

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:) Adjudication Hearing
Application No. 2004-01) Pages 1 thru
) Volume I
WIND RIDGE POWER PARTNERS, L.L.C.,)
)
WILD HORSE WIND POWER PROJECT)
_____)

An adjudication hearing was convened in the above matter and was held in the presence of a certified court reporter on March 7, 2005 at 1:30 p.m., at 512 North Poplar Street, Kittitas County Fairgrounds, Fine Arts Building, Ellensburg, Washington before Energy Facility Site Evaluation Councilmembers.

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JUDGE TOREM: It's 1:40 in the afternoon on Monday March 7, 2005 and we're now ready to begin the adjudication in the matter of Wild Horse Wind Power Project application 2004-01 before the Washington Energy Facility Site Evaluation Council. This is Judge Adam Torem. I am present with the Council in Ellensburg today at the fairgrounds to conduct this adjudicative hearing.

We have earlier today concluded the land use hearing and made a finding that that application is now consistent with Kittitas County land use regulations including its zoning regulations and its comprehensive plan,

1 we accepted the county's letter of certification in doing
2 so.

3 This morning we also accepted and approved a
4 settlement agreement between Kittitas County and the
5 applicant which involved a lengthy development agreement
6 setting out essentially a baseline floor for conditions that
7 would be imposed on the project, recognizing that EFSEC can
8 have additional restrictions as needed if we were going to
9 recommend site certification approval.

10 Finally, this morning, we adopted and approved a
11 settlement agreement between Washington Department of Fish
12 and Wildlife and applicant regarding a variety of habitat
13 and wildlife mitigation measures that are being adopted for
14 the project and those have been adopted as voluntary through
15 a conservation easement and agreement that will -- which
16 once they own the property they have promised the project
17 will be built and then they will impose a voluntary
18 conservation easement something that the Council chooses to
19 endorse but not necessarily make binding restriction on it.

20 At this time, I want to note who is here in the
21 room.

22 We're going to have two less parties because we
23 have accepted the withdrawal from intervener Lathrop and
24 also settlement agreement from the county accepting their
25 withdrawal from Kittitas County. We also have, I guess,

1 three less parties. The Friends of Wildlife and Wind Power
2 have also filed a withdrawal last week.

3 So the remaining parties are the applicant
4 represented by Darrel Peeples and Tim McMahan. They're
5 going to be providing witnesses this afternoon.

6 John Lane, Counsel for the Environment, is present
7 and Debbie Strand, Kittitas Economic Development Group, is
8 present as well.

9 The Councilmembers are present as follows: Patti
10 Johnson representing Kittitas County, Richard Fryhling
11 representing Community Trade and Economic Development, Chair
12 James Luce, also present is Chris Townes for Fish and
13 Wildlife, Tim Sweeney, Utilities and Transportation
14 Commission, and Hedia Adelsman from the Department of
15 Ecology, not joining us today due to illness is Tony Ifie
16 from the Department Natural Resources. He was present by
17 telephone earlier today at the land use hearing and the
18 prehearing conference in which the Fish and Wildlife
19 settlement agreement was approved. Mr. Ifie recognized that
20 in order for him to deliberate with the Council probably
21 late next month on this project he have to review the
22 transcript of this if he has any questions that were burning
23 issues that may not already satisfied by questions from
24 other members of the Council and he indicated at this time
25 that he had none. If he has further review of questions of

1 witnesses scheduled for tomorrow he will let us know whether
2 or not to pose those on his behalf. Council, we will be one
3 short of a member as well in the proceedings, but Mr. Ifie
4 will not participate in the deliberations until and unless
5 he has reviewed the transcript for this matter and he
6 certainly has already had the opportunity to review direct
7 testimony that have been prefiled for all of the parties.

8 At this stage of the proceedings, I want to make
9 note as to what the exhibits have already been admitted and
10 will become part of the record in the adjudication as well.

11 Exhibits 1 through 10 have already been admitted
12 in the course of a prior prehearing conference and the land
13 use hearing itself.

14 Exhibit 1 was the county certification of land use
15 consistency.

16 Exhibit 2 was the stipulation and settlement
17 agreement.

18 Exhibit 3 was Kittitas County ordinances adopted
19 recently, Ordinance 2005-10.

20 Exhibit 4 was the lengthy development agreement
21 with eight supporting exhibits, that's Exhibit 4.

22 Exhibits 5, 6 and 7 were three additional county
23 ordinances adopted in support of that agreement.

24 And Exhibit 8 was a marked up copy showing
25 differences between one of the supporting exhibits in the

1 settlement agreement, Exhibit D, and changes that had been
2 made since that time when it was originally. I think these
3 were extracted from the draft environmental impact statement
4 and other changes that were made in support of the
5 development agreement.

6 Exhibits 9 and 10 were in the Fish and Wildlife
7 settlement agreement which we have already discussed and an
8 eight-page supporting letter from the regional habitat
9 manager.

10 Those are the ten exhibits that have already been
11 admitted.

12 At this time, I would like to have as marked the
13 original application for site certification as Exhibit 11.
14 The draft environmental impact statement or the DEIS as
15 Exhibit 12. The public comments to the DEIS as Exhibit 13.

16 As I understand it, those would be offered by
17 Counsel for the Environment.

18 And another set of public comments that was not
19 regarding the DEIS but could have been regarding the scoping
20 procedure or to any other workings of project as Exhibit 14.

21 We have also circulated a very lengthy list of
22 exhibits that were premarked with prefiled testimony and
23 supporting documents this is going to be each of those.
24 Those have been preprinted and circulated. They begin with
25 Exhibit 20.0, and continues all the way through Exhibit

1 101.5.

2 It's been brought to my attention that a number of
3 those exhibits will be withdrawn based upon the withdrawal
4 of various parties and I want to make sure that it is clear
5 to everybody which exhibits have been withdrawn and which
6 are still being offered.

7 At this time, with the withdrawal of Intervener
8 Lathrop, Exhibit 60, which is one document 60.0, which is
9 being withdrawn will not become part of the record unless
10 somebody else moves that it become part. Exhibit 70 and
11 70.1 are from Mr. Stream, S-T-R-E-A-M. Mr. Lane was
12 offering Mr. Stream's testimony for the Counsel for the
13 Environment Exhibit 70.0 and 70.1.

14 Mr. Lane, I am correct, that those are being
15 withdrawn?

16 MR. LANE: Yes, that is correct, based on the
17 stipulation agreement with the applicant, Counsel for the
18 Environment will withdraw the testimony of Mr. Stream at
19 this time.

20 JUDGE TOREM: All right. Thank you. Based on the
21 withdrawal of Friends of Wildlife and Wind Power the
22 testimony by Robert Kruse is being withdrawn, that's Exhibit
23 100.0 through 100.7, so a total of eight exhibits, 100.0 all
24 the way through 100.7, and asking the applicant who filed
25 Exhibit 100.8, whether or not that exhibit would be still

1 relevant to the Council and whether they still want that to
2 come in. I've been informed because of the number of
3 comments that came in at the DEIS stage and other testimony
4 that may have been come in regarding the elk census and
5 impact on wildlife that you believe this testimony would
6 still be relevant and helpful for the Council so they are
7 not asking that even though it is in rebuttal to Mr. Kruse's
8 testimony which is no longer an exhibit they still want the
9 Council to consider and move for the admission of Exhibit
10 100.8. Exhibit 101.0 through 101.5 will also be withdrawn,
11 that was specified from the Friends of Wildlife and Wind
12 Power withdrawal from the case.

13 Mr. Peeples, do you have some concerns that you
14 want me to put on the record regarding public comments,
15 specifically Exhibit 14, the DEIS public comments?

16 MR. PEEPLES: I think I'm going to pass. The
17 Council has brought in the DEIS and the comments with regard
18 to the DEIS. I think that I don't have a problem with that,
19 per se, the reason it was coming in, without the ability of
20 the parties cross examine, it is part of the SEPA process.
21 I just have some general concerns, and general concerns not
22 specific concerns, to the other exhibit.

23 But I think and be very careful what we put in the
24 record of a contested case hearing because general comments
25 which are not subject to cross examination and really action

1 by the parties. I'm even somewhat, you know, uncomfortable
2 with bringing in the comments of the DEIS and maybe even the
3 EIS per se because there's no ability to cross on it. But I
4 think that the precedent has been set because it is out of
5 the SEPA procedure is okay.

6 I think we're going to start going down some kind
7 of squishy ground if we start putting into the evidence just
8 general statements made whether there will be no ability to
9 account for the validity and verify, you know, the facts
10 that might be alleged in those statements.

11 And I have no statement in Exhibit 14 specifically
12 in my mind I don't even really know what it is, so -- but I
13 do want to really express that concern. I think that would
14 be a concern, you know, in the cost, you know, of the
15 alliance between the parties because there maybe some stuff
16 that all of the other parties might object to that I might
17 want, et cetera, so I think you are better off just leaving
18 those out.

19 I think the Council can consider them generally
20 when it makes its decision just as it can generally
21 consider, you know, the input that may be coming in
22 tomorrow. But to make them a part of the adjudicative
23 proceeding, I don't think it's a good idea and I would
24 object to them.

25 JUDGE TOREM: Mr. Lane, you're going to move for

1 the admission for the DEIS comments which would fall under
2 the umbrella of Mr. Peeples' comments if you want to append
3 a motion to include Exhibit 13 if not 14.

4 MR. LANE: I am sorry?

5 JUDGE TOREM: Do you want to address the concerns
6 that you are offering as Exhibit 13, the DEIS comments?

7 MR. LANE: Yes. The parties previously agreed to
8 the order for the rules regarding this procedure which refer
9 back to November 1, 2004 prehearing conference and
10 specifically Council Order 790, I believe it was, which
11 refers to Attachment C, drafting guidelines for Wild Horse
12 Wind Power Project, and which then goes on to Page 14 and 15
13 of that regarding public testimony.

14 And, at that point, it outlays that at the
15 beginning of the hearing session for purposes of taking
16 testimony from members of the public testimony for public
17 issues in the hearing session which will take place tomorrow
18 and goes on to say documents provided on behalf members of
19 the public in the public hearing may be offered as
20 illustrative exhibits continued on to "C" by Counsel for the
21 Environment and members of the public could be offered into
22 evidence illustrative opinions and correspondence.

23 It's Counsel of the Environment's position that if
24 people can appear tomorrow night and testify and provide
25 documents that the same privilege should be extended to

1 those who had previously provided those comments. It goes
2 onto say to the documents from the public and Counsel for
3 the Environment may contain factual information and it's
4 appropriate for them to not be here and they maybe offered
5 into evidence provided that the sponsoring witness is
6 available for cross examination.

7 That will address Mr. Peeples' concern about the
8 ability to cross examine those factual determinations.

9 It's the Counsel for the Environment's position
10 that those letters and comments should be included in the
11 adjudicative proceeding and so should the opinions of public
12 involved in this matter.

13 MR. PEEPLES: I think that we both stated our
14 positions. I don't believe they are proper in an
15 adjudicative proceeding and again I have no document
16 specifically in mind or anything.

17 It's just generally I think the Council should
18 consider when they start bringing in items into the
19 adjudicative proceeding that can't be cross examined, you
20 know, I think you're asking frankly for some trouble.

21 JUDGE TOREM: Let me note my observations from the
22 judge's seat. Some of the earlier on issues that we had in
23 the land use hearing, we certainly are taking the ordinances
24 from the board, it's my position that those sorts of things
25 we don't have the ability to cross examine those folks. I

1 know you were indirectly involved in some of the drafting
2 and getting them in. And generally, in administrative
3 proceedings such as this, there is variety of documents that
4 may become part of the record and while, with this case,
5 we're not entering an initial or final order according to
6 the Washington Administrative Procedure Act, RCW 34.05.461
7 does have a variety of things listed that shows when things
8 become part of the record.

9 The Council is, I think, is very sensitive as to
10 witnesses that are here and have prefiled testimony can now
11 be cross examined today and tomorrow and the type of
12 evidence that may come in the status of opinion and the
13 status of appealing on a motion or even filing as fact
14 through public comments that will come in through the DEIS
15 as Exhibit 13 proposed to be or other comments at the
16 hearings tomorrow night in the public hearing.

17 So the weight of the evidence given, Mr. Peeples,
18 I think is something the Council is very sensitive to.
19 However, if the Council wants to make sure they write a very
20 complete recommendation to the Governor whether it be to
21 approve or not to approve the project as proposed there may
22 be something that comes up only in the context of public
23 comment that needs to addressed, may not be a turning point,
24 but it may be something that a constituency that's not
25 intervening today has to be addressed their concerns and

1 given the appropriate weight, may be a lesser amount of
2 weight, but if there was public comment, for example, on the
3 project where the opposition was very strong, that needs to
4 be noted, may not mean that anybody intervenes on behalf of
5 the opponents but their opposition would be noted as part of
6 the record in the proceeding and that may or may not make a
7 difference with the council's ultimate decision.

8 So I understand the concerns of both parties as to
9 wanting this material before the Council and it is easier I
10 think for the Council to have it in the record to be cited
11 to as part of that final recommendation to the governor as
12 opposed to an uncitable document or just a phantom,
13 something that happened during the proceeding, and if the
14 governor and that person's staff wanted to put a finger on
15 it they could draw out those documents that have now become
16 part of the record.

17 That's the only explanation I can give you.
18 Again, it's only analogous to what's in the APA, but I would
19 recommend to the Council in noting Mr. Peeples' concern to
20 still bring those matters in and stick by our prior
21 preference of having public comment become part of the
22 Council record.

23 EFSEC is a strange animal as it is and this would
24 be one of the oddities and I will do my best to avoid any
25 further amount of slippery slope, squishing around as you

1 put it, Mr. Peeples, so we don't go any further down that.
2 That's just for this one area of public comment, get those
3 in and consider them.

4 Any other comment from Counsel for the Environment
5 or the applicant?

6 All right, then I think I will just -- let's have
7 the Council then state if there any objections to those
8 documents, Exhibits 11 through 14, 20 through I believe it
9 is going to be 50 -- 20 through 50, 71 through 90, and
10 that's it, if there are no objections to those documents, we
11 will move those into the record at this time as a group.

12 All right, seeing none from any of the parties or
13 from Councilmembers, we will also include 100.8 as well as
14 in that group. Thank you. All right, those are now part of
15 record. We've already listed the exclusions based upon the
16 withdrawal of evidence, the only out of sequence that still
17 comes in is 100.8 filed by the applicant.

18 All right, we now have the record assembled. We
19 are ready to begin our inquiry of the witnesses.

20 For those not familiar with the proceeding, this
21 is not your normal administrative hearing or trial
22 procedure. Each of the witnesses that are present today
23 will be sworn in and then adopt their testimony as filed,
24 operating like a deposition, and at that point when their
25 testimony is offered there may be some additional inquiry

1 from the Council as to set the scene for any cross
2 examination or maybe simply turn it over to the prescheduled
3 cross examination.

4 We have a number witnesses already at the tables
5 this afternoon. I think I will swear in the four that I can
6 see up here as a group and see if there is any cross
7 examination for each of them.

8 Mr. Peeples, what I will do is swear the four of
9 them in and I understand that Mr. Young and Mr. Taylor will
10 have cross examination when they step up, so I will swear
11 them in as well, but we will postpone their testimony,
12 Councilmembers, so that these folks who may have very short
13 time left to spend with us to get on their way get and onto
14 other business today.

15 I will let Mr. Peeples, once I swear in these half
16 dozen witnesses choose the order that -- it's now two
17 o'clock. We expected at 2:30 to have two witnesses
18 available by phone. We may pause with Mr. Taylor and Mr.
19 Young to take their testimony at that time and schedule
20 accordingly.

21 Mr. Peeples, will that work for you?

22 MR. PEEPLES: That's fine.

23 JUDGE TOREM: I am going to ask that all those
24 witnesses present to please raise their right hand.

25 (Witnesses sworn)

1 JUDGE TOREM: Thank you. Mr. Peeples, who would
2 you like to call first of these six witnesses.

3 MR. PEEPLES: Just generally I guess I would like
4 to address all of them with one question and then verify
5 the, you know, their testimony and then I would proceed to
6 see if the Council has any questions with regard to Mark
7 Bastasch, Michael Pappalardo, Marlana Guhlke, and Ron
8 Neirenberg, and then after that I would go to Chris Taylor
9 and Andrew Young.

10 So all of the witnesses that have just been sworn
11 with respect to you and the respective exhibits which
12 contain your prefiled testimony and other related exhibits,
13 if I were to ask you all of those questions, would you
14 respond the accordingly you can all say yes at one time.

15 JOINT ANSWER: Yes.

16 MR. PEEPLES: Okay. Essentially with regard to
17 Mark Bastasch, Michael Pappalardo, Marlana Guhlke, and Ron
18 Nieerenberg, there is going to be no cross of those
19 witnesses, so I would like to open those with questions from
20 the Council.

21 Essentially Mark Bastasch is a witness that
22 provided information regarding some care and quality issues
23 and the noise analysis.

24 Michael Pappalardo is your civil engineering type
25 having to do with soils and things of that nature.

1 Marlena Guhlke did the testimony regarding the
2 land use issues and her testimony talks in part about the
3 land use ordinances for the county, also referred to land
4 use and other items in there, and to the extent that her
5 testimony only refers to the status of the application
6 compliance with the county land use ordinances that has been
7 supplemented by the stipulation between county and the
8 certificate of compliance. Those things will be done after
9 she submitted her testimony.

10 Ron Nierenberg will answer questions regarding the
11 meteorological conditions and the climate conditions at the
12 site.

13 So, with that, Mr. Torem, I would like to turn it
14 over to you to see if any of the Councilmembers have any
15 questions of these witnesses?

16 JUDGE TOREM: Let's start with one witness at a
17 time, I think. Let's see, Ms. Towne, you were going to ask
18 a question?

19 MS. TOWNE: Probably of Ms. Guhlke.

20 JUDGE TOREM: All right. We will start with Ms.
21 Guhlke and direct all significant questions related to her
22 prefiled testimony I believe can be found in Exhibit 25.

23 MS. TOWNE: I think -- pardon me, I am on the
24 wrong page, sorry. On Page 7, you make reference to a
25 feeder line that will connect to the project using existing

1 BPA transmission line. Is that the state of the proposal
2 today?

3 MS. GUHLKE: That's how I understood it at the
4 time. I am not sure as to whether that has changed since.

5 MR. PEEPLES: I think you should refer those
6 questions to probably Andrew and Chris because you're
7 talking PSE.

8 MS. TOWNE: Yes, I assume so.

9 MR. PEEPLES: Yes.

10 JUDGE TOREM: Ms. Guhlke, you're not aware of any
11 changes to the project that would change what you have
12 testified as to the transmission lines?

13 MS. GUHLKE: No, that's not come to my attention.

14 JUDGE TOREM: Councilmembers, any other questions
15 regarding land use for Ms. Guhlke?

16 MS. ADELSMAN: Just for clarification, wasn't this
17 testimony happened before you had the development agreement?

18 MR. PEEPLES: Yes. It will be modified with
19 regard to the development agreement. Her testimony referred
20 to the nature of the ordinance and the situation at the time
21 we filed the development agreement and everything was passed
22 by the county last Friday, so when she did it it was out of
23 compliance and now it is in compliance.

24 JUDGE TOREM: Any other questions for Ms. Guhlke?
25 All right, any other questions that any of you folks would

1 want to ask Mr. Pappalardo?

2 MS. ADELSMAN: Some of this may be relevant to our
3 discussion or --

4 JUDGE TOREM: Let me just direct the question back
5 to Mr. Peeples. He and I talked about Ms. Guhlke's
6 testimony would still be relevant based on the changes to
7 the -- and the acceptance of the settlement agreement
8 earlier and I thought Mr. Peeples had already explained
9 that. Portions of her testimony showed what was there and
10 the changes that have come on. He thought it was still
11 helpful for the Council to see that, you know, some
12 additional portions you might wish to highlight now.

13 But this witness Ms. Guhlke is probably the only
14 one that is dramatically affected by the acceptance of
15 settlement agreement and the development agreement today.

16 The rest of the folks are telling you about
17 effects and impacts that are subjective on various aspects
18 of the environment that we need to consider regardless of
19 development agreement.

20 CHAIR LUCE: Let me ask a clarifying question if I
21 could. Mr. Peeples, in the absence of a settlement with the
22 county, do you believe that Ms. Guhlke's testimony would
23 have been relevant to the authorities regarding the
24 relationship between the county and EFSEC and the county's
25 ability to -- the county ordinances regarding land use?

1 MR. PEEPLES: Put it this way, her testimony is
2 relevant. She describes the land use surrounding the area
3 et cetera, regarding the ordinances and, you know, she
4 described those accurately. Those are what the ordinances
5 provide. What is not in there is the fact that we have
6 complied with those ordinances.

7 CHAIR LUCE: So but for settlement with the
8 county --

9 MR. PEEPLES: We would not have been in
10 compliance.

11 CHAIR LUCE: But for that settlement, Ms.
12 Guhlke's's testimony would have been the basis for going
13 forward with this case otherwise?

14 MR. PEEPLES: Right. The only difference is we
15 have complied with the ordinance as she described.

16 CHAIR LUCE: So if you had hypothetically another
17 case in this county, not you personally, but if there were
18 another wind project in this county that had going forward
19 in the absence of a settlement with the county, Ms. Guhlke's
20 would be very relevant.

21 MR. PEEPLES: In fact, it would describe it.

22 CHAIR LUCE: Thank you.

23 JUDGE TOREM: Mr. Peeples, I just want to bring
24 that back to today what's relevant. Is it your opinion, the
25 applicant's opinion that the counsel is still with its

1 obligation to recognize what local land use requirements are
2 that they could get from Ms. Guhlke's testimony is just a
3 basic review of the general language provisions applicable
4 here in Kittitas County?

5 MR. PEEPLES: Yes.

6 JUDGE TOREM: That development agreement sets the
7 stage, but now with the development agreement in place,
8 you're in compliance with each of these ordinances as she
9 describes in her testimony?

10 MR. PEEPLES: Yes.

11 JUDGE TOREM: With that in mind and the
12 clarification, does any other Councilmember have a question
13 for Ms. Guhlke? All right, I see none. Does any other
14 party have additional cross examination for Ms. Guhlke that
15 may have come up based on the discussion today?

16 MR. LANE: No.

17 JUDGE TOREM: Seeing none, Mr. Peeples, do you
18 want to keep Ms. Guhlke here any longer?

19 MR. PEEPLES: No.

20 JUDGE TOREM: All right. She may be excused. She
21 can leave at her leisure as the proceeding goes. All right,
22 let's turn back to Mr. Pappalardo. His basis is on wind and
23 water resource impacts and I believe his testimony can be
24 found in Exhibit 22, is that right, Exhibit 22.

25 Ms. Towne, did you have a question for Mr.

1 Pappalardo?

2 MS. TOWNE: Yes, Your Honor. Mr. Pappalardo, I
3 believe you state in the first full paragraph all excavation
4 at the facility shall be relatively shallow and will not
5 exceed a maximum of 35 feet in depth for the turbine
6 foundation. I am sort of taken aback it was that deep,
7 35 feet, would this be true of all of the turbines.

8 MR. PAPPALARDO: I am not sure exactly as a
9 geotechnical engineer. I am not qualified to answer that
10 particular question.

11 MS. TOWNE: Okay.

12 MR. PAPPALARDO: At the maximum, that would be
13 maximum depth for the foundation.

14 JUDGE TOREM: We will have testimony on this at
15 2:30 of a geotechnical expert, Mr. Butler. Perhaps, Ms.
16 Towne, you could repose the question to him?

17 And, if necessary, Mr. Peeples one of us can read
18 that testimony from Mr. Pappalardo to him and get his
19 opinion on it if we need a geotechnical perspective.

20 MR. PEEPLES: Also to answer the question we have
21 Andrew Young, but the maximum is 35 and depending on the
22 quality of materials, it could be less.

23 MS. TOWNE: Thank you.

24 JUDGE TOREM: Mr. Pappalardo, that comment on Page
25 9 of your testimony appears to address whether or not

1 excavations would not engage the water table and so your
2 opinion is that any depth of 35 feet would not.

3 MR. PAPPALARDO: It would not that is my opinion.

4 JUDGE TOREM: Any other questions for Mr.
5 Pappalardo?

6 MS. ADELSMAN: That would not include any springs
7 or any --

8 MR. PAPPALARDO: No, I don't think so.

9 JUDGE TOREM: I didn't hear the response.

10 MR. PAPPALARDO: No, they would not.

11 JUDGE TOREM: So to clarify that would not include
12 any springs? You have a negative question and the answer
13 was negative.

14 MR. PAPPALARDO: The excavation would not impact
15 any springs.

16 JUDGE TOREM: Okay, thank you. Any other
17 questions for this witness? Other parties, are there any
18 questions for Mr. Pappalardo.

19 Seeing none, Mr. Peeples, is there any reason to
20 keep Mr. Pappalardo around?

21 MR. PEEPLES: No.

22 JUDGE TOREM: Let's move next to Mr. Bastasch,
23 he's at Exhibit 26, I believe. Are there council's
24 questions in regards to his air quality and noise impacts
25 that should be raised at this time.

1 Mr. Bastasch, I have a question that I reviewed on
2 Page 5 of your testimony, at Line 8, it appears the question
3 that was asked to you was summarize and describe the
4 evaluation of potential noise resulting from construction
5 and operation of the project, and when I read your answer it
6 seemed to talk mostly about construction, the blasting
7 activities, the hours of the day that would occur, and then
8 it went straight to the cumulative impacts.

9 When I read this, I wasn't clear as to how loud a
10 wind turbine was. I notice that these turbines for the
11 project would quite far away from any residences.

12 Can you today give me a little bit of an
13 elaboration as to what I might hear and how depending on how
14 close I get to a wind turbine operating at whatever wind
15 speed you want to chose for your example?

16 MR. BASTASCH: Sure. I will just tell you that
17 the operations are discussed a little bit later on in the
18 testimony. At the distances that we thought we would hear
19 we were expecting levels at a maximum to be that of soft
20 whispers or rushing wind in trees.

21 JUDGE TOREM: What was the distance away that I
22 would have to get? What proximity would I have to come up
23 to, actually be in visual sight or just being able to hear
24 the operation of these? If I am driving on the highway,
25 I've seen the visual simulations, I might see them in the

1 distance but not hear them. How close would I have to get
2 to actually able to hear that noise as opposed to, I guess,
3 the background wind noise.

4 MR. BASTASCH: That is really depends on the level
5 of background wind noise and how much of that is masking the
6 noise of the turbines. I would really expect, on this
7 project, that the base line here is the 40 decibel contour
8 line and I would not expect that you would be able to
9 discern the project from outside of that.

10 JUDGE TOREM: All right. For the record, is there
11 an exhibit number there that you're pointing at?

12 MR. BASTASCH: That is in the -- that's addressed
13 in the testimony. I don't think I have that.

14 JUDGE TOREM: All right. We may have a scramble
15 to figure out which exhibit we're looking at.

16 MR. TAYLOR: 15B of the application.

17 JUDGE TOREM: 15B of the application, thank you.
18 So is it 40 decibels?

19 MR. BASTASCH: At the outer most contour. The WAC
20 limit is the blue contour, the 60. And your question was
21 about how far would you may be able to hear it and what my
22 response is you may be able to hear it out to the 40 decibel
23 line at -- under ideal conditions. Ideal being a maximum
24 noise propagation conditions, I would not expect that you
25 would hear beyond that distance.

1 JUDGE TOREM: I don't have that exhibit directly
2 in front of me. From the tower to that 40 decibel contour
3 line, do you know what the approximate distance might be?

4 MR. BASTASCH: Approximately a mile.

5 JUDGE TOREM: So a mile away, I could still be
6 able to hear that on optimal conditions?

7 MR. BASTASCH: There is a remote chance in a worst
8 case scenario.

9 JUDGE TOREM: Okay. With those questions asked by
10 myself or other Councilmember is there any questions
11 regarding noise, construction or operation?

12 All right, seeing none, Counsel for the
13 Environment or Ms. Strand, any questions?

14 All right, seeing none, Mr. Peeples any reason to
15 keep Mr. Bastasch here?

16 MR. PEEPLES: No.

17 JUDGE TOREM: All right, thank you, sir, for your
18 testimony and answering questions. We have one additional
19 witness who is known anticipating cross examination.

20 Mr. Nierenberg, we've already adopted his
21 testimony, that can be found in Exhibit 23 -- no, Exhibit
22 24.

23 And, if I recall, Mr. Nierenberg is a
24 meteorologist, who made the opening statement about some
25 indication as to the resources of the wind in the State of

1 Washington, where they might be found, and that Kittitas
2 County is one of few places suitable for wind farm in his
3 opinion.

4 Anybody have any questions for this witness?

5 MS. ADELSMAN: I have just a quick question. This
6 morning you talked about the force majeure, you might say,
7 one of the maybe things that could happen that would
8 preventing the plant from opening. What are the chances of
9 having that happen?

10 JUDGE TOREM: I don't think that Mr. Nierenberg
11 was here to hear that discussion. Let me rephrase the
12 question for you.

13 MS. ADELSMAN: Sure.

14 JUDGE TOREM: There was part of the development
15 agreement, sir, this morning with the county that said that
16 if it weren't generating enough electricity that they might
17 ask for the place to be shut down and have power removed and
18 decommissioned.

19 One of the areas that was questioned is something
20 called force majeure, essentially an act of God, that
21 Kittitas County might not be windy for a certain period of
22 time and I believe Councilmember Adelsman is just asking
23 your opinion as a meteorologist as to what is the likelihood
24 of the wind not blowing in Kittitas County for some extended
25 period of time?

1 MR. NIERENBERG: That's virtually impossible.

2 Barring like cataclasmic earth quake that would, you know,
3 change the shape of the state.

4 JUDGE TOREM: So if the Cascades and other ranges
5 around here stay in place, the wind will blow.

6 MR. NIERENBERG: Yes.

7 JUDGE TOREM: Does that cover the question?

8 MS. ADELSMAN: Yes.

9 JUDGE TOREM: No references to Kansas for the
10 witness? All right. Had to work it in there somewhere.
11 All right, I don't see any questions for this witness,
12 Counsel for the Environment or any other parties.

13 All right, I will have to let him go. Thank you
14 witnesses for coming in.

15 It is now 2:20. Mr. Peeples, do we want to break
16 now?

17 MR. PEEPLES: That would be fine.

18 JUDGE TOREM: Let's take a brief break for eight
19 minutes. We need to be back on the record in ten minutes
20 for the next witness.

21 (Whereupon, the hearing recessed at
22 2:21 p.m. and reconvened at 2:32 p.m.)

23 JUDGE TOREM: We're back on the record now at 2:32
24 in the afternoon on Monday March 7, 2005. This is Judge
25 Adam Torem.

1 We're now shifting to one of the more difficult
2 parts technically in this proceeding where we have three
3 witnesses with us on the telephone.

4 All of the Councilmembers that were present
5 previously are back assembled and are ready to see if there
6 is any cross examination for the following three witnesses.

7 I hope you will identify yourself if you can hear
8 me on the phone. First Josh Butler, a geotechnical expert.
9 Are you there, Mr. Butler?

10 MR. BUTLER: Yes.

11 JUDGE TOREM: The second, Kurt Oliver.

12 MR. OLIVER: Yes.

13 JUDGE TOREM: All right. Mr. Oliver is
14 telecommunications and also Jeff Flenniken. I don't have a
15 designation for him, Mr. Peeples.

16 MR. PEEPLES: Cultural resources.

17 JUDGE TOREM: Can you hear me, sir?

18 MR. FLENNIKEN: Yes.

19 JUDGE TOREM: What I am going to do is swear each
20 of you three in so. So if each of you three would raise
21 your right hand I will be so doing. Do you Josh Butler, do
22 you Kurt Oliver, and do you Jeff Flenniken, each solemnly
23 swear or affirm that all testimony that you will provide in
24 the proceeding will be the truth, Mr. Butler?

25 MR. BUTLER: Yes, I will.

1 JUDGE TOREM: Mr. Oliver?

2 MR. OLIVER: Yes.

3 JUDGE TOREM: Mr. Flenniken?

4 MR. FLENNIKEN: Yes.

5 (Witnesses sworn.)

6 JUDGE TOREM: Thank you. Now I am going to turn
7 it over to Darrel Peeples. He is going try to project out
8 to our speakerphone for each to you to hear his questions
9 and he will call on you individually for your responses as
10 needed, to adopt your testimony, and then we will see if the
11 Council has any additional questions.

12 There may be a break between the voices that you
13 hear as we shuffle people around the microphone. If
14 Councilmembers have questions, I would be happy to have them
15 to come up and sit here to ask them to be sure that it can
16 be heard.

17 Mr. Peeples?

18 MR. PEEPLES: Mr. Butler, with regard to Exhibit
19 No. 23, which is your prefiled testimony, it's already been
20 entered into the record here, but if I were to ask you those
21 same questions would you respond the same way as in your
22 prefiled written testimony?

23 MR. BUTLER: Yes, I would.

24 MR. PEEPLES: Okay. Jeff Flenniken, your exhibit
25 is -- prefiled testimony is Exhibit 27. It is already been

1 entered into evidence. If I were to ask you all of those
2 questions would you reply as you wrote down in your prefiled
3 testimony?

4 Jeff?

5 MR. FLENNIKEN: Yes.

6 MR. PEEPLES: Okay. Kurt Oliver, your exhibit is
7 for your prefiled testimony and is Exhibit 30. It's been
8 previously entered into the record. If I were to ask you
9 all of those questions would you respond as stated in your
10 prefiled testimony?

11 MR. OLIVER: Yes, I would.

12 MR. PEEPLES: Okay, I guess that's it. I believe
13 Judge Torem has adequately indicated the subject matter of
14 each one of these witnesses. Josh Butler is geotechnical.

15 And, Ms. Towne, I want to point out that we're
16 going to be bringing Mike Pappalardo back to indicate how
17 deep the water level is out there for you.

18 MS. TOWNE: Thank you.

19 MR. PEEPLES: So Jeff Flenniken will speak to
20 cultural resources and Kurt Oliver the radio communications
21 type things, microwaves, et cetera.

22 JUDGE TOREM: All right. Let's first address
23 questions to Mr. Butler. Can you hear me, sir?

24 MR. BUTLER: Yes, I can.

25 JUDGE TOREM: Councilmembers, are there any

1 questions regarding geotechnical issues for Mr. Butler while
2 we have him available on the telephone today?

3 All right, I don't see any questions, Mr. Butler,
4 for you of any of the Councilmembers. Will you stay on the
5 line for just few a minutes, Mr. Butler?

6 MR. BUTLER: You bet.

7 JUDGE TOREM: Thank you. Now turning to Exhibit
8 23 to Exhibit 27 on cultural resources, Mr. Flenniken, are
9 there any questions for Mr. Flenniken?

10 All right, Mr. Sweeney, from the Utilities and
11 Transportation will come over and ask you questions.

12 MR. PEEPLES: Good morning, Mr. Flenniken. I have
13 a question, a rather general one, on updates. It is seems
14 or rather a --

15 MR. FLENNIKEN: Can you speak up?

16 MR. SWEENEY: I will speak up. I am looking for
17 an estimate when the study to be complete.

18 MR. FLENNIKEN: Would you repeat?

19 MR. PEEPLES: Could you please repeat?

20 MR. SWEENEY: How is this? Can you hear me now?

21 MR. FLENNIKEN: Yes.

22 MR. SWEENEY: I was speaking into the wrong
23 speaker. Okay, now we have this taken care of. And perhaps
24 you're not the right one because I can see someone else in
25 the hearing room waving their hand I think to perhaps answer

1 that question, but in your testimony here your last line
2 says, "However, the final conclusions of report await the
3 traditional of cultural property setting being completed by
4 the Confederate Tribes of the Colville Reservation," I was
5 wondering if was completed yet?

6 MR. FLENNIKEN: To my understanding, the applicant
7 has contacted the Confederated Tribes of the Colville
8 Reservation and it has been completed and it is now ready.

9 MR. SWEENEY: You've not had a chance to review
10 that?

11 MR. FLENNIKEN: Yes, I have.

12 MR. SWEENEY: Okay. So, is there some additional
13 conclusions you can add based on what you have --

14 MR. FLENNIKEN: No, sir.

15 JUDGE TOREM: Mr. Flenniken, can you just speak as
16 loudly as possible and enunciate as best as possible. We
17 have a court reporter trying to take these things down. So
18 you were saying about the results of the survey?

19 MR. FLENNIKEN: Well, my understanding is that the
20 applicant has contacted Colville Tribe for a traditional
21 property study of the project area. That part is in a draft
22 form. I read that report and the applicant addressed the
23 report.

24 JUDGE TOREM: Addressed the report is what he
25 said.

1 MR. PEEPLES: Chris, could you answer, just very
2 briefly, that cultural study was done by the Colvilles and
3 not by this witness, okay? So it has been done. I believe
4 it is in draft form and it will be submitted for the DEIS.

5 Chris, would you like to add anything?

6 MR. TAYLOR: For the record, Chris Taylor for the
7 applicant. We did receive a copy of that report from the
8 Colville Tribe archeology department and in consultation
9 with Plunkin (phonetic) and Associates, we crafted a brief
10 response letter to the Colville Tribe which they received, I
11 believe, last Tuesday. We've spoken to them and they
12 received it. We're not asking any major modification to the
13 report and we should have a final ready to provide to EFSEC
14 in time for inclusion in the final EIS, I hope this week, if
15 not by next week.

16 Does that answer your question, Councilmember
17 Sweeney?

18 MR. SWEENEY: Yes.

19 MS. TOWNE: Mr. Flenniken, this is Chris Towne.
20 Starting on Page 5 Line 23 of your testimony, you speak of
21 the Yakama Tribal Chairman as having concerns and stating
22 that the presence or absence of TCPs should be confirmed by
23 an on-site visit by Yakama elders; has that occurred.

24 MR. FLENNIKEN: Yes, it has.

25 MS. TOWNE: And what was found?

1 MR. FLENNIKEN: That was not part of the study.

2 JUDGE TOREM: It wasn't his study.

3 MS. TOWNE: Thank you.

4 JUDGE TOREM: All right. Any other questions for
5 Mr. Flenniken. Counsel for the Environment?

6 MR. LANE: No

7 JUDGE TOREM: Mr. Flenniken, please stay on the
8 line in case something else comes up. We're now up to Mr.
9 Oliver Exhibit 30. Mr. Oliver, are you there?

10 MR. OLIVER: Yes, I am.

11 JUDGE TOREM: Is there any questions from
12 Councilmembers for Mr. Oliver regarding telecommunications
13 impact? We have a question coming from Councilmember Towne,
14 hang on just one second.

15 MS. TOWNE: Mr. Oliver, on Page 5 starting at Line
16 14, you in effect say they have lousy TV reception now but
17 there aren't very many of them so you figure they won't
18 complain.

19 Is that -- I'm summarizing, but that's what it
20 looks like to me.

21 The question is: Is that the test? Or is it that
22 this project may or may not have an impact on reception?

23 Or are you saying because of the low quality of
24 the reception, there will not be a distinguishable impact
25 from the project?

1 MR. OLIVER: I think the latter. Low quality.
2 The signal quality has -- our measuring numbers showed very
3 poor quality signal throughout this area and the impact of
4 the project itself is going to have a negligible impact to
5 the signal.

6 MS. TOWNE: Thank you.

7 JUDGE TOREM: Councilmembers, any other questions
8 about radio, cell phone, or TV reception issues? Counsel
9 for the Environment or the Economic Development Group?

10 MR. LANE: No.

11 JUDGE TOREM: All right. Mr. Peeples, we have on
12 the telephone right now Josh Butler, Kurt Oliver and Jeff
13 Flenniken, is there any reason to keep these witnesses
14 available the rest of today?

15 MR. PEEPLES: No.

16 JUDGE TOREM: All right, gentlemen, thank you very
17 much. I appreciate the long distance testimony, but you may
18 now hang up.

19 JOINT ANSWER: Thank you.

20 JUDGE TOREM: All right.

21 MR. PEEPLES: Your Honor, we would like to
22 respond, I think, some of the Councilmembers had some
23 questions with regard to TCPs. First of all, overlay does
24 the map wasn't done by that witness. It was done basically
25 between the applicant and the, you know, tribal contact

1 method between that and if you have any questions on that I
2 think I would like to clear that up at this time.

3 JUDGE TOREM: TCPs are the tribal cultural
4 properties.

5 MR. PEEPLES: Traditional cultural property. One
6 was done by the Colvilles. That will be completed very
7 shortly and the Yakama Tribe did not come up and do one.

8 JUDGE TOREM: Mr. Taylor, do you want to clarify
9 as to those studies?

10 MR. TAYLOR: Chris Taylor for the applicant. I
11 believe we asked them via a connection through the computer,
12 their Council, if they had questions and to my knowledge, I
13 believe that I would know it if that was the case, that we
14 have offered numerous times to the Yakama Nation both in
15 writing and verbally to visit the site, et cetera, asked
16 specifically whether the elders were interested in a -- for
17 a chance to visit the site, and I believe I thought I heard
18 the answer as being in the affirmative. I do believe that
19 was the intent, but I don't know if that's an accurate
20 statement.

21 To my knowledge, the Yakama Nation elders have not
22 been to the site with the expressed purpose of evaluating
23 TCPs. With that said, the site, the gates are not locked,
24 they may have, and I don't know about it, but I don't have
25 any evidence that they have.

1 MS. TOWNE: Thank you.

2 MS. ADELSMAN: Did they receive a copy of the
3 report and are they going to be provided the opportunity to
4 comment or just make an observation or whatever?

5 MR. TAYLOR: Again, Chris Taylor for the
6 applicant. To be quite frank, we were wading into an area
7 of cultural resources that's rather political amongst the
8 tribes and between tribes and non tribal members.

9 And what Mr. Flenniken alluded to was that, as an
10 academic archeologist, he didn't feel that he was qualified
11 to speak to the issue of TCPs. That's why he didn't respond
12 to that question. I think that the reality is the Colville
13 Tribe would not be interested in us asking the Yakama Nation
14 for their comments on their view of things.

15 I don't speak for the Colville Tribe, but that is
16 what we have discussed this matter with them. I'm sorry
17 that they are not here to represent themselves.

18 We certainly would not object to that but I am not
19 sure that -- they view that intellectual property as their
20 own.

21 JUDGE TOREM: Councilmember Sweeney, do you have a
22 question?

23 MR. SWEENEY: I thought I did. Why was the two
24 tribes invited to come up here for a reason to do that and
25 then the second question is do you have any idea why the

1 Yakamas have not taken you up on your offer to have their
2 input?

3 MR. TAYLOR: For the record, Chris Taylor for the
4 applicant. I'm not able to address that, nor am I a tribal
5 member, although, I will do my best to answer your question.

6 The answer is why were two tribes -- or we
7 consulted with two tribes. This area is their actual map
8 and below you see the territory of the Yakama Nation and
9 this site clearly falls within that map and that was
10 something was agreed upon by treaty between the Yakama
11 Nation and the federal government.

12 We started with the Colville Tribe. They claimed
13 the eastern portion of Kittitas County as a historical use
14 area of one band that make up the Confederated Tribes as the
15 most western tribes and one of those bands, I believe it's
16 the Lower Columbia Band, historically uses this area in and
17 around Wild Horse, and so we then thought that everyone will
18 seem like they might have an interest in the area.

19 The Colville Tribe expressed an interest in
20 working with us on this when we came in to perform this
21 study under contract.

22 So, with respect to the Yakama Nation, it is my
23 understanding that they've had a particular position as a
24 nation and they don't want to invade government and federal
25 law.

1 JUDGE TOREM: Certainly no intention to construct
2 or disturb on this site.

3 MR. TAYLOR: No. We've communicated what we're
4 doing and the result of our studies and we've also made the
5 offer in writing, I believe it is in the council's record,
6 that they can be present for any of those ground breaking
7 activities and we would also be willing to grant as we have
8 with the Colville Tribe access rights in the future if they
9 need the site for occasional cultural purposes.

10 We made that offer to the Yakama Nation. Also I
11 believe the Yakama Nation agreed to adopt any resolution in
12 the tribal Council level and slightly modified their
13 position on wind power. I don't have references in front of
14 me, the resolution number, but it is referenced in the
15 letter that they sent EFSEC staff that, by order of Yakama
16 Tribal Council resolution No. XXXX, it was their position on
17 the wind power which I believe was subsequently modified and
18 now they are indicating on the record as not being opposed
19 to the wind power project any more.

20 They are on the service list, I believe, for both
21 Kittitas County and EFSEC. They have certainly received all
22 of communications.

23 JUDGE TOREM: All right.

24 CHAIR LUCE: This is Chairman Luce. Just based on
25 my past professional experience, in which I dealt

1 extensively with the tribes including the Yakamas, I can
2 affirm that the government relationship particularly with
3 respect to the federal government, also with respect to the
4 state government but usually that means the governor and
5 just the governor, is something that the Yakamas and other
6 tribes pride themselves on in speaking to other subunits of
7 government.

8 It's not something that traditionally happens and
9 something that is avoided as a general matter of policy.

10 JUDGE TOREM: Any other questions with regards to
11 cultural resources in follow up to Mr. Flenniken's testimony
12 through Mr. Taylor?

13 All right, seeing none, Mr. Peeples, is there any
14 other clarifications we need for any portions of the phone
15 testimony that may have not been clear to the Council?

16 MR. PEEPLES: That was the only one.

17 JUDGE TOREM: Let's turn back to Exhibits 1 and 2
18 and have witness Michael Pappalardo who agreed to stick
19 around and after talking to Mr. Peeples at the break it
20 became clear that the geotechnical type question that
21 Councilmember Towne had asked about the depth of the
22 excavations being a maximum of 35 feet could be answered by
23 Mr. Pappalardo and this was with regard to the water table;
24 is that correct, Councilmember Towne?

25 MS. TOWNE: Yes.

1 JUDGE TOREM: Mr. Pappalardo is back and has
2 joined us again and hasn't taken off quite yet.

3 Mr. Peeples, do you want to --

4 MR. PEEPLES: Mr. Pappalardo, Councilmember Towne.

5 MS. TOWNE: Asked about the depth of 35 feet
6 stated in your testimony and I believe what the examiner
7 clarified is that with reference to depth was with regards
8 to the potential impact on the aquifer you said that the
9 aquifer was far below the potential maximum excavation depth
10 of 35 feet.

11 How deep is that -- are the aquifers there?

12 MR. PAPPALARDO: Well, ground water -- a review of
13 Washington Department of Ecology ground water levels shows
14 that the nearest well is about three miles away and at least
15 thousand feet below the project site. There is some springs
16 in the first aquifer nearby, but that is also -- the nearest
17 springs are a quarter mile from away from the development
18 and well below 35 foot maximum excavation level.

19 JUDGE TOREM: That first aquifer as well that
20 depth wouldn't be reached until you get below 35 feet?

21 MR. PAPPALARDO: Correct, yes.

22 JUDGE TOREM: Councilmembers, any other follow up
23 now that's been addressed that little bit more specifically
24 to the water table in the area of the project?

25 All right, Mr. Peeples has indicated that there is

1 no reason to hold on to you, Mr. Pappalardo, thank you for
2 clarification. We appreciate it.

3 Councilmembers, looking at the witness schedule
4 that was circulated by Mr. Peeples last week, you'll see
5 that at Witness No. 9, a Jeannie Acutanza, who was listed
6 for today, she'll be here tomorrow at some point. She's
7 going, I think, to be here in person, but there is no cross
8 examination scheduled for her. She will not be heard today.

9 We now have left on the schedule of witnesses for
10 today Andrew Young and Chris Taylor and both of them have
11 already been sworn.

12 My understanding is that they will now take
13 testimony and Counsel for the Environment has some cross
14 examination questions.

15 We had discussed this last time, Councilmembers,
16 but I will remind you that both Mr. Young and Mr. Taylor are
17 responsible for different areas of project. Mr. Taylor is
18 actually better testimony for being the permitting expert
19 and Mr. Young for the mechanical and engineering expertise.

20 And I think that we will find that if one doesn't
21 know the answer the other does. So, in an attempt to make
22 sure that's it's not appearance of any, oh, it's the other
23 guy's answer, they will both sit at the table, and answer
24 questions as a panel.

25 It would helpful if they were to move to that

1 other table that the witnesses have been at and take their
2 name tags with, that way the court reporter will be able to
3 identifying the moving talking head target, and we will go
4 from there.

5 (Off the record while rearranging
6 witness positions.)

7 JUDGE TOREM: All right. Mr. Peeples, the
8 witnesses have already been sworn. I will let you go
9 through your questions with them.

10 MR. PEEPLES: I think we've already identified the
11 fact that they have -- they've responded the same way to the
12 questions as if they were asked in their direct testimony
13 and I believe they are ready for cross.

14 JUDGE TOREM: So, Mr. Young, when we adopted your
15 prefiled testimony, Exhibit 20, and Mr. Taylor's adopted
16 Exhibit 21, Mr. Lane, you can direct one at a time or both,
17 whatever you feel is best for your cross examination.

18 MR. LANE: Thank you. Mr. Young, I think this
19 question might most properly addressed to you. Could you
20 please clarify for the record exactly how far any one
21 turbine -- nearest turbine will be to any identified spring.

22 You simply didn't put any testimony in your
23 prefiled and the settlement agreement between Fish and
24 Wildlife. In the settlement agreement between Fish and
25 Wildlife, you identified 150 meters or is it Mr. Erickson's

1 testimony it's identified at 225 meters at one point and 300
2 meters at another point.

3 MR. TAYLOR: For the record, Chris Taylor. The
4 actual number I believe is 225 meters number. The 150
5 meters was a very conservative number of -- that was put in
6 there in the event, as we requested it, in the application
7 for site certification. We asked the Council to grant that
8 draft SCA to give us some flexibility as set out within the
9 defined floor as set out throughout the documents and, as I
10 said, in the event that when we do the geotechnical
11 investigation and other issues come up that we have some
12 flexibility in moving them and so that was taking the 225
13 and adding that in the event that moving would be required
14 in the direction was explained. That's where the 150 comes
15 from. So, I believe, the testimony was that none of the
16 springs are closer than 225 meters and that most of them are
17 well over 300 meters. I believe is what his testimony says
18 and I think that answer to be accurate.

19 MR. LANE: Thank you. Turning also to the
20 settlement agreement, it is to avoid to the greatest
21 possible construction in the outside undisturbed areas
22 except for during the months of May through October when
23 soil moisture is low.

24 Could you please explain what is meant by the
25 qualifiers "to the greatest extent possible?"

1 That's on Page 2, the first line or second line, I
2 guess.

3 MR. TAYLOR: For the record, this is Chris Taylor.
4 I represent the applicant. Just to provide very briefly
5 background for the Council benefit, when we made this
6 request from Fish and Wildlife to have temporary impacts and
7 permanent impacts as different.

8 JUDGE TOREM: Mr. Lane, you're looking at the
9 letter from Fish and Wildlife that's part of the Exhibit 10,
10 I think, so that's Page 2 of that document?

11 MR. LANE: Yes.

12 JUDGE TOREM: Councilmembers, it's Exhibit 10, the
13 letter from Mr. Clausing; is that right?

14 MR. LANE: Yes.

15 MR. TAYLOR: As part of Fish and Wildlife's
16 guidelines, which I believe the Council has before them, are
17 the wind power guidelines from Department of Fish and
18 Wildlife.

19 There are specific mitigation requirements for
20 temporary impacts and for permanent impacts and there are
21 different ratios and the intent was that with this
22 recommendation from the Department of Fish and Wildlife is
23 that temporary should be in the temporary and they are
24 temporary, you know, not very long duration when you start
25 to look at a permit and this was an attempt to minimize any

1 disturbed habitat that would be outside of our foot print of
2 the project.

3 So, in other words, an area that might become part
4 of a gravel road will become a gravel road that isn't
5 subject to this provision, but it would be any activities
6 outside of areas that are going to be permanently disturbed.

7 And I think this is the sort of question that we
8 asked if at possible is that because, you know, things
9 happen in life with -- a construction vehicle driving down a
10 gravel road and some animal jumps in front of them and he
11 swerves to avoid it and is not on the road but on a
12 temporary area that's not supposed to impacted that we're
13 not going say that that is permit violation.

14 That's a rather extreme example, but there are --
15 you know, we had a construction project with a couple of
16 county workers, they need to say to follow reasonable
17 efforts to contain those impacts to those areas and to
18 designate these areas as not to be driven on or otherwise
19 impacted.

20 MR. LANE: Thank you.

21 JUDGE TOREM: Mr. Lane, did that answer the
22 question you wanted to propose?

23 MR. LANE: Yes.

24 JUDGE TOREM: I am looking at the Council to see
25 if there is any follow up to that.

1 Okay, we will let Mr. Lane press on and hold that
2 question, but if it's a direct follow up to what Mr. Lane
3 asked, Councilmembers, let me know if there is anything of
4 that sort that logically makes sense to be on that train of
5 thought.

6 MR. LANE: So you would agree with me then that to
7 the greatest extent possible at some of point something that
8 was originally classified as temporarily disturbed became
9 permanently disturbed the appropriate mitigation would that
10 include an undertaking to account for that?

11 MR. TAYLOR: I believe it is our intent to fully
12 mitigate for any actual impact that occurred would be
13 undertaken to account for that, yes.

14 MR. LANE: Thank you. Has Zilhke Renewable Energy
15 or of its subsidiary companies ever undertaken to replace
16 disturbed habitat in the United States or elsewhere
17 throughout the world?

18 MR. TAYLOR: To my knowledge, no, and I don't know
19 exactly how EFSEC has this defined.

20 But we do have a project in Oklahoma that to a lay
21 person is a similar looking type of habitat where we did do
22 reseeded, but I don't believe it that was a species
23 involved process.

24 MR. LANE: So I guess is your answer: Yes, Zilhke
25 has or, no, Zilhke has not undertaken to recovery habitat

1 similar or equal to that here in Kittitas County?

2 MR. TAYLOR: I believe the answer is no, but I am
3 not the person who has that knowledge, but right now I am
4 happy to say no.

5 MR. LANE: Ms. Lack will be here tomorrow and so I
6 can direct those questions to her.

7 MR. TAYLOR: Yes.

8 MR. LANE: Was Mr. Erickson involved in the review
9 of this document and its drafting?

10 MR. TAYLOR: Would you please clarify what
11 documents?

12 MR. LANE: I am still referring to the attached
13 exhibit letter to settlement agreement between Fish and
14 Wildlife and the applicant.

15 MR. TAYLOR: This document you have before you in
16 its current form, no, not to my knowledge. Mr. Erickson was
17 not involved.

18 Some of the text can be -- the body of this
19 language was shared between applicant and the Department of
20 Fish and Wildlife and Mr. Erickson was part of that, but
21 not -- at least I never saw this letter until it was sent
22 out to all of the parties.

23 I don't believe Mr. Erickson was again. He'll be
24 here tomorrow and you can ask him directly.

25 MR. LANE: Okay. Looking at Page 4 of that

1 document, it states that Zilhke has agreed that during the
2 sage grouse rutting season no routine maintenance of the
3 substation area of the facility within a quarter of a mile
4 of an active lek will be conducted between the hours of
5 sunset and 9:00 a.m. and recreational use will be restricted
6 to the extent feasible.

7 But it's my understanding, through looking through
8 other testimony in this case, that there are no active leks
9 that you can find in the project area; is there some reason
10 why this is not placed in this document?

11 MR. TAYLOR: For the record, Chris Taylor. The
12 answer to the question is no. There are no known leks
13 despite extensive efforts to follow what was approved by the
14 Department of Fish and Wildlife. However, as I believe
15 other testimony perhaps that you reference that this is an
16 area where we would like to see sage grouse recovery occur
17 and I believe that the intent is to see that as a successful
18 sage grouse use as they occupy this area and that the leks
19 will be reestablished, but if that were to occur we would
20 take these measures to not disturb that. It was a
21 prospective sort of approach referring to that today.

22 JUDGE TOREM: Mr. Taylor, if you could just define
23 and spell a lek?

24 MR. TAYLOR: Oh, sorry. Okay, L-E-K, and it
25 refers to a traditional mating or strutting grounds of sage

1 grouse and other related species. It's where they puff
2 themselves up.

3 JUDGE TOREM: There is no need for a
4 demonstration. Thank you for that clarification.

5 MR. LANE: Move to Page 6 on post construction
6 monitoring Paragraph 2, the last sentence.

7 It says, "The TAC shall reconvene if unanticipated
8 circumstances arise during incidental monitoring."

9 Could you please provide for us from the
10 applicant's perspective what that means?

11 What additional conditions in terms of who would
12 decide such an issue, how does it go about reconvening, what
13 is the plan, some of those circumstances?

14 MR. TAYLOR: Sure. I would say, first of all, as
15 I stated earlier it's our intent to not be overly
16 restrictive with respect to the type or function of the TAC,
17 its supervision, or the frequency in its meeting.

18 We elected to leave that open and let the TAC
19 decide and EFSEC as the ultimate decision maker how often
20 they would meet and how often they would continue meeting.

21 With respect to what the applicant's view of the
22 on additional circumstances, which I believe was question,
23 the intent there is if something is uncovered that they're
24 monitoring that departs significantly from the impact that
25 was predicted through the SEPA process then that would

1 constitute unanticipated circumstances whether it was
2 discovery of a species that had previously had never been
3 identified as existing on site or some kind of an impact
4 that is observed that wasn't predicted?

5 Was there another part of question that I hadn't
6 gotten to?

7 MR. LANE: No. I think that's that sufficiently
8 answers that.

9 With regard to the mortality rates for the
10 project, you hired West Incorporated to do a study for you.
11 Are you comfortable with that study and it's -- and it's
12 projections in terms of the avian mortality projections for
13 this project?

14 MR. TAYLOR: We are very satisfied with the
15 accuracy of the study based primarily on the track record of
16 the individuals involved. I was personally responsible for
17 retaining the firm to do this work, interviewing the various
18 firms, for example, looked at their work, their track
19 record, did a reference check on them, determined what this
20 particular firm was and in particular the individuals who
21 did both the field work, Jay Jeffrey, and the analysis Walt
22 Erickson were highly qualified essentially as being
23 specifically wind power and specifically that they had done
24 traditional estimations prior to construction of numerous
25 projects in the Pacific Northwest which have since been

1 built and operated and data for those projects that would
2 have impacted then which are consistent with the provisions
3 that are made before they're built.

4 So, to put it in simple terms, people like that
5 who have made projections that have been more true in
6 similar conditions within reason and that's the basis for
7 our confidence in their estimates.

8 MR. LANE: And from the applicant's perspective,
9 you're confident that the avian mortality numbers that are
10 predicted by the study after a one-year period is
11 representative and you don't have any concerns avian
12 mortality greater than what has been outlined in the avian
13 mortality study?

14 MR. TAYLOR: Yes. I think it's important to know
15 that we believe exactly that this is an issue that's in
16 front of the AFC and the EIS will include all of these.
17 I've had the pleasure of reading that whole piece, as you
18 know, it's a very large document in the EIS. And we should
19 probably serve it to the public and make it easier to read,
20 but he believes in detail and I think it's important and I
21 think that he is here and if you want he could probably make
22 a point because he's a statistician, but pulling out
23 estimates -- we did try to provide a range for all of that
24 rather than to say it's 102 birds and like I say we have a
25 great concern, but pulling out an estimate would be very --

1 I don't think anybody would want to make that assertion, but
2 will we follow the defined range of the predicted, yes, we
3 will.

4 MR. LANE: Okay. In this document and in other
5 places throughout testimony, the Washington Department of
6 Fish and Wildlife guidelines that have been referenced you
7 would agree with me that those guidelines are merely
8 instructive and not binding on EFSEC, correct?

9 MR. TAYLOR: I believe that they don't have the
10 force of law or rule, that is correct.

11 MR. LANE: And you would agree with me that EFSEC
12 is fully within its powers to outline mitigation measures
13 which may exceed those recommended by Wind Power guidelines?

14 MR. TAYLOR: It would certainly be my
15 interpretation that EFSEC has the ultimate authority over
16 what conditions to impose on its measures. They also have
17 to overlay with SEPA but there has to be a nexus between
18 what's been discovered through the EIS process and then
19 presented that anticipated impact and what those mitigation
20 conditions that have been imposed are and -- but that this
21 is their official position. But I think that there would
22 have to be a fairly defined reason to go beyond that which
23 DFW has recommended and stipulated but, yes, ultimately the
24 applicant has respected that they have that authority.

25 MR. LANE: Just to clarify, I think the answer to

1 that question was, yes, EFSEC does retain authority to
2 outline mitigation measures excepted and beyond what has
3 been recommended by Fish and Wildlife guidelines; correct?

4 MR. TAYLOR: Yes.

5 MR. LANE: Thank you. No further questions.

6 JUDGE TOREM: Do you have questions for Mr. Young
7 or is that the scope of cross examination?

8 MR. LANE: I think that would be it.

9 JUDGE TOREM: All right, Councilmember Towne?

10 MS. TOWNE: Question for Mr. Taylor. At the top
11 of Page 6 of your prefiled testimony you state water would
12 be obtained from a local source with a valid water right,
13 essentially municipal water utility. I remember reading
14 that a year ago. Where are you on this project?

15 MR. TAYLOR: I actually think that I want Mr.
16 Young give his testimony related to the information on this
17 issue. I will ask that you direct your ask question to
18 him.

19 MS. TOWNE: Oh.

20 MR. YOUNG: What we're saying is that we would not
21 drill a well and draw water from other sources but use a
22 source with a legal right that would allow the construction
23 general contractor to draw water from that source to provide
24 water for the construction of the project for the concrete
25 batch plant to make concrete and wet down the roads to

1 achieve impacting. Those are the kind of water uses on the
2 project.

3 MS. TOWNE: Mr. Young, I seem to recall an
4 estimate something like a million GPM for construction
5 phase?

6 MR. YOUNG: It's a total of amount of 100 million
7 gallons of water total use; maximum per day would be around
8 a quarter of a million.

9 MS. TOWNE: I am looking at that coming over here
10 and thinking, huh, I wonder if they nailed down the water
11 supply yet.

12 MR. YOUNG: We have not nailed down our water
13 supplier yet, no.

14 JUDGE TOREM: Other Councilmembers, any further
15 questions for Mr. Young or Mr. Taylor?

16 CHAIR LUCE: I have a question. If I recall
17 reading -- this is Jim Luce, Chair, am I correct in
18 reading -- recalling when I read the testimony that the
19 avian mortality conclusions were drawn based not only on the
20 one-year study but also on statistical analysis from other
21 projects?

22 MR. TAYLOR: I think I can answer that question.
23 I believe that is something that Mr. Erickson addressed in
24 his testimony and he can answer questions on it tomorrow.

25 But I think it's important to know the number of

1 birds that pass by an individual site with great specificity
2 does not allow one to reach definitive conclusions about
3 impact on its own.

4 We need to know what the, you know, based on
5 similar levels of avian use at other actual sites with
6 similar equipment, you know, turbines, what were observed on
7 the mortality levels, that is indeed how these estimates
8 were drafted. Using real mortality projections comparing
9 that to what the previous project use level was and drawing
10 his conclusions on that basis, so it's indeed correct on
11 some of those other projects and all of that has been
12 incorporated into his synopsis that he can talk about more
13 tomorrow.

14 CHAIR LUCE: Thank you.

15 MS. TOWNE: Another question for Mr. Young. This
16 wasn't in your testimony, but this specific piece
17 demonstrates the problem that I am having with the
18 testimony.

19 On Page 2, Line 18, you say the applicant is Wind
20 Ridge Power Partners, the company will own and operate the
21 Wild Horse Project.

22 On Page 7 of the same documents, you say you
23 signed a letter of intent with PSE to purchase, how do I
24 reconcile that?

25 At what point will we have something that

1 clarifies whose project it is? You could have said the Wild
2 Horse Project is going to operated by Wind Ridge Power
3 Partners or a successor or a purchaser, but you didn't.

4 So, how are we supposed to view this contradictory
5 testimony throughout the exhibit?

6 MR. YOUNG: I believe that the rules and the
7 procedures for assignment of the applicant require the EFSEC
8 rules and provisions for doing that.

9 That's a good question. It's certainly -- the
10 applicant is the LLC. We're in agreement. We have a letter
11 of intent with Puget Sound Energy to transfer that policy to
12 Puget Sound Energy and Puget Sound Energy would have to come
13 before EFSEC to make that transfer effective is my
14 understanding.

15 MS. TOWNE: So where I see Wild Horse will be
16 built, owned, and operated by Wind Ridge Power Partners I
17 should mentally insert or substitute a successor or a
18 purchaser or something like that to make --

19 MR. YOUNG: I think that would be -- yes, I
20 believe that would be correct.

21 MR. TAYLOR: Perhaps a clarification on that
22 point. It would be part of the agreement with Puget Sound
23 Energy. It is intent that our company will build the
24 project. So we will still be playing that role.

25 MS. TOWNE: But not operate, not maintain, not --

1 MR. TAYLOR: I think there would be a transitional
2 operation role for our company and then ultimately Puget
3 Sound Energy will operate the project over long term.

4 I think just in interest of trying to explain the
5 testimony and to make no mention whatsoever except as
6 testimony of a widely known public fact would cause further
7 confusion than to acknowledge at the hearing would make all
8 the people confused of our intent.

9 MS. TOWNE: Thank you.

10 JUDGE TOREM: I have a follow up on those
11 questions of Mr. Taylor and then we will go to Councilmember
12 Sweeney.

13 As to the operations phase, you mention a limited
14 operation phase that Wind Ridge might have, I guess that
15 means waiting for PSE to get its own steps anticipated to
16 assume ownership and operation, what would be the limited
17 operation phase?

18 MR. TAYLOR: I think the intent is that our
19 company has experience operating wind power projects,
20 something that is a core part of the business and as you all
21 probably read also interested in purchasing another wind
22 power project and I think the intent is that they want some
23 hands on assistance experience helping with the management,
24 how long that lasts and what level of involvement they need
25 from us, I don't think -- it's fine. I believe that the

1 intent is something, you know, that's something we know
2 about and I suspect that something they feel is available to
3 them. They have extensive operating all sorts of other
4 power systems from dams to coal to gas plants, but not wind.

5 JUDGE TOREM: So Zilhke, the Council should take
6 from that answer, has experience building and operating
7 them? In this case, is building one for the purchase and
8 future operation by another party once they get them up to
9 speed so to speak and you're confident in doing so?

10 MR. TAYLOR: When they decide they don't need us
11 any more, we will go away.

12 JUDGE TOREM: Councilmember Towne, does that
13 satisfy the follow up? Councilmember Sweeney?

14 MR. SWEENEY: Taking up the same idea, on Page 8.
15 You have it as the project adding 26 to 30 additional jobs.
16 I looked in your application I understand 14 to 18 of those
17 to be direct jobs. Now, assuming no change in the
18 ownership, by direct jobs you mean 14 to 18 that are
19 directly contracted or work for Zilhke managing the
20 operation of the service; is that correct?

21 MR. TAYLOR: With one slight change, ultimately it
22 will be Puget Sound Energy and the employee contracts will
23 be with Puget Sound Energy, yes. That's level of direct
24 hire that we anticipate. Now, Puget Sound Energy may chose
25 to staff the project differently. I don't know that they

1 plan to, but that is an industry standard estimate that we
2 provided.

3 MR. SWEENEY: I was wondering if you would back up
4 just a little bit more where you have two people doing
5 maintenance on turbines twice a year. What else would folks
6 be doing there?

7 MR. TAYLOR: That's a good question. The
8 reference to two guys in a pick up truck is my
9 characterization on what maintenance entails.

10 The standard service routine for the types of wind
11 turbines that are going to used for this project is that
12 they will serviced twice a year and that service is always
13 conducted by a team of two technicians for safety reasons.
14 They can climb the tower together, they do a routine
15 together, so they are just two people.

16 If you kind of view that, take multiple days to do
17 the service on one of turbine, they come home pretty
18 tuckered, so there's multiple teams of two that are each
19 going, you know, to each turbine every six months, and you
20 can divide the number of turbines plus the number of days it
21 takes them, a team with two, and that's how you get that
22 number.

23 In addition to 14 to 18, and the bulk of those
24 people are technicians and they are sometimes referred to as
25 windsmiths, there is actually a program down at Walla Walla

1 University where they actually train people how to do this,
2 those individuals, when there's just two. There's also
3 going to be a spare parts clerk, most likely superintendent,
4 a managerial level person, probably some sort of clerical
5 and security person as well.

6 I think that's all outlined on Page 45 of Section
7 2.2 of our application for site certification under format
8 of staff with a breakdown and as I described 10 to 14 of
9 those 14 to operating technicians and the remaining or the
10 other four would be the other positions that I have
11 described.

12 There is also a split between -- usually the
13 maintenance employees typically that service the turbines
14 are actually trained by the company that built them. In
15 other words, if it is a GE machine, they will use GE trained
16 and employed people and the owner of the project whether
17 it's Zilhke or PSE there will be at least one or two people
18 on site who will not be out changing -- inspecting bearings,
19 but who would be overseeing the overall operations in
20 management given the magnitude of the investment and its
21 assets.

22 MR. SWEENEY: Thank you, that answers the
23 question.

24 JUDGE TOREM: Other Councilmembers have any
25 questions for this gentleman?

1 CHAIR LUCE: All right. Let's get down to it. I
2 don't have any more questions.

3 JUDGE TOREM: I don't think I have any questions
4 for Mr. Taylor or Mr. Young.

5 Does Counsel for the Environment have any
6 additional questions from your perspective?

7 MR. LANE: No.

8 JUDGE TOREM: Given the economic comments today,
9 Ms. Strand, do you have anything that you want to follow up
10 on this?

11 MS. STRAND: No.

12 MS. TOWNE: Let me ask one more very generalized
13 question, can the Council assume that if and when a transfer
14 of ownership is made to Puget Sound Energy or another entity
15 that person or entity will be bound by the agreement that
16 Zilhke has made?

17 MR. TAYLOR: Absolutely. Absolutely. All of the
18 agreements and all of the conditions that the Council would
19 imposed through the SCA and the county imposed on the
20 development would be binding on, we assume -- I mean, you
21 could write it, but the county's agreement is very explicit.
22 That would be binding on any successors and assigns and we
23 would certainly propose that to EFSEC with Puget Sound
24 Energy and the people involved in the process that's been
25 entered into this agreement with them so that they are

1 intimately familiar with the commitments and obligations
2 that are attendant to the project.

3 MS. TOWNE: Thank you.

4 JUDGE TOREM: Any other questions for this
5 gentleman?

6 MR. PEEPLES: I have just a couple of questions on
7 redirect. These will go to Chris Taylor and they dwell on
8 the Fish and Wildlife guideline, okay. You were involved in
9 helping develop those guidelines with many other people at
10 DFW; correct?

11 MR. TAYLOR: Yes. I helped in those negotiations.

12 MR. PEEPLES: Did you know Mr. Erickson was also
13 involved in that?

14 MR. TAYLOR: He was directly involved the
15 discussion in the negotiations, yes.

16 MR. PEEPLES: Okay. Would you explain why it was
17 the Department's desire to go to an adaptive management type
18 of response rather than, you know, a predisposed type of
19 outline for the mitigation process, if you think that might
20 have happened?

21 MR. TAYLOR: Yes. That was the subject of a long
22 discussion that involved actually Jeff Tayer who was here
23 today and others at that time as far as the Department of
24 Fish and Wildlife and when we got to the issue of TAC
25 adaptive management, spelling out the thresholds, the

1 trigger points for precipitating mitigation measures there
2 was plenty of discussion on this about that particular
3 approach. The Director of the Department of Fish and
4 Wildlife at the time and today said it was his view it was
5 impossible to envision in advance every possible scenario,
6 every possibly outcome that could occur in advance.

7 And to go through that exercise to find out, well,
8 if there is -- if you exceed the number of avian fatalities
9 on a specific species by five percent what does that
10 trigger, well, he felt that that was not possible and would
11 be a very lengthy exercise and that adaptive management, as
12 we proposed here where the agency would retain authority on
13 an ongoing basis, was a more realistic workable approach and
14 that the -- and in particular for an agency to be involved
15 and figure out a contingency that would be unworkable.

16 MR. LANE: Your Honor, I would object on the basis
17 of hearsay.

18 JUDGE TOREM: All right, it is noted. Mr.
19 Peeples?

20 MR. PEEPLES: No further questions.

21 JUDGE TOREM: Mr. Lane, would you like the
22 opportunity to follow up on any of that hearsay?

23 MR. LANE: No, that is fine.

24 JUDGE TOREM: Okay. Are there any other questions
25 of this gentleman? Mr. Taylor and Mr. Young, I want to

1 thank you for your testimony. I think that concludes what
2 we have scheduled for testimony today.

3 Mr. Peeples?

4 MR. PEEPLES: Can we go over what's on for
5 tomorrow?

6 JUDGE TOREM: All right. I will be here at 8:30
7 tomorrow morning and if anything different comes up in the
8 course developments. I have scheduled Wally Erickson and
9 Elizabeth Lack, L-A-C-K, to be here to discuss wildlife and
10 answer habitat issues. Again, I don't know what time we
11 will actually get them on. I am thinking perhaps by 9:15 or
12 9:30. They are scheduled for a thirty minute estimate of
13 cross examination each from Counsel for the Environment.
14 The rest of the day there is no scheduled cross examination
15 by any of the parties.

16 We would still hear from Counsel for the
17 Environment witness Tim Cullinan. Is he to be here in
18 person?

19 MR. LANE: I have spoken with Mr. Peeples who
20 indicates he doesn't plan to cross examine Mr. Cullinan.
21 Mr. Cullinan can be made available for in person but would
22 prefer to testify by phone if there's no objection.

23 JUDGE TOREM: Where is he coming from?

24 MR. LANE: I believe he's coming from Sequim.

25 JUDGE TOREM: Mr. Peeples, is his -- pardon me,

1 but I haven't reviewed his testimony in the last couple of
2 weeks, I believe we could adopt his and Mr. Erickson's side
3 by side? How much -- well, let's put it this way, how much
4 additional would we get if we were, counsel, to have both of
5 them here?

6 MR. PEEPLES: I think you would find with them as
7 with most things, you know, they are both very good
8 scientists.

9 JUDGE TOREM: That's amazing coming from, you
10 know, that these are dueling biological experts.

11 Is there any reason to have him make a trip from
12 Sequim? I recognize that difficulties we have had with the
13 phone. Does anybody have additional questions that they've
14 noted that they want to ask Mr. Cullinan?

15 CHAIR LUCE: This is Jim Luce, Chair. I have had
16 his testimony. He talked at the end about sage grouse and
17 that's really the highlight of it. On avian mortality, he
18 talks about -- I mean, it's all relatively non controversial
19 testimony. This is the fellow from the Audubon Society?

20 MR. LANE: Yes.

21 CHAIR LUCE: You're not going to get nothing
22 really controversial with respect to Mr. Cullinan's
23 testimony.

24 MS. ADELSMAN: He's going to be on the phone
25 though.

1 CHAIR LUCE: He can be on the phone, but what I am
2 saying is there's no reason that I can see to get him here
3 in person. This is not controversial testimony in my
4 opinion.

5 MS. TOWNE: On Page 6, he talks about the risk of
6 incidental mortality being very low, but increasing evidence
7 from studies and I don't see any citation for those studies.
8 I don't know their veracity, whether they are analogous
9 habitat. I would want to explore that until I am satisfied
10 with his statement there.

11 JUDGE TOREM: Well, we can have him by phone.

12 MS. TOWNE: Oh, that's fine with me. I just said
13 that as the area of question.

14 JUDGE TOREM: All right. Well, perhaps Mr. Lane
15 would call his attention to that testimony in advance and
16 ask him immediately on direct exam and follow up questions
17 to clarify the citations to that once he adopts his
18 testimony and we can hope that will save one step of the
19 process. If you can get in touch with him and tell him that
20 he doesn't have to drive out, we will have him by phone.

21 MR. LANE: Certainly.

22 JUDGE TOREM: All right.

23 CHAIR LUCE: Can I make a request? Could we have
24 Mr. Usibelli testify by phone? I don't see any reason for
25 him to come. Is anyone going to cross Mr. Usibelli?

1 JUDGE TOREM: There is none planned.

2 MR. LANE: No.

3 MR. PEEPLES: Is he coming here for Tuesday night?

4 CHAIR LUCE: If he's coming for that reason, then
5 that's different. If he's only coming to testify in this
6 hearing then there is no reason for him traveling.

7 MR. PEEPLES: I will call him. I can get ahold of
8 him.

9 CHAIR LUCE: Otherwise, I see no reason.

10 MR. PEEPLES: I was assuming that he was coming
11 for Tuesday night.

12 JUDGE TOREM: All right. Mr. Peeples, if you will
13 take the initiative to contact Mr. Usibelli and let him know
14 what our situation is, if he doesn't want to make the drive
15 tomorrow, that's fine. So Mr. Usibelli may not come
16 tomorrow. Will you let us know in the morning?

17 MR. PEEPLES: Yes.

18 JUDGE TOREM: Now we've already agreed per our
19 discussion yesterday, the prehearing, that Mr. Grover, Mr.
20 Sterzinger if we can find him, and Mr. Bernay. Mr. Nielsen
21 will be by phone. If we added them to the -- Mr. Bernay,
22 Mr. Kammen, and Mr. Jorgensen were all testifying by phone,
23 so that leaves only Tom Priestly and Mr. DeLacy were going
24 to come over, I think, from Portland in person because
25 Council anticipates cross examination for Mr. Priestly on

1 visual impacts and from Mr. DeLacy on his study of property
2 values in the county. Scheduling problems, folks, tomorrow,
3 we had originally split some up in the afternoon and I think
4 given how quickly things went today, we will try to get
5 everything done -- I don't know if we will get done before
6 12:00 but we will certainly have -- I would think we would
7 be done before 1:00 or 1:30 if we press straight through and
8 everyone else will have the opportunity to eat lunch and do
9 what they want before our seven o'clock public hearing.

10 My suggestion is I understand that Mr. Jorgensen
11 is going to call me at nine o'clock in the morning from
12 Denmark. If the phone was a challenge in calling those
13 folks -- calling in from where those folks were, I can only
14 imagine that Denmark might add to the difficulties.

15 So, if Councilmembers will be kind enough to write
16 up any questions, initial questions, that they might have
17 and forward them to me before we start tomorrow at nine
18 o'clock, I will see if I can pose those questions and cross
19 examination to Mr. Jorgensen about turbine safety and
20 engineers, then that will, I think, cut things down a little
21 bit. If there's follow up questions, we will just deal with
22 that as the Council needs.

23 Directly after that, I would suggest that we go
24 directly to Mr. Erickson and Ms. Lack at about 9:15 and Mr.
25 Cullinan could next on the telephone to follow up. That

1 would make sense with the wildlife issue if we have that
2 stay on that topic, so perhaps Mr. Cullinan could be
3 available any phone at about 9:00. Well, I have got this
4 call at 10:00 o'clock because that's -- Mr. Lane, that would
5 give you 45 minutes with Erickson and Lack.

6 MR. LANE: Right. And I believe those are an
7 outside estimate of our end. I don't think that it will go
8 that long. I will probably have Mr. Cullinan by phone at
9 that time and just listening in as well, so I think I will
10 plan on him calling in at 9:15 and he'll be ready to go from
11 there.

12 JUDGE TOREM: All right. Mr. Usibelli will be by
13 phone. I would have that around 10:00 o'clock as well.

14 MS. TOWNE: I have one follow-up question to Mr.
15 Taylor.

16 JUDGE TOREM: Let me get through the schedule and
17 then I will come back to you this gentleman before we
18 adjourn for the day.

19 Mr. Grover is going to be, Ms. Strand, your
20 witness. Do you have any idea as to his availability or
21 when he might be available by phone tomorrow?

22 MS. STRAND: I believe he's available in the
23 morning.

24 JUDGE TOREM: Okay. Why don't we tell him
25 approximately ten o'clock to call in.

1 MS. STRAND: Okay.

2 JUDGE TOREM: Okay. I am guessing if we don't get
3 to him in before the morning break that we can have him
4 after that. You can have Mr. Priestly and Mr. DeLacy after
5 the morning break if they don't to observe the proceedings
6 tomorrow. Mr. Peeples, that would be fine. Going to take a
7 break around 10:30 is what I would be aiming for. They want
8 to arrive at 10:30 then that would be fine as well.

9 MR. PEEPLES: We will have them here first thing
10 in the morning.

11 JUDGE TOREM: Were you ever able to get ahold of
12 Mr. Sterzinger?

13 MR. PEEPLES: No.

14 JUDGE TOREM: So he'll probably walk in tomorrow
15 as well.

16 MR. PEEPLES: That's correct.

17 JUDGE TOREM: So I am thinking that those folks
18 would be 10:30 or later depending on how long it takes to
19 find out if there are any Council questions for these
20 individuals.

21 We've talked about Mr. Bernay and Mr. Kammen being
22 1:30 in the afternoon and I would like to move that up to
23 11:30 in the morning, so that they are available no later
24 than that.

25 And, Mr. Neilsen, what do you think is best?

1 Would you like to have him available during Mr. Priestly's
2 testimony or would you like to have him available as the
3 last witness with that group, about wind farm risk analysis
4 because it looks like Mr. Neilsen did additional simulations
5 that Mr. Priestly did his prefiled testimony with regards
6 to.

7 MR. PEEPLES: I would say have him available at
8 11:30, you know. Yes, I would agree that it would be nice
9 to finish him at 11:30.

10 JUDGE TOREM: So Bernay and Neilsen will be at
11 11:30 as far as their availability?

12 MR. PEEPLES: Yes.

13 JUDGE TOREM: That should work out then. To recap
14 then at nine o'clock, we will have Mr. Jorgensen, at 9:15
15 a.m Wally Erickson and Elizabeth Lack. At ten o'clock, we
16 will hear from Mr. Cullinan, Mr. Usibelli, Mr. Grover, and
17 leads you to take Mr. Grover after the break.

18 All right, 10:30 when we come back from the break,
19 we will have Mr. Priestly, Mr. Sterzinger, and Mr. DeLacy
20 will be here in person, and then we will take up from with
21 11:30 Mr. Bernay and then Mr. Neilsen.

22 MR. PEEPLES: Jeannie Acutanza, let's put her in
23 with Steve Grover --

24 JUDGE TOREM: At ten o'clock, all right, thank you
25 for that oversight.

1 MR. PEEPLES: If she's on the phone, she will be
2 on the phone. If not, she'll be here. That's right, she is
3 not a phone person, so --

4 JUDGE TOREM: She's coming in person. She will be
5 here at ten o'clock and after the wildlife issues are done.

6 MR. PEEPLES: We will have her after them, yes.

7 JUDGE TOREM: All right. Okay, I think that is
8 good. Council, any questions on scheduling for tomorrow?
9 So if you want to plan your day accordingly my hope is to
10 have us done after or before one o'clock in the afternoon
11 and we will see where things hang out.

12 If there is a need, if something comes
13 unexpectedly tomorrow, a controversy, and it looks like
14 extended cross examination we will reshuffle, but from what
15 I've seen today, I think we just anticipate the schedule.

16 Now, Mr. Taylor, there was a follow up question
17 for you, I know I took too long.

18 MS. TOWNE: Mr. Taylor, I asked a question of the
19 earlier witnesses about hook up to BPA and was told to
20 address it to you.

21 MR. TAYLOR: I think it's a simple answer to your
22 question. The way the application is put forth, we had one
23 or two in our site certification, one or two feeder lines,
24 we would request that the -- we don't intend to build that
25 and there would be no need for that and that construction

1 would not exist.

2 However, given the various and substantial
3 commitments of time and resources to get to this stage, we
4 would request that the application -- or that the SCA grant
5 that in the event and that for some reason that doesn't go
6 through and a different customer wishes to purchase the
7 power and wanted to connect to the BPA will have that
8 ability. We do not intend to build it. We don't need it.

9 MS. TOWNE: Thank you.

10 JUDGE TOREM: All right, Councilmembers, any other
11 items to take up? Is there any other issues that we need to
12 take up on the record today?

13 All right. Then we will close the hearing today
14 and we will resume tomorrow at nine o'clock in the morning.

15 If everybody can be in place at about five minutes
16 until 9:00 and then that will allow us to take that phone
17 call from Denmark.

18 Thank you and we are in recess until tomorrow
19 morning.

20 * * * * *

21 (Whereupon, the adjudicative hearing
22 adjourned at 3:48 p.m.)

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IN RE: APPLICATION NO. 2004-01
WIND RIDGE POWER PARTNERS, LLC & WILD HORSE WIND POWER
PROJECT

A F F I D A V I T

I, Roger G. Flygare, CCR, do hereby certify that the
foregoing transcript prepared under my direction is a full
and complete transcript of proceedings held on March 7,
2005, at the hour of 1:30 p.m., at Ellensburg, Washington.

ROGER G. FLYGARE, CSR
CCR No. 2248

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* * * * *

20 Nos. 20 through 50, 71 through 90 & 100.8, prefiled

21 exhibits were admitted into the record on Page 116.

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