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March 15, 2023

Washington State Energy Facility Site Evaluation Council v.

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WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
MARCH 15, 2023
1:30 p.m.

Council Meeting
Verbatim Transcript of Hybrid Proceedings
Taken at
621 Woodland Square Loop Southeast
Lacey, Washington

REPORTED BY: Lori Haworth, RPR, CCR #2958

A P P E A R A N C E S

Local Government and State Agencies for:

The Horse Heaven Project:

ED BROST

Wautoma Solar Project:

DAVE SHARP, Benton County

PAUL GONSETH, WSDOT

Assistant Attorney General:

JON THOMPSON

JENNA SLOCUM

Administrative Law Judges:

ADAM TOREM

DAN GERARD

EFSEC Staff:

SONIA BUMPUS

AMI HAFKEMEYER

AMY MOON

STEW HENDERSON

JOAN OWENS

ANDREA GRANTHAM

DAVE WALKER

SONJA SKAVLAND

LISA MASENGALE

SARA RANDOLF

SEAN GREENE

LANCE CAPUTO

JOHN BARNES

OSTA DAVIS

JOANNE SNARSKI

Councilmembers:

KATHLEEN DREW, Chair

KATE KELLY, Department of Commerce

ELI LEVITT, Department of Ecology

MIKE LIVINGSTON, Department of Fish and Wildlife

LENNY YOUNG, Department of Natural Resources

STACEY BREWSTER, Utilities & Transportation
Commission

(Continued on next page.)

1 A P P E A R A N C E S (Continued)

2 Operational Updates:

3 Kittitas Valley Wind, EDP Renewables:
4 ERIC MELBARDIS

5 Wild Horse Wind Power Project, Puget Sound Energy:
6 JENNIFER GALBRAITH

7 Grays Harbor Energy Center, Grays Harbor Energy:
8 CHRIS SHERIN

9 Chehalis Generation Facility, PacifiCorp:
10 MICHAEL ADAMS

11 Columbia Generating Station & WNP-1/4, Energy Northwest:
12 MARY RAMOS

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1 (Council meeting commenced at 1:32 p.m.)

2
3 CHAIR DREW: Good afternoon. This is
4 Kathleen Drew, Chair of the Energy Facility Site
5 Evaluation Council, calling our March 15th monthly
6 meeting to order.

7 Ms. Grantham, will you call the roll?

8 MS. GRANTHAM: Certainly.

9 Department of Commerce?

10 MS. KELLY: Kate Kelly, present.

11 MS. GRANTHAM: Department of Ecology?

12 MR. LEVITT: Eli Levitt, present.

13 MS. GRANTHAM: Department of Fish and
14 Wildlife?

15 Department of Natural Resources?

16 MR. YOUNG: Lenny Young, present.

17 MS. GRANTHAM: Utilities and
18 Transportation Commission?

19 MS. BREWSTER: Stacey Brewster, present.

20 MS. GRANTHAM: Local government and
21 optional state agencies.

22 For Horse Heaven Project, Department of
23 Agriculture, Derek Sandison?

24 For Benton County, Ed Brost?

25 For the Badger Mountain Project, Douglas

1 County?

2 For the Wautoma Solar Project, for Benton
3 County, Dave Sharp?

4 I know Dave was here.

5 If you have an open mic, can you please make
6 sure to mute. I heard a small echo.

7 For the Wautoma Solar Project, Washington State
8 Department of Transportation?

9 MR. GONSETH: Paul Gonseth, here.

10 MS. GRANTHAM: For the Hop Hill --

11 MR. SHARP: Dave Sharp checking in -- Dave
12 Sharp checking in late.

13 MS. GRANTHAM: Thank you, Dave.

14 For the Hop Hill Project, for Benton County,
15 Paul Krupin?

16 MR. KRUPIN: Present.

17 MS. GRANTHAM: The assistant attorney
18 generals, Jon Thompson?

19 MR. THOMPSON: Present.

20 MS. GRANTHAM: Jenna Slocum?

21 MS. SLOCUM: Present.

22 MS. GRANTHAM: Administrative law judges,
23 Adam Torem?

24 JUDGE TOREM: Here and off-mute for this
25 purpose.

1 MS. GRANTHAM: Thank you.

2 Laura Bradley?

3 JUDGE GERARD: Judge Bradley couldn't
4 attend today.

5 MS. GRANTHAM: Okay. And was that Dan
6 Gerard?

7 JUDGE GERARD: It was. Judge Gerard, yes.

8 MS. GRANTHAM: Thank you.

9 For EFSEC Staff, Sonia Bumpus?

10 Ami Hafkemeyer?

11 MS. HAFKEMEYER: Ami Hafkemeyer, present.

12 MS. GRANTHAM: Amy Moon?

13 MS. MOON: Amy Moon, present.

14 MS. GRANTHAM: Stew Henderson?

15 Joan Owens is present.

16 Dave Walker?

17 MR. HENDERSON: Stew --

18 MS. GRANTHAM: Oh.

19 MR. HENDERSON: Stew Henderson here.

20 MS. GRANTHAM: Thank you, Stew.

21 Dave Walker?

22 MR. WALKER: Dave Walker, present.

23 MS. GRANTHAM: Sonja Skavland?

24 MS. SKAVLAND: Sonja Skavland, present.

25 MS. GRANTHAM: Lisa Masengale?

1 MS. MASENGALE: Lisa Masengale, present.
2 MS. GRANTHAM: Sara Randolph?
3 MS. RANDOLF: Sara Randolph, present.
4 MS. GRANTHAM: Sean Greene?
5 MR. GREENE: Sean Greene, present.
6 MS. GRANTHAM: Lance Caputo?
7 MR. CAPUTO: Lance Caputo, present.
8 MS. GRANTHAM: John Barnes?
9 MR. BARNES: John Barnes, present.
10 MS. GRANTHAM: Osta Davis?
11 MS. DAVIS: Osta Davis, present.
12 MS. GRANTHAM: Joanne Snarski?
13 MS. SNARSKI: Joanne Snarski, present.
14 MS. GRANTHAM: For the operational
15 updates, Kittitas Valley Wind Project?
16 MR. MELBARDIS: Eric Melbardis, present.
17 MS. GRANTHAM: Wild Horse Wind Power
18 Project?
19 MS. GALBRAITH: Jennifer Galbraith,
20 present.
21 MS. GRANTHAM: Grays Harbor Energy Center?
22 Cheha- --
23 MR. SHERIN: Chris Sherin, present.
24 MS. GRANTHAM: Thank you.
25 Chehalis Generation Facility?

1 MR. ADAMS: Mike Adams, present.

2 MS. GRANTHAM: Columbia Generating
3 Station?

4 MS. RAMOS: Present.

5 MS. GRANTHAM: Columbia Solar?

6 MR. CUSHING: Thomas Cushing, present.

7 MS. GRANTHAM: And do we have someone for
8 the Counsel for the Environment?

9 Chair, there is a quorum for the regular
10 council, the Wautoma Solar council, and the Hop Hill
11 council. Thank you.

12 CHAIR DREW: Thank you.

13 Moving on to the proposed agenda. There is a
14 proposed agenda in front of you, Councilmembers. Is
15 there a motion to adopt the proposed agenda?

16 MR. YOUNG: So moved. Lenny Young.

17 CHAIR DREW: Thank you.

18 Second?

19 MS. KELLY: Second, Kate Kelly.

20 CHAIR DREW: Thank you.

21 All those in favor, please say "Aye."

22 COUNCILMEMBERS: Aye.

23 CHAIR DREW: Opposed?

24 The agenda is adopted.

25 Moving on to the meeting minutes for

1 February 15, 2023. Is there a motion to approve the
2 minutes?

3 MS. BREWSTER: Stacey Brewster. Motion to
4 approve the meeting minutes from February 15, 2023.

5 CHAIR DREW: Thank you.

6 Second?

7 MS. KELLY: Kate Kelly, second.

8 CHAIR DREW: Thank you.

9 I have a few changes for the meeting minutes.
10 On page 8, line 8, the word "continued" should be the
11 word "conditional."

12 On page 11, line 16, the word S-I-F-C-O-R
13 should be "PacifiCorp," P-A-C-I-F-I-C-O-R-P.

14 Page 12, line 23 is correct.

15 Page 18, line -- just checking. Line 14, the
16 word "Tacoma" should be the letters capital T, capital
17 A, capital C.

18 Page 28, line 22, "accumulative" should be
19 "cumulative."

20 Those are the corrections that I have. Are
21 there any other corrections?

22 Hearing none, all those in favor of approving
23 the minutes as amended, please say "Aye."

24 COUNCILMEMBERS: Aye.

25 CHAIR DREW: Opposed?

1 The minutes are approved. On to our operating
2 facilities reports. Kittitas Valley Wind Project,
3 Mr. Melbardis?

4 MR. MELBARDIS: Good afternoon, Chair
5 Drew, EFSEC Council, and Staff.

6 For the record, this is Eric Melbardis with EDP
7 Renewables for the Kittitas Valley Wind Power Project.
8 And we have nothing nonroutine to report.

9 CHAIR DREW: Thank you.

10 Wild Horse Wind Power Project, Ms. Galbraith?

11 MS. GALBRAITH: Yes. Thank you, Chair
12 Drew, Councilmembers, and Staff. This is Jennifer
13 Galbraith with Puget Sound Energy regarding the Wild
14 Horse Wind Facility. And I have nothing nonroutine to
15 report for the month of February.

16 CHAIR DREW: Thank you.

17 Okay. Moving on to Chehalis Generation
18 Facility, Mr. Adams?

19 MR. ADAMS: Good afternoon, Chair Drew,
20 EFSEC, Council, and Staff. For the record, this is Mike
21 Adams, Plant Manager, representing Chehalis Generation
22 Facility. For the month of February 2023, I have
23 nothing nonroutine to report.

24 CHAIR DREW: Okay. Thank you.

25 Grays Harbor Energy Center, Mr. Sherin?

1 MR. SHERIN: Good afternoon, Chair Drew,
2 Councilmembers, EFSEC Staff. This is Chris Sherin,
3 Plant Manager, Grays Harbor Energy Center. And for the
4 month of February, I also have nothing nonroutine to
5 report.

6 CHAIR DREW: Columbia Generating Station?

7 MS. RAMOS: Good afternoon, Chair Drew,
8 Councilmembers, and EFSEC Staff. This is Mary Ramos
9 reporting for Energy Northwest.

10 For the month of February, I have two items to
11 report for Columbia Generating Station.

12 The first item is regarding an NPDES
13 noncompliance. On February 21st, Energy Northwest
14 discovered that a flow meter calibration required under
15 the Columbia Generating Station National Pollutant
16 Discharge Elimination System Permit exceeded the
17 required annual calibration time frame.

18 The calibration -- the task to calibrate the
19 flow meter, it was inadvertently closed, due to human
20 performance errors. The flow meter tracks potable water
21 backwash to the on-site evaporation ponds and in no way
22 impacts any discharge to the environment. The device
23 was calibrated on March 2nd and was found to be within
24 specification and did not require adjustment. We are
25 evaluating additional corrective actions to prevent

1 reoccurrence of this human performance error. And we
2 are also evaluating if any additional paths were
3 inadvertently closed, but so far, we have not found any.
4 This was reported in the February Discharge Monitoring
5 Report which was submitted to EFSEC yesterday.

6 The second item I have to report for Columbia
7 Generating Station is regarding our building 194 paint
8 and blast shop. This paint and blast shop is governed
9 under EFSEC Order 87- -- 837. And during calendar year
10 2022, we exceeded the small quantity emission rate for
11 one chemical under that permit. The -- essentially, the
12 emission rate limit is 0.02 pound per hour under that
13 EFSEC order, and our calculated maximum emission rate
14 for calendar year '22 was 0.054 pounds per hour. This
15 permit exceedance is also a result of human performance
16 error. Paint shop personnel did not follow the
17 procedure to validate chemical consumption limits prior
18 to using the paint products.

19 Similar to the item I noted earlier, we are
20 evaluating additional corrective actions to prevent
21 reoccurrence such as retraining of paint shop personnel
22 and then also reevaluating the list of items -- or paint
23 projects used at that facility. This noncompliance was
24 reported in the 2022 air emission source registration
25 for Columbia Generating Station.

1 Are there any questions for me?

2 CHAIR DREW: Thank you.

3 Are there any questions from Councilmembers?

4 MR. YOUNG: Chair, this is Lenny Young. I
5 have one question for Ms. Ramos.

6 CHAIR DREW: Go ahead.

7 MR. YOUNG: Could you briefly explain what
8 "potable water backwash" means? What's the -- what's a
9 plain-language explanation of what that is?

10 MS. RAMOS: Oh. It -- we have a
11 flocculator building. It's, essentially, this flow
12 meter tracks the backwash coming from our flocculator
13 building to our on-site evaporation ponds.

14 MR. YOUNG: What do you mean by
15 "backwash"?

16 MS. RAMOS: It is essentially -- I'm
17 trying to -- I am drawing a blank on the words. It is
18 essentially part of the cleaning process from our
19 potable water system.

20 MR. YOUNG: Okay. So water that is in the
21 potable system somehow gets exited into the evaporating
22 ponds; is that right?

23 MS. RAMOS: Correct.

24 MR. YOUNG: Thank you.

25 CHAIR DREW: Thank you.

1 Any other questions?

2 Okay. Thank you. We now are moving on to, we
3 have two resolutions in front of us. The first one,
4 Resolution Number 299, Amendment Number 1, the cooling
5 system sediment disposal. And it is in front of you
6 now. It's been in our packets.

7 Before we move on to consider this item, I'd
8 like to ask if there is anyone who would like to comment
9 from the public on this resolution. Please raise your
10 hand or open your mic to ask to be recognized.

11 Okay. At this point, we are not hearing that
12 there is anyone who would like to speak and provide us
13 with public comment on Resolution Number 299.

14 I guess I should have asked for the Staff --
15 sorry about that -- Ms. Moon, to go ahead and give us
16 the briefing on this.

17 MS. MOON: Thank you, Chairman Drew.

18 So good afternoon. Good afternoon, Chair Drew
19 and other Councilmembers. For the record, this is Amy
20 Moon, an EFSEC Staff Member. And this will be kind of a
21 repeat of what Chair Drew just said, but I want to
22 introduce to you the two proposed resolutions that have
23 been updated to reflect a dosimeter change as presented
24 to you at the last Council meeting on February 15, 2023.

25 As I presented last month, Resolution 299 is

1 the Columbia Generating Station cooling system sediment
2 disposal. That's what the resolution deals with. And
3 then Resolution 332 is for the Columbia Generating
4 Station radiological environmental monitoring program.

5 As I presented last month, the radionuclide air
6 monitoring in both resolutions was historically done
7 using thermoluminescent dosimeters, or TLDs. The dose
8 measurement technology has evolved, and the more recent
9 technology uses optically stimulated luminescence, or
10 OSL, dosimeters. The updated resolutions included in
11 your Council packet reflect that change to OSL
12 dosimeters.

13 The change in dosimeters will continue to meet
14 the Nuclear Regulatory Commission requirements as
15 published in the NRC Regulatory Guide 4.13 for
16 environmental dosimetry, including meeting the American
17 National Standards Institute performance testing and
18 procedural specifications for dosimetry environmental
19 applications.

20 The NRC approved the license basis documents
21 which noted the change from thermoluminescence
22 dosimeters to optically stimulated luminescence
23 dosimeters. In addition, the Washington Department of
24 Health provides technical oversight for the Radiological
25 Environmental Monitoring Program -- we also use the

1 acronym R-E-M-P, or REMP -- and is aware of the
2 dosimeter update and has no concerns or objections.

3 So as Chair Drew brought to your attention, the
4 updated Resolution 299 Amendment 1, and then the next
5 one that she was about to introduce is Resolution 332
6 Amendment 1, are included in the Council packet for your
7 consideration.

8 And are there any questions on those
9 resolutions?

10 CHAIR DREW: Any questions from
11 Councilmembers?

12 Okay. Before we move to take action, I will
13 try this once again, now that the public may know now
14 what we are actually talking about.

15 So are there any public comments for either
16 Resolution 299 or -- Amendment Number 1, or Resolution
17 Number 332 Amendment Number 1 regarding the optically
18 stimulated luminescence dosimeters?

19 At this point, I don't think we have any public
20 comment on either one of those. So if we would start,
21 Councilmembers, with Resolution Number -- oh. Go ahead.

22 MS. MOON: I see that Eli raised his hand.
23 Eli Levitt, Council -- or, Chairman -- Chairperson
24 Levitt.

25 CHAIR DREW: Councilmember Levitt?

1 MR. LEVITT: Thank you, Amy.

2 This is Eli Levitt of Department of Ecology. I
3 just wanted to reiterate. I believe, from the last
4 briefing, you said this change in the technology we are
5 using is purely to monitor environmental impacts and is
6 not related to human health or personnel safety; is that
7 correct?

8 MS. MOON: Right. This is part of the
9 regional program that monitors air.

10 So the Nuclear Regulatory Commission, they of
11 course have the authority over the stack emissions;
12 basically, what comes out from producing the energy.
13 But there is potential for radiation energy, to put it
14 that way, out in the air, and so these air monitors
15 collect that, and the Department of Health monitors
16 those.

17 And so the monitoring is not being changed;
18 like, the fact that monitoring is being done will still
19 continue to be done. It's just, the type of monitor
20 that's being used is being changed. And it's -- they
21 are set at different intervals, away from the power
22 plant. And it's just part of the overall program that
23 monitors air and food, things, so that they -- we know
24 if there is any kind of environmental issue that needs
25 to be dealt with with -- in -- you know, in a fast

1 manner that would be outside of something horrible like
2 a meltdown.

3 Does that answer your question, Eli, or did I
4 get too off-track?

5 MR. LEVITT: No. I think so, Amy. Yeah.
6 It just reiterates. It's not about, you know, like,
7 personnel safety. It's about --

8 MS. MOON: No. Right.

9 MR. LEVITT: -- general monitoring.

10 MS. MOON: Yeah. And general monitoring
11 for the outside world. And the personnel monitoring,
12 Mary Ramos could answer questions on that, but. But
13 there is in-plant monitors that are different.

14 CHAIR DREW: So also --

15 MR. LEVITT: Right. Okay. Thank you.

16 CHAIR DREW: Thank you.

17 MS. MOON: You're welcome.

18 CHAIR DREW: And also, to reiterate. This
19 type of monitoring is a different technology but has the
20 same level of monitoring as has occurred in the past.

21 MS. MOON: Correct, it has the same level
22 of monitoring. It's a different technology, in which
23 they can actually process the dosimeter more than once
24 to -- to look at the measurement, which may be necessary
25 sometimes with -- to double-check something or to make

1 sure there wasn't a laboratory error.

2 CHAIR DREW: Okay. Thank you.

3 Are there other Councilmembers with questions?

4 MS. KELLY: Madam Chair, this is Kate
5 Kelly.

6 CHAIR DREW: Go ahead.

7 MS. KELLY: So I think, Amy, my question
8 isn't directly related to that issue before us, but I am
9 just wondering. It sounds like the sediment is being
10 disposed -- or stored and monitored on the property.
11 And I understand that this is air quality monitoring. I
12 think. But is there something monitoring the --
13 underneath where the sediment is being stored, as well?

14 MS. MOON: So there is multiple monitoring
15 going on at the Columbia Generating Station, and these
16 are both having to do with the air.

17 So things get put into the air in different
18 ways, either it's -- it's -- but falling from the sky,
19 because these dosimeters are also picking up background
20 sources like from just the earth rocks and soils and the
21 atmosphere cosmic rays, but there is also water
22 monitoring done. The Department of Health is really in
23 charge of that. But this is just one of -- one of the
24 many ways that the radiological environmental monitoring
25 program collects data that they use. And the NRC uses

1 it in annual reports. And it's -- this is all pretty
2 standard stuff.

3 And, you know, I could invite somebody from
4 Department of Health, a physicist, to come and give a
5 presentation to the Council at some point that might
6 help, since I -- I don't know as much as they do about
7 it, but yeah, there is other sampling of things other
8 than air; like you said, sludge and water, and then
9 there is -- it goes way further than that. Like, the
10 fish in the Columbia River, and vegetables, and milk
11 products. It's really a comprehensive program.

12 CHAIR DREW: Thank you.

13 MS. MOON: Does that answer your
14 questions?

15 MS. KELLY: It did. Thank you.

16 MS. MOON: Okay. You're welcome.

17 CHAIR DREW: Thank you. And I think we
18 can explore that, to have a presentation sometime in the
19 future that provides our council with a little -- with
20 some more background.

21 **A few years ago, we did have a tour of the**
22 **Columbia Generating Station, but that was before most of**
23 **the members who are on the Council. And so that was**
24 **very helpful at the time. And we'd be happy to see how**
25 **we can provide some of that information to the current**

1 **Councilmembers who were not yet with us at that time.**

2 MS. MOON: Yes. Thank you, Chair Drew.
3 That I think that would be really helpful to the
4 Council, as well as the public, if we could arrange at
5 least for a presentation in this format, this hybrid
6 format.

7 And then at this time, I want to make the Staff
8 recommendation to the Council to take a vote to approve
9 the amended Resolutions 299 and 332 as presented in your
10 Council packet.

11 CHAIR DREW: Thank you.

12 Now we will move to, Councilmembers, Resolution
13 299 and its Attachment 1. Is there a motion to amend
14 Resolution Number 299 and its Attachment 1 to require
15 full-time monitoring of direct radiation by optically
16 stimulated luminescence dosimeters as specified in
17 Attachment 1 to this resolution amendment? May I have a
18 motion to approve this resolution?

19 MR. YOUNG: Lenny Young --

20 MR. LEVITT: Motion to approve -- oh.
21 Sorry about that.

22 MR. YOUNG: Lenny Young, second.

23 No, that's all right, Eli.

24 Lenny Young, second.

25 CHAIR DREW: That was Councilmember Levitt

1 who made the motion and Councilmember Young who seconded
2 it. Thank you very much.

3 Any discussion?

4 All of those in favor, please say "Aye."

5 COUNCILMEMBERS: Aye.

6 CHAIR DREW: Opposed?

7 The resolution is adopted.

8 Moving on to Resolution 332 and its Amendment
9 1. Its -- excuse me, its Attachment 1.

10 The motion is, the Council hereby amends
11 Resolution Number 332 and its Attachment 1 to require
12 full-time monitoring of direct radiation by optically
13 stimulated luminescence dosimeters, as specified in
14 Attachment 1 to this amendment. In addition, the
15 Council hereby amends Resolution Number 332,
16 Attachment 1, Table 1, groundwater monitoring wells.

17 May I have a motion to approve that resolution?

18 MR. LEVITT: Eli Levitt, motion to
19 approve.

20 CHAIR DREW: Thank you.

21 Second?

22 MR. YOUNG: Lenny Young, second.

23 CHAIR DREW: Any discussion?

24 All those in favor, please say "Aye."

25 COUNCILMEMBERS: Aye.

1 CHAIR DREW: All those opposed?

2 Resolution adopted. Thank you.

3 Moving on to our next item. We skipped through
4 WNP 1 and 4, non-operational update, I believe, unless
5 it was combined with the -- I think there are no
6 outstanding items to report. Is that right, Ms. Ramos?

7 MS. RAMOS: That's correct. I do not have
8 any nonroutine items to report for WNP 1 and 4.

9 CHAIR DREW: Thank you.

10 Okay. Now we are on the Columbia Solar
11 Projects. Mr. Cushing? Welcome.

12 MR. CUSHING: Good afternoon, Chair Drew,
13 Councilmembers, EFSEC Staff. This is Thomas Cushing
14 speaking on behalf of Columbia Solar. I am taking over
15 for Owen Hurd from here on forward.

16 And Penstemon was completely operational this
17 month -- I mean since February, 591 megawatt hours.

18 Camas is currently operational with 554
19 megawatt hours for February.

20 Urtica reached the potential completion
21 February 8th and final completion March 2nd and produced
22 627 megawatt hours for February.

23 CHAIR DREW: Thank you.

24 Moving on to the Horse Heaven Wind Farm Project
25 update. Ms. Moon?

1 MS. MOON: Good afternoon, Chair Drew and
2 EFSEC Councilmembers. Again, this is Amy Moon, EFSEC
3 Staff Member, providing an update on the Horse Heaven
4 Wind Project.

5 EFSEC Staff continue to coordinate with our
6 consultant WSP, formerly known as Golder, reviewing
7 comments received during the draft environmental impact
8 statement public comment period, and we have been
9 developing data requests to assist in development and
10 preparation of a final environmental impact statement.

11 This additional information and analysis from
12 the data requests will touch on several resource topics,
13 including, but not limited to, air, noise and vibration,
14 water, and transportation. EFSEC Staff are also working
15 on additional agency coordination that will inform the
16 development and preparation of the final environmental
17 impact statement.

18 Does the Council have any questions?

19 CHAIR DREW: Are there any questions from
20 Councilmembers?

21 Okay. Then moving on to the adjudication
22 update.

23 JUDGE TOREM: Yes. Good afternoon. Good
24 afternoon, Chair Drew. I hope I can be heard both in
25 the conference room you are in and over Microsoft Teams.

1 If something happens here, as tends to bite me, I will
2 call back in and give the report.

3 CHAIR DREW: Okay. Thank you.

4 JUDGE TOREM: As the Council knows, we
5 issued an order commencing adjudication back in mid
6 December of last year and set some deadlines in that for
7 the petitions for intervention to come in, and they did
8 last month. On February 3rd, we had two different
9 petitioners, the Yakama Tribe and Tri-Cities Cares, a
10 nonprofit organization over in Benton County, with
11 interests as alleged about the wind farm.

12 We also got formal notices of participation
13 from the applicant Benton County and Counsel for the
14 Environment. So we have five parties now, based on my
15 order -- preliminary order of intervention allowing both
16 Tri-Cities Cares and the Yakama Tribe to be parties to
17 the adjudication which is in the process of being
18 scheduled for the Horse Heaven Wind Project.

19 We have a matter of scope of intervention to be
20 determined. There was a limited objection from the
21 applicant regarding the petition filed by Tri-Cities
22 Cares. That has not yet been resolved. And as soon as
23 we have a better idea of what the scope of the issues to
24 be adjudicated might be, I will be issuing a ruling on
25 that question.

1 On March 9th, I issued my preliminary order on
2 intervention. It's pretty short. I hope it's concise
3 and readable. But it does essentially what I just said.

4 The following day, last Friday, March 10th of
5 2023, we conducted, in the morning, at 9:00 a.m., a
6 two-and-a-half-hour prehearing conference, and we
7 covered -- in addition to a roll call, we covered six
8 additional substantive items, and one of those is the
9 question of venue. I know I talked with the EFSEC
10 manager yesterday about the current decision that was
11 made during COVID restrictions that this entire hearing
12 would be held virtually, and I am asking that the Chair,
13 on behalf of at least three of the parties that have
14 lobbied me, to have you reconsider that decision. I
15 will be speaking more with them on March 20th about the
16 questions and justifications for having a portion of the
17 hearing in-person or at least hybrid and asking them to
18 submit those -- their logic and rationale for their
19 request to you in writing so a full consideration can be
20 made of how we are going to conduct this adjudication in
21 the months ahead.

22 We also talked about scheduling and the
23 logistics that go into having an adjudication of this
24 sort with pre-filed written testimony. And we may see
25 written testimony come in to the Council. And I am

1 advising all of those Councilmembers listening that your
2 reading homework is going to go up. So if you need to
3 see your optometrist about reading glasses, now is a
4 good time. But on April 10th, you might expect to see
5 the first round of pre-filed testimony coming in from
6 one or more parties.

7 We will be hammering away on the actual
8 schedule, itself, on March 20th, and hope we come to
9 some ideas for milestones and deadlines.

10 We are switching, if we can, as agreed by all
11 the parties, to electronic filing so there won't be as
12 much paper. Counsel for the Environment was certainly
13 rooting for that. And we will be coming up with some
14 filing rules that make sense for our Staff to handle all
15 the electronic items and make sure that all the parties
16 are serving each other, so everything is instant,
17 timely, and less burdensome than the paper.

18 If we have a need to accommodate someone who
19 prefers paper copies amongst the Councilmembers, please
20 let our Staff know -- Lisa Masengale or Andrea Grantham
21 might be a good person to send an email to -- and we
22 will make sure, if you prefer written copies, hardcopies
23 of things, that we can try and figure out a way whether
24 to put that back on the filing parties or have Staff get
25 you what you need.

1 I am working today and hope to have a
2 prehearing conference order filed out tomorrow that
3 summarizes everything I have just told the Council
4 today, Chair Drew and, in that, also give some further
5 direction to the parties on how we expect the issues to
6 be framed for the adjudication.

7 Some of the submissions that came in lacked
8 specificity, and others lacked the appropriate tone of
9 neutrality, but I think the Council expects to take it
10 up and to review all of the evidence in these questions
11 before us that are raised not only in the DEIS but also
12 the application, itself, and the tour that many members
13 of the Council took a few months ago.

14 So I am working to see if I can get past
15 experience both from the Vancouver Energy, the Whistling
16 Ridge, and my personal experience as the Judge in the
17 Kittitas Valley and Wild Horse Wind Project to look at
18 all those orders and how, in practice, the parties there
19 cooperated to get to an agreement on, of all things, a
20 disputed issues list. So if that's not an oxymoron, I
21 don't know what it is. But I am herding the cats and
22 trying to set expectations. And I hope that when the
23 parties next meet I think on Friday this week is what I
24 am informed, to collaborate and prepare, we will have a
25 productive discussion next Monday afternoon at

1 prehearing conference number two. You may have seen
2 Joan Owens issue that notice earlier this week with the
3 language about what we are going to be doing next
4 Monday.

5 I think, Chair Drew, I will stop there, but
6 that should give you and all the Councilmembers a
7 picture of what we are trying to do.

8 We still have a July 8th deadline in which to
9 make a recommendation to the Governor. I have expressed
10 some concern to Staff about the timing that requires and
11 for the writing, deliberation, and consideration that
12 the Council will have to go through. But until and
13 unless the applicant files for another extension out to
14 the end of at least September, it's going to be a tight
15 statutory bound deadline for us to get done, but the
16 Council needs to, and that may start as early as the
17 first week of June. More to come.

18 If you have questions, I stand by.

19 CHAIR DREW: Thank you, Judge Torem. I do
20 have a question from Councilmember Levitt, or a comment,
21 to ensure that all of the filing parties have current
22 email addresses and Councilmember contact information.

23 Are we receiving, as Councilmembers, filings
24 directly from the parties or through you and the EFSEC
25 Staff?

1 JUDGE TOREM: That's an excellent question
2 from Councilmember Levitt. And my preference, subject
3 always to the legal opinion of the esteemed and
4 honorable Jonathan Thompson, is that for ex parte
5 reasons, I think it's best that the parties not
6 communicate directly with any member of the Council but
7 that they continue to communicate through the
8 adjudication email. Lisa Masengale has masterfully set
9 up a system where every filing that comes in, if sent to
10 the proper email, can be distributed accordingly, based
11 on what it is. So for a lot of the questions going
12 around about deliberative process, procedural issues, we
13 shouldn't be bothering you or the Councilmembers. And I
14 am not asking our parties to send those kind of items
15 directly to you or any Councilmember. When Lisa
16 Masengale receives something that looks like it's
17 Councilmember-worthy, and we will be getting into a list
18 of those things as we get testimony pre-filed, certainly
19 that will be shipped directly probably from Staff is
20 what I am thinking. It will come in to the Council
21 email box and then be shipped separately, as a Staff
22 tasking, to filter what's coming in and what's
23 appropriate for Council.

24 Anything that's coming in that's appropriate
25 for the public of course is going up on the website, but

1 I am asking the Council to read what you are supposed to
2 read and don't form your opinions early. And I think,
3 by filtering this way, we will achieve a better chance
4 to avoid any ex parte communications that might
5 prejudice a Councilmember and lead for a motion to
6 exclude them from the deliberations and the decision, at
7 least as it goes into the recommendation to the
8 Governor.

9 CHAIR DREW: Perhaps I can bring
10 Mr. Thompson in to the conversation here and ask for his
11 advice to the Councilmembers in terms of the pre-filed
12 material that they will be receiving.

13 Is this only for Councilmembers and not to be
14 shared with other parties?

15 MR. THOMPSON: Well, the testimony will be
16 served by each party on all of the other parties and
17 then also distributed to the Councilmembers. So, you
18 know, when the -- when a party's deadline for the filing
19 of their pre-filed written testimony occurs, then, you
20 know, every party to the adjudication will have an
21 opportunity to look at that and formulate their
22 responsive testimony.

23 CHAIR DREW: So that's not necessarily
24 protected or confidential information when we receive
25 it, but it is our responsibility not to share

1 information or our thoughts or any conversations about
2 that material that we get with anyone else; is that
3 correct?

4 MR. THOMPSON: Well, the main concern with
5 ex -- with the restriction on ex parte contacts is
6 against Councilmembers, so, preside- -- what are
7 referred to as presiding officers, under the
8 Administrative Procedure Act. The restriction on ex
9 parte contacts is that you not receive information
10 pertinent to the decision before you from other sources,
11 other than information that's gone through the filter of
12 the adjudicative process. So certainly pre-filed
13 testimony is -- you know, goes through the filter of the
14 adjudicative process, so.

15 And also, there is a -- actually, an exemption,
16 under the Open Public Meetings Act, which generally
17 requires members of a board or a council to only
18 deliberate in -- at open public meetings. There is an
19 exception to that when you are in an adjudication where
20 you will have the opportunity to deliberate with one
21 another, not in an open meeting context, about your
22 recommendation to the Governor, based on what you hear
23 in the adjudication. So that will all kind of unfold in
24 due course, but.

25 I hope that gives a general sense.

1 CHAIR DREW: Yes. I guess one of the
2 questions I was trying to get at, to speak more
3 directly, is that none of the Councilmembers should be
4 sharing their thoughts about the material that they are
5 receiving with someone outside the Council, for example,
6 or having those kinds of conversations, which could lead
7 to ex parte communication --

8 MR. THOMPSON: Right, right, right.

9 CHAIR DREW: -- from that other party.

10 MR. THOMPSON: Understood. Yeah.

11 CHAIR DREW: Maybe I didn't say that
12 directly enough.

13 MR. THOMPSON: Yeah. Right, right, right.
14 Yeah. So, yeah, certainly there is both the appearance
15 of fairness and ex parte contact restriction where,
16 yeah, right, you wouldn't want to -- you know, if folks
17 are involved in the advocacy on another matter before
18 the Council, for example, to, you know, discuss that
19 current case and then -- and, you know, engage in
20 dialogue with people about the case that they are
21 sitting on.

22 CHAIR DREW: Thank you.

23 JUDGE TOREM: Yeah. And I will chime in,
24 if I can, now, Chair Drew.

25 I think, several months back, I gave a brief

1 presentation on what it meant to be a Councilmember on
2 an adjudication, and promised a future training on ex
3 parte contacts, and how to handle all of these things.
4 I think Judge Cassandra Noble, in the past, gave that
5 presentation most recently, and I have got her
6 materials. I want to update them, work with AAG Jon
7 Thompson to make sure we have the most current ex parte
8 rules under the APA, and then give that presentation.
9 It could be at a monthly meeting or it could be at a
10 special session. That's up to you.

11 I will also say that in the past when
12 Councilmembers had an interaction with a party or
13 perhaps where somebody approached them to talk about an
14 adjudication that was ongoing or upcoming, they just, on
15 the record, divulged that contact, made a record of the
16 contact, itself, and stated whether or not they thought
17 they could still be fair and impartial in their duties
18 as a Councilmember making their recommendation to the
19 Governor under our 80.50.100 and 090 adjudication rules.

20 So there are ways to cure these contacts. I
21 don't want the Councilmembers to think they can't pick
22 up the phone if somebody else in their agency who might
23 be a witness in the proceeding calls them. But I think
24 they should caution them that, "Hey, I am the
25 decisionmaker on a recommendation to the Governor. I

1 can't talk to you about that topic." But other agency
2 business, certainly still fair game. They don't have to
3 climb too high up the ivory tower. But those are the
4 basic limits, as Mr. Thompson also described today.

5 CHAIR DREW: Thank you. That's helpful.
6 For all of us, including myself, this is our first
7 adjudication, so we are trying to make sure we
8 understand the responsibility and the roles.

9 And Mr. Young, you have your hand up?

10 MR. YOUNG: Yeah. Thank you, Chair.

11 Could Staff remind us as to the status of SEPA
12 work for this project and how that correlates to the
13 time line that Judge Torem just sketched out?

14 CHAIR DREW: Ms. Moon?

15 MS. MOON: So as I stated in the update,
16 SEPA; we completed the draft environmental impact
17 statement, we had a public comment period that closed,
18 and now we are reading all of those comments and taking,
19 you know, heed of what the public had to say. And in
20 order to develop the final environmental impact
21 statement, there is plenty of work to be done of
22 additional analysis, and we haven't finalized that yet.
23 We haven't submitted any requests yet to the applicant,
24 but that is part of the SEPA process. Rather than just
25 reissue a draft environmental impact statement and stamp

1 it as final, we look at the public comments. We look at
2 new information. We look at the updated application for
3 site certification that the applicant submitted to us.
4 And we have to process all of that, do additional SEPA
5 work, make additional analysis, produce a new document,
6 the final environmental impact statement, and that also
7 takes time, obviously. I do not have a clear estimate
8 of how much time we think that will take, and I am going
9 to defer to Ami Hafkemeyer. She might be able to speak
10 on that.

11 CHAIR DREW: An additional -- yeah. Thank
12 you. Then I will call on --

13 MS. MOON: You're welcome.

14 CHAIR DREW: -- Ms. Hafkemeyer.

15 I think an additional piece of information for
16 the Council to know is that as we proceed further, we
17 may have the adjudication running concurrently with
18 finalizing the EIS, but we will not be coming to ask the
19 Council to make a final recommendation until all the
20 pieces of information are before the Council. And --

21 MR. YOUNG: Thank you, Chair.

22 CHAIR DREW: Yeah. Go ahead.

23 MR. YOUNG: That's what I was driving at,
24 is whether we would have the final EIS and Staff
25 recommendation in-hand before we had to make a

1 recommendation to the Governor.

2 CHAIR DREW: Yes, yes.

3 Is there anything else you'd like to add,
4 Ms. Hafkemeyer?

5 MR. YOUNG: How tight -- how tight is that
6 timing going to be? How much time would there be
7 between when we have a completed SEPA process and when
8 we have to make a recommendation to the Governor?

9 CHAIR DREW: Well, we certainly will need
10 to work with the applicant and look at that July date,
11 but our deliberations on this complex project will need
12 to take into consideration both those pieces, as well as
13 our consultation with the Yakama Nation which I have an
14 update on, but I will go ahead and let Ms. Hafkemeyer
15 also jump in here.

16 MS. HAFKEMEYER: Thank you, Chair Drew.

17 To speak to the time line question, as we are
18 reviewing the comments and establishing the remaining
19 analysis and revisions that are intended for the final
20 EIS in response to comments received, we are also
21 working with our contractor and contracted agencies to
22 develop a time line of next steps and what we think that
23 schedule will look like. We are not ready to set that
24 schedule yet. It's still in-work. And part of that
25 will depend on the time line for getting the remaining

1 analysis completed. But hopefully, at one of the
2 upcoming Council meetings, we will be ready to share
3 with the Council the schedule that we are looking at for
4 the final EIS.

5 CHAIR DREW: And I would say --

6 MR. YOUNG: Hey, Ami?

7 I am sorry. Go ahead.

8 CHAIR DREW: Go ahead. Ask your question.
9 Go ahead.

10 MR. YOUNG: I just would -- I guess what I
11 am looking at is, I hope there would be a reasonable
12 amount of time between when a final SEPA analysis is
13 available to the Council and when we have to make our
14 recommendation to the Governor, and that that's not so
15 tight that we don't have enough time to adequately
16 consider the EIS and the final determination.

17 CHAIR DREW: You are absolutely correct.
18 And as Chair, that's my concern, as well. And --

19 JUDGE TOREM: And I want to jump in.

20 This is Judge Torem.

21 Councilmember Young, this is a primary concern
22 so that there is not any viability or -- oh. The right
23 word is just "vulnerability" to a remand from the
24 Supreme Court that we did not give adequate
25 consideration when we made our recommendation to the

1 Governor and any party that might challenge this
2 Council's decision. If it seems too rushed, we are not
3 going to look good. And as Chair Drew said, we can work
4 with the applicant. But right now, we have to work with
5 July 8th.

6 CHAIR DREW: That's --

7 MR. YOUNG: July 8th for the
8 recommendation to the Governor?

9 JUDGE TOREM: That's currently the
10 deadline, because if you look at the second extension
11 request that was approved by this Council, that's when
12 we extended it.

13 Now, again, let's be fair to what the statute
14 says, Councilmember Young. 12 months is what is
15 notionally involved. And we know that this project came
16 to the Council on February 8th of 2021. And I will do
17 public math and say that we have exceeded 12 months
18 already by a lot. So the applicant; we have a duty to
19 them, as well, but a duty to the public and a duty to
20 the Governor. These are competing issues of the
21 July 8th date. It's something that -- that's as far as
22 we have right now. If more can be negotiated or applied
23 for by the applicant, I am sure the Council will grant
24 more time, but the applicant has a right to a decision
25 and a recommendation in a timely fashion.

1 MR. YOUNG: Yeah. I am not necessarily
2 alluding to extending that July 8th deadline. Maybe
3 that's possible or necessary. Maybe it's not. But what
4 I guess I am getting at is, if July 8th is our working
5 deadline, then the SEPA work would -- or should be
6 completed reasonably before that July 8th deadline so we
7 can fully consider a completed SEPA analysis when making
8 our recommendation to the Governor.

9 JUDGE TOREM: I couldn't agree more fully.
10 And I am alluding to an extension request. I have done
11 it with the parties at the prehearing conference on that
12 record, and I will do it again today. Unless the
13 Council wants to go 24/7 at the end of June, July 8th is
14 looking like a really tight deadline to me to have a --
15 issue a recommendation to the Governor that's
16 defensible.

17 MR. YOUNG: Thank you for that clarity. I
18 really appreciate that.

19 CHAIR DREW: Thank you.

20 As part of this update, I also want to give you
21 an update on consultation with the Yakama Nation.

22 As you perhaps know, EFSEC statute in RCW
23 80.50.060 Sub 8 requires EFSEC to offer
24 government-to-government consultation with affected
25 tribes during the Energy Facility Application Review

1 process. The statute also requires that regular updates
2 be provided to the Council by the EFSEC Chair throughout
3 the tribal consultation process. And the Chair
4 represents the Council during the process but is
5 responsible for providing that information back to the
6 Council. With that, I have an update on the Horse
7 Heaven application review concerning the
8 government-to-government consultation process.

9 As you are already aware from prior Staff
10 project updates, EFSEC Staff have been in communication
11 with staff from the Yakama Nation regarding the Horse
12 Heaven application for site certification, review, and
13 preparation of the draft environmental impact statement.

14 On March 7th, I, as the EFSEC Chair, met with
15 the Yakama Nation Council, Tribal Council Chair Lewis,
16 Tribal Council General Council and staff, along with
17 several members of the EFSEC Staff, to conduct a
18 government-to-government consultation meeting for the
19 Horse Heaven Wind Farm application for site
20 certification.

21 This consultation meeting provided a meaningful
22 opportunity to better understand the concerns of the
23 Yakama Nation and will be considered, in addition to
24 public comments received on the DEIS, and will help to
25 inform the SEPA review process for the Horse Heaven ASC.

1 The issues that were raised have connection to
2 the draft EIS. And so at this point, we are looking for
3 those issues as we continue to explore them with the
4 Yakama Nation to be brought back to the Council perhaps
5 with the final EIS. If not, there will be additional
6 information that I provide to you on the conclusion of
7 that consultation.

8 Are there any questions for me?

9 Thank you. Thank you for the questions for the
10 information for the robust conversation on this really
11 critical point during this project review.

12 Moving on to the Goose Prairie Solar Project
13 update, Ms. Randolph?

14 MS. RANDOLF: Thank you.

15 Good afternoon, Chair Drew, Councilmembers, and
16 Staff. For the record, this is Sara Randolph, the site
17 specialist for Goose Prairie Facility.

18 EFSEC Staff are continuing to receive and
19 review documents being sent by the certificate holder
20 for preconstruction plans.

21 Are there any questions?

22 CHAIR DREW: Hearing none, thank you for
23 that update.

24 On Badger Mountain, Ms. Snarski?

25 MS. SNARSKI: Thank you, Chair Drew, and

1 good afternoon, Councilmembers and Staff.

2 This is Joanne Snarski, for the record.

3 Just after your February Council meeting, we
4 received a partial response from the applicant on our
5 first of two data requests. We hope to have both data
6 requests completed in the next few weeks. Or, excuse
7 me, in the next week. The data and the information we
8 requested will be reviewed and support the development
9 of the draft environmental impact statement that is
10 currently in-progress. Staff are working closely with
11 our contractor and contracted agencies and the applicant
12 to support the thorough evaluation of the potential
13 impacts of the project and identify appropriate
14 mitigation for those impacts.

15 Are there any questions?

16 CHAIR DREW: Are there any questions for
17 Ms. Snarski?

18 Thank you for your report.

19 High Top and Ostrea Project, Ms. Hafkemeyer?

20 MS. HAFKEMEYER: Thank you. And good
21 afternoon, Chair Drew and Council and Staff. For the
22 record, this is Ami Hafkemeyer.

23 Following the February 15th Council meeting,
24 EFSEC Staff sent the recommendation package to the
25 Governor's Office on February 17th. The Governor's

1 Office has 60 days to review the Council's
2 recommendation. And Staff anticipate that we will know
3 the result of that review by the April 18th deadline.

4 Are there any questions?

5 CHAIR DREW: Any questions?

6 Thank you.

7 Wautoma Solar Project update, Mr. Caputo?

8 MR. CAPUTO: Thank you, Chair Drew and
9 Councilmembers.

10 Last month, EFSEC received the applicant's
11 response to our Data Request Number 2. Presently, we
12 are assessing the information with our consultant,
13 coordinating with the appropriate state agencies, and
14 collaborating with tribal nations. We anticipate
15 updating the Council on the SEPA determination at the
16 next Council meeting.

17 Any questions?

18 CHAIR DREW: Any questions?

19 Okay. Thank you.

20 Moving on to the Hop Hill Solar Project,
21 Mr. Barnes?

22 MR. BARNES: Thank you, Chair Drew and
23 Councilmembers.

24 For the record, this is John Barnes, EFSEC
25 Staff, for the Hop Hill application.

1 On March 10th, EFSEC received a Cultural
2 Resource Report from the applicant which is available
3 for Council review in a Council SharePoint. We are
4 continuing to coordinate and review the application with
5 our contractor and contracted agencies.

6 Are there any questions?

7 CHAIR DREW: Questions?

8 Okay. Thank you.

9 Moving on to Carriger Solar, Ms. Snarski?

10 MS. SNARSKI: Thank you, Chair Drew.

11 Again, this is Joanne Snarski, for the record.

12 On March 8, 2023, Staff sent out the initial
13 notification letter for the project. This included
14 notification to residents and property owners within a
15 one mile radius of the proposed project. The notice
16 provided an overview of the project and the location and
17 identified the EFSEC web page where they can receive
18 more detailed information.

19 Staff have also begun to review the application
20 for the site certification and are working with our
21 contractor and contracting agencies to identify any
22 missing or necessary supplemental information.

23 Finally, Staff are working to confirm a final
24 date and location for the upcoming informational meeting
25 and land use hearing. We hope to confirm the date by

1 the beginning of next week. Upon completion, we will
2 again notify all the interested parties with this
3 information. Tentatively, it looks as if April 13th
4 will be the date for those meetings.

5 That's all I have. Any questions?

6 CHAIR DREW: Any questions from
7 Councilmembers?

8 Hearing none, before we move to adjourn the
9 meeting, I would like to speak to my personal
10 congratulations to Patty Betts, longtime member of our
11 Staff and our SEPA lead, who is finally retiring, once
12 again, having worked for multiple state agencies in her
13 career, only to retire and come back to work with EFSEC
14 for close to 10 years, I believe, to help us with our --
15 as our SEPA lead, through the projects that have come
16 forward.

17 We have relied for many years on Patty's
18 wisdom, knowledge, her spirit of working with everyone,
19 sharing the information she has developed over a long
20 and illustrious career and her love of her horses and
21 her life in Thurston County. And she is going to have a
22 lot more time to spend in the way she wants to, but we
23 will sincerely miss her on our Staff. So
24 congratulations to Patty Betts. Thank you.

25 And with that, our meeting is adjourned.

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(Meeting adjourned at 2:31
p.m.)

