

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of: )  
 Application No. 2004-01 )  
 )  
 WIND RIDGE POWER PARTNERS, LLC, ) Prehearing Conference  
 )  
 WILD HORSE WIND POWER PROJECT ) Pages 1 - 60  
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A prehearing conference in the above matter was held in the presence of a court reporter on November 1, 2004, at 12:00 p.m., at 925 Plum Street S.E., WSU Building, Room 308, in Olympia, Washington, before Energy Facility Site Evaluation Councilmembers.

\* \* \* \* \*

The parties were present as follows:

WIND RIDGE POWER PARTNERS, LLC, Darrel Peeples,  
 Attorney at Law; and Tim McMahan, Attorney at Law; 325  
 Washington Street N.E., Suite 440, Olympia, Washington  
 98501.

COUNSEL FOR THE ENVIRONMENT, John Lane, 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

1 Appearances (cont'd):  
2 FRIENDS OF WILDLIFE AND WIND POWER, David A.  
3 Bricklin, Attorney at Law, Bricklin Newman Dold, LLP,  
4 1424 Fourth Avenue, Suite 1015, Seattle, Washington 98101  
5 DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC  
6 DEVELOPMENT, Tony Usibelli, Assistant Director, Energy  
7 Policy Division, P.O. Box 43173, Olympia, Washington  
8 98504-3173.  
9 F. STEVEN LATHROP, Jeff Slothower, Attorney at  
10 Law, Lathrop, Winbauer, Harel, Slothower & Denison, LLP,  
11 1527 Robinson Canyon Road, P.O. Box 1088, Ellensburg,  
12 Washington 98926.  
13 ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY,  
14 Debbie Strand, Executive Director, 1000 Prospect Street,  
15 P.O. Box 598, Ellensburg, Washington 98926.  
16 \* \* \* \* \*  
17 CHAIR LUCE: The Washington State Energy  
18 Facility Site Evaluation Council prehearing conference for  
19 Monday, November 1, 2004, will come to order. This  
20 particular prehearing conference will be presided over by  
21 our Administrative Law Judge, Adam Torem.  
22 JUDGE TOREM: Thank you, Chairman Luce. We  
23 will just quickly take appearances from those that are  
24 here for the Council and here for other parties in the  
25 room, then we will go to the phone line, and hopefully

1 everyone on the phone line can hear adequately. When we  
2 get through appearances, I guess it would be more  
3 important.  
4 Present for the Council I'm going to start  
5 with Mr. Fryhling on the far end of the room here and have  
6 everybody come around back to Chairman Luce.  
7 MR. FRYHLING: Richard Fryhling, and I  
8 represent the Department of Community Trade and Economic  
9 Development.  
10 MR. SWEENEY: Im Tim Sweeney. Im with the  
11 Utilities and Transportation Commission.  
12 MS. ADELSMAN: Im Hedia Adelsman with the  
13 Department of Ecology.  
14 MS. TOWNE: Chris Towne for the Department  
15 of Fish and Wildlife.  
16 MR. IFIE: Tony Ifie for the Department of  
17 Natural Resources.  
18 CHAIR LUCE: I would note the presence of  
19 Ann Essko, our Assistant Attorney General, and my name is  
20 Jim Luce. Im Chair of the Council.  
21 JUDGE TOREM: Patti Johnson, are you out  
22 there?  
23 MS. JOHNSON: Yes, this is Patti.  
24 JUDGE TOREM: All right, and representing  
25 Kittitas County. Also present are EFSEC staff Allen

1 Fiksdal and Irina Makarow. Other parties present in the  
2 room I see Darrel Peebles here as counsel for the  
3 Applicant, along with Chris Taylor and another gentleman.  
4 MR. WILLIAMS: Scott Williams with Puget  
5 Sound Energy.  
6 JUDGE TOREM: All right. Scott Williams  
7 from PSD is here as well. On the telephone -- and we'll  
8 come back to Tony for CTED. On the telephone do we have  
9 someone representing Steven Lathrop?  
10 MR. SLOTHOWER: Yes, Jeff Slothower is here.  
11 JUDGE TOREM: Thank you, sir.  
12 Representing Kittitas County?  
13 MR. HURSON: Jim Hurson.  
14 JUDGE TOREM: Anybody else, Mr. Hurson, or  
15 are you without planning staff at the moment?  
16 MR. HURSON: Our now planning director is  
17 here, yes, Darryl Piercy with me.  
18 JUDGE TOREM: What was the name?  
19 MR. HURSON: Darryl Piercy. We'll probably  
20 need him added to the mailing list. I'll email Irina to  
21 get that put on the list correctly.  
22 JUDGE TOREM: Can you give us the spelling  
23 of Mr. Piercy's name.  
24 MR. PIERCY: It's D-a-r-r-y-l P- as in Paul  
25 -i-e-r-c-y.

1 JUDGE TOREM: Okay. Thank you, Mr. Piercy.  
2 Representing Friends of Wildlife and Wind  
3 Power?  
4 MR. BRICKLIN: David Bricklin, and I believe  
5 the Robert Kruse is on the line as well.  
6 Is that right, Robert?  
7 MR. KRUSE: Yes, that's correct.  
8 JUDGE TOREM: All right. And the Economic  
9 Development Council of Kittitas County?  
10 MS. STRAND: Yes, Debbie Strand.  
11 JUDGE TOREM: Thank you. Is there anyone  
12 else on the line?  
13 MR. McMAHAN: Tim McMahan here from Stoel  
14 Rives representing the Applicant.  
15 JUDGE TOREM: Anyone else?  
16 MR. LANE: John Lane, Counsel for the  
17 Environment.  
18 JUDGE TOREM: Good afternoon, Mr. Lane.  
19 Anyone else?  
20 All right and present today also who has  
21 filed a notice of appearance at this point is one of the  
22 deputy directors for Community, Trade, and Economic  
23 Development, Tony Usibelli.  
24 I think that takes care of our appearances,  
25 and our roll call. Did I miss anyone?

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1 All right. I don't think so.  
2 Is there a motion, Councilmembers, to adopt  
3 the proposed agenda which had a total of ten items?  
4 MS. TOWNE: So moved.  
5 MR. IFIE: Second.  
6 JUDGE TOREM: It's been moved and seconded.  
7 Call for the question.  
8 CHAIR LUCE: Question has been called for.  
9 All in favor say aye.  
10 COUNCILMEMBERS: Aye.  
11 JUDGE TOREM: The agenda that was  
12 distributed has been adopted. Item No. 4 is the  
13 consideration of petitions for intervention, and as you  
14 will recall back on September 30 in Ellensburg, the  
15 Council heard comment and took objections from the  
16 Applicant and had a discussion of all four petitions for  
17 intervention that had come in at that time and also heard  
18 from Mr. Usibelli that although it was a clerical error  
19 not to have filed a notice of appearance one was intended.  
20 I believe one was filed the following day.  
21 We had indicated in the notice of intent to  
22 hold this prehearing conference that there would be a  
23 ruling today on petition for intervention of Mr. Lathrop.  
24 The Council is still in the process of making that  
25 determination, and the Council also if you saw the

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1 footnote further down had indicated to the parties that it  
2 would be issuing its order which would delineate the scope  
3 of intervention for those three intervenors that had their  
4 petitions verbally approved on September 30. The Council  
5 has thought that it's best to issue one single order  
6 handling all of the four intervenors together and  
7 delineating the scope for each one, and it would be  
8 cleaner to do that in the Council's opinion to apply the  
9 same test as for determining the scope for intervention  
10 and the rights to intervene for each one. That is in  
11 draft format.  
12 The Council has had a chance to review the  
13 briefs filed by you, Mr. Slothower, and the reply that you  
14 filed as well last week, and those other pleadings that  
15 came in opposition to Mr. Lathrop's intervention both from  
16 the Applicant and from Mr. Bricklin's client.  
17 So those have all been considered by the  
18 Council, and a deliberative session was held to get the  
19 initial Council feedback on those and a draft order is in  
20 process. We are hoping that no later than next Monday,  
21 Tuesday, Wednesday, that time frame the order will be  
22 issued, and everybody will have an idea as to where they  
23 stand on intervenor status and whether there is any  
24 problem with the scope of intervention that the Council  
25 intends to grant for those that are granted status as

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1 intervenors.  
2 Mr. Slothower, I wanted to make sure if you  
3 have any questions about the process or concerns for  
4 waiting another week on that. I had hoped to have it, but  
5 that's the best we can do.  
6 MR. SLOTHOWER: I don't have any concerns or  
7 questions. Thank you.  
8 JUDGE TOREM: All right. Thank you. Any  
9 other intervenors have any questions or concerns as to  
10 waiting for another week to determine the scope of their  
11 intervention that was previously granted?  
12 All right. Hearing none, we will move on  
13 then to hear from Mr. Usibelli, if necessary, as to effect  
14 of the notice of appearance that was filed I believe on  
15 October 1. My understanding is that based on our statute  
16 and WAC any Council positions that have an agency that is  
17 being represented by a member on the Council may intervene  
18 of right simply by filing a notice of appearance. That  
19 had not been particularly clear to me in our last  
20 discussion, but I have conferred with our staff Assistant  
21 Attorney General, Ann Essko. That appears to be what's  
22 required, and that's what had happened last time in the  
23 Kittitas Valley case.  
24 So I take it, Mr. Usibelli, that the notice  
25 of appearance means your agency will become an intervenor.

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1 MR. USIBELLI: That is correct.  
2 JUDGE TOREM: All right. And because it's  
3 of right I won't go to you, Mr. Peeples or Mr. McMahan, to  
4 ask for objection. It's an of right issue.  
5 Are there any comments that any of the  
6 persons on the phone -- including Mr. Slothower if you  
7 want to speak to it, you may, although your intervention  
8 status for your client has not yet been determined. Is  
9 there anyone that wants to speak to Mr. Usibelli's notice  
10 of appearance?  
11 All right. Hearing none, Mr. Usibelli you  
12 will be listed as Community Trade and Economic Development  
13 as an intervenor from this point on.  
14 MR. USIBELLI: Thank you.  
15 JUDGE TOREM: Item No. 5, Mr. Peeples. We  
16 are going to now move on to have the Council perhaps take  
17 action on the request for a second extension of the  
18 preemption period. That preemption period was to expire  
19 on November 15, two weeks from today, and today the agenda  
20 calls for a discussion of this request and as necessary  
21 from you and from Mr. Hurson a discussion or presentation  
22 of any schedule developed between you and the County for  
23 resolving any land use inconsistency issues.  
24 MR. PEEPLES: I believe the date -- can  
25 people hear on the phones?

1 MS. STRAND: Yes.  
 2 MR. PEEPLES: I would like to set that date  
 3 as a safe date for a period of at least a few weeks after  
 4 the County believes is their best estimate of when they  
 5 can get through their process, and it is my understanding  
 6 that their best guess right now is towards the end of  
 7 February. Jim, can you speak up on that?  
 8 MR. HURSON: You said the end of February?  
 9 MR. PEEPLES: Yes. That's kind of where  
 10 you're aiming at.  
 11 MR. HURSON: Yes, tentatively right now  
 12 we've got scheduled for hearings starting the week of  
 13 January 24 or 25. That would be planning commission and  
 14 the other boards, and then having to put together the  
 15 paperwork, follow-ups, the second round of hearings under  
 16 our process. We anticipate we'd complete it by the end of  
 17 February. So if it was through the end of February, that  
 18 would fit in our schedule.  
 19 MR. PEEPLES: So generally based on that I  
 20 would like to have until March 15. That would allow some  
 21 time period for things to shake out. Kind of getting  
 22 ahead of myself on that with regard to scheduling the  
 23 hearing, it is going to be my suggestion -- and, Jim,  
 24 please speak up when I get done here. -- to go ahead and  
 25 schedule it as if we're going to obtain land use

1 consistency. Then if we don't, we'll have to sit down and  
 2 figure out what a different schedule would be.  
 3 MR. HURSON: Yes. Jim Hurson, Deputy  
 4 Prosecutor Kittitas County. I've talked with some of the  
 5 Zilkha representatives and also staff on our end, and we  
 6 don't have an objection to setting the schedule I think  
 7 with EFSEC except possible starting schedules for the last  
 8 week in February, the first week in March. We would  
 9 suggest the one that was on the first week in March which  
 10 I think was March 7. That would, of course, carry with it  
 11 assuming that consistency is reached, and so you could do  
 12 all the briefing and the scheduling. We could go forward  
 13 there. If the County approves for consistency, we would  
 14 see it that basically the first day of the hearing the  
 15 County would enter a stipulation on consistency and a  
 16 stipulation on any other matters we had, and then we  
 17 probably wouldn't be involved in the process.  
 18 If the board, my commissioners don't approve  
 19 it, then we would need to basically have an understanding  
 20 at this point that that hearing date is going to get  
 21 stricken, and then we have to reset a briefing schedule  
 22 and a new hearing date if there's a need for a request for  
 23 an override. But we don't have a problem with setting a  
 24 hearing schedule based on the premise it would be  
 25 approved. But if it isn't approved, then we also need it

1 understood that we have to have it rescheduled with an  
 2 appropriate briefing schedule down the road.  
 3 MR. PEEPLES: So with that kind of as a  
 4 background, we would request until March 15 as a date, the  
 5 deadline date for us to file preemption, if necessary.  
 6 JUDGE TOREM: Let me ask both of you, --  
 7 Again, this is Judge Torem -- as to the impact. If there  
 8 is land use consistency, and again looking ahead to the  
 9 weeks that it might be scheduled, then the County would  
 10 essentially have a settlement. Is that correct,  
 11 Mr. Hurson?  
 12 MR. HURSON: That's the concept I'm working  
 13 on. If we're going to go through a public process that we  
 14 would resolve any issues that are County issues which in  
 15 essence, yes, it would be a stipulation on the settlement  
 16 regarding issues and consistency. One thing you do need  
 17 to appreciate, however, is that I am going to have a  
 18 different board next year. Two of the three commissioners  
 19 will be new, so I don't know who they are. The election  
 20 is tomorrow. So I am just trying to anticipate various  
 21 options, set up a process that will work as far as timing,  
 22 and just realize that I don't know who my client is going  
 23 to be next year.  
 24 JUDGE TOREM: All right. Well, that unease  
 25 for the rest of the nation exists as well, and I'm sure we

1 can wait to see with these hearing dates and have sort of  
 2 a backup if there's a need for a request for preemption to  
 3 be filed. My only concern is if we schedule the hearing  
 4 as though with this matter still up in the air what it  
 5 does to all of the other testimony that might be filed.  
 6 We've had a long discussion about bifurcating this issue,  
 7 and typically it's been a question of putting this issue  
 8 first and the inability of our statute to bifurcate the  
 9 recommendation to the Governor at all as to preemption or  
 10 not.  
 11 I recognize also that if Mr. Lathrop is  
 12 going to participate that his participation may be  
 13 severely impacted by knowledge of whether or not  
 14 preemption is going to be requested, so I don't want,  
 15 Mr. Peeples, if it's scheduled that way, and it gets  
 16 bumped, I don't want to have a rush, rush briefing  
 17 schedule to put it right back on for let's say it was  
 18 going to be that second week in March, the 7th to the  
 19 11th. We might be able to dry docket another week of  
 20 hearings as needed for May as a backup date.  
 21 But we need to have a different -- I'm not  
 22 prepared to look at a schedule yet for what judge  
 23 availability will be, let alone ask the Councilmembers to  
 24 do that. It may be that we come back with another  
 25 prehearing conference based on Mr. Hurson's evaluation of

1 who his client might be next month and figure these things  
2 out as to what clues the tea leaves might have after  
3 tomorrow's election. I think that's the best the Council  
4 can get right now from both parties, and we certainly  
5 would appreciate seeing the land use inconsistency  
6 resolved. It would make matters simpler for a lot of  
7 fronts, including the local constituencies in my opinion.

8 Mr. Peeples, anything else you want to add?

9 MR. PEEPLES: Well, I think once the  
10 intervention order has been issued and see the scope of  
11 intervention with the different parties involved that will  
12 also make it kind of clear of what issues might be related  
13 to the parties and preemption and what issues may not. So  
14 I think that will aid in analysis of what would come in  
15 and what would be actively involved at a later time.

16 JUDGE TOREM: All right. Mr. Hurson,  
17 anything else to add?

18 MR. HURSON: No. Well, I guess one thing I  
19 was just going to say as to the schedule we've been  
20 talking about. Frankly, the County hasn't anticipated  
21 prefiling anything and spend all of our efforts working on  
22 the consistency issue. If we get that resolved, then we  
23 don't need to be involved. So if that helps, that would  
24 be one less stack of prefiled testimony you would have to  
25 worry about.

1 JUDGE TOREM: Correct me if I'm wrong,  
2 Mr. Hurson. Most of Mr. White's prefiled testimony in the  
3 Kittitas Valley case focused on the land use inconsistency  
4 and the process and the issues involved in whether or not  
5 preemption would have been justified in that case.

6 MR. HURSON: Yes, most of it was, and so  
7 that's what we're basically saying. Let's not go down  
8 that path. Let's try to get this thing resolved. If we  
9 get it resolved, we're done.

10 JUDGE TOREM: Worst-case scenario if it's  
11 not resolved, and your client chooses to either deny the  
12 permitting that the County would like to give it, if it  
13 resolves in favor, or if your county decided that it was  
14 no matter what still land use inconsistencies existed,  
15 then you would want to have an opening at least for a  
16 similar briefing schedule to whether it's opposed or at  
17 least detail what happened this time in the attempts to  
18 resolve the land use inconsistencies and whether  
19 preemption is justified.

20 MR. HURSON: Correct. We would have a  
21 second round of briefing, and basically I guess as a  
22 reference it would be whatever sort of prefiled timing  
23 you're using for the main hearing. We would probably  
24 anticipate there would be a similar spacing and prefiled  
25 testimony. But that's something that I don't think we

1 need to sort out at this point.

2 JUDGE TOREM: Okay. Well, I'm just thinking  
3 down the road as to how to back those things out if  
4 Hearing Schedule A goes to Hearing Schedule B as has been  
5 in the case in these wind farm hearings. So I'm just  
6 trying to think a little further down the road and make  
7 sure that everyone that needs to be available can hold  
8 appropriate dates on their calendar.

9 Do any of the other parties on the telephone  
10 have anything they want to comment on, whether in support  
11 or in opposition or just a general comment on this  
12 proposal to extend the deadline for a request for  
13 preemption to March 15, 2005?

14 Let me start with Ms. Strand. Do you have  
15 any comment?

16 MS. STRAND: No, we have no objection to it.

17 JUDGE TOREM: Mr. Bricklin?

18 MR. BRICKLIN: I have a comment and a  
19 question. So is what you're contemplating is going with  
20 the schedule like the one Irina sent out this morning? I  
21 know we're going to discuss the details of that, but then  
22 the schedule would be a hearing in early March. Would  
23 that be bumped if the County and the Applicant are unable  
24 to reach resolution on the land use consistency?

25 JUDGE TOREM: Yes, Mr. Bricklin. That's

1 what I'm hearing is that the schedule that was sent out by  
2 email in the last hour would perhaps be adopted today and  
3 all parties would go along with that. The County has  
4 indicated they wouldn't be one of the parties filing  
5 testimony, but if they don't reach land use consistency,  
6 then I'm hearing there would be a motion for a continuance  
7 that has already been announced and anticipated today and  
8 a separate schedule for filing testimony regarding the  
9 land use consistency issues as opposed to those others  
10 that we might adopt as relevant today would be set up.  
11 And hopefully sometime in May we would schedule a backup  
12 date for the hearing.

13 MR. BRICKLIN: All right. So I guess my  
14 comment is from my understanding, the little conversation  
15 I've had with the other parties that at least at this  
16 juncture the likelihood of getting the land use  
17 consistency issues resolved is not great, and I know  
18 everybody is going to be trying real hard to overcome  
19 that. But my understanding is it's an uphill battle  
20 there, and given that, it seems at the moment at least  
21 that it's more likely than not that we are going to be  
22 looking at a hearing in May, not in March, and I'm not  
23 sure that you wanted all the testimony filed starting in  
24 December, January if the hearing is not until May.

25 The second comment I would have is if you're

1 not going to find out until maybe March whether the land  
 2 use consistency has been resolved or not, what are you  
 3 going to do if the hearing is suppose to start on February  
 4 28? It could be at that point in fact opening statements  
 5 will have been filed ten days before that under the  
 6 tentative schedule. It seems like there's some prospect  
 7 that you're not even going to know until the first or  
 8 second week of March -- That is after the hearing has  
 9 started. -- as to whether the land use consistency is  
 10 resolved or not.

11 JUDGE TOREM: Those are all excellent  
 12 points, Mr. Bricklin. Certainly hearing the date of March  
 13 15, 2005 was much later than I had anticipated in working  
 14 with Irina to send out that anticipated schedule. So it  
 15 may be when we get to that part of the agenda that the  
 16 Applicant may recommend we not schedule this for the  
 17 earlier time frame. But I recognize that the continuance  
 18 of the Kittitas Valley case and the effort to move ahead  
 19 with this project that Puget Sound Energy now is intensely  
 20 interested in was trying to get the earliest possible  
 21 hearing date, and that's where those 28 February through  
 22 11 March dates came from; me having had that perception of  
 23 the Applicant's intention to get this moved along as  
 24 quickly as possible.

25 MR. BRICKLIN: And we share in that. I'm

1 just noting the apparent disconnect of the two things that  
 2 are being discussed here.

3 JUDGE TOREM: Right now there is a  
 4 disconnect. That's correct. I had factored that into my  
 5 proposed dates. So blame any of the ambiguity, at least  
 6 50 percent, on this Administrative Judge not anticipating  
 7 exactly.

8 MR. BRICKLIN: I'm not blaming any  
 9 reference. I'm just pointing out I don't think the two  
 10 schedules match up very well at this point.

11 JUDGE TOREM: Let me see if, Mr. Lathrop, if  
 12 you have anything, and then, Mr. Lane, if you have  
 13 anything from CFE just on the issue of a position of  
 14 support or any other similar observations about the  
 15 Applicant's request to extend the deadline for filing for  
 16 preemption?

17 MR. SLOTHOWER: Your Honor, Jeff Slothower.  
 18 I didn't receive an email this morning, so I don't have  
 19 your proposed schedule in front of me, but listening to  
 20 Mr. Peeples and Mr. Hurson assuming we're allowed to  
 21 intervene we would have no objection to those dates.

22 JUDGE TOREM: All right. Mr. Lane, anything  
 23 from the Counsel for the Environment?

24 MR. LANE: I don't have any concerns about  
 25 rescheduling the preemption until March. I share

1 Mr. Bricklin's concern with scheduling a bunch of dates  
 2 that just seem tentative at this point, getting a lot of  
 3 prefiled testimony ready to go that potentially might get  
 4 continued over again.

5 JUDGE TOREM: So what I'm hearing from most  
 6 of the parties is that it would be helpful to know whether  
 7 land use is going to be an issue or not in submitting any  
 8 of their items for prefiled testimony, and it may also as  
 9 Mr. Peeples points out be dependent on whether or not  
 10 that's within the scope of their intervention.

11 When that order comes out, then we will want  
 12 to have I guess an opportunity for any parties that think  
 13 that land use consistency or preemption is part of the  
 14 scope of their intervention which is possible for any of  
 15 the intervenors that are not under consideration. They  
 16 would have no ability to object to that is what I'm  
 17 hearing and as for that scope have any meaningful ability  
 18 to file unless they know if there's going to be a request  
 19 for preemption.

20 Mr. Bricklin and Mr. Lane, does that kind of  
 21 sum up where you're going? Mr. Bricklin?

22 MR. BRICKLIN: I think so.

23 MR. LANE: Yes, I think that is generally.

24 JUDGE TOREM: Mr. Usibelli, anything from  
 25 CTED?

1 MR. USIBELLI: We are not opposed to the  
 2 extension. I think I would echo the comments of  
 3 Mr. Bricklin concerning the issues around scheduling and  
 4 timing.

5 JUDGE TOREM: For those on the phone  
 6 Mr. Usibelli did not object and echoes the same concerns  
 7 about scheduling.

8 Mr. Peeples.

9 MR. PEEPLES: I just wanted to add that we  
 10 will know whether or not there's going to be a necessity  
 11 for preemption at the end of the County process. So  
 12 assuming it ends in February, we'll know the status of  
 13 that at the end of February. I just want a few weeks to  
 14 be able to go through it and then get the petition for  
 15 preemption together. So I think it's still late to know  
 16 at the end of February, but we'll know before the petition  
 17 has been filed. That's the only comment that I have, but  
 18 we're only talking a couple of weeks there.

19 JUDGE TOREM: Before I turn it over to the  
 20 Council for their questions and maybe comments and  
 21 concerns on this, let me just see if I can clarify from  
 22 you, Mr. Peeples and Mr. Taylor, whether or not the  
 23 Applicant would still be interested in having it scheduled  
 24 for a 28 February, 7 March date, essentially risking that  
 25 we would have to reopen all the briefing schedules and

1 allow folks to supplement all of their prefiled testimony  
 2 and have a do over on that if you're not able to achieve  
 3 the desired result of land use consistency?  
 4 MR. TAYLOR: I think the answer is yes.  
 5 JUDGE TOREM: Mr. Taylor, you're asking for  
 6 essentially a Plan A and a Plan B hearing schedule.  
 7 MR. TAYLOR: Yes.  
 8 JUDGE TOREM: Councilmembers, with  
 9 clarification in mind, I know Mr. Luce had some questions.  
 10 We passed the microphone, and, Mr. Peeples, you have a  
 11 comment.  
 12 MR. PEEPLES: I don't think all the  
 13 testimony is reopened. It's only those that would relate  
 14 to preemption. That would be the only thing I would like  
 15 to insert at this time. So we would have all the  
 16 testimony filed, cross-filed for all the issues except  
 17 those with regard to preemption.  
 18 JUDGE TOREM: Chairman Luce.  
 19 CHAIR LUCE: I just had I guess, first of  
 20 all, a comment. I would applaud the parties' efforts, the  
 21 County and the Applicant, their good efforts and their  
 22 good faith to resolve the land use consistency issues  
 23 before the hearing, and I wish them well.  
 24 I do have some, and I don't like to use the  
 25 word concerns, but I guess I will use it for lack of a

1 better word. Based on past history that may be setting  
 2 the bar pretty high. It's a goal, stretch goal. What  
 3 they used in my prior life, they would say that's a real  
 4 stretch goal. So I guess I have a question.  
 5 If we're looking at a February possibility  
 6 of a hearing or getting up to that date and then striking  
 7 that hearing and then rolling it over to May for another  
 8 hearing, what would be wrong with a contingent request for  
 9 preemption now or in the not too distant future?  
 10 I mean asking for preemption is not  
 11 suggesting that preemption is actually going to be needed.  
 12 It's a contingent request for preemption in the event that  
 13 you're not able to get to yes. You're not able to meet  
 14 the stretch goal. Nobody denies that good faith is going  
 15 to be used to resolve these issues. Everybody is moving  
 16 toward that end. But if you can't get to that end, and  
 17 God knows we all wish you well, what would be wrong with  
 18 requesting preemption with the understanding that if you  
 19 can't get there, then we can go ahead and meet the  
 20 schedule and actually have this hearing that Irina has  
 21 laid out with the filings of the testimony and with the  
 22 hearing occurring in the time frame that has been set?  
 23 I mean the alternative is we are going to  
 24 get readied up like we had last time in another case,  
 25 Kittitas Valley. We were right up to the day before or

1 the week before the hearing is about to occur and then  
 2 it's off. Now it's a different reason it was off in  
 3 Kittitas Valley. I know that. But in this case we'd get  
 4 right up to that, and then despite all the good efforts  
 5 and all the good faith that both of you I know are going  
 6 to show you wouldn't be able to reach closure. Then we're  
 7 back three months doing this all over again. You're going  
 8 to come in with a request for preemption and away we go.  
 9 So I guess I would just ask you to search  
 10 your souls as to whether there's anything inherently wrong  
 11 with requesting preemption now with the understanding that  
 12 this is not something that either party desires and it's  
 13 not something the Council desires. We don't want to  
 14 preempt. That's the last thing we want to do. But the  
 15 question is, is it worth putting that word on paper in  
 16 saving yourselves three months and then making these  
 17 herculean efforts to avoid that outcome? So that's the  
 18 only thing I would ask, and Councilmembers may have  
 19 questions themselves.  
 20 JUDGE TOREM: Councilmember Adelsman, did  
 21 you want to hear from the Applicant first before your  
 22 comments?  
 23 MS. ADELSMAN: Yes.  
 24 MR. PEEPLES: I would like to respond to  
 25 that. The issue is your WAC. We have to show certain

1 things in your WAC, and we're going to have to show that  
 2 by evidence. So if we won't know all of that, we won't  
 3 know exactly what that testimony would be until the County  
 4 finishes its process. So filing now I don't think is  
 5 going to save time on the end because we would have to  
 6 refile more testimony at the end of February. We won't  
 7 know until the end of February. The Applicant won't know  
 8 until the end of February about how to present a case for  
 9 preemption.  
 10 CHAIR LUCE: I'm not going to judge the  
 11 legal merits of your interpretation of the WACs. That's  
 12 up for you to decide and for the County to decide and for  
 13 others who are interested in the outcome of this case to  
 14 decide. It just seems to me that -- well, I've stated  
 15 what I believe to be the case here in terms of losing  
 16 three months.  
 17 JUDGE TOREM: Thanks, Chairman Luce.  
 18 Councilmember Adelsman. Hold on one second  
 19 for the microphone, please.  
 20 MS. ADELSMAN: I think the question that I  
 21 have, and maybe it's to the County and to the Applicant.  
 22 On the SEPA itself one of the issues that we had to deal  
 23 with last time relating to preemption is the scope of  
 24 SEPA, and I know there was some discussion back and forth  
 25 between us and the County related to the SEPA and the lead

1 agency. I just wanted to know what is going on with the  
 2 SEPA at the County level or not going on?  
 3 JUDGE TOREM: Mr. Hurson, my understanding  
 4 is that the Department of Ecology has issued a letter  
 5 memorandum declaring that EFSEC is the lead agency for the  
 6 Wild Horse case as far as SEPA is concerned.  
 7 MR. HURSON: Yes, that's correct.  
 8 JUDGE TOREM: Ms. Adelsman, is that what  
 9 you're asking about?  
 10 MS. ADELSMAN: So the County is not doing a  
 11 SEPA; is that correct?  
 12 MR. HURSON: Ecology has said that EFSEC is  
 13 the lead. What that did is it prevented the County from  
 14 being able to look at possibly doing a mitigated DNS as a  
 15 process, so we are looking at the draft that EFSEC has put  
 16 together. There were a couple of areas that we needed  
 17 some additional information on that we felt was necessary  
 18 for us to have before we go forward with our GMA planning.  
 19 We are working with the Applicant on that. They're  
 20 supplying the information to our consultant who is putting  
 21 that together, so we'll have that information in hand  
 22 before we get to our hearings.  
 23 JUDGE TOREM: Any other Councilmembers with  
 24 a question or concern regarding the issue of preemption  
 25 and its impact on scheduling?

1 All right. I see none.  
 2 Mr. Peeples, Mr. Hurson, anything else that  
 3 you want to add on this?  
 4 MR. PEEPLES: No, Your Honor.  
 5 MR. HURSON: Jim Hurson. I was just going  
 6 to say as far as the contingent preemption request I agree  
 7 with Mr. Peeples on the way that the WACs are written and  
 8 as far as what facts would be out there. Frankly from my  
 9 perspective I'd like to focus my energies and the planning  
 10 staff energies on trying to get it through our process.  
 11 When you're in a preemption override mode it's kind of the  
 12 opposite focus. So we would like to keep it focused on  
 13 trying to facilitate the process through rather than  
 14 getting in a fight over a preemption issue.  
 15 CHAIR LUCE: I wasn't suggesting a fight. I  
 16 don't like fights.  
 17 JUDGE TOREM: All right. Regardless if  
 18 preemption is a four letter word in this context or not,  
 19 let's take a look then the Applicant's motion and request  
 20 is to extend the deadline to request preemption to March  
 21 15, 2005. Councilmembers, is there a motion to adopt or  
 22 approve that?  
 23 MR. IFIE: I so move.  
 24 JUDGE TOREM: All right. Moved by  
 25 Councilmember Ifie.

1 Is there a second?  
 2 MR. FRYHLING: I will second it.  
 3 JUDGE TOREM: All right. Councilmember  
 4 Fryhling.  
 5 Is there any discussion from any of the  
 6 other Councilmembers at this point on extending the  
 7 preemption deadline to March 15, 2005?  
 8 MS. TOWNE: I would hope that we would  
 9 interpret that deadline as a not later than date. It  
 10 strikes me that in the course of negotiations with the  
 11 County and say the planning commission hearing and their  
 12 recommendation to the county commissioners somebody is  
 13 going to have a pretty good idea of how things are going  
 14 somewhat earlier than March 15. And if someone does know,  
 15 then it would behoove them to so inform us and maybe we  
 16 can expedite the schedule.  
 17 JUDGE TOREM: Certainly, Chris Towne, I  
 18 appreciate that observation and certainly Mr. Peeples  
 19 knows that any extension of a date comes with an  
 20 obligation to give us monthly updates, and he and  
 21 Mr. Hurson have always done that in both this case and the  
 22 Kittitas Valley case. So we would expect those as much as  
 23 possible on any of the application updates at regular  
 24 EFSEC meetings.  
 25 My expectation is that the first round of

1 hearings in Kittitas County in their process at the end of  
 2 January will tell us much of what we need to know, but  
 3 probably not with enough time for an application for  
 4 preemption request to be filed and the testimony to  
 5 preserve those hearing dates. But we may know by the end  
 6 of January if there's a bright outlook for the land use  
 7 consistency and a settlement with the County or if we're  
 8 going to be bumped back at that point. We'll know  
 9 probably a month in advance of the hearings if that's  
 10 going to be likely.  
 11 Mr. Peeples, do you agree?  
 12 MR. PEEPLES: I would agree with that.  
 13 JUDGE TOREM: Any other Councilmember  
 14 comments or concerns at this point? There's a motion on  
 15 the table to extend the preemption deadline to March 15,  
 16 2005. If there's no further comments or discussion, then  
 17 let's, Chairman Luce, if you will.  
 18 CHAIR LUCE: Call for the question. All in  
 19 favor?  
 20 COUNCILMEMBERS: Aye.  
 21 JUDGE TOREM: All right. Then the  
 22 Applicant's request to extend preemption is granted to  
 23 essentially a not later than date of March 15, 2005, and  
 24 we will now move onto --  
 25 CHAIR LUCE: With monthly updates if not



1 sooner.

2 JUDGE TOREM: Correct. We will have a

3 request for the same updates as the previous request for

4 extension that have been granted in the Kittitas Valley

5 case.

6 Item No. 6 on the agenda is consideration

7 and adoption of an issues list. All of you should have

8 received a copy via direct email or had it off the website

9 Council Order No. 790 in the Kittitas Valley case, and on

10 Page 8 and 9 of that he had a list of prefiled testimony

11 topics. The first of which Letter A dealt with

12 preemption, so at this point excluding that. Let me turn

13 to the Applicant second but ask, Mr. Lane as Counsel for

14 the Environment, if there was any look at Letters B, C, D,

15 E, F, and G that obviously from CFE's perspective did

16 pertain or did not pertain might be the easiest way to

17 this particular hearing?

18 Mr. Lane.

19 MR. LANE: Yes, I think that Counsel for the

20 Environment would agree with the list of issues as they're

21 currently listed.

22 JUDGE TOREM: Were there any you as CFE

23 might want to add or subtract specifically from the list

24 from where you're sitting?

25 MR. LANE: I'm looking at List C. There's

1 nothing that I would need to add at this time, and in

2 terms of removal of the issues I think under C, I don't

3 recall that communications was an issue in this case for

4 anyone. I don't believe that electromagnetic and

5 vibrations was an issue for anyone in this case.

6 JUDGE TOREM: Do you recall, Mr. Lane, if

7 noise was an issue on this one or was that just going to

8 be a standard issue that we need to address on any of

9 these from your perspective.

10 MR. LANE: I think it might be a standard

11 issue, but I don't recall anyone fairly raising that

12 issue.

13 Same thing with shadow flicker. I don't

14 think there's anyone that posed that in this case.

15 JUDGE TOREM: Okay.

16 MR. BRICKLIN: Well, this is Dave Bricklin.

17 Until we get information from our wildlife experts, I

18 don't know that I am ruling out noise or shadow flicker to

19 the extent that it has an impact on wildlife.

20 JUDGE TOREM: I had thought noise might be

21 an impact for wildlife. I wasn't sure about shadow

22 flicker or at least I didn't hear the light and glare

23 issues.

24 MR. BRICKLIN: Right. So I think I'm

25 covered adequately because you have wildlife as a separate

1 issue, so I presume anything that impacts wildlife comes

2 in there. If you were to take noise or shadow off the

3 table here, I want to make sure I can still talk about it

4 if my wildlife expert tells me that's an issue for

5 wildlife.

6 JUDGE TOREM: Certainly the way this list is

7 drawn out it's under human impact issues as opposed to

8 wildlife, and it's differentiated.

9 MR. BRICKLIN: So I don't care on the human

10 impacts then.

11 JUDGE TOREM: All right. That's got a room

12 full of smiles here, Mr. Bricklin.

13 MR. BRICKLIN: For purposes of my current

14 client.

15 JUDGE TOREM: All right. Mr. Peeples and

16 Mr. Taylor, other than Letter A for preemption which we

17 hopefully won't have to deal with, how does this list of

18 issues suit this particular project in your perspective?

19 MR. PEEPLES: The only comments I have is on

20 some of them like communications. I don't believe there's

21 been any issues raised with regard to communications.

22 You've already mentioned the noise and light and glare.

23 The vibration impact I don't think that's been raised in

24 this one. So I don't think these are exactly compatible

25 with before. I think they give a general, good general

1 framework to review it, but I think there's some specific

2 things that have not been raised as issues in this

3 application.

4 JUDGE TOREM: From the Applicant's

5 perspective are there any potential issues missing from

6 this list or is it just overly broad?

7 MR. PEEPLES: I'm not saying it's overly

8 broad. I'm just saying there's some specific ones that

9 have not been raised as issues in this proceeding. That's

10 all. The general issues I think are a good list of the

11 general issues. Some of the specific issues like we

12 mentioned have not been raised as an issue in this case.

13 MR. TAYLOR: Fish would be another example.

14 JUDGE TOREM: Mr. Bricklin, since it comes

15 back to environment and natural resource issues do you and

16 Counsel for the Environment are there any aquatic or fish

17 issues that come up here?

18 MR. BRICKLIN: I don't believe so.

19 MR. LANE: I can't recall any as well.

20 JUDGE TOREM: So that may be one that we can

21 trim from the list as well.

22 MR. BRICKLIN: Robert, hop in here if I'm

23 overlooking anything.

24 MR. KRUSE: Part of the subject matter of

25 our discussion has to do with the proximity of the springs

1 in locations close to turbines as presently designed, and  
 2 so if a multitude of springs and how they relate to  
 3 aquatic issues falls into that category, then that should  
 4 remain as part of the agenda.  
 5 MR. BRICKLIN: Right. Let me elaborate on  
 6 that a little bit. We're not asserting that the wind farm  
 7 would have an adverse impact on the springs themselves but  
 8 rather that the value of the springs for wildlife would be  
 9 diminished if some of these turbines are located in close  
 10 proximity to the springs.  
 11 JUDGE TOREM: Would you agree, Mr. Bricklin  
 12 and Mr. Kruse, that if we left the vegetation and wildlife  
 13 line item, as well as the land and water line item under  
 14 environmental and natural resource issues that would be  
 15 broad enough to cover any such concerns with the springs  
 16 themselves?  
 17 MR. BRICKLIN: I would think so.  
 18 MR. KRUSE: Yes.  
 19 JUDGE TOREM: All right. Mr. Hurson, from  
 20 the County's perspective, any other issues that needed to  
 21 be deleted, trimmed off, or perhaps added?  
 22 MR. HURSON: Not that I see. Like you said,  
 23 the preemption issue is the biggest issue, and if that's  
 24 resolved, then I think all the county issues will be  
 25 resolved.

1 JUDGE TOREM: All right. Mr. Slothower,  
 2 anything on this particular topic and the issues?  
 3 MR. SLOTHOWER: Again, I have not seen the  
 4 email that went out. I didn't receive it.  
 5 JUDGE TOREM: This was one that was the same  
 6 issues list that we developed in the last case, so this  
 7 has been out there for some time. It's not the scheduling  
 8 issue that went out today.  
 9 MR. SLOTHOWER: Right. Well, I was looking  
 10 while this was going on because I didn't know it was on  
 11 the agenda for today. I tried to get to the website, but  
 12 either your website is down or I'm having internet  
 13 problems. I couldn't get to the document.  
 14 JUDGE TOREM: My understanding is that your  
 15 client if he's granted intervention status is looking  
 16 mostly at personal property and valuation issues.  
 17 MR. SLOTHOWER: That's correct. Our issues  
 18 would be the same as they were in the Kittitas Valley  
 19 project.  
 20 JUDGE TOREM: We do have just for the record  
 21 an economic issues area which has actually three line  
 22 items. One for property values in that generic term;  
 23 second, local economic development which I think is akin  
 24 to Ms. Strand's interest in her group; and, third, there's  
 25 a line item for agricultural interests. So I think if

1 your focus is going to be, Mr. Slothower, on economic  
 2 issues and property values and agriculture as all the  
 3 brief and the original petition indicated that should be  
 4 sufficient. Would you agree?  
 5 MR. SLOTHOWER: Yes.  
 6 JUDGE TOREM: Are there any other parties?  
 7 Mr. Usibelli?  
 8 MR. USIBELLI: No.  
 9 JUDGE TOREM: Anyone else that I may have  
 10 neglected? Ms. Strand, on the phone that want to comment  
 11 on the issues list?  
 12 MS. STRAND: No, I believe that our issues  
 13 are certainly listed under the subject of economic issues.  
 14 JUDGE TOREM: Let me ask then before we go  
 15 off from this to the Council to perhaps adopt this issue  
 16 list with some modifications that I'll suggest. On the  
 17 project-specific issues, it's letter E on this particular  
 18 list, Mr. Peebles, can you and Mr. Taylor just take a look  
 19 and see. Proper location and consideration of  
 20 alternatives has been one that I think is covered in the  
 21 Draft EIS and would certainly be an issue. From Item 2 to  
 22 construction issues with the roadways, turbine foundation,  
 23 and the transmission corridors that certainly overlaps  
 24 with some of the other parties' issues in wildlife or  
 25 other areas. The decommissioning and site restoration is

1 something that came up as required in the application.  
 2 Are there any other project specific issues that come up  
 3 here on the Whiskey Dick Mountain Ridge Tops as opposed to  
 4 the other location we had to address for this one?  
 5 MR. PEEPLES: No, I don't think so. The  
 6 other thing I just wanted to point out is that we're  
 7 talking about issues list of parties. The Council needs  
 8 to look at the entire siting and all the general  
 9 requirements in that which these items cover.  
 10 JUDGE TOREM: Certainly that's the Council's  
 11 job to do, but we want to make sure in a presentation of  
 12 witnesses and prefiled testimony that you're on notice of  
 13 what the Council wants to hear.  
 14 All right. Any other discussion from the  
 15 parties and the applications for intervention folks on the  
 16 phone as to issues list?  
 17 My proposal to the Council would be that a  
 18 motion be entertained to adopt these as the issues holding  
 19 off the preemption, dropping that Letter A entirely and  
 20 renumbering the list which I'll undertake. But  
 21 eliminating B(3) Fish, and under human impact issues  
 22 consider whether you want to eliminate 1(b) Noise; 1(c),  
 23 Light, glare, shadow flicker and blade glint; 1(d)  
 24 electromagnetic and vibration impacts; and 1(g) the issue  
 25 about communications for radio, television, or cell phones

1 which have not appeared thus far in this case.  
 2 Again, if those are eliminated under human  
 3 impact issues, they would not restrict Mr. Bricklin from  
 4 the more wide ranging wildlife issues that might actually  
 5 occur with any of those particular issues; noise, light,  
 6 glare, etc.  
 7 MS. TOWNE: So moved.  
 8 JUDGE TOREM: All right. That motion is on  
 9 the table. Is it seconded?  
 10 MR. IFIE: Second.  
 11 JUDGE TOREM: Any discussion?  
 12 MS. TOWNE: Comment.  
 13 JUDGE TOREM: Comment, Ms. Towne.  
 14 MS. TOWNE: I recall from an earlier session  
 15 on Wild Horse that the question of site access by members  
 16 of the public, the greet dot road issues, and I cannot  
 17 find a specific category here under human. I presume it  
 18 would be human because it's a behavioral modification  
 19 question, if you will, and I suspect we'll need to find a  
 20 place to plug that in.  
 21 JUDGE TOREM: All right. That was also  
 22 raised by Chairman Luce aside to me during the meeting  
 23 today, and I think that's a great point to bring up.  
 24 Whether it goes under project-specific issues under  
 25 roadways that happens to be under construction, but that's

1 not under a long-term post construction access. So  
 2 perhaps the way to handle that comment is to add something  
 3 under C(1), which I guess would be B(1) in this case under  
 4 public health, safety, and welfare concerns adding an  
 5 issue as to site access and leave it at that.  
 6 MS. TOWNE: For the life of the project or  
 7 something.  
 8 JUDGE TOREM: Site access would imply any of  
 9 that, then we could take it up under public comments as  
 10 well.  
 11 Councilmember Adelsman.  
 12 MS. ADELSMAN: I thought the issue was a  
 13 little bit broader. There was some question of  
 14 recreational issues. Not only access but also issues  
 15 dealing with people using the area.  
 16 MS. TOWNE: Access for use I guess would be  
 17 the correct term.  
 18 MS. ADELSMAN: So it's truly part of the  
 19 human impact issues.  
 20 JUDGE TOREM: It is human impact; you agree.  
 21 So if we put it under site access, and in parentheses put  
 22 --  
 23 MS. ADELSMAN: Recreational use of the site.  
 24 JUDGE TOREM: Access, use, recreation, etc.  
 25 MS. TOWNE: Yes.

1 MR. PEEPLES: Well, there's two issues I  
 2 could insert. One is the use. The other is a road. I  
 3 don't think this Council can determine if there's a public  
 4 road. That's the County's determination.  
 5 CHAIR LUCE: That was made clear by -- it  
 6 was also made clear that the County doesn't want to make  
 7 that determination.  
 8 MR. TAYLOR: We just want to keep making it  
 9 clear.  
 10 CHAIR LUCE: Clear that the County doesn't  
 11 want to make that determination, and it was clear that  
 12 some people want the County to make that determination.  
 13 MR. TAYLOR: The issue of what provisions  
 14 the Applicant is willing to offer as far as continued use.  
 15 As long as that's what we're defining, it's not getting  
 16 into a legal question of the history of that road. That's  
 17 all we want.  
 18 JUDGE TOREM: One other thing, and I don't  
 19 mean to speak for Mr. Bricklin or his client, but it would  
 20 appear that the wildlife viewing issues that are raised by  
 21 their intervention may also have some indication as to  
 22 human impact issues as to viewing use photography that his  
 23 client has raised.  
 24 Mr. Bricklin, did you want to add anything  
 25 to that?

1 MR. BRICKLIN: No, but I think that's a fair  
 2 comment.  
 3 JUDGE TOREM: So we'll add site access,  
 4 Councilmember Smith Towne, to that issues list on human  
 5 impact in place of some of the other three or four that  
 6 are being deleted.  
 7 Are there any other Councilmember concerns  
 8 or comments?  
 9 Councilmember Adelsman.  
 10 MS. ADELSMAN: I have a question. On No. 4  
 11 it talks about local concerns and attitudes. What do we  
 12 mean my attitudes?  
 13 JUDGE TOREM: In the Kittitas Valley case,  
 14 if you recall, we had an overwhelming amount of public  
 15 participation earlier in the process, and the meetings  
 16 that were held, the public meetings that were held in  
 17 early 2003 and throughout the rest of that year and this  
 18 year on the KV case local attitudes about the process were  
 19 certainly the opinions needed to be taken into effect.  
 20 And we added that I believe for exactly that reason. So  
 21 in this case --  
 22 MS. ADELSMAN: Wouldn't local concerns  
 23 suffice without going into the attitudes?  
 24 JUDGE TOREM: We could drop it if you would  
 25 like. We didn't have that word last time, and I'm not

1 sure anyone was offended last time.  
 2 MR. PEEPLES: I would like to respond. This  
 3 was I believe added because it was part of Mr. Lathrop's  
 4 intervention request, and on this case we're objecting.  
 5 We do not believe that this is -- we don't believe anybody  
 6 has the proper grounds to raise this issue. We have the  
 7 County involved, and we have the County government  
 8 involved, and we do not believe that this is within the  
 9 interest that the Council has jurisdiction over. I don't  
 10 know what it is.  
 11 CHAIR LUCE: Local concerns can be voiced at  
 12 the public meeting. I think that's entirely appropriate.  
 13 Attitudes is sort of an ephemeral.  
 14 JUDGE TOREM: Well, we had it last time I  
 15 think simply because of what had been voiced at the  
 16 previous public meetings, and whether it's kept here or  
 17 not the public meeting will still occur during this  
 18 hearing, and we'll surely find out what local attitudes  
 19 and concerns are, whether it's on the issues list for the  
 20 parties to address or not.  
 21 Mr. Peeples, you're suggesting we delete  
 22 that item. Is there any other intervenor or applicant for  
 23 intervention that seems to think they need to have that  
 24 item number which is now C(4) on the list, local concerns  
 25 and attitudes?

1 MR. SLOTHOWER: This is Jeff Slothower on  
 2 behalf of Mr. Lathrop. I don't recall the word attitude  
 3 being used before. I would agree that the term attitude  
 4 is probably not appropriate, but I believe that local  
 5 concerns regardless of how they're raised is something  
 6 that has to be considered. It is an issue, and it should  
 7 remain as an issue to be addressed in this hearing.  
 8 JUDGE TOREM: Do you think it needs to be  
 9 addressed in terms of prefiled testimony or only in the  
 10 public session, Mr. Slothower?  
 11 MR. SLOTHOWER: Well, I think that it's  
 12 possible there may be intervenors that would want to  
 13 submit testimony in the form of prefiled testimony on that  
 14 issue. I don't think it's appropriate to rule that out.  
 15 I'm sure you will get a significant amount of comment at  
 16 the public hearing, but I think that it's appropriate to  
 17 leave it there as an issue. I don't necessarily like the  
 18 term attitudes. Like I said, I don't recall that being  
 19 part of the last issue with local concerns.  
 20 JUDGE TOREM: Does Mr. Lathrop intend to  
 21 introduce any testimony if he is granted intervenor status  
 22 about local concerns?  
 23 MR. SLOTHOWER: We would. If we're granted  
 24 intervenor status, we would, yes.  
 25 JUDGE TOREM: Okay. Because this goes to

1 part of the ongoing consideration of what the Council is  
 2 trying to figure out for scope for your client, but,  
 3 again, we'll leave that. That deliberation is ongoing  
 4 with the Council.  
 5 Okay. So local concerns seems to be the one  
 6 that, Mr. Peeples, you think it's not appropriate for it  
 7 to be in.  
 8 MR. PEEPLES: I think if you have a local  
 9 concern about fish, that's fine. If you a local concern  
 10 about a certain animal, that's fine. If you a local  
 11 concern about property values, that's fine. But local  
 12 concerns doesn't tell anybody anything. I believe the  
 13 other issues that we have here do define issues that local  
 14 people can have concerns about. Local concerns defines  
 15 nothing.  
 16 JUDGE TOREM: I think just in the context of  
 17 the last case, and I concur with what you're saying now,  
 18 it seemed as though there were so many local concerns it  
 19 merited its own line item. Is there any Councilmember --  
 20 I see Councilmember Smith Towne. You want to comment  
 21 further on this?  
 22 MS. TOWNE: I think that "concerns" or  
 23 "attitudes" is what we can infer from the testimony on  
 24 subject specific matters such as noise, like, glare,  
 25 whatever. In and of itself where is the standard? We've

1 just spent three years writing our rules, so that it is  
 2 clear to all what it is we purport to regulate and where  
 3 possible what the standard is.  
 4 We're talking attitudes and concerns. I  
 5 cannot imagine how we would consider a standard against  
 6 which to evaluate it. Is it intensity, frequency? What  
 7 are the parameters? Therefore, I want to get rid of it.  
 8 JUDGE TOREM: It would seem to me that  
 9 striking it doesn't limit the testimony in any other area.  
 10 MS. TOWNE: Because they'll go to the  
 11 subject matter from which we will understand the level of  
 12 concern.  
 13 JUDGE TOREM: Once someone takes the time to  
 14 testify on a particular subject they have a concern or an  
 15 attitude as we may get it.  
 16 MS. TOWNE: Yes.  
 17 JUDGE TOREM: All right. So I think then  
 18 unless there's any objection there's probably enough  
 19 discussion on that. We'll strike that. I will understand  
 20 the motion to include then striking that particular line.  
 21 MS. TOWNE: Yes.  
 22 CHAIR LUCE: I would second that.  
 23 JUDGE TOREM: Any other issues that the  
 24 Councilmembers see they want to address on the adopted  
 25 list for the Kittitas Valley case that we are now going to

1 modify the Wild Horse case?  
 2 All right. Seeing none, then let me sum  
 3 what the motion then is to adopt Items B(1), (2), (4), and  
 4 (5). That's deleting fish from environmental and natural  
 5 resource, Items C1(a), (e), (f), and (h). That's the same  
 6 we had before but deleting noise, light, and glare or  
 7 shadow flicker and electromagnetic, as well as  
 8 communications. But adding a line item for site access to  
 9 include the parenthetical of access, use, and recreation,  
 10 etc. Deleting Item C(4), local concerns and attitudes but  
 11 adopting the rest of the list as it appeared in Order 790  
 12 of the Council in the KV case. That's the motion that's  
 13 on the table then.  
 14 CHAIR LUCE: Do you want to include  
 15 something in your site access just to capture the notion  
 16 not to include Council determination of legal rights  
 17 relative to this particular road?  
 18 JUDGE TOREM: I think that I'd rather -- if  
 19 I was giving the advice, I'd rather not because it makes  
 20 it seem as though the Council might have an interest in  
 21 that. We've already determined that it's a county issue.  
 22 It's not something that this Council as an interest in.  
 23 CHAIR LUCE: Okay. And we have a court  
 24 reporter here, and I think the Council, I think the sense  
 25 of the Council we're not determining an issue that the

1 county has jurisdiction over, the county doesn't want to  
 2 decide.  
 3 JUDGE TOREM: In my opinion putting it in  
 4 the issues list in a formal document only raises the  
 5 profile of an issue we've already --  
 6 CHAIR LUCE: Okay. I see lots of Council  
 7 heads moving vertically, so I will take that as a yes.  
 8 All right.  
 9 JUDGE TOREM: Do you want to call for the  
 10 question?  
 11 CHAIR LUCE: The question has been called  
 12 for. All in favor say aye.  
 13 COUNCILMEMBERS: Aye.  
 14 JUDGE TOREM: The issues list has been  
 15 adopted. Now, we get to the part where we've tread a  
 16 little bit, the adjudicative proceeding schedule.  
 17 Let's go back to Mr. Peeples. We had set  
 18 aside two different weeks here, and I know in the last  
 19 case where preemption was going to take up several days of  
 20 a hearing that was proposed to run for up to 12 days. You  
 21 still had a proposed schedule that I think was going to  
 22 run at the most six to seven days. Here we've got ten  
 23 days as I am calling Plan A. Would you want to schedule  
 24 two weeks of hearings or would you be proposing only one  
 25 of those two weeks be set up?

1 MR. PEEPLES: Well, I would propose two  
 2 weeks just in case. First of all, I don't think we need  
 3 two weeks. I would imagine my guess right now, and that's  
 4 all it is, is a guess, is we would be able to get it done  
 5 within one week. I'm assuming the week we're talking  
 6 about is February or March.  
 7 I would imagine we would be able to get that  
 8 hearing done within five days. I mean I'm pretty positive  
 9 on that, so I think we can limit that to one week.  
 10 JUDGE TOREM: Any other parties think we  
 11 would need in excess of five hearing days in Ellensburg to  
 12 complete issues, especially that would be a hearing in  
 13 which the County has settled and dropped out and  
 14 preemption is not an issue?  
 15 All right. Hearing none, then maybe only  
 16 one week would be needed. Is there a preference then,  
 17 Mr. Peeples, to take the 28 week or March 7 week?  
 18 MR. PEEPLES: I thought it was March 20.  
 19 MS. TOWNE: Remember he isn't going to come  
 20 back until March 15 on preemption.  
 21 JUDGE TOREM: Right.  
 22 MR. PEEPLES: This is assuming there's going  
 23 to be no preemption needed.  
 24 MS. TOWNE: Oh, okay. But you said you  
 25 wouldn't expect to know before.

1 MR. PEEPLES: I think a final decision, and,  
 2 Jim, would you insert yourself if I misstate anything,  
 3 please. The County probably does not anticipate  
 4 completing its process until towards the end of February.  
 5 So am I wrong there?  
 6 MR. HURSON: Jim Hurson. No, that's our  
 7 anticipation is we complete it at the end of February, and  
 8 in talking with our staff right now our preference would  
 9 be to set a March 7 starting date. We looked at the 28th  
 10 date and thought might -- it's one of those maybe you  
 11 could; maybe you couldn't. So that if you don't, you  
 12 don't want to mess up your whole schedule because of a few  
 13 days. So we thought March 7 was a better date for a firm  
 14 date.  
 15 MR. PEEPLES: We don't have a preference on  
 16 that. The 28th or the 7th would be fine.  
 17 JUDGE TOREM: Any other parties have a  
 18 preference or a conflict with the week of March 7?  
 19 MR. BRICKLIN: This is Dave Bricklin. I may  
 20 have a court argument one day that week, but I'm assuming  
 21 there's going to be enough issues that don't affect my  
 22 client in this case that I can schedule around that when  
 23 we get closer to the hearing.  
 24 JUDGE TOREM: All right. That certainly can  
 25 be accommodated if you don't mind running from one side of

1 the mountains to the other.  
 2 MR. BRICKLIN: No, that would be fine.  
 3 JUDGE TOREM: Any other parties have  
 4 comments or questions the week of March 7 or the preceding  
 5 week?  
 6 All right. Then the email that went out  
 7 today based on the earliest possible date of February 28  
 8 would have a requirement for prefiled testimony from the  
 9 Applicant to start on December 6 and six weeks thereafter  
 10 on Tuesday, January 18, all other parties' prefiled  
 11 testimony would come in. After that all parties, the  
 12 Applicant and any other party, could file a rebuttal by  
 13 Tuesday, February 18. Yes, we go from January 18 to  
 14 February 18 -- or February 8; Tuesday, February 8 for the  
 15 rebuttals. If you look through Order 790 about rebuttals  
 16 we open it up to all parties simply to have the ability  
 17 for parties that might be competing in interest to rebut  
 18 other prefiled testimony, not just the Applicant's.  
 19 So that would be the proposed schedule.  
 20 That tracks pretty well with exactly what we did in the  
 21 Kittitas Valley case, and then we had a requirement for  
 22 opening briefs turned into opening statements as that last  
 23 case went along. This case we're projecting Friday,  
 24 February 18, and then motions to strike would be due  
 25 February 15th on a Tuesday with responses due on the 18th,

1 again, the same day as openings statements.  
 2 We had some issues last time around about  
 3 electronic filing or fax filing of those motions to strike  
 4 due to the quick turn and deviating somewhat from the  
 5 regular schedule of service to put all those copies in the  
 6 mail and make sure things got to people in time, so we  
 7 were going to make sure to address that. For those  
 8 short-term items that electronic filing would be permitted  
 9 and preapproved up front. Then that was all assuming that  
 10 February 28 would be the date. If February 28 is not the  
 11 date, it's March 7, and all those dates can be slid  
 12 forward one week and keep the same sort of schedule.  
 13 Mr. Peeples, since you're the first affected  
 14 by the prefiled and assuming that you go to March.  
 15 MR. PEEPLES: I would like to slide forward.  
 16 JUDGE TOREM: All right. So moving  
 17 everything so it would move from December 6 to 13, and  
 18 everything else move forward one week. Is there any  
 19 concern or opposition to sliding everything as I've just  
 20 related it or hopefully you saw on the email in the 11:00  
 21 a.m. hour this morning these dates? Is there anybody that  
 22 --  
 23 MR. BRICKLIN: This is Dave Bricklin. One  
 24 thought. Given that you're pinched for time there in  
 25 February with the motions to strike due just a week after

1 the rebuttals are filed, maybe instead of moving all the  
 2 dates back one week, you could leave those first four  
 3 dates where they are and move the last three dates back  
 4 one week, so that you give everybody more time between the  
 5 filing of the rebuttals and then the motions related to  
 6 those.  
 7 MS. TOWNE: A question before we make a  
 8 decision on this.  
 9 JUDGE TOREM: Yes, Councilmember Smith  
 10 Towne.  
 11 MS. TOWNE: And it may be a question to  
 12 Ms. Makarow. We have the 18th for openings, then the next  
 13 item is the 15th for motions to strike. Either the 15th  
 14 date is incorrect or it needs to get swapped around.  
 15 JUDGE TOREM: This is actually what we did  
 16 last time. We had opening statements coming in on the  
 17 same time when we did not have motions to strike resolved.  
 18 As you might recall we had a whole flurry of motions that  
 19 came in and then motions to strike were included in some  
 20 as a subpart of the motion. But all the parties filed  
 21 their opening statements; some of them wondering whether  
 22 or not the testimony that was being objected to might come  
 23 in. As it turned out things got continued and moved  
 24 along, so it was difficult and it might be helpful to  
 25 resolve any motions to strike ahead of requiring opening

1 statements.  
 2 MS. TOWNE: It seems to me I guess I would  
 3 probably recommend putting the motion to strike after  
 4 rebuttal and before opening. It's just I like things to  
 5 flow.  
 6 JUDGE TOREM: We just got ourselves into a  
 7 bit of a time crunch last time.  
 8 So, Mr. Peeples, the suggestion that  
 9 Mr. Bricklin makes would accommodate what Councilmember  
 10 Smith Towne suggests as well, to leave all the dates, the  
 11 first three where they are for the deadlines for prefiled  
 12 testimony, including rebuttals, deal with motions to  
 13 strike, and then still have time for opening statements to  
 14 be modified from their original draft form with rulings on  
 15 motions to strike out. So that any party whose case might  
 16 be changed whether a little bit or a lot by a motion to  
 17 strike against them having some impact, they would be able  
 18 to modify their opening statement accordingly.  
 19 MR. PEEPLES: That makes sense.  
 20 JUDGE TOREM: All right. Well, then I'll  
 21 circulate something to the Council that fits within those  
 22 comments and a hearing schedule like that could be  
 23 adopted. We don't need to adopt it today, but I think if  
 24 we adopt the week of hearing as March 7 as has been  
 25 suggested, it gives that extra week to work out that

1 scheduling difficulty that Councilmember Smith Towne and  
 2 Mr. Bricklin pointed out.  
 3 All right. Any further discussion that we  
 4 need to have on the scheduling of at least for Plan A, a  
 5 March 7 hearing date?  
 6 Seeing none, is there a motion to that  
 7 effect?  
 8 MS. TOWNE: So move.  
 9 MS. ADELSMAN: Second.  
 10 JUDGE TOREM: All right. It's been moved  
 11 and seconded. Any discussion?  
 12 CHAIR LUCE: All in favor?  
 13 COUNCILMEMBERS: Aye.  
 14 JUDGE TOREM: Parties you can put the week  
 15 of March 7 to March 11 down for Plan A at least for  
 16 scheduling the hearing, and we'll issue an order in the  
 17 next few weeks. So you can expect to see two orders  
 18 issued; one on intervention and the scope for those  
 19 intervenors that are granted status, and, secondly, an  
 20 order on scheduling that will come out.  
 21 One of the other issues that we wanted to  
 22 look at was I believe it's procedural. I don't know what  
 23 term to call it, but hearing guidelines.  
 24 Is that correct, Ms. Makarow?  
 25 MS. MAKAROW: That is correct. We

1 circulated draft hearing guidelines in both the last two  
 2 notices, and I would like to have those adopted.  
 3 JUDGE TOREM: These were Attachment C to one  
 4 of the mailings, and they addressed administrative  
 5 matters, they addressed discovery, petitions and motions  
 6 and issues about dispositive or non-dispositive motions,  
 7 and they also go so far as I believe to talk about issues  
 8 as to filing and the deadlines and the methods for filing  
 9 that perhaps clarify anything that are in the EFSEC rules.  
 10 And they go all the way out to the post-hearing process.  
 11 So they're numbered 1 through 24.  
 12 Is there anything, Mr. Peeples, that you saw  
 13 in these that needed any comment?  
 14 MR. PEEPLES: No, they look like what's been  
 15 used for the last I think three hearing cases.  
 16 JUDGE TOREM: Did any parties have any  
 17 questions or comments on the draft hearing guidelines that  
 18 were circulated?  
 19 All right. Hearing none, then I'll ask the  
 20 Council if they wish to adopt these same draft hearing  
 21 guidelines for Application 2004-01, the Wild Horse Wind  
 22 Power Project. Is there a motion?  
 23 MS. TOWNE: So moved.  
 24 MR. IFIE: Second.  
 25 JUDGE TOREM: For discussion Mr. Fiksdal

1 wants to interject a few items first.  
 2 MR. FIKSDAL: I just want to make sure that  
 3 in your discussion you talked about electronic filing, and  
 4 I'm not sure that that's covered under these guidelines.  
 5 Maybe that needs to be added to the guidelines through an  
 6 order that you put out to modify those guidelines.  
 7 CHAIR LUCE: The electronic filing should be  
 8 permissible.  
 9 MR. FIKSDAL: Well, the conditions upon  
 10 which because there was a large discussion last time about  
 11 electronic filing, and we need to have that clear I think  
 12 in part of the guidelines.  
 13 JUDGE TOREM: So it looks like under  
 14 petitions and motions there is a method for filing of  
 15 service, and what I'll need to do is come back with a  
 16 first amendment to the hearing guidelines and present that  
 17 the next time. I don't believe that between now and the  
 18 first potential date that we're adopting for prefiled  
 19 testimony that electronic filing is going to rear its ugly  
 20 head.  
 21 Mr. Peeples, do you see any reason for the  
 22 Applicant?  
 23 MR. PEEPLES: No, I think everybody right  
 24 now has been filing every way possible, including  
 25 electronic filing.

1 JUDGE TOREM: Right. And what we're looking  
 2 for is a way that all the parties will know when it's okay  
 3 to file electronically and have that date count as a  
 4 services date as opposed to having to wait for a date when  
 5 you get it in the mail, but to make sure that that's  
 6 adopted.  
 7 Councilmember Adelman.  
 8 MS. ADELSMAN: On Page 10 there is an  
 9 attachment to the electronic mail, and it kind of  
 10 describes a little bit what we did last time.  
 11 JUDGE TOREM: This is where a party waives  
 12 receiving any other thing, but we want to do something  
 13 that's not party dependent, but that's Council endorsed  
 14 and allows for electronic filing. Perhaps what I can do  
 15 is draft something and circulate it to all the parties  
 16 because you're the ones that will be affected by it the  
 17 most, ask for your comments at a future prehearing  
 18 conference or update, and then from there be able to adopt  
 19 it and add it to the prehearing guidelines.  
 20 Thank you, Mr. Fiksdal, for raising that.  
 21 CHAIR LUCE: But now there's a motion on the  
 22 table to adopt these as they are and knowing that there  
 23 will be a future amendment for electronic filing. There's  
 24 a motion. Do I hear a second?  
 25 MR. IFIE: Second.

1 CHAIR LUCE: All in favor?  
 2 COUNCILMEMBERS: Aye.  
 3 JUDGE TOREM: The hearing guidelines that  
 4 have been adopted they'll be included with the scheduling  
 5 order that goes out as part of our prehearing conference  
 6 orders, and that takes us on the agenda to No. 8, the next  
 7 prehearing conference.

8 Is there a need to schedule a separate  
 9 prehearing conference at a point because the next event  
 10 will be the filing of the Applicant's prefiled testimony  
 11 on December 6, or shall we just have an update at the  
 12 first regular scheduled EFSEC meeting in December and  
 13 invite all the parties to be present at that time?

14 Mr. Peeples, is that all right with you?

15 MR. PEEPLES: I think that would be just  
 16 fine. I think the update is going to just really be  
 17 primarily focused at the status of the progress in the  
 18 local land use.

19 JUDGE TOREM: So other parties is there a  
 20 need for anyone else to schedule a prehearing conference  
 21 that they can see right now?

22 All right. Hearing none, then if any party  
 23 wishes to schedule a prehearing conference if something  
 24 comes up, whether it be a discovery issue or otherwise,  
 25 please let us know. In this case there's been no

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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 November 1, 2004,  
 in Olympia, Washington.

\_\_\_\_\_  
 Shaun Linse, CCR  
 CCR NO. 2029

1 discussion of depositions or any other such thing coming  
 2 up, so we won't be adopting specific language about  
 3 discovery other than what is in the hearing guidelines  
 4 which essentially say that informal discovery should  
 5 proceed.

6 Mr. Lane, you had mentioned a month ago as  
 7 to discovery and perhaps some depositions. So if you  
 8 still see the need for that, and you find any resistance  
 9 that informal discovery doesn't bring, please bring it to  
 10 our attention sooner rather than later, so we can schedule  
 11 a timely prehearing conference to address that with the  
 12 appropriate parties.

13 MR. LANE: Okay.

14 JUDGE TOREM: Any other matters on the Wild  
 15 Horse Wind Power project?

16 Chairman Luce, do you wish to adjourn the  
 17 meeting then?

18 CHAIR LUCE: I do wish to adjourn the  
 19 meeting actually. Meeting is adjourned.

20 \* \* \* \* \*

21 (Whereupon, the prehearing conference was  
 22 adjourned at 1:17 p.m.)  
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