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August 10, 2023

Energy Facility Site Evaluation Council v.

EF-210011

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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of the Application)
of:)
)
Scout Clean Energy, LLC, for) No. EF-210011
Horse Heaven Wind Farm, LLC,)
Applicant)

VIDEOCONFERENCE PREHEARING CONFERENCE #5

BEFORE JUDGE TOREM

August 10, 2023

Taken Remotely via Zoom

PREPARED BY: Michelle D. Elam, RPR, CCR 3335

1 APPEARANCES

2 FOR THE APPLICANT (via Zoom):

3 STOEL RIVES, LLP
4 Tim McMahan
5 Ariel Stavitsky
6 Emily Schimelpfenig

7 FOR BENTON COUNTY (via Zoom):

8 MENKE JACKSON BEYER, LLP
9 Ken Harper
10 Aziza Foster

11 FOR THE ENVIRONMENT (via Zoom):

12 OFFICE OF THE WASHINGTON STATE ATTORNEY GENERAL
13 Sarah Reyneveld

14 FOR CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION
15 (via Zoom):

16 YAKAMA NATION OFFICE OF LEGAL COUNSEL
17 Shona Voelckers
18 Ethan Jones

19 FOR EFSEC (via Zoom):

20 Andrea Grantham
21 Jonathan Thompson
22 Joan Owens
23 Jenna Slocum
24 Alex Shiley

25 FOR TRI-CITIES C.A.R.E.S (via Zoom):

LAW OFFICES OF RICHARD ARAMBURU, PLLC
Richard Aramburu

Also present: Dave Kobus
Carol Cohoe
Greg Wendt
Erik Jansesn
Jessica Houston

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Also present (continued):

Michelle Cooke
Pat Landess
Linnae Fossum

1 BE IT REMEMBERED that on Thursday, August 10,
2 2023, at 2:01 p.m., before Michelle D. Elam, Certified
3 Court Reporter, RPR, the following Prehearing
4 Conference #5, was held, to wit:

5
6 <<<<<< >>>>>>

7
8 JUDGE TOREM: Thank you. Good afternoon,
9 everyone. This is Judge Torem for the Final Prehearing
10 Conference No. 5 in the Scout Clean Energy application
11 for the Horse Heaven Wind Farm.

12 Let me take a look first if we have someone from
13 the applicant today.

14 MR. MCMAHAN: Your Honor, Tim McMahan here,
15 along with Ariel Stavitsky and Emily Schimelpfenig.

16 JUDGE TOREM: All right. Thank you,
17 Mr. McMahan.

18 For Benton County today?

19 MR. HARPER: Ken Harper, Your Honor.

20 JUDGE TOREM: Good afternoon, Mr. Harper.

21 Counsel for the environment joining us today?

22 MS. REYNEVELD: Yes. Sarah Reyneveld is here.

23 JUDGE TOREM: I hope everything is safe where
24 you are, Ms. Reyneveld.

25 MS. REYNEVELD: We are just --

1 JUDGE TOREM: For the Yakama --

2 MS. REYNEVELD: So thank you. Yeah, we just now
3 have food and electricity. It's been pretty devastating
4 over here.

5 JUDGE TOREM: I understand that Maui is not a
6 fun place right now. So stay safe. Thank you very, very
7 much for making time to join us today.

8 For the Yakama Nation?

9 MS. VOELCKERS: Good afternoon, Your Honor.
10 Shona Voelckers for the Yakama Nation. And I believe my
11 colleagues Mr. Jones and Ms. Houston are on as well.

12 JUDGE TOREM: Excellent. Thank you,
13 Ms. Voelckers.

14 And, Mr. Aramburu, are you there for Tri-Cities
15 C.A.R.E.S?

16 MR. ARAMBURU: I am.

17 JUDGE TOREM: All right. Thank you.

18 Any other EFSEC staff want to identify or need
19 to participate today?

20 I know we have Ms. Grantham and our court
21 reporter today.

22 Mr. Thompson, are you on?

23 MR. THOMPSON: I am on, yes. I don't need to
24 participate.

25 JUDGE TOREM: Thank you.

1 I hope not.

2 All right. Let's move on to the agenda items,
3 and I think we'll talk about further refinements and the
4 adjudicative hearing schedule that the applicant's center
5 around today.

6 Mr. Aramburu, I did get your note, and I just
7 sent some suggestions about Mr. Simon.

8 So it looks like we have our land use topics all
9 down to one-plus days.

10 Mr. Aramburu?

11 MR. ARAMBURU: When you're ready to talk about
12 Mr. Simon, let me know.

13 JUDGE TOREM: I will.

14 Let me see what the first day's schedule truly
15 looks like here.

16 We've got our housekeeping built into every day
17 in the morning. There will be some days we don't need
18 it, so that may also affect, particularly Wednesday,
19 depending what we think about Mr. Simon's availability.

20 I'm taking a look at where we are on the land
21 use schedule there, and I think when we had talked last
22 time, there was a question of Ms. McClain being recalled
23 for other topics.

24 Mr. McMahan, did we sort that out or was it
25 Ms. Ragsdale?

1 MR. MCMAHAN: (Inaudible) -- discussion about
2 Ms. Ragsdale, but as to Ms. McClain, the issue there was
3 the question of site retirement and that hadn't been
4 something that we had originally thought about within the
5 first day land use. But I think we can pick that up, to
6 the extent she has knowledge about the site restoration
7 issues. I think we can pick that up on Monday.

8 JUDGE TOREM: Okay. So it looks like we built
9 in time for her before and after lunch.

10 The estimates look doable. And I'm wondering if
11 anybody thinks there's any squeak time on Monday late
12 afternoon that we might fit in Mr. Simon, or my
13 preference, as I sent in the email just a moment ago,
14 some point on Wednesday, whether that's during our
15 housekeeping session or if we actually do end at 11:30,
16 the meeting for the afternoon is not scheduled until
17 1:30. So we might be able to fill in a half an hour at
18 that point.

19 Mr. Aramburu, let me turn to you right now to
20 see where Mr. Simon might get rescheduled, if it really
21 is only 45 to 50 minutes.

22 MR. ARAMBURU: Well, thank you, Judge Torem.

23 I do want to present a preliminary issue related
24 to the entirety of the hearing schedule.

25 We received just yesterday a brief from the

1 applicant. And in that brief, it included some
2 significant additional materials that were referenced for
3 review by the council.

4 These materials, though found in brief, were
5 never provided -- were not provided to us with the brief.
6 And it was only when Ms. Voelckers requested them that we
7 received them. Included in that is material from
8 Mr. Kobus concerning the water issues.

9 Mr. Examiner, these are significant new matters,
10 material changes in the project, material changes in
11 analysis that have been received literally an hour before
12 our final prehearing conference.

13 We think that's plainly violative of standards
14 of ethics, violative of standards of due process that
15 we -- that these -- we were treated to these surprises at
16 the -- just before the hearing starts and also with no
17 particular explanation of how this material is going to
18 be given to the council itself.

19 We also have outstanding, our objection to the
20 substance of the supplement to the Kobus deposition. We
21 do not have rulings on witnesses as well.

22 So we think that because of this significant
23 late-filed material, without notice and without notice it
24 was coming, that a continuance is in order for at least a
25 month to allow us to review this new material that has

1 just arrived today.

2 To do other -- to proceed without this
3 continuance is to essentially have a hearing by ambush,
4 by which additional material is submitted by the
5 applicant, who knows how often, keeping everybody
6 off-balance and off-guard.

7 The memo that we received this morning, which is
8 referenced in the brief, which is particularly important
9 for this and apparently is expected to be read by the
10 council because it's a part of the brief, deals with
11 multiple changes in locations of wind turbines, locations
12 of projects shifting the battery operations from one side
13 of the project to the other, making changes in a variety
14 of things.

15 So the totality of this suggests that a
16 continuance of at least a month to allow review of this
17 material is entirely appropriate.

18 And I will point out that this material has all
19 been kind of foisted on us by the applicant without
20 notice, without indication that it was coming, and
21 without indication of how it was going to be treated in
22 an evidentiary manner in this prehearing conference.

23 So we think that due process compliance would
24 rule. Attention to the public's participation in these
25 proceedings indicates that a continuance of at least a

1 month is necessary to review all of this new material.

2 And that would indicate that the prehearing
3 conference today should be canceled and a new one
4 scheduled, based upon a new hearing schedule.

5 So thank you for that. I hope my motion is
6 clear.

7 JUDGE TOREM: It's clear, and it's denied as far
8 as the continuance. That should be clear as well.

9 Let me turn to the applicant and find out
10 exactly what this material was that was shared at
11 1:01 p.m. today, according to Ms. Stavitsky's email.

12 Mr. McMahan, Ms. Stavitsky, I'm not sure who
13 wants to speak to it.

14 MR. MCMAHAN: Yes.

15 JUDGE TOREM: Mr. McMahan, I would like to make
16 sure -- the sound quality coming from the applicant's
17 microphone has a little bit of an echo, so if you could
18 take it a little slower, the court reporter can still get
19 things down. But I want to be kind to our court
20 reporter.

21 Go ahead, sir.

22 MR. MCMAHAN: Thank you, Your Honor.

23 Can you hear me okay?

24 Can you hear me --

25 JUDGE TOREM: That's a little better.

1 MR. MCMAHAN: That's better.

2 JUDGE TOREM: I can. That's a little better.

3 MR. MCMAHAN: I appreciate the time. Gave me an
4 opportunity to lower my blood pressure down a little bit
5 in the last two minutes.

6 So let me explain what happened here.

7 We have been in a process with EFSEC for a very
8 long time, where EFSEC asks us for data requests. And we
9 had indicated to EFSEC some time ago that we have
10 continued to, as we go, modify the application to address
11 things we learn; ways to minimize, mitigate impacts;
12 additional information that EFSEC has asked specifically
13 of us for their work as they prepared the Final
14 Environmental Impact Statement.

15 So we did, in fact, accumulate a number of
16 issues that we were aware of that EFSEC had asked us for
17 in Data Request No. 9. So we did submit that this week
18 in order to be responsive to EFSEC.

19 We did cite, in passing -- if I had to again, I
20 probably wouldn't have done it, but we did cite in
21 passing, reference to the memorandum that we submitted to
22 EFSEC. And I believe there was also -- might have been a
23 reference to -- I think it might have been a reference to
24 a 2023 updated wildlife report, which also we provide
25 regularly to EFSEC, as they ask us for additional

1 information concerning the project. So that's what we
2 submitted.

3 Now, I and our team here had certainly some
4 sensitivity about doing that prior to moving along with
5 the testimonial process. Had I to do it again, I
6 probably just wouldn't have put those references in the
7 brief. But we did it thinking this information will be
8 posted on the EFSEC website and there will be access to
9 it.

10 The problem, of course, is that EFSEC takes a
11 bit of time to get stuff posted on the website. So this
12 afternoon, we offered to the parties, and Ariel
13 circulated to the parties, the memorandum, which was for
14 Data Request No. 9 to be submitted to EFSEC staff.

15 That's what we did. It wasn't an ambush. It
16 was what we have done throughout these whole proceedings
17 to respond to data requests that we've gotten from EFSEC
18 staff. And our stuff was developed over the years and a
19 lot of stuff has developed over the last month. And so
20 EFSEC asked us to accumulate that change information.

21 And we could have held off until the
22 adjudication was done, which didn't make sense to me. We
23 could have -- and really, we just had the time over the
24 last few days to finish it up, the team, the Scout team
25 had time to finish it up.

1 There is no untoward motive here. It was all in
2 an effort to be as transparent and open as possible to
3 provide this information as requested by the council.

4 Yes, it coincided with the starting of the
5 adjudication. We will, if you want, if you think it
6 best, Judge Torem, we'll reissue the brief taking those
7 citations out of the brief. I'm happy to do that. And
8 if there's anything else we can do to address this issue,
9 we're happy to do that.

10 It is simply an effort to provide the best
11 information at the time it was requested of us by EFSEC
12 staff. Nothing more. Nothing more conspiratorial than
13 that.

14 JUDGE TOREM: Well, Mr. McMahan I appreciate the
15 explanation.

16 I do see that there's essentially a one-page
17 cover letter and a 79-page memo. It is noted that it's
18 responding to the Final Environmental Impact Statement
19 that staff is working on and not directly related, other
20 than the citations in the brief, to the adjudication.

21 Aside from what you've stated and explained,
22 Mr. McMahan, was there any attempt to make that evidence
23 as part of the hearing?

24 MR. MCMAHAN: A little solemn here, but, no. In
25 fact, we said that; that this -- we did not intend to

1 have this be part of the adjudication hearing. We
2 recognized that, you know, it's been challenging.

3 So, no, that was not our intention.

4 JUDGE TOREM: Okay. Let me suggest, then, as I
5 haven't got my finger exactly on what page this material
6 is cited to, is it only on one or two pages of the
7 applicant's brief?

8 MR. MCMAHAN: It is. Yes, Your Honor. I think
9 mostly footnotes. No. I'm sorry.

10 JUDGE TOREM: Let me have you --

11 MR. MCMAHAN: I'm sorry.

12 JUDGE TOREM: Go ahead.

13 MR. MCMAHAN: We're having a mute button
14 problem.

15 So, yes, aside from -- I think in a couple of
16 footnotes in the brief, and we would be happy to take
17 those out.

18 JUDGE TOREM: Why don't you do this: As opposed
19 to taking them out, so it's exactly clear to all parties
20 on the line, go back in and use the strike-out feature of
21 Word.

22 MR. MCMAHAN: Sure.

23 JUDGE TOREM: And if that's not helpful, I'm
24 sure there's a Sharpie in your office. Black out that
25 material, if you have to do it manually, and resubmit by

1 close of business today. I'll make sure that staff
2 that's on the phone here is able to let counsel know to
3 use the Version 2 of your brief as opposed to the
4 Version 1.

5 MR. MCMAHAN: Yes.

6 JUDGE TOREM: And they can -- everybody will see
7 that they are getting this. It's been stricken. And
8 these attachments that you sent out today won't be part
9 of the adjudication, but staff will continue to use the
10 information supplied to them as part of your response to
11 Data Request No. 9.

12 So I think we've now taken care of that
13 particular issue of any ambush.

14 And, again, the continuance request, based on
15 that, is denied.

16 And now the evidentiary issue is taken care of
17 as well.

18 Is there anything else --

19 MS. VOELCKERS: Your Honor?

20 JUDGE TOREM: Ms. Voelckers, go ahead.

21 MS. VOELCKERS: Thank you, Your Honor.

22 Just -- before we move forward, Yakama Nation,
23 if I could make my own verbal motion for the record,
24 understanding what -- all I have heard. We have our own
25 motion to make, and I think that we should be able to

1 make it on the record. And I would like to do that
2 before we move forward so that we're not coming back to
3 the same issue.

4 JUDGE TOREM: Okay. Is it in regard to what
5 Mr. Aramburu raised or something different?

6 MS. VOELCKERS: In regard to what Mr. Aramburu
7 raised.

8 JUDGE TOREM: I'll let you go ahead and make
9 your motion and then we'll see if there's any additional
10 rulings that need to be made.

11 Go ahead, Ms. Voelckers.

12 MS. VOELCKERS: Thank you, Your Honor.

13 The Yakama Nation has its own motion to continue
14 the adjudication because of applicant's violation of
15 WAC 463-60-116.

16 Applicant cited materials in its prehearing
17 brief that were not only unavailable to any other party
18 but actually also include extremely untimely
19 modifications to the project design that is the subject
20 of this adjudication, multiple witnesses' testimony, and
21 other parties' own prehearing briefs.

22 I would respectfully ask that Your Honor review
23 the memorandum itself before ruling on our motion because
24 this is not simply an issue of striking footnotes.

25 Applicant has provided absolutely no

1 justification for its failure to disclose any of this
2 information before this afternoon. And this proposed
3 project redesign does not fit within what is contemplated
4 under WAC 463-60-116.

5 As Mr. McMahan said, a lot of information has
6 developed, but it's not clear that this information was
7 not developed this week and it is directly relevant to
8 this proceeding.

9 Yakama Nation does not take its motion to
10 continue lightly, as we ourselves have been working
11 diligently and preparing in good faith. But is truly
12 unworkable to be responding to this level of gamesmanship
13 in the midst of brief drafting, witness prep, and hearing
14 prep.

15 This new information provides a clear --
16 presents a clear prejudice to our client, Yakama Nation.
17 We have essentially prepared for a hearing on a project
18 that is now apparently no longer before the council.

19 It is not reasonable to ask the parties to
20 prepare for this new project design over the weekend. We
21 haven't actually even been afforded the time to discuss
22 this new information with our own client before today's
23 conference.

24 In order to ensure that all parties can cite to
25 a fair record, the adjudication should be continued to

1 allow sufficient response.

2 The applicant has turned their proposal into a
3 constantly evolving proposal, and Your Honor should draw
4 a line and continue the hearing for the time necessary to
5 ensure that all parties are talking about the same thing.

6 It is clear that applicant is now talking about
7 a different proposal than the one that we had presented
8 our cases on -- prepared our cases on for the hearing set
9 on Monday.

10 Even if the applicant does withdraw its footnote
11 citations, that does not cure the prejudice because there
12 are clearly project redesign conversations happening
13 outside the adjudicative process and outside of the
14 information shared with the other parties.

15 Thank you for considering our motion.

16 JUDGE TOREM: Thank you, Ms. Voelckers.

17 MR. ARAMBURU: Mr. Examiner, I would like to be
18 heard as well, please.

19 JUDGE TOREM: Hold on, Mr. Aramburu.

20 This is the Yakama Nation's motion.

21 MR. ARAMBURU: I understand.

22 JUDGE TOREM: I've heard you on your motion and
23 I've issued my ruling.

24 Let me have the applicant respond, and then
25 we'll see if there's anything that TCC needs to respond

1 to back.

2 Mr. McMahan.

3 MS. STAVITSKY: Your Honor, this is Ariel
4 Stavitsky. I can respond to this one.

5 You know, our reasoning here is the same as our
6 response to TCC's similar motion. I think this is really
7 a product of these two parallel processes, this
8 adjudication and the SEPA process, the DRA request
9 process that are proceeding in tandem.

10 And, Your Honor --

11 JUDGE TOREM: Hold on a second. Hold on a
12 second, Ms. Stavitsky.

13 I'm a little worried that you're speaking
14 quickly, and I'm worried that the sound quality is
15 deteriorating. So whatever Mr. McMahan did to improve
16 the auditory sound quality coming from your conference
17 room, if you would do the same. And just slow down for
18 me and then we'll hear the rest of your explanation.

19 MS. STAVITSKY: My apologies. I'll try to keep
20 the court reporter in mind.

21 I was stating that, you know, this issue is
22 really a product of the fact that we have these two
23 parallel processes proceeding in tandem: The SEPA data
24 request process and this adjudication.

25 So as Mr. McMahan explained, you know, these are

1 ongoing -- this is an iterative process and we are
2 providing updated information to EFSEC in response to
3 their data requests.

4 And so this is our attempt to provide, you know,
5 improved transparency, provide all parties with as much
6 information as we possibly can, particularly given
7 that -- well, I know that TCC and Yakama Nation have had
8 concerns about the fact that, you know, information
9 that's part of the EIS process is not making it into the
10 adjudication.

11 So this is not an attempt to ambush. This is an
12 attempt to provide as much information as we can. But
13 if, you know, based on the timing of this adjudication,
14 if it's too much to be provided, this updated
15 information, we can certainly, you know, stall the clock
16 and base the adjudication on -- not on this updated
17 information.

18 So, you know, we're happy to respond however
19 makes the most sense in terms of making sure that both of
20 these processes can proceed uninterrupted.

21 JUDGE TOREM: Thank you, Ms. Stavitsky.

22 Mr. Aramburu, anything to add to what
23 Ms. Voelckers said, in response to what Ms. Stavitsky
24 said, either way? I'll give you a few minutes. Go
25 ahead, sir.

1 MR. ARAMBURU: I mean, the general response here
2 is, this is crazy. They have sent us a memo, now, that
3 says, for example, remove all solar array infrastructure
4 west of I-82.

5 Remove solar infrastructure within 1 mile of
6 I-82.

7 Remove four turbines near Benton City.

8 So this -- it goes on with 11 pages of this.

9 So the council has to understand what the
10 project is before it. And the project has been changed
11 by the applicant. It's not just a matter of deleting
12 footnotes and other things. The project has been
13 changed.

14 So we're going to go ahead with days and days of
15 testimony on a project that's been changed. That makes
16 no sense of any kind. Completely violative of due
17 process.

18 And I guess I would like to know what you're
19 going to tell the council that the project is because
20 you're going to have to tell them the project has been
21 changed at 1:05 p.m. on August 10 by this memo from the
22 applicant.

23 This makes no sense at all and is going to
24 confuse council members, and council members are going to
25 question why they are reviewing a project that's been

1 changed by the applicant. It makes no sense of any kind.

2 MR. HARPER: Your Honor, this is Ken Harper.
3 Can I be heard?

4 JUDGE TOREM: Of course, Mr. Harper. You're
5 next.

6 MR. HARPER: I would just like to state for the
7 record that the County joins in these motions. It is
8 going to be a significant impediment to
9 cross-examination.

10 I've been working on my cross-examination,
11 particularly of Ms. McClain. And now it is very
12 difficult for me to understand how the cross-examination
13 should be modified.

14 Mr. McMahan's suggestion, or I guess his action
15 of striking portions of the brief does not actually
16 address Mr. Aramburu's point, which is that the project
17 is in a state of transition.

18 So the County joins in the motion, and the
19 County renews its earlier motion that this entire matter
20 should be stayed until there's an FEIS and we actually
21 have a project that's a fit subject for adjudication.

22 JUDGE TOREM: All right.

23 We all know that I've already denied
24 continuances based on waiting for the FEIS. There's not
25 a basis in law to do so.

1 That aside, I understand where the parties are
2 coming from on a moving target.

3 Mr. McMahan, Ms. Stavitsky, Ms. Schimelpfenig,
4 would you care to give an explanation of why the
5 applicant continues to make minor and/or major changes to
6 the original proposal that we first saw in the
7 application for site certification filed on February 8th
8 of 2021?

9 And, Mr. McMahan, if you want to take into
10 account the ongoing debates or discussion of the project
11 with council staff and how a draft environmental impact
12 statement is being responded to with various
13 recommendations for mitigation that are not in dispute by
14 the applicant and coming up with the update prior to the
15 adjudicative hearing, as required by administrative code
16 provisions adopted by EFSEC, and give the overview of
17 what you think the council was expecting from the
18 applicant and what the applicant has been trying to do by
19 filing the changes, despite the frustration it might
20 create for anybody trying to figure out what we're
21 adjudicating here the rest of the month.

22 So with all of that, as a compound question,
23 please, enlighten everybody on the call what the
24 applicant has been up to.

25 MR. MCMAHAN: Thank you, Your Honor.

1 And it's not just what the applicant has been up
2 to, we have gone through nine data requests for the life
3 of the project. This is not -- this process is not one
4 where you file an application and it sits there until the
5 adjudication and then an approval is issued.

6 This is, as Ms. Stavitsky indicated, it's a
7 two-track process. It's an iterative process that we've
8 been dealing with for the life of the project.

9 And the other irony here is what's actually
10 proposed with this information is a net reduction of
11 impact. That's what we have been talking with EFSEC
12 staff about in terms of the intent of these
13 modifications.

14 And, you know, it is part of a process that we
15 have been on for a very long time. We debated, should we
16 just not move this forward right now. We thought in the
17 interest of transparency, that it was best to put it out
18 there so that people understood.

19 And, again, does not -- these are not
20 modifications that are going to increase impacts or
21 dramatically change the project. They are fairly nuanced
22 and they do, in fact, accomplish net reduction of impact.

23 JUDGE TOREM: And in your experience, which may
24 differ from mine, has this been, for other clients that
25 you represented before EFSEC, essentially a parallel of

1 past practices reaching back to things done in Kittitas
2 County, things done at the Tesoro matter, which I don't
3 think you were on, or the Whistling Ridge project?

4 Has this been the ongoing funneling down of
5 impact prior to the council actually considering what's
6 in front of them?

7 MR. MCMAHAN: It absolutely has. In fact, the
8 Whistling Bridge project, during the adjudication,
9 literally live during the adjudication, modifications
10 were made, you know, when the process was underway.

11 So this is really -- in terms of the several
12 projects I've been involved in, there's nothing different
13 about this. It has to do with the way the EFSEC process
14 works. And the idea is that as EFSEC gains greater
15 knowledge through all of these proceedings and it tends
16 to, you know, accelerate at this point in time,
17 Judge Torem, because a lot of information is being
18 developed as we learn more about each others' positions
19 in the case.

20 We are being responsive and we are being
21 responsive in a way that we've been directed by EFSEC
22 council staff to provide information as it evolves and as
23 it develops.

24 There's nothing different that has been handled
25 in the other projects I've been involved in.

1 And, no, I didn't represent Tesoro.

2 JUDGE TOREM: All right. Well, I've heard from
3 the applicants in response and I've heard, Ms. Voelckers.
4 I appreciate what you've raised, what Mr. Aramburu has
5 supplemented, and what Mr. Harper has added as well.

6 Ms. Reyneveld, anything you wanted to add on
7 this?

8 MS. REYNEVELD: So I have been out of internet
9 access for -- until earlier this morning and have not had
10 an opportunity to review the prehearing briefs of any of
11 the parties. And so I do not have the benefit of having
12 reviewed the updated information fully that the applicant
13 provided.

14 You know, I do think a continuance makes sense
15 for us to be able to review the information, at least for
16 counsel for the environment, if it is, indeed, correct,
17 that there have been reductions or, you know, serious
18 modifications or mitigative measures that have been
19 proposed. In response to the new information, I know
20 that I would like a little bit more time to review it
21 with my witness.

22 With that said, I have not had the benefit of
23 the other parties of reviewing the information because
24 I'm just not getting internet access, but would certainly
25 benefit from a brief continuance to review the

1 information, just so that we are all on the same page in
2 terms of the actual project proposal that we're
3 litigating.

4 MR. MCMAHAN: Your Honor, Tim McMahan here.

5 I want to ground this in a very specific actual
6 thing that happened in the Kittitas Valley case, and I
7 know that you were there at the time.

8 During the adjudication and close to the time
9 the case was depleted, the applicant in that case put on
10 the table, and the citing council was happy to see it, a
11 standard of four times to remind setback that would deal
12 with a lot of issues raised by residential landowners.
13 And that happened as we were in the closing days or
14 moments of the adjudication of Kittitas Valley.

15 And I don't remember, frankly, you know,
16 whether -- if there was controversy around that, but it
17 was an issue of some importance to the cite council; that
18 we were able to resolve prior to the close of the
19 adjudication.

20 I could probably come up with other examples,
21 but that's the one that really sticks out to me, Your
22 Honor.

23 MS. VOELCKERS: Your Honor, if I could respond
24 to a couple of things that Mr. McMahan had said, I would
25 appreciate the opportunity.

1 JUDGE TOREM: Go ahead, Ms. Voelckers.

2 MS. VOELCKERS: Thank you, Your Honor.

3 I just want to clarify that our motion, while we
4 certainly do stand by the original motion continuance
5 around the lack of FEIS, is not out of -- our motion
6 today is not out of any confusion about what is happening
7 between the applicant and EFSEC on the SEPA side.

8 It is about the need for substantive project
9 modifications to be shared in a timely way. And I think
10 that that is clearly supported by the WAC, which allows
11 the applicant to provide this information up to 30 days
12 before the hearing. But it's not supported to do it now.

13 And while Mr. McMahan concedes that there's a
14 net reduction in environmental impacts, respectfully,
15 none of the lawyers are the ones that can really testify
16 to that. Like, we need time for our experts and their
17 experts to be able to speak about that.

18 And so I just wanted to emphasize that we're not
19 saying that the applicant and EFSEC cannot talk through
20 these information exchanges and requests for further
21 information. But when it is a project design
22 modification, that is a substantive change. And this
23 last -- you know, last night or today, however you want
24 to count this new information, it's not compliant with
25 any rule. And we need some sort of line here that allows

1 us to be talking about the same thing on Monday.

2 So that's really what we're asking for here.
3 And there might be certain positives that come out of
4 certain modifications, but no one has had a chance to
5 review this memo besides the applicant.

6 And so we really need the opportunity for the
7 folks that we've called to testify over the next two
8 weeks to be able to make that analysis, not the lawyers
9 today.

10 So thank you for your consideration.

11 JUDGE TOREM: Thank you, Ms. Voelckers.

12 Mr. McMahan, this memo that's being referred to,
13 that's the one that was circulated an hour before we
14 started today; is that correct?

15 MR. MCMAHAN: That is correct.

16 JUDGE TOREM: All right. Ms. Voelckers, I'm
17 going to take that under advisement until Monday morning.
18 At 8:30, we'll take it up again and you can summarize the
19 motion on behalf of the other parties as well because I
20 don't want to take an extended amount of time at 8:30
21 Monday morning. But I'll consider it. I'll take a look
22 at the memo in the days ahead.

23 My thought is that all of the parties are going
24 to bring Monday morning with them, their availability or
25 not, for the week of September 25th through the 29th for

1 one to two days of additional supplemental adjudicative
2 hearing, if I decide to grant the motion in part. So I
3 want that material by the end of the day on Monday the
4 14th of August. Everybody will have their availability
5 for that week of September 25th to 29th.

6 I may want an additional four to eight hours of
7 hearing time split over one or two days, depending on
8 whether this raises, truly, any new issues that I think
9 need to be talked about 30 days after the close of the
10 hearing, which would set back the filing of posthearing
11 briefs accordingly.

12 If I grant a motion to continue the entire
13 hearing, I'll let you know Monday morning. But I'm not
14 going to give you a ruling on that today.

15 So let's move on to the original portions of
16 today's prehearing conference.

17 I appreciate the reaction time today to some of
18 the late-breaking filings. So no critique imposed.

19 Much as it's still baseball season, you continue
20 to impress me with curve balls, all of you, and I'm going
21 to do my best to take my time before I swing at any of
22 these pitches.

23 So let's go back to the original things that
24 were on the agenda for today. One of them was reviewing
25 the schedule, and I want to come back to Mr. Simon's

1 testimony.

2 Given the discussion we've had today and what it
3 may have an impact on Ms. McClain's cross-examination, I
4 certainly want to take back anything I said in my
5 late-breaking email two minutes before today's
6 conference.

7 We're not going to put Mr. Simon on Monday.
8 Tuesday looks pretty full. My suggestion is that we
9 either bridge Tuesday into Wednesday or we run the
10 hearing an extra half hour to one hour on Wednesday,
11 August the 16th.

12 Mr. Aramburu, can you make Mr. Simon available
13 either late Tuesday and/or late Wednesday?

14 MR. MCMAHAN: We've -- Mr. Simon has a long
15 scheduled trip to Alaska.

16 JUDGE TOREM: That's not the issue. That's not
17 the issue. He's out for that week.

18 Can you make him available next Tuesday or next
19 Wednesday?

20 MR. MCMAHAN: I can make him available by way of
21 email and phone conversations with him. He can be
22 available at noon on Friday, August 25, which is when he
23 is currently scheduled. He will be getting off -- he's
24 stepping off an airplane from Alaska, but he can be
25 available for cross-examination at that time.

1 JUDGE TOREM: Let's go with that as Plan B. I
2 don't trust airline schedules to deliver witnesses to a
3 place where it's quiet.

4 Can he be available next week, since he's
5 apparently not in Alaska next week?

6 MR. MCMAHAN: My proposal would be Friday,
7 August 25, which is on his return from Alaska.

8 JUDGE TOREM: All right. Are you willing, if
9 he's not available within 15 minutes of the scheduled
10 time, that he waives his right to testify?

11 MR. MCMAHAN: I can't do that. I just don't
12 know what the schedules are. He is scheduled to get off
13 the airplane at 11:00 o'clock in the morning. I can make
14 sure that he is by a phone at noon to be able to be
15 available for cross-examination. But I cannot account
16 for the vagaries of travel for these witnesses.

17 JUDGE TOREM: Yes. As I recall, Mr. Aramburu,
18 you had no control over the Blue Angles last Thursday,
19 and I'm not going to grant you any control over what I
20 presume is an Alaska Airlines flight from Anchorage.

21 If he is to be made available on Friday, that is
22 at TCC's peril. I am offering you going once, going
23 twice, going three times today, an opportunity to have
24 him testify next week on either Tuesday, late in the day,
25 or Wednesday, before the council meeting.

1 Would you like those options, or would you like
2 to gamble next Friday on the 25th?

3 MR. MCMAHAN: I would like to consult with him
4 and get back to you by the end of the day.

5 JUDGE TOREM: All right. If you'll send an
6 email with your selection, it will be accommodated
7 accordingly.

8 So, again, his choices are, Tuesday -- let me
9 roll back up to it -- August 15th at 4:00 o'clock;
10 Wednesday, August 16th at 11:30 -- I think there's a
11 typographical error there. It should say a.m. Or per
12 your suggestion, Friday, August 25th at noon.

13 Let me know your preference. If it's next week,
14 we'll talk about it at the housekeeping session on
15 Monday. If it's the following week on Friday, I'm
16 putting it on the record today: If he's not available at
17 the designated time, we'll check the flight number. And
18 at my discretion and the council's indulgence, we may
19 wait for him.

20 But if he's not available, I'm not going to have
21 however many people are on the line here today and the
22 entire council wait for that flight to come in on Friday.
23 That will be a gamble that TCC takes or not. If he's not
24 present to adopt his testimony, it will be stricken.

25 Are we absolutely clear on that, Mr. Aramburu?

1 MR. MCMAHAN: We disagree but we're clear.

2 JUDGE TOREM: Perfect.

3 All right. Let's move on to the rest of the
4 schedule.

5 Is there anything else I need to know beyond
6 what's obvious on the piece here? And, again, the
7 Wednesday, 11:30 a.m., we would fit Mr. Simon in with the
8 swearing in of uncalled wildlife witnesses, which should
9 take mere moments. That's why that particular time looks
10 attractive to me.

11 From the applicant, anything else I need to know
12 that appears to be -- that the schedule might go
13 sideways, so I can anticipate any dates that were -- I
14 don't know, discussions that happened off line that
15 there's any worry about, the estimates from the
16 applicant's perspective?

17 MS. STAVITSKY: No, Your Honor. We believe that
18 list that was just circulated is still accurate, from our
19 perspective.

20 JUDGE TOREM: All right. Mr. Harper, I know
21 that Ms. Foster was covering the last couple of
22 prehearings.

23 From your review of all of this, does the County
24 have any concerns?

25 MR. HARPER: No, Your Honor.

1 JUDGE TOREM: Ms. Reyneveld, I know you've been
2 out of internet for a piece of time due to the
3 devastation in Maui.

4 From what you've participated in and getting the
5 schedule together, does counsel for the environment have
6 any concerns?

7 MS. REYNEVELD: No, counsel for the environment
8 does not have any concerns at this time.

9 Thank you, Judge.

10 JUDGE TOREM: And, Ms. Reyneveld, were you
11 intending to have submitted a prehearing brief? In my
12 accounting, I did not see one come in. I may have missed
13 it.

14 MS. REYNEVELD: Counsel for the environment was
15 not intending to submit a prehearing brief, but we will
16 be submitting a posthearing brief.

17 Thank you for --

18 JUDGE TOREM: Excellent.

19 MS. REYNEVELD: Thank you for asking, though,
20 because I wouldn't have been able to submit it yesterday.

21 JUDGE TOREM: Understood. I wanted to see if
22 there was going to be any accommodation needed, but it
23 sounds like we'll wait for posthearing briefs from you.
24 And hopefully the internet situation and the general
25 situation is better.

1 MS. REYNEVELD: Yes. Thank you.

2 JUDGE TOREM: Ms. Voelckers, anything else that
3 I need to know about the schedule that Yakama Nation is
4 still concerned with?

5 MS. VOELCKERS: Thank you, Your Honor.

6 I would like to better understand the plan for
7 Mr. Kobus's recent -- or, excuse me, Stoel's recent
8 motion to supplement Mr. Kobus's testimony before
9 confirming our agreement.

10 With the schedule as emailed on August 9th, we
11 are in agreement with what was emailed and that we did
12 workshop collaboratively with Stoel, but I think there's
13 still a question that remains about Mr. Kobus's
14 testimony. And so we would like to wait for that to be
15 resolved before we agree with the schedule in its
16 entirety.

17 JUDGE TOREM: And, Ms. Voelckers, it's my
18 understanding that Mr. Kobus does not appear on the
19 witness list; is that correct?

20 MS. VOELCKERS: Correct, Your Honor, because
21 this was developed before -- or, I mean, this has been a
22 work in progress, but the motion to supplement was just
23 so recently filed that it was not accounted for on this
24 list. And, in fact, it was filed after we gave our final
25 feedback to the applicant on the list that you have in

1 front of you.

2 And so seeing now that there is a proposal for
3 him to sit for cross-examination, if Your Honor does
4 allow that new supplemental testimony to come in, we
5 would like to reserve the right to cross-examine him.
6 And I don't know what his general availability is, but I
7 think there's certainly time left at the end of the
8 hearing for that.

9 JUDGE TOREM: Let me hear from Mr. McMahan or
10 someone else at the Stoel Rives office as to the
11 intention and timing, if that supplemental testimony is
12 admitted in conjunction with his discovery deposition.

13 MR. MCMAHAN: Thank you, your Honor. Tim
14 McMahan here.

15 We notified the parties at the last prehearing
16 conference that we were most likely to be submitting some
17 supplemental testimony to correct some understanding --
18 some misunderstandings about the battery energy storage
19 system, technology, and water safety around the BESS
20 systems.

21 We notified everyone last prehearing conference
22 that we felt that was going to be necessary. We intended
23 to provide some supplementary testimony in order to
24 correct some information and to update some information.
25 So we have done that.

1 I recognize that Mr. Aramburu has strongly
2 objected to that testimony. Our view is that it would be
3 inaccurate to submit to the citing council prior
4 information, design information, prior information about
5 the BESS facility -- battery energy storage system
6 facility because that is just simply not as described in
7 the original testimony. It's just simply not the way
8 it's going to be proposed to EFSEC.

9 So we -- and I apologize that it took some days
10 to pull this together because, frankly, this was new
11 stuff for me to learn and figure out. And it took a bit
12 to have sufficiency and technical information so that we
13 could provide helpful information to the citing council
14 to understand the safety issues around the BESS -- the
15 battery energy storage facility -- around the BESS
16 facility.

17 So that's what we did. We felt that it was
18 just -- it was not productive or fruitful to give the
19 council something that was not accurate. So we just
20 tried to provide accurate information with that
21 supplemental testimony.

22 JUDGE TOREM: One more question, Mr. McMahan.
23 And, again, slow down a little bit for the court
24 reporter.

25 MR. MCMAHAN: Sorry.

1 JUDGE TOREM: When would Mr. McMahan be --
2 sorry.

3 When would Mr. Kobus be available to testify?
4 Would that also be on Friday, August 25th in the
5 afternoon?

6 MR. MCMAHAN: Your Honor, Mr. Kobus is along for
7 the ride, and we will make him available if
8 cross-examination is desired whenever it fits within the
9 schedule.

10 JUDGE TOREM: All right. That's good to know.

11 Ms. Voelckers, once I have a chance to take a
12 look at that supplemental testimony, if it is admitted,
13 I'll let the parties know as soon as possible. It may be
14 Monday morning at the housekeeping. It may then be
15 something to renew the -- if it is admitted, renew the
16 motions or add to the motions a reason for the
17 continuance and/or the supplemental dates of hearing that
18 I mentioned earlier, that would be, without looking at
19 the council's schedule, possibly the week of
20 September 25th to 29th.

21 Those are dates that I think are 30 days after
22 the close of the hearing and responsive to the length of
23 continuance the parties were seeking. So that's why I've
24 selected that week to determine your availabilities.

25 Mr. McMahan, if I do end up admitting the

1 testimony and I believe that it needs additional time for
2 the parties, that would be when I would ask Mr. Kobus to
3 make himself available for cross-exam.

4 If I admit the testimony supplementally to go
5 with what's in the deposition and I think it's not
6 something the parties need 30 days, then we'll see if
7 he's available at another place in the hearing. But
8 likely Friday, August 25th, with some of that afternoon
9 time. And we'll schedule it after the time that we might
10 have for Mr. Simon, if that's the choice that TCC makes
11 to present him, as opposed to the current scheduled time.
12 But we'll take that matter up later.

13 MR. MCMAHAN: That's fine. Thank you, Your
14 Honor.

15 MR. ARAMBURU: Judge, may I be heard on these
16 matters briefly?

17 JUDGE TOREM: Certainly. Go ahead,
18 Mr. Aramburu.

19 MR. ARAMBURU: First of all, with respect to
20 witness scheduling, we have been in contact with Lonnie
21 Click from the Benton Fire District. And he is scheduled
22 for Wednesday, August 23, at 9:30.

23 It turns out he is not available on that day but
24 he is available on August 21 or 22. So we would like the
25 parties to accommodate. And he is -- there has not been

1 a request to cross-examine him nor was his testimony
2 requested to be stricken. So it would be simply an
3 affirmation of testimony.

4 JUDGE TOREM: I have no problem at all with
5 that, Mr. Aramburu. If you would let us know what day is
6 most convenient for Lonnie Click to document testimony, I
7 don't think the parties will object at all. We'll just,
8 in a housekeeping session, move that to whatever day he's
9 going to adopt his testimony.

10 Is that acceptable with TCC?

11 MR. ARAMBURU: That would be fine with us.

12 And I do want a clarification about our position
13 about -- regarding Mr. Kobus's testimony.

14 His supplement that he submitted to us involves
15 a lot of technical material analysis of National Fire
16 Protection Association standards and that kind of thing.

17 So our principal interest is not so much to
18 cross-examine him on those things, which he didn't seem
19 to know anything about during his deposition, but rather
20 to make sure that we have an opportunity to rebut that
21 information with information of our own, given the late
22 nature of what's been proposed here.

23 So we are not necessarily asking for
24 cross-examination, but we are asking for an opportunity
25 to provide rebuttal to that material.

1 JUDGE TOREM: All right. And TCC may feel that
2 way but the other parties may wish to cross-examine.

3 I'll let the other parties clarify with me next
4 week on Monday at the housekeeping session or as soon
5 thereafter as possible, what their intent is. If there's
6 nobody wishing to cross-examine but simply more time to
7 rebut and supplement the record, we can do that and give
8 additional time for posthearing briefs.

9 Again, the extension that the applicant has is
10 through January 31st of 2024. It's my understanding that
11 we would have all of the materials in from the
12 adjudication late this fall and that the FEIS is on track
13 to be presented to the council shortly thereafter. We'll
14 find out from the appropriate EFSEC staff when that
15 timing is. And then the council will have its full
16 deliberations on the entire record.

17 So there's time, Mr. Aramburu, to get additional
18 information from the parties into the record on the
19 adjudication side. And when the FEIS is completed, it
20 will also be before the council with sufficient time for
21 them to make their recommendation on the entire record
22 and the SEPA record up to the governor.

23 So I want to assure you that on my side of the
24 house, which is the adjudication, the entire record will
25 be considered before any findings of fact or conclusions

1 of law are drawn from the adjudication.

2 And I am assured by the rest of EFSEC staff that
3 the council will also have the FEIS in time for their
4 deliberations that go in conjunctive nature with what
5 we're doing in the adjudication, before any
6 recommendation is made to Governor Inslee.

7 All right. We've taken care of the schedule
8 concerns.

9 We've got Lonnie Click that will be moved around
10 according to that schedule.

11 We've got Rick Simon to come on a different date
12 than August 23rd.

13 And we've got questions now about the
14 continuance request to handle all of the redesign issues
15 per 463-60-116 and anything else that might come out of
16 the Kobus deposition and the supplemental testimony.

17 So we're going to move on from Agenda Item 2 to
18 Agenda Item 3, which is the status update on the Yakama
19 Nation's discovery requests regarding water resources.

20 Ms. Voelckers.

21 MS. VOELCKERS: Thank you, Your Honor.

22 And I respect that you are moving on, but if I
23 could finish my thoughts on the schedule, I think we got
24 a little sidetracked with my comment on Mr. Kobus. I did
25 have one more question for you --

1 JUDGE TOREM: Please.

2 MS. VOELCKERS: -- on that.

3 Okay. So -- and then just to be clear, we will
4 be asking to cross-examine Mr. Kobus, if that testimony
5 is submitted.

6 So on the 21st, when there is -- we'll be
7 requesting the closed-record hearing, in meeting with my
8 client this week, the question came up about viewing of
9 the hearing for the council members, meaning the tribal
10 council members.

11 And so we can update our confidentiality
12 agreement to reflect additional council members, but I
13 wanted to make sure to understand if it would be okay to
14 have multiple folks just kind of in a room together
15 viewing the screen, or whether or not EFSEC would like a
16 record of who all is participating in these hearings by
17 being in the room for them.

18 I mean, it's being closed at the Yakama Nation's
19 request, so I hope that, you know, there's not concern
20 about the Nation's tribal council members joining. But I
21 just want to make sure that we're doing it in a way
22 that's appropriate and also so people aren't accidentally
23 excluded from the room with the technology that's going
24 to be used.

25 So I don't know if this is a question for Your

1 Honor or for EFSEC staff, but I just wanted to bring that
2 up while it was front of mind, to make sure that we're
3 doing what we had to to avoid complications on your end.

4 JUDGE TOREM: I appreciate that very much.

5 Let's go over that Monday schedule with the
6 cultural historic archaeological resource impacts and
7 identify each session that needs to be a closed-record
8 hearing.

9 I think the first one would be starting at
10 10:45 a.m.; is that correct?

11 MS. VOELCKERS: I'm sorry. I'm having a little
12 bit of a technical issue.

13 Is that -- that's the beginning of Ms. Lally's
14 testimony, I believe?

15 JUDGE TOREM: Correct. So the Lally testimony
16 is scheduled for 10:45 to 11:45 and again after lunch
17 from 12:45 to 1:45.

18 MS. VOELCKERS: Yes. Okay.

19 MS. STAVITSKY: Your Honor, apologies. This is
20 Ariel Stavitsky for applicant. And I would also ask --
21 I'm glad we're addressing this.

22 Ms. Ragsdale also had the question whether her
23 testimony would be held in the breakout room as private.
24 And her position is that it's going to be difficult, I
25 think for her as well, to determine in the moment what of

1 her testimony is subject to the protective order and what
2 is not.

3 So her preference would be that her testimony as
4 well would be all held in the private breakout room.

5 JUDGE TOREM: All right. So it sounds as though
6 the morning session starting at 9:00 all of the way
7 through 1:45 --

8 Let me go back to you, Ms. Voelckers.

9 In looking at the rest of the day, is any of
10 that day not going to be a confidential breakout session?

11 MS. VOELCKERS: Not -- my expectation, Your
12 Honor, is that full day would be a closed hearing. I
13 know that there's discussion about having the fire chief
14 just adopt his testimony, but for the witnesses that are
15 listed there, we are asking that they all be heard in a
16 closed-record hearing.

17 So I would expect that, yes, that would be a
18 full day of a closed hearing.

19 JUDGE TOREM: Okay. Noted.

20 I don't see any problem with the Yakama Nation
21 who is forwarding this confidential information, having
22 as many people in any room that you would like or tribal
23 members that you and the rest of the elders determine are
24 entitled to hear this information.

25 If you would like to have them sign on, I think

1 that we should make that Ms. Grantham and Ms. Owens know
2 who else to expect so they can add them to the list of
3 people authorized to be in the hearing that day.

4 It will also be something that we can make clear
5 next week at the hearing and maybe send out a supplement
6 to the notice that went out for the hearing, that the
7 bulk of the day on Monday, August 21st, other than Lonnie
8 Click adopting testimony, if that's the date that works,
9 that the hearing will be a closed record because of the
10 sensitive and confidential nature of the testimony. So
11 that's Monday the 21st.

12 Are there any other sessions throughout the
13 course of the hearing that are anticipated to be
14 confidential in a closed-record hearing?

15 MS. VOELCKERS: Your Honor, from the Yakama
16 Nation's perspective, the other time where there might be
17 a request for a closed-record hearing would be on
18 testimony around the project's potential impacts to the
19 pronghorn population. And it's hard to predict how much
20 of that, not knowing whether or not the council would
21 have questions for Yakama Nation's own expert on that
22 topic, Mr. Ganuelas, which is why we estimate half an
23 hour, even though I understand that he, you know, is not
24 appearing for cross-examination, just because we weren't
25 sure whether or not the council would have questions for

1 him.

2 And so our understanding from last Friday from
3 you was they should be prepared to answer questions from
4 the council. And so we built in that time.

5 So it is possible that there would be time at
6 the end of the day Tuesday during Mr. Rahmig's testimony
7 and Wednesday, during the remainder of his testimony or
8 the swearing in of Yakama Nation's wildlife biologist.
9 That's the only other time that I see on the schedule
10 where we might be asking for that. And it's a little
11 tricky to predict how long that would be right now.

12 JUDGE TOREM: All right. I appreciate that.

13 So in summing that up, Tuesday afternoon at
14 2:50 p.m., depending on where the cross-exam goes and the
15 redirect for Mr. Rahmig and continuing on Wednesday
16 morning at 9:00 a.m. for that testimony and redirect,
17 those portions may have sessions that require us to go
18 into closed record.

19 You're also saying that when Mr. Ganuelas adopts
20 his testimony Wednesday, late morning, if there are
21 questions and he needs to comment on the pronghorn
22 issues, those may also require us to move into closed
23 session.

24 Did I get that right?

25 MS. VOELCKERS: Yes, Your Honor.

1 JUDGE TOREM: Okay.

2 MS. STAVITSKY: Your Honor, may I --

3 JUDGE TOREM: But I think it's help --

4 MS. STAVITSKY: I just wanted to add, the same
5 will likely be true of -- there may be some need for
6 confidential pronghorn testimony from our wildlife
7 experts Erik Jansen and Troy Rahmig.

8 And we were -- just to throw it out there as
9 sort of a logistical solution, we were thinking it may
10 make sense to sort of have a pronghorn subject matter
11 time of day so that that could be held in the private
12 breakout room, but defer to you and Ms. Voelckers on how
13 you -- how best you think that would work out.

14 JUDGE TOREM: And this was Ms. Stavitsky; right?

15 MS. STAVITSKY: Yes. Thanks, Your Honor.

16 Ms. Stavitsky for applicant.

17 JUDGE TOREM: So, Ms. Stavitsky, you mentioned
18 Mr. Jansen and was it Mr. Cook as well?

19 MS. STAVITSKY: Mr. Jansen and Mr. Rahmig.

20 JUDGE TOREM: Okay. And we already had
21 identified Mr. Rahmig as potentially having that
22 testimony.

23 So Jansen and Rahmig on Tuesday and Wednesday
24 this coming week and then the entire day on Monday, the
25 21st.

1 All right. I'm going to make sure Ms. Grantham
2 is taking notes on that. And if not, to reach out to me
3 later to qualify or clarify anything. But we may be
4 putting out an amended notice today or tomorrow that
5 indicates that those sessions on Tuesday the 15th of
6 August and Wednesday the 16th of August are anticipated
7 to have closed-record hearings, and that essentially the
8 full day after the hearing opens on August 21st will be
9 anticipated to being a closed-record session.

10 Were there any other witnesses that any party
11 thinks will have confidential information that requires a
12 closed-record hearing?

13 MS. STAVITSKY: Your Honor --

14 JUDGE TOREM: All right. Hearing -- go ahead.

15 MS. STAVITSKY: Apologies, Your Honor. This is
16 Ariel Stavitsky, again, for applicant.

17 The only other thing we can possibly think may
18 require a closed hearing is depending on your ruling on
19 the pending motion to strike.

20 If some of that testimony is allowed, there is
21 certain trade secret information that may be required to
22 be disclosed in a closed-record hearing. And so that
23 would be -- the witnesses likely affected by that, from
24 our perspective, would be Rich Simon and Greg Poulos.

25 JUDGE TOREM: All right. Understood.

1 Parties, we've been going at this for over an
2 hour. I want to have some mercy for the court reporter
3 and anybody who has late-afternoon coffee consumption.

4 So it's now 3:02. I propose we come back at
5 3:15 and get back on the record at that time. So we'll
6 take a 12-minute break here and come back at 3:15 and
7 we'll resume the agenda with Item No. 3, I believe it is
8 on -- Ms. Voelckers, I'm going to turn to you at 3:15 on
9 the status of that discovery request.

10 And I'll be prepared to give you a list of the
11 outstanding orders I believe I need to get out when we
12 get to Item No. 4, and then we'll go around again for
13 No. 5. And hopefully by 4:15, we can be done today, but
14 I know we've scheduled it through 5:00 o'clock.

15 All right. We'll take a recess now until 3:15.

16 (Recess from 3:03 p.m. to 3:15 p.m.)

17 JUDGE TOREM: All right. It's now 3:15. Let me
18 have a brief roll call to make sure everybody is back.

19 For the applicant?

20 MR. MCMAHAN: We're here, Your Honor.

21 JUDGE TOREM: For the Yakama Nation?

22 MS. VOELCKERS: Present.

23 Thank you, Your Honor.

24 JUDGE TOREM: Benton County?

25 MR. HARPER: Present, Your Honor.

1 JUDGE TOREM: Ms. Reyneveld?

2 MS. REYNEVELD: I'm here.

3 Thank you, Judge.

4 JUDGE TOREM: All right. And, Mr. Aramburu?

5 MR. ARAMBURU: Present for Tri-Cities C.A.R.E.S.
6 Thank you, Your Honor.

7 JUDGE TOREM: All right. Let's resume with Item
8 No. 3 on the agenda, status update on the Yakama Nation's
9 discovery request.

10 Ms. Voelckers.

11 MS. VOELCKERS: Thank you, Your Honor.

12 We did receive a response to our discovery
13 requests. So that has been solved.

14 I would like to note that we would likely have
15 more, once we have a chance to review the memo that was
16 submitted yesterday, and that's the subject of the motion
17 to continue.

18 JUDGE TOREM: When you say that's the memo, is
19 it the same memo we've been discussing today?

20 MS. VOELCKERS: Yes, Your Honor.

21 MR. ARAMBURU: Your Honor, this is Rick Aramburu
22 speaking.

23 The subject of the well is found for your notes,
24 Your Honor, on Page 8 of the memo under Section 1.12. It
25 has been made an issue for these proceedings.

1 JUDGE TOREM: You said Page 8, Section 1.12?

2 MR. ARAMBURU: Correct.

3 JUDGE TOREM: Okay. Thank you, Mr. Aramburu,
4 for that refinement.

5 Ms. Voelckers, anything else I need to know
6 about the discovery requests?

7 MS. VOELCKERS: Not at this time.

8 Thank you, Your Honor.

9 JUDGE TOREM: All right. Anybody from the
10 applicant want to confirm, is there anything else
11 outstanding you intend to be providing as continuing in
12 this discovery request?

13 MR. MCMAHAN: Not that I'm aware of, Your Honor,
14 no.

15 JUDGE TOREM: All right. Then moving onto
16 No. 4, the what does Judge Torem still have to do.

17 So you can cross out the "if any."

18 I understand that I still owe Mr. Aramburu and
19 the parties my order on which witnesses are formally
20 being moved from the TCC list that might be subject to
21 adopting testimony and allowed for council questions and
22 converting those to public comment. So that's definitely
23 something outstanding.

24 There's some other motions to take out, I think
25 it's Mr. Simon's testimony that was stricken.

1 And tell me for sure, Mr. Aramburu, if there's
2 other portions for Mr. Krupin? It looked as though he
3 was listed for potential cross-examination.

4 So there's still a motion out for both of those;
5 is that correct?

6 MR. ARAMBURU: Your Honor, as I see your list,
7 if I can put it that way, there is still an outstanding
8 decision on a motion for reconsideration of inclusion of
9 the testimony for witnesses Krupin, Sharp, Dunn, and
10 Simon -- part of Simon's testimony.

11 There is an outstanding motion by the applicant
12 to strike rebuttal testimony of those witnesses, which is
13 also opposed by TCC.

14 The third motion is our motion to compel certain
15 documents in our request for production. We have filed
16 with you on Monday our response to that.

17 So as far as we know, those are the three items
18 that are outstanding that we are the most concerned with.

19 JUDGE TOREM: Okay. And I think by that
20 listing, there's four. There's the public comment versus
21 prefile. There's the motion for reconsideration you
22 detailed. There's the motion to compel certain documents
23 and the Scout Clean Energy's opposition.

24 And then there's the applicant's motion to
25 strike rebuttal and your response that came in on this

1 first motion and your response this past week.

2 I think I also have, Ms. Voelckers, a motion --
3 I think it's really going to be the agreed order we
4 talked about last week on the motion to supplement. I
5 think those came in on -- since our hearing last time or
6 since our prehearing conference -- I can try to scroll
7 through --

8 MS. VOELCKERS: Yes, Your Honor.

9 JUDGE TOREM: -- emails and find them.

10 MS. VOELCKERS: Yes, Your Honor. Shona
11 Voelckers.

12 That should be in your inbox. And it just -- it
13 took us a couple of days, given all of the other
14 briefing.

15 But we did circulate that and made sure that
16 that was okay with the applicant, the way that it was
17 phrased. And also attached to my email is the deposition
18 transcript for Mr. Kobus.

19 The deposition transcripts and exhibits for
20 Yakama Nation's motion to supplement were already
21 provided. And I know that Ms. Masengale was making sure
22 that those were all able to be put online as well so that
23 anyone could access those once the order is entered.

24 JUDGE TOREM: All right. So then by my count,
25 we're up to a fifth order, depending on 5A, 5B, however

1 many orders, taking into consideration those motions to
2 supplement from Yakama Nation.

3 Does the applicant see anything more outstanding
4 than those five that we've talked about so far?

5 MR. MCMAHAN: I don't believe so, Your Honor.

6 JUDGE TOREM: Mr. Harper, was the County looking
7 for anything else that I still owe the parties?

8 MR. HARPER: No, I don't believe so, Your Honor.
9 Thank you.

10 JUDGE TOREM: For counsel for the environment,
11 anything else that you are looking for that I still need
12 to get to?

13 MS. REYNEVELD: No. Thank you.

14 We do still plan on submitting supplemental
15 testimony, hopefully, today from our witness. I was not
16 able to submit that previously because of lack of access
17 to internet. So that's the only thing outstanding for
18 us.

19 JUDGE TOREM: All right. And do you anticipate
20 that any of the parties will be objecting to that
21 supplemental testimony, Ms. Reyneveld? I'm not sure what
22 discussions you may have had about that.

23 MS. REYNEVELD: I do not anticipate that, no.

24 JUDGE TOREM: Mr. McMahan, was the applicant
25 considering, if you know what's going to be supplemented,

1 any concerns with CFE's witness?

2 MR. MCMAHAN: You know, Your Honor, this is an
3 awkward question to ask -- or answer because we don't
4 know exactly what it would be.

5 I would say that before Ms. Reyneveld went to
6 Maui, we did talk about it briefly and it didn't seem
7 like we would have an issue. But I guess it's -- I would
8 like to reserve the opportunity to object to it if
9 there's reason to do so. I guess if I could just leave
10 it at that. I don't anticipate -- because we did --
11 Ms. --

12 JUDGE TOREM: Yeah, and I'm not asking --

13 MR. MCMAHAN: Sorry.

14 JUDGE TOREM: I'm not asking, Mr. McMahan, that
15 you waive any right once you've read it. But I'm just
16 looking for, should I be anticipating any further
17 motions, whether in writing or verbally at one of our
18 housekeeping sessions?

19 MR. MCMAHAN: I don't think so because I think I
20 have -- we had good conversation with the CFE and so
21 that's my answer. I don't think so.

22 JUDGE TOREM: Okay. And, again, I don't expect
23 attorneys to be predicting with any better luck than I
24 had in front of military court-martial telling a judge
25 how long a witness would take. So I get it.

1 On this side of the bench, it's a lot easier to
2 ask for information than it might be to provide it with
3 any fidelity.

4 Let me go, then, to Mr. Aramburu.

5 Any other items besides those five that -- other
6 than the pending motion we talked about earlier under
7 No. 2 in the agenda?

8 MR. ARAMBURU: No. There's been the motion to
9 supplement the Kobus deposition. We've filed a response
10 to that just at 10:00 o'clock this morning. So I think
11 that's on your list.

12 I do have one additional question, and it arises
13 from this memorandum that we received at 1:05 this
14 afternoon.

15 On Page 2, there is a discussion of the east
16 solar array size reduction. And there's a paragraph that
17 begins, "Rationale for change." And the second sentence
18 says, "In a settlement agreement, Scout Clean Energy is
19 committed to reduce solar generation from this location
20 by approximately 100 megawatts."

21 I am not -- I have not seen a settlement
22 agreement, and I think I would like the applicant to
23 explain what that settlement agreement is. And if
24 it's -- and if one exists, that he make it available to
25 us.

1 JUDGE TOREM: Mr. McMahan.

2 MR. MCMAHAN: Thank you, Your Honor.

3 Yeah, we have been -- I would say a settlement
4 agreement probably ought to say "proposed settlement
5 agreement." We -- Ms. Reyneveld can step in here too.

6 We had -- during the spring, in particular, we
7 had some productive conversations with the counsel for
8 the environment on a variety of issues to deal with.
9 Some occurred, and Mr. McGyver's concerns regarding
10 habitat impacts any impacts on any of the species and the
11 like.

12 And in that discussion, we -- the applicant
13 agreed to modify the east solar array, to remove it.
14 Essentially remove it from a habitat that was of concern
15 to the CFE.

16 So that is what that is about. And so that --
17 so we're documenting that we have minimized the impact of
18 that area.

19 JUDGE TOREM: And so that's not an agreement
20 that's been signed or submitted to the council; is that
21 correct?

22 MR. MCMAHAN: That is correct. No agreement has
23 been signed or submitted. And as I, and Ms. Reyneveld
24 can weigh in here, as I understand it, such a thing would
25 have to be approved by the attorney general's office

1 anyway.

2 MS. REYNEVELD: Yes, that's correct. That's
3 a --

4 JUDGE TOREM: Go ahead, Ms. Reyneveld. I want
5 you to address also the timing of when that might be
6 submitted. And what, if any other -- from CFEs
7 perspective, negotiations or inclusion of the other
8 parties was done or is needed.

9 So let me have you start again.

10 MS. REYNEVELD: Yes. We had early settlement
11 discussions, and they did particularly involve litigation
12 to the east solar field. So Mr. McMahan is correct.

13 We -- I mean, I don't think anything has been
14 decided other than I think those have been brought to our
15 office and up the chain. We've considered them but have
16 not definitely arrived at any sort of settlement
17 agreement. Those discussions are on hold currently.

18 And from my recollection, we did involve all of
19 the parties in those initial discussions. And the
20 settlement proposal was shared with all of the parties,
21 the most recent settlement proposal. So this should not
22 be a surprise pertaining to that discussion, if my
23 recollection is correct.

24 JUDGE TOREM: All right.

25 MR. ARAMBURU: This is Rick Aramburu.

1 JUDGE TOREM: Hold on a second, Mr. Aramburu.
2 If it's a settlement between just counsel for
3 the environment and the applicant, Mr. McMahan, that
4 would not preclude the other parties from either
5 commenting on, objecting to, or continuing their own
6 positions, but simply reflects the settlement between the
7 applicant and the counsel for the environment; true?

8 MR. MCMAHAN: That is correct, Your Honor.

9 MS. REYNEVELD: Correct.

10 JUDGE TOREM: Mr. Arauburu.

11 MS. REYNEVELD: I just wanted to clarify my
12 statement, that I do believe we shared that proposal with
13 all of the parties. So I think that they should have
14 received that.

15 JUDGE TOREM: And, Ms. Reyneveld, they are free
16 to sign on to it as well but they don't have to; correct?

17 MS. REYNEVELD: That's correct. At this point,
18 no one has signed on to anything.

19 JUDGE TOREM: All right. If CFE and the
20 applicant enter such an agreement, you would welcome the
21 other parties to either sign on or indicate via the
22 adjudication at some point, that they don't concur with
23 whatever the stipulation might be.

24 Ms. Reyneveld; is that correct?

25 MS. REYNEVELD: That's correct. If and when we

1 do, yes.

2 JUDGE TOREM: Okay. Now, Mr. Aramburu.

3 MR. ARAMBURU: I am speaking for myself. My
4 inbox is filled with emails on this case, but I do not
5 recall receiving any draft proposals or discussions of
6 the settlement agreement from either the applicant or
7 Ms. Reyneveld. Perhaps I've missed one, but I have not
8 seen such a document.

9 MR. MCMAHAN: (Multiple speakers.)

10 JUDGE TOREM: Mr. McMahan, given Ms. Reyneveld's
11 position and other things that should have her attention
12 when we hang up today, would you care to provide any of
13 that email traffic, forward it to Mr. Aramburu and copy
14 Ms. Reyneveld so she'll know what's been sent and, of
15 course, copy the other parties?

16 MR. MCMAHAN: Sorry, Your Honor. We spoke over
17 each other for a moment.

18 So that's a request of the applicant to forward
19 that to the other parties?

20 JUDGE TOREM: Correct. And I don't need to see
21 it because it's not involving the council, but certainly
22 if it's something that staff has been involved in, then
23 copy the appropriate staff. But I'm asking you to
24 relieve Ms. Reyneveld of the obligation today on Thursday
25 while she has other things to attend to.

1 MR. MCMAHAN: I would be happy to do that, Your
2 Honor.

3 JUDGE TOREM: All right. So, Mr. Aramburu,
4 hopefully your inbox will get even fuller later today.

5 MR. ARAMBURU: Yes. And thank you, Your Honor,
6 for helping with that clarification.

7 JUDGE TOREM: No worries.

8 On the agenda, then, I've got it looks like,
9 five orders that I need to write and the motion today
10 regarding Mr. Kobus's supplemental testimony that I have
11 under advisement. We may be able to deal with that on
12 the record next week. So I've got some homework to do.

13 Let me go around the room, then we'll switch to
14 Item No. 5 and we'll see what other miscellaneous or
15 last-minute questions.

16 I think we've brought up the settlement
17 agreement and the other supplemental testimony that may
18 be coming in from counsel for the environment.

19 But let me ask the applicant, is there any other
20 last-minute questions or concerns before we convene
21 everything Monday morning at 8:30?

22 MR. MCMAHAN: No, Your Honor, as far as I'm
23 aware of.

24 For Monday, I intend to get cross-examination
25 exhibits out to the parties for the land use section of

1 the hearing beginning Monday. So they can expect to
2 receive that from us tomorrow.

3 JUDGE TOREM: I'm sorry. What was it you're
4 going to circulate?

5 MR. MCMAHAN: Yeah. Cross-examination exhibits
6 for land use.

7 JUDGE TOREM: All right. And if those are
8 exhibits -- let me, again, since you mentioned that word,
9 indicate to the parties. I've consulted with
10 Ms. Masengale about the screen-sharing issues. And I
11 know we had, in a technical shakeout on July 25th,
12 watched Mr. Aramburu share with success his screen.

13 I'm hoping that all of the parties will be able
14 to do that themselves. And if they are planning to have
15 Ms. Masengale put anything up on the screen on their
16 behalf, that those exhibits be identified by number and
17 that she affirmatively respond to you that she will have
18 that ready to share on your behalf.

19 As it turns out, there have been some other
20 duties that are going to distract Ms. Masengale from
21 being on call during the hearing the entire dates. So if
22 we're going to make use of EFSEC staff, I just want
23 parties to reach out in advance. But otherwise, be
24 prepared to share your own screens so that council
25 members will be able to see things and will go on with

1 any of those exhibits.

2 Mr. McMahan --

3 MS. VOELCKERS: Your Honor.

4 JUDGE TOREM: -- does that work for the
5 applicant?

6 MR. MCMAHAN: Yes, Your Honor.

7 JUDGE TOREM: Ms. Voelckers.

8 MS. VOELCKERS: If I could ask in the interest
9 of clarity and also making sure that we're kind of all
10 working off the same -- so I had planned to ask for
11 Ms. Masengale's assistance. So it would be helpful to
12 know how far in advance she needs that information, with
13 the understanding that if we don't provide that to her,
14 we could still share the exhibits but we would need to do
15 it ourself.

16 Did she have a timing request on that?

17 JUDGE TOREM: I don't think Ms. Masengale is on
18 the call today to speak for herself. If she is, I'll ask
19 her to speak up now, but I think she's out today.

20 MS. GRANTHAM: This is Andrea Grantham. She is
21 out today and tomorrow as well.

22 JUDGE TOREM: Okay. So, Ms. Voelckers, what I
23 would suggest is that Monday morning at the housekeeping
24 session or if you would like to send an email prior, just
25 sometime early next week or depending on the date you're

1 going to ask for her assistance, that we identify which
2 parts of the hearing session we might want to have her or
3 another member of EFSEC staff assist.

4 But certainly Yakama Nation will be permitted to
5 display those exhibits that we need during
6 cross-examination or for the supplemental testimony. I
7 believe it was a PowerPoint presentation to help walk
8 through one of your witnesses' testimony.

9 So we'll get it done one way or the other. I
10 just wanted to make sure -- I had made some promises for
11 Ms. Masengale and overpromised what I think her schedule
12 is going to allow her to deliver.

13 If parties need assistance, we will find a way
14 to get those exhibits up on the screens and in front of
15 the council members so everybody can see them. But I
16 just need to know those things in advance. Probably by
17 at least 24 hours, but 48 would be preferred. And that
18 would be the same for any other party seeking assistance
19 with displaying exhibits during the hearing.

20 It's just really a troubleshooting matter to
21 make sure we have it ready to go, so there's not any
22 delay, given the tightness of the schedule that we have.

23 Ms. Voelckers, does that address your concern?

24 MS. VOELCKERS: Yes, Your Honor. We will
25 continue to do our best to get all of that in an orderly

1 fashion so we can share with Ms. Masengale.

2 JUDGE TOREM: Okay. And while I've got you
3 talking, anything else that you wanted to bring up,
4 outstanding issues before Monday morning?

5 MS. VOELCKERS: Thank you, your Honor.

6 If you could humor me. I just want to make sure
7 that people can see me on camera. I've been trying to
8 work with our technical IT support staff.

9 So if you or anyone else -- I just turned my
10 camera on. If you could let me know whether or not you
11 can see me, that would be great.

12 JUDGE TOREM: Ms. Grantham, I'm not on camera
13 today myself. I'm calling in by phone.

14 Is Ms. Voelckers' camera working, as far as you
15 can tell?

16 MS. GRANTHAM: Yes, I can see Ms. Voelckers.

17 MS. VOELCKERS: Okay. Thank you so much for
18 humoring that.

19 And I don't have anything else at this time.
20 Thank you, Your Honor.

21 JUDGE TOREM: All right. Mr. Harper, anything
22 from the County?

23 MR. HARPER: No.

24 Thank you, Your Honor.

25 JUDGE TOREM: Mr. Aramburu?

1 MR. ARAMBURU: I don't see anything further for
2 the day. It sounds as though our housekeeping, if we
3 want to call it that session for Monday, setting half an
4 hour for that meeting may not be enough. Perhaps we want
5 to start early.

6 JUDGE TOREM: Well, I think we have a question
7 as far as people's availability. We should be able to
8 bleed into the 9:00 a.m. to 9:30 a.m. adoption of
9 uncalled land use witnesses.

10 And what I might do, Mr. Aramburu, is let the
11 parties -- or the council members know that they don't
12 need to be on until 9:15 on Monday to take care of
13 Ms. Wadsworth and Mr. Wiley, but we'll see where they
14 are. And if we need to go to 9:15 for housekeeping, we
15 will.

16 MR. ARAMBURU: Thank you.

17 JUDGE TOREM: All right. Ms. Reyneveld.

18 MS. REYNEVELD: I guess my only question is, I
19 assume there's no objection to having expert witnesses
20 listen to the prior testimony of witnesses in their
21 subject matter.

22 But I wanted to ask the question as to what the
23 protocol was pertaining to expert witnesses
24 participating.

25 JUDGE TOREM: Ms. Reyneveld, my understanding is

1 that there's no need to have them excluded. They have
2 all had a chance to read each other's direct testimony.
3 They have all submitted their testimony. So I'm not
4 worried, like a normal trial, where credibility or people
5 sticking to somebody else's story might come up. All of
6 the evidence that parties expect to come in has been
7 disclosed.

8 So I would have no concerns, unless a party can
9 make a very rational objection, why any other person or
10 expert testifying should be excluded from any other
11 witness's testimony.

12 So that's my initial take on things. There may
13 be an exception to that, but I think it will be incumbent
14 upon a party to let the others know that they want
15 someone excluded. And then during housekeeping on the
16 day of, not now, during housekeeping on the day of, let
17 me know if there's any such concerns with people that
18 should be excluded beyond the arrangements we've made for
19 the confidential closed-record portions of the hearing.

20 So, Ms. Reyneveld, I hope that addresses your
21 concern. Your witness, certainly, I don't think would
22 have any -- they would be wanting to listen in to the
23 other wildlife testimony, I'm sure, so they can respond
24 to anything that they hear. That would make sense to me.

25 Does that answer your question?

1 MS. REYNEVELD: It does. Thank you, Your Honor.
2 And that's correct.

3 JUDGE TOREM: Does anybody want to voice a
4 general concern now as opposed to the instruction I'm
5 giving you to let me know the day of witnesses, if
6 there's anyone to be excluded?

7 Mr. McMahan.

8 MR. MCMAHAN: No, Your Honor. Thank you.

9 JUDGE TOREM: Mr. Aramburu.

10 MR. ARAMBURU: I don't have anything further,
11 Your Honor.

12 JUDGE TOREM: Okay. And, Ms. Voelckers, any
13 concerns with that?

14 MS. VOELCKERS: No, Your Honor. Thank you.

15 JUDGE TOREM: And, Mr. Harper.

16 MR. HARPER: No concerns.

17 JUDGE TOREM: Okay. I think we've gone around
18 the room.

19 Let me see if EFSEC staff has anything for me or
20 the parties regarding technology issues or scheduling
21 questions.

22 Ms. Grantham, are you aware of anything I need
23 to raise today that hasn't already been discussed?

24 MS. GRANTHAM: Not as of right now.

25 JUDGE TOREM: Okay. You'll let me know Monday

1 morning as needed.

2 Mr. Thompson, it's your chance to participate.

3 Anything?

4 MR. THOMPSON: No. Thank you.

5 JUDGE TOREM: All right. Then with that, it's
6 3:39, almost 3:40 p.m. We are adjourned.

7 (Prehearing adjourned at 3:39 p.m.)

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C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing Prehearing Conference #5 was taken before me and completed on August 10, 2023, and thereafter was transcribed under my direction; that the Prehearing Conference #5 is a full, true and complete transcript;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said Prehearing Conference #5 and promptly delivering the same to EFSEC.

IN WITNESS WHEREOF, I have hereunto set my signature on the 24th day of August, 2023.

Michelle D. Elam

Michelle D. Elam, RPR, CCR
Certified Court Reporter 3335

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