
7 I'll do redirect after that if I need to.

8 REDIRECT EXAMINATION

9 BY MR. PEEPLES:

10 Q. You say this is the absolute worst-case
11 analysis with regard to the noise. Correct?

12 A. Correct.

13 Q. You're assuming the wind is on that
14 directional from all turbines. You mentioned that. What
15 wind conditions are there when you are creating the
16 maximum amount of noises from the turbines? Is that a
17 very, very windy day?

18 A. Yes.

19 Q. Now, you were asked about if you're inside a
20 house and you're a quarter mile away would you be able to
21 hear it. Remember that question?

22 A. I do.

23 Q. Let's take an example of a very calm night
24 and you have a combined cycled turbine noise that would
25 come through that window versus a turbine. Wind turbine

1 on a very windy day or evening with that window open and
2 the sound coming through would there be a difference
3 between a quiet night with a gas turbine and the
4 conditions required to give off as much noise as possible
5 from a wind turbine?

6 A. There would not be as much masking under the
7 combined cycle situation under a calm night. So that
8 would be more under that scenario that you're describing a
9 combined cycle facility or simple cycle facility would be
10 more audible than a wind turbine facility where you've got
11 wind noise that's in the mix to be masking.

12 Q. If your window is open would that create
13 noise just having a window open with the wind blowing very
14 hard?

15 A. Yes, you would have the noise of the wind.

16 Q. And that masks the sound; is that correct?

17 A. There is some masking, yes.

18 MR. PEEPLES: Okay. No further questions.

19 JUDGE TOREM: Mr. Tribble.

20 RE-CROSS-EXAMINATION

21 BY MR. TRIBBLE:

22 Q. I have a clarification question line of
23 questioning about background noise. I believe you said
24 earlier that there really isn't a different source of
25 appreciable background noise; is that correct?

1 A. Correct.

2 Q. You were talking about specifically the wind,
3 the sound of the turbine generated by the wind at the
4 time; is that correct?

5 A. I think I understand what you're saying.

6 Q. Did you study any other sounds, constant
7 sounds or semi-constant background noise sounds that are
8 associated with the physical properties of the KV site as
9 laid out?

10 A. There was monitoring conducted and those
11 results are presented. So I don't--there are no
12 other--there is no other industry that is a steady source
13 of noise in that area. There are intermittent sources of
14 traffic and agricultural activities or logging or whatever
15 there may be.

16 Q. Within that statement are you considering the
17 sounds, if any, of the power lines that run through that
18 area?

19 A. You're referring to an effect called corona.
20 Corona tends be a foul weather condition predominantly and
21 when we did our measurements I don't believe we had a foul
22 weather condition.

23 Q. Excuse me. You don't believe?

24 A. I don't believe. So I believe we measured
25 under relatively quiet conditions compared to a foul

1 weather condition where you would potentially have corona,
2 corona noise.

3 Q. Can you estimate what the dBA would be of
4 corona and foul conditions, foul weather conditions?

5 A. The BPA standard for corona noise is 50 dBA
6 at the right of way. That's typically what they design
7 their towers to or their transmission line.

8 MR. TRIBBLE: Thank you.

9 JUDGE TOREM: Any redirect?

10 RE-REDIRECT EXAMINATION

11 BY MR. PEEPLES:

12 Q. Your studies are very conservative studies
13 and you've already mentioned that. Right? And, again,
14 you mentioned that it meets the 50 dBA which is a
15 residential standard at an ag property line. Correct?

16 A. Yes.

17 MR. PEEPLES: Okay. No, forget it.

18 JUDGE TOREM: Any other follow-up questions
19 for Mr. Bastasch?

20 All right. Seeing none, thank you, sir, for
21 your time and staying after lunch today. Before we take a
22 quick break are there any parties or witnesses waiting on
23 the telephone line?

24 MR. KRICHBAUM: Yes.

25 JUDGE TOREM: Who would that be?

1 MR. KRICHBAUM: Randall Krichbaum.

2 JUDGE TOREM: All right. I think you are
3 the only witness scheduled at the two o'clock time period;
4 is that correct, Mr. Peeples?

5 MR. PEEPLES: I believe that's right.

6 JUDGE TOREM: Councilmembers at the table
7 any opposition to the slave driver here pressing forward
8 and just getting Mr. Krichbaum on and off?

9 CHAIR LUCE: No, let's get it done.

10 MS. ADELSMAN: If the Chair says it's okay,
11 it's okay by us.

12 JUDGE TOREM: Please turn to Exhibit 30 and,
13 Mr. Krichbaum, you're there in Beaverton, Oregon; is that
14 right?

15 MR. KRICHBAUM: Yes.

16 (Randall Krichbaum appearing by telephone.)

17 (Randall Krichbaum sworn on oath.)

18 JUDGE TOREM: Can you please state and spell
19 your last name for the record.

20 THE WITNESS: Krichbaum, K-r-i-c-h-b-a-u-m.

21 JUDGE TOREM: I'm going to have Mr. Darrel
22 Peeples walk you through the adoption of your testimony
23 and then determine if there's anybody who wants to
24 cross-examine you.

25 Mr. Peeples.

1 RANDALL KRICHBAUM,
2 being first duly sworn on oath,
3 testified as follows:

4
5 DIRECT EXAMINATION

6 BY MR. PEEPLES:

7 Q. Exhibit 30 is your testimony and do you have
8 a copy of that in your hand?

9 (Exhibit Nos. 30.0 and 30.1 identified for
10 the record.)

11 A. Yes, I do.

12 Q. If I asked you all the questions in that
13 would you reply the same?

14 A. Yes.

15 MR. PEEPLES: I move it into evidence.

16 JUDGE TOREM: Councilmembers, there's a
17 motion before you for Exhibit 30 to be brought in as well
18 as the exhibits it references in the application for site
19 certification and anything else referenced in Exhibit 30
20 on pages 2 and 3 and perhaps elsewhere. All those in
21 favor?

22 COUNCILMEMBERS: Aye.

23 JUDGE TOREM: Any opposed?

24 (Exhibit Nos. 30.0 and 30.1 admitted into
25 evidence.)

1 JUDGE TOREM: Mr. Tribble, Counsel for the
2 Environment, if you'll switch seats with, Mr. Peoples.

3 So, Mr. Krichbaum, hold on one second.
4 We'll get our lawyers shuffled around in this room and
5 then ask the questions. It will be Michael Tribble,
6 Counsel for the Environment.

7 CROSS-EXAMINATION

8 BY MR. TRIBBLE:

9 Q. Mr. Krichbaum, do you have Exhibit 30 in
10 front of you?

11 A. Yes, I do.

12 Q. Can you turn to page 6, please. I'm going to
13 draw your attention to portions of your testimony to sort
14 of get everybody in the frame of mind before some of my
15 questions.

16 A. Okay.

17 Q. Page 6 your testimony states on line 16, you
18 walked or drove the entire 50 meter buffer corridor and
19 delineated areas of lithosolic or shallow-soiled plant
20 communities within the corridor. Skipping down to 21, the
21 final cover type map includes 65,100 acres of land and
22 contains 11 different major cover types. The shrub-steppe
23 type covered the largest extent, 51.2 percent with the
24 grassland type accounting for another 31.5.

25 Over to page 7 beginning at the top of line

1 1, the lithosolic sub-type included in the shrub-steppe
2 low sagebrush and grassland types was found to be present
3 on approximately 39 percent. Then you said it is
4 important to note that in many parts of the project area
5 lithosols occur as small inclusions in deeper-soiled
6 habitats, and that these inclusions are typically too
7 small and numerous to map at the project, at the project
8 scale.

9 A. Yes.

10 Q. Looking at the next page, page 8, beginning
11 on line 7, you said, "We expect the general mitigations
12 proposed by the applicant to minimize the degree and
13 extent of ground disturbance will be effective at reducing
14 both permanent and temporary impacts to vegetation
15 resources."

16 A. Yes.

17 Q. Can you describe the relative differences on
18 the vegetation--excuse me--the relative differences in
19 impact on the vegetation when construction occurs on
20 lithosol and shrub-steppe habitat with dry soil generally
21 associated with summertime construction and also with
22 moist soil generally associated with a mid fall to mid
23 spring construction.

24 A. Yes. With most projects in semi-arid regions
25 of the Northwest when construction occurs when the ground

1 is wet often there is additional disturbance, ground
2 disturbance and vegetation disturbance. This can be
3 mitigated for through application of a storm water plan,
4 erosion control, construction timing, but this is a factor
5 on most construction projects that occur in rural areas.

6 Q. Was it your understanding when you made this
7 testimony and in your review of the application and the
8 environmental documents was it your understanding that
9 construction or at least the bulk of heavy equipment
10 construction would take place during the dry season?

11 A. Well, we did not carry out investigation with
12 any knowledge of when the construction would occur.

13 Q. Doesn't the DEIS specifically refer that its
14 belief that the bulk of the construction would be done in
15 the late spring through the summer?

16 A. I'm not familiar with that section. When we
17 conducted the survey the DEIS had not been issued yet.

18 Q. You talked about seasonal timing being one of
19 the mitigating factors in impact on the vegetation.

20 A. Yes.

21 Q. The kind of areas of your testimony that I
22 highlighted earlier don't they show that this type of
23 shrub steppe and lithosol habitat is hard to predict where
24 you're going to find it throughout the project?

25 A. Yes. As we said in there, there can be

1 inclusions of lithosol habitat within deeper-soiled
2 shrub-steppe areas. The same is also true in areas that
3 we mapped as lithosol. That can be also be deeper-soiled
4 habitats within those.

5 Q. On page 9 of your testimony you said on line
6 24 the last line, "Certain areas could benefit from active
7 revegetation efforts." Can you describe what you meant by
8 active revegetation efforts?

9 A. I believe that section was talking about the
10 habitat quality in the mitigation parcel that we looked
11 at; is that correct? Is that where you're talking about?

12 Q. Line 24 of page 9.

13 A. Yes. Yes. Yes, there are areas especially
14 along there's a creek that is intermittent that runs
15 through there. There are areas where replanting of native
16 vegetation might be appropriate in order to enhance the
17 overall quality of that parcel.

18 Q. Is that the only area that you were referring
19 to when you mentioned active revegetation efforts?

20 A. That is what I was mentioning in line 24
21 there. That is where we were discussing the mitigation
22 parcels.

23 MR. TRIBBLE: Thank you.

24 JUDGE TOREM: Councilmembers, does
25 Mr. Tribble's questions raise anything further you want to

1 follow up on?

2 I see Councilmember Towne.

3 MS. TOWNE: Just a quickie.

4 JUDGE TOREM: Mr. Krichbaum, let me know if
5 you can't hear her. She's a little bit away from the
6 microphone.

7 MS. TOWNE: A quick question. Do we have a
8 large scale exhibit of the proposed habitat mitigation
9 area? I don't recall seeing one.

10 JUDGE TOREM: Mr. Krichbaum, did you hear
11 the question?

12 THE WITNESS: I heard the question. I don't
13 know. We produced an overall vegetation map of the entire
14 project area that includes detailed analysis of the
15 mitigation parcel. I don't know if that's available at
16 this point.

17 JUDGE TOREM: Do you know if that's in the
18 application for site certification, sir?

19 MR. PEEPLES: I believe it's in the
20 application and is it in the DEIS? I know it was
21 provided, I just can't tell you right now.

22 MS. TOWNE: May I ask Mr. Peeples to let us
23 know when he discovers its whereabouts?

24 MR. PEEPLES: Yes, I'll find it for you
25 because it's in the record. I just can't remember right

1 now.

2 MS. TOWNE: I had one more unrelated
3 question.

4 JUDGE TOREM: Councilmember Towne, if you'll
5 speak up.

6 MS. TOWNE: Yes. Is there a relationship
7 between the size of the lithosol patch and its value? Is
8 a big patch ten times the size of a little patch is it
9 worth 20 times more in habitat value or is it a one-to-one
10 thing?

11 THE WITNESS: From a biological point of
12 view, I believe that all of the habitats that are native
13 dominated like the lithosols are probably of equal value.
14 A larger area may provide more wildlife habitat; however,
15 a smaller area may provide a small island of habitat
16 within a larger area that's degraded. So I think it's
17 difficult to place a particular value multiple on a
18 question like that.

19 MS. TOWNE: Thank you.

20 JUDGE TOREM: Councilmember Adelsman.

21 MS. ADELSMAN: Really quick one. Are you
22 familiar with the Wild Horse Project?

23 THE WITNESS: I'm sorry. I didn't hear you.

24 JUDGE TOREM: The question was are you
25 familiar with the Wild Horse Project?

1 THE WITNESS: Only. I have not seen the
2 project. I have read information on it, but I am not
3 familiar with any what of went on with the project or the
4 preparation of the site.

5 MS. ADELSMAN: So you're not familiar with
6 the mitigation that was required for the project to
7 preserve some of then vegetation and then during the
8 construction; is that right?

9 THE WITNESS: I'm sorry. I can barely hear
10 you.

11 JUDGE TOREM: I'll restate the question.
12 Councilmember Adelsman wants to know if your unfamiliarity
13 with the general project would also extend to if you're
14 familiar with the mitigation that was done with the
15 project itself and specifically some issue that came up
16 during construction? Do you have any knowledge as to the
17 experience the applicant had in applying for and now
18 building the Wild Horse Project?

19 THE WITNESS: No, I don't. We did not work
20 on that project, and I have no information about it.

21 JUDGE TOREM: Okay. Thank you.

22 MS. ADELSMAN: Thanks.

23 JUDGE TOREM: Any other questions for
24 Mr. Krichbaum?

25 Mr. Krichbaum, I wanted to follow up on what

1 Mr. Tribble, Counsel for the Environment, had asked.

2 Would you say that if EFSEC is going to
3 permit this project to be built that to best mitigate the
4 impacts on these lithosols construction season should be
5 restricted to the dry season?

6 THE WITNESS: I believe that while that may
7 be an option, there are construction methods and planning
8 that can occur that will reduce or eliminate any
9 additional impact that occurs during the wet season.
10 Certain construction can take place during a wet season
11 without providing any additional disturbance to the ground
12 or vegetation, although it does take careful planning and
13 careful monitoring of the site conditions and the weather.

14 JUDGE TOREM: All right. I think we've
15 addressed the monitoring and compliance issue with other
16 witnesses. Let me see if Mr. Peeples has any redirect or
17 if Mr. Tribble has any additional cross-examination
18 questions?

19 MR. PEEPLES: No.

20 JUDGE TOREM: Seeing none from either of
21 them, Councilmembers, any objection to letting this
22 witness go for the day?

23 COUNCILMEMBERS: No.

24 JUDGE TOREM: All right. Thank you,
25 Mr. Krichbaum.

1 THE WITNESS: Thank you.

2 JUDGE TOREM: We will take a brief recess.

3 It's now almost 2:30. I don't believe we have any other
4 witnesses scheduled until three o'clock. So we'll break
5 until to that time and see who calls in.

6 (Recess taken.)

7 (Randy Hardy and Stephen Grover appearing by
8 telephone.)

9 JUDGE TOREM: All right. It is three o'clock
10 in the afternoon. We have both the witnesses that are
11 scheduled already on the telephone line so I'm going to
12 call your attention first to Mr. Randy Hardy. His
13 exhibits are 43, and I believe this is the only one.
14 There is no supplemental testimony, just the original 2004
15 submission. So I'm going to first swear in Mr. Hardy and
16 then I'll have Darrel Peeples next to the phone to have
17 you adopt his testimony, sir.

18 (Randy Hardy sworn on oath.)

19 RANDY HARDY,
20 being first duly sworn on oath,
21 testified as follows:

22

23 DIRECT EXAMINATION

24 By MR. PEEPLES:

25 Q. Mr. Hardy, do you have Exhibit 43-T in front

1 of you, your prefiled testimony?

2 (Exhibit Nos. 43.0 and 43.1 identified for
3 the record.)

4 A. Yes, I do.

5 BY MR. PEEPLES:

6 Q. If I asked you those questions would those be
7 your answers?

8 A. Yes, they would.

9 MR. PEEPLES: I move the entry of Exhibit
10 43-T.

11 JUDGE TOREM: Parties, any objections to
12 Mr. Hardy's testimony coming in?

13 Seeing none, Council, all those in favor?

14 COUNCILMEMBERS: Aye.

15 JUDGE TOREM: Any opposed?

16 (Exhibit No. 43.0 and 43.1 admitted into
17 evidence.)

18 JUDGE TOREM: All right. Mr. Hardy, let me
19 see if I can locate the designated parties who are doing
20 cross-examination.

21 MR. PEEPLES: I believe it's just the county
22 and applicant.

23 JUDGE TOREM: It should be Counsel for the
24 Environment has reserved a tenth of an hour and Kittitas
25 County has reserved two-tenths of an hour.

1 Mr. Hurson, did you want to go first?

2 MR. HURSON: Actually in looking at it and
3 after having gone through days of testimony I hope the
4 Council will appreciate that we'll just waive it for now
5 unless something comes up and we'll ask a question if it
6 pops to mind.

7 JUDGE TOREM: So the County is going to
8 reserve their right to cross-examine depending on what
9 else is said.

10 Counsel for the Environment?

11 MR. TRIBBLE: We reserve.

12 JUDGE TOREM: All right. So now it's up to
13 the Councilmembers, Mr. Hardy. Let me see who among the
14 Council may have some questions. Let's just pause for one
15 or two minutes while they finish paging through your
16 testimony for probably the second or third time this week.

17 All right. I'm ready to poll the
18 Councilmembers.

19 Councilmember Wilson, any questions?

20 MS. WILSON: No.

21 JUDGE TOREM: Councilmember Towne, any
22 questions?

23 MS. TOWNE: Yes. At page 6, Mr. Hardy, the
24 first full paragraph you're talking about firming up
25 power, how hydro can be manipulated, and you say because

1 Northwest integration costs are low it is to the region's
2 economic advantage to maximize its available wind
3 potential for electricity generation.

4 THE WITNESS: That's right.

5 JUDGE TOREM: Mr. Hardy, did you hear the
6 question?

7 THE WITNESS: Yes, I heard the statement.
8 What's the question?

9 MS. TOWNE: Talk to me about this
10 integration capability and how wind and hydro work
11 together. I'm a little dim on it.

12 THE WITNESS: Okay. Since we have a
13 predominantly hydro base load region, that is 50 percent
14 or more of our total generation capacity in the Northwest
15 comes from hydro, we are absolutely unique vis-a-vis any
16 other region in the United States.

17 And how this helps with wind integration is
18 the hydro, having that much hydro capacity is just like
19 having a big storage battery. If the wind doesn't blow,
20 you simply ramp up the hydro to fill in the gap of
21 generation for the minutes or the hours that it doesn't
22 blow. You just draft the reservoirs a little bit more and
23 when it does blow you, you don't draft them as much.

24 In virtually every other region--so you just
25 use your surplus hydro to effectively back up, if you

1 will, or firm up the wind generation. In virtually every
2 other region of the country you have to use thermal
3 resources, either combustion turbines, in some cases coal
4 resources to back up the wind machines when they don't
5 blow or when they're not blowing as much as you forecast
6 the day ahead, and that's a much more expensive
7 proposition. In reality we just we had the hydro already
8 available. It's sitting behind the reservoirs and as long
9 as you're just talking about brief periods that you're
10 drafting a reservoir, that is within the hour or one to
11 two hours ahead, you can do that without damaging the
12 system's capability to any appreciable extent and it hence
13 is much cheaper to integrate wind resources with kind of
14 hydro base load to work with than it is in a region where
15 you predominantly have thermal resources that you have to
16 run to that in.

17 MS. TOWNE: That's helpful and it brings up
18 just one quick follow-up question. Does wind tend to blow
19 vigorously when water levels are low or is that at the
20 same time?

21 THE WITNESS: They're completely independent
22 and trying to forecast either when it's going to rain or
23 when the wind is going to blow is beyond mine or I think
24 just about anybody else's capability.

25 MS. TOWNE: Thank you.

1 JUDGE TOREM: Councilmember Adelsman.

2 MS. ADELSMAN: Maybe I'll come over there.
3 Mr. Hardy, on page 8 you talk starting with line 7, you
4 talk by November 2006 we'll know whether Initiative 937
5 will pass, and then you go on to say that the utilities
6 would be required to acquire about 4,500 to 5,000
7 megawatts of wind capacity.

8 First of all, the part of my question is do
9 you know what is our wind capacity at this time with say
10 once Wild Horse is completed and I think the Nine Canyon
11 is also under construction? Do you know where we are?

12 THE WITNESS: I'll give you an approximate
13 estimate. Given the two Puget Projects, Hopkins Ridge and
14 Wild Horse, plus the existing wind generation Vancycle,
15 Condon, State Line--not just in Washington State, but
16 regionally you probably have 800 to 1,000 megawatts of
17 capacity that's already on line in the region, and my
18 figures that I cited are in addition to that. You're
19 going to have to build another 4,500 to 5,000 megawatts of
20 wind in a capacity sense to meet the requirements of
21 Initiative 937 which you can do but the amount of wind
22 sites is limited.

23 And the issue that we'll get into with if
24 937 passes is do you fence off some wind sites so they are
25 more marginal and hence the price goes up a lot because

1 the wind doesn't blow as much at those sites, at those
2 particular sites, or do you proceed with the most valuable
3 sites and keep the price down to more reasonable levels?
4 And that's the challenge we'll face with 937.

5 MS. ADELSMAN: Okay. Thank you.

6 JUDGE TOREM: Other Councilmember questions?

7 All right. Seeing no other Councilmember
8 questions, just out of curiosity, Mr. Hardy, is there any
9 relationship between the building out of wind power in the
10 region that might contribute to the argument for the
11 removal of those Columbia system dams in the future?

12 THE WITNESS: No, I don't. At least I can't
13 see any connection. If anything, for the reasons I cited
14 before in the answer to the question about why hydro is so
15 valuable as an integrater of wind you'd want to keep the
16 four Snake River dams and all the other hydro capacity
17 you've got because that makes the more hydro capacity you
18 have, the more cheap capacity you have to integrate the
19 wind resource. And as soon as you start removing that
20 capacity not only do you suffer the difference between
21 replacing it with much more expensive energy, but you also
22 have to replace it with much more expensive thermal
23 capacity for the integration.

24 CHAIR LUCE: I do have a question.

25 Mr. Hardy, I have a question. In the different

1 alternative or different resource mixes of hydro, thermal,
2 and wind given the fact that the hydro system is under a
3 number of Endangered Species Act listings in your opinion
4 is it valuable to have a wind resource such as the project
5 before us to help take pressure off of the hydro system so
6 that, if necessary, the water that is available can be
7 used for fish mitigation?

8 THE WITNESS: In some respects, yes, because
9 the wind generation that you have since wind is strictly
10 an energy resource and doesn't have a capacity component
11 to it will help you avoid having to draft reservoirs more
12 than you otherwise would and therefore that energy, the
13 water behind the reservoirs could be available either for
14 energy generation or fish fill or flow augmentation or
15 other measures.

16 So in an energy sense the answer to your
17 question is yes. In a capacity sense it goes just the
18 other way. What you spill for fish or use for flow
19 augmentation for fish directly competes with the capacity
20 you need for wind integration.

21 CHAIR LUCE: In that circumstance I believe
22 you said it's also possible to firm wind with thermal, if
23 necessary.

24 THE WITNESS: It's possible to firm wind
25 with thermal and we still have enough capacity even with

1 the fairly dramatic Endangered Species Act requirements of
2 the hydro system. We still have plenty of capacity and
3 probably will for the next several years to integrate wind
4 with basically hydro capacity so that's not an immediate
5 problem. Even though Bonneville is looking at that right
6 now, I see it as more of a prospective problem.

7 CHAIR LUCE: Thank you.

8 JUDGE TOREM: Councilmembers, does any of
9 that raise additional questions for you?

10 Counsel for the Environment, any questions
11 at this time?

12 MR. TRIBBLE: No.

13 JUDGE TOREM: Mr. Hurson, any questions at
14 this time?

15 All right. Mr. Peeples, any redirect?

16 MR. PEEPLES: No.

17 JUDGE TOREM: All right. Thank you,
18 Mr. Hardy. You can go ahead and disconnect from the
19 conference.

20 THE WITNESS: Great. Thank you very much.

21 JUDGE TOREM: I'm going to direct people's
22 attention to Exhibit 80 and Stuart Grover to get those
23 exhibits and supporting exhibits in front of him and ask
24 Debbie Strand to come up and I'll assist her in sponsoring
25 his testimony in.

1 I think I've been saying Stuart Grover. It
2 should be Stephen Grover.

3 MS. STRAND: Correct.

4 JUDGE TOREM: I know a Stuart Grover, pardon
5 me.

6 Stephen Grover, do you have that exhibit in
7 front of you?

8 MR. GROVER: Yes.

9 (Stephen Grover sworn on oath.)

10 JUDGE TOREM: Debbie Strand is here and
11 she's asked for me to give her a little bit of assistance
12 in asking the questions to go through and adopt your
13 testimony.

14 STEPHEN GROVER,
15 being first duly sworn on oath,
16 testified as follows

17
18 EXAMINATION

19 BY JUDGE TOREM:

20 Q. So I'll just start off and say have you
21 reviewed Exhibit 80 your original testimony and its
22 supporting exhibits in recent days?

23 A. Yes.

24 Q. That was originally submitted in 2004; is
25 that correct?

1 A. Correct.

2 Q. Have you reviewed Exhibit 80-SUP which I
3 believe was prepared for this proceeding in 2006?

4 A. Yes.

5 Q. And it's accompanying a number of items,
6 including a report that's labeled Exhibit labeled 80-5,
7 Economic Impacts of the Kittitas Valley Wind Project dated
8 August 11, 2006. You're sponsoring all of those studies
9 associated with both Exhibit 80 and 80-SUP; is that
10 correct?

11 (Exhibit Nos. 80.0 through 80.5 and 80-SUP
12 identified for the record.)

13 A. Correct.

14 BY JUDGE TOREM:

15 Q. Would you give the same answers to those
16 questions today that you did in 2004 and when you
17 submitted Exhibit 80-SUP in 2006?

18 A. Yes.

19 Q. Any corrections or clarification you wish to
20 make?

21 A. No.

22 JUDGE TOREM: All right. Are there any
23 objections to 80 or 80-SUP coming into the record?

24 Seeing none from the parties, Councilmembers,
25 there's a motion then presented by the Economic

1 Development Group of Kittitas County to have this come in
2 as prefiled testimony and supporting exhibits. All those
3 in favor?

4 COUNCILMEMBERS: Aye.

5 JUDGE TOREM: Any opposed?

6 (Exhibit Nos. 80.0 through 80.5 and 80-SUP
7 admitted into evidence.)

8 JUDGE TOREM: All right. So, Mr. Grover,
9 I've got the County scheduled to ask some questions.

10 Mr. Hurson, do you wish to ask those
11 questions?

12 MR. HURSON: Actually I just had a couple
13 questions.

14 CROSS-EXAMINATION

15 BY MR. HURSON:

16 Q. As I recall, your economic analysis was based
17 on some I think was two-megawatt turbines?

18 A. Yes.

19 Q. When were you told that they are two-megawatt
20 turbines?

21 A. I don't remember the exact date, but it would
22 have been in preparation of the August report, August
23 2006.

24 Q. Do you know who told you the size and number
25 of turbines?

1 A. I got that information from Horizon Wind.

2 Q. What did they tell you their size and number
3 was going to go be?

4 A. 65 turbines at two megawatts a piece.

5 Q. Did they tell you that there's a possible
6 range of turbine sizes, numbers?

7 A. I was told for my analysis to assume two
8 megawatts, 65 turbines.

9 Q. So you were basically given a very specific
10 project to analyze: 65 turbines, two megawatts in size.

11 A. Correct.

12 Q. Your analysis is based upon that specific
13 configuration.

14 JUDGE TOREM: I'm not sure he heard your
15 questions.

16 BY MR. HURSON:

17 Q. And that analysis is based upon that specific
18 configuration.

19 A. Correct.

20 Q. All right. If they are in fact building
21 something different, then your analysis would be
22 different.

23 A. Possibly.

24 MR. HURSON: Okay. Thank you.

25 JUDGE TOREM: Mr. Grover, would your

1 analysis change dramatically if the megawatt changed or
2 only if the number of turbines changed?

3 THE WITNESS: It's hard to tell. You know,
4 I would have to look and see. It's basically how do costs
5 change and what share of that cost is local. I suspect
6 that the change in megawatts would have less impact in my
7 numbers than the number of turbines.

8 JUDGE TOREM: So can the Councilmembers here
9 at EFSEC take it that if you analyzed a situation with 65
10 turbines, even if the applicant decides to put in a
11 different size turbine that most of the affects you've
12 suggested here economically would remain the same so long
13 as the number of turbines remains the same?

14 THE WITNESS: Again, without running through
15 the numbers again, I suspect that with the same number of
16 turbines but a different megawatt value the analysis would
17 be pretty much the same, yes.

18 JUDGE TOREM: Mr. Hurson, did you want to
19 follow up at all?

20 Councilmembers, any individual questions for
21 Mr. Grover?

22 Councilmember Wilson.

23 MS. WILSON: Mr. Grover, if the number of
24 turbines--let me see. How can I can ask you think this?
25 What would make a difference: one turbine, five turbines,

1 ten turbines less, or is it incremental by the number?

2 Does make any sense?

3 THE WITNESS: It would be incremental by the
4 number. Again, and this is talking just about the
5 construction impacts. I think operationally, you know, it
6 would take a significant reduction in the number of
7 turbines before the manpower estimates went down.

8 But for, again, what we're talking about
9 here is how much is being spent locally on construction,
10 and, you know, you remove a turbine you're removing the
11 spending on a portion of the workers, the supplies that go
12 into that one turbine. So I think that if you, you know,
13 start removing turbines then the numbers would start
14 scaling back for those reasons.

15 MS. WILSON: Thank you.

16 JUDGE TOREM: Any other Councilmember
17 questions?

18 Seeing none, Ms. Strand, were there any
19 other issues you wanted to follow up on?

20 MS. STRAND: No.

21 JUDGE TOREM: Mr. Grover, thank you. A very
22 short audience with us, but I know the group has reviewed
23 your materials in this matter, and I think we can let you
24 go so thank you very much.

25 THE WITNESS: Thank you very much.

1 JUDGE TOREM: Parties, that's all for the
2 witnesses on the phone this afternoon, and my schedule
3 shows that we somehow managed to get everything we said we
4 were to get done today done at the expense of some comfort
5 here and there. But our next reassumption of this will be
6 7:00 p.m. tonight back at the fairgrounds in the Home Arts
7 Building. That's where if you are a registered local, you
8 might have voted yesterday.

9 CHAIR LUCE: If you didn't vote, shame on
10 you all.

11 JUDGE TOREM: But, again, all of you please
12 reserve your votes and judgment on this matter until we've
13 heard the public testimony tonight and tomorrow night. My
14 thoughts are that we're going to figure out, Irina and I,
15 a way to determine if people that sign up tonight can't
16 make it tomorrow that they please be given priority. But
17 I'm not sure how I want to announce that because suddenly
18 everybody that's there tonight will not be able to come
19 back tomorrow.

20 So Irina and I will work that out. I've
21 been a made aware of a few people that need special
22 accommodation for tonight already, and we'll take care of
23 that sort of behind the scenes.

24 But please come ready to do what you did
25 last Tuesday and hopefully the lights won't be so bright

1 and no one will think to go in front of the lights and
2 create their own shadow flicker. I was waiting for that
3 last week, but tonight that should not be the case. You
4 know the room and you've been there before. Just bring
5 your bright smiling faces and ears ready to pay attention.

6 CHAIR LUCE: And a fly swatter.

7 JUDGE TOREM: And perhaps fly swatters. We
8 hope that the Home Arts Building is not so infested. And
9 tomorrow morning be ready to go again at nine o'clock.
10 We'll have three witnesses, Arne Nielson on shadow
11 flicker, Ted Clausing on wildlife, and Troy Gagliano will
12 be here for Renewable Northwest Project. So those three
13 I'm hoping given the minimum that we have addressing them
14 for cross-exam can be done in probably no less than an
15 hour but hopefully not much more than an hour and by ten
16 o'clock be ready to go on our field trip out to see the
17 site.

18 Tomorrow morning I'll go over on the record
19 again what the ground rules for that are. I've not been
20 made aware of any other members of the public that are
21 wishing to attend. I'm not going to announce it tonight
22 at the public meeting. It's been announced throughout the
23 adjudication and I'd rather not extend the announcement.
24 The public meeting is for a different purpose and I don't
25 think it's appropriate for us to mention it there. But we

1 will be telling people again tomorrow morning. Show up,
2 if you're there, and we leave at 10:00 or as soon as we're
3 available to leave thereafter, that will begin the site
4 visit and we'll be back when we're back and have hopefully
5 the afternoon to rest up for one more public meeting.

6 I hope tonight we get your consensus that
7 stopping at ten o'clock is quite late enough. So we'll
8 only run until about ten o'clock. At about nine o'clock
9 I'll figure out how many more people there are. We'll
10 probably take a short ten-minute break at nine o'clock but
11 plan to run from I don't know 7:00 to 9:00 or 7:00 to
12 8:45, take a break, come back and finish with the last
13 hour, something like that. So come prepared
14 physiologically as well and we'll try to stick to some
15 schedule that I'll announce.

16 If you want to lobby me for a break at 8:30
17 or 8:45, let me know off the record and we'll figure
18 something that works for everyone.

19 Parties, anything else we need to do
20 procedurally on the record today?

21 Anybody from the Applicant have anything
22 else we need to take care of this afternoon?

23 All right. Then the adjudication resumes
24 tomorrow, the public meeting starts at seven o'clock.

25 Councilmember Towne.

1 MS. TOWNE: For my record keeping, I want to
2 make sure I've figured out where all these other people
3 went. Flenniken did we affidavit?

4 JUDGE TOREM: He's going to come in by
5 affidavit so is Polisky and so apparently is
6 Mr. Jorgensen. In the two o'clock group you'll find that
7 Mr. Bernay, Mr. Kammen, Mr. Pappalardo, and Peggy O'Neill
8 will come in by affidavit as well.

9 MS. TOWNE: What about the three o'clock:
10 Butler, Acutanza, and Pitzler?

11 MS. ADELSMAN: Yes.

12 JUDGE TOREM: That's correct.

13 MS. TOWNE: Thank you.

14 JUDGE TOREM: I believe that exhausts the
15 witnesses but for the three we have tomorrow morning.

16 Okay. It's now a little past 3:20. We'll
17 be adjourned until tomorrow morning. We'll take the
18 public comment tonight at seven o'clock.

19 * * * * *

20 (Adjudicative hearing adjourned at 3:21
21 p.m.)

22

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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 September 20, 2006,
in Ellensburg, Washington.

Shaun Linse, CCR

CCR NO. 2029