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Transcript of Proceedings

July 22, 2024

Energy Facility Site Evaluation Council v.

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1 APPEARANCES

2 FOR THE APPLICANT (via Zoom):

3 VAN NESS FELDMAN, LLP
4 Erin Anderson

5 FOR BENTON COUNTY (via Zoom):

6 BENTON COUNTY PROSECUTING ATTORNEY
7 LeeAnn Holt

8 FOR THE ENVIRONMENT (via Zoom):

9 OFFICE OF THE WASHINGTON STATE ATTORNEY GENERAL
10 Sarah Reyneveld

11 FOR EFSEC (via Zoom):

12 Andrea Grantham
13 Jonathan Thompson
14 Joan Owens
15 Jenna Slocum
16 Alex Shiley
17 Cathy Taliaferro
18 Adrienne Barker
19 Lisa McLean
20 Audra Allen
21 Lance Caputo
22 Ali Smith
23 Martin McMurray
24
25

1 BE IT REMEMBERED that on Monday, July 22, 2024,
2 at 1:30 p.m., before Michelle D. Elam, Certified
3 Court Reporter, RPR, the following Prehearing
4 Conference #1, was held, to wit:

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

7
8 OAH DAN GERARD: The date is July 22nd, 2024.
9 The time 1:30 p.m.

10 I'm going to quickly do a roll call to see who
11 is present and then we'll go ahead and get the
12 proceedings started.

13 So I'm going to start first with those
14 participating on behalf of EFSEC. I do have some names
15 on the board, and so I'll confirm who are present and
16 then we'll go around and see if I missed anybody.

17 So starting first, I see Andrea Grantham is
18 present.

19 Ms. Grantham, are you present?

20 ANDREA GRANTHAM: I am here, yes.

21 OAH DAN GERARD: Thank you.

22 Cathy Taliaferro?

23 CATHY TALIAFERRO: I am present.

24 OAH DAN GERARD: Thank you.

25 Adrienne Barker.

1 ADRIENNE BARKER: I am present.
2 OAH DAN GERARD: And Joan Owens.
3 JOAN OWENS: Present.
4 OAH DAN GERARD: Lisa McLean.
5 LISA MCLEAN: Present.
6 OAH DAN GERARD: Thank you.
7 Audra Allen.
8 AUDRA ALLEN: Present.
9 OAH DAN GERARD: Lance Caputo.
10 LANCE CAPUTO: Yes, sir.
11 OAH DAN GERARD: Good afternoon.
12 Ali Smith.
13 Ali Smith, I see you on the screen listed as
14 EFSEC. Are you present or just not on mute -- or kept on
15 mute, rather?
16 We'll move on.
17 Martin McMurray.
18 MARTIN MCMURRAY: Present.
19 OAH DAN GERARD: And anybody else on behalf of
20 EFSEC at this point who either I have not identified or
21 who has not identified themselves?
22 Go ahead and state your name for me, please.
23 (Multiple speakers.)
24 ALEX SHILEY: Alex Shiley is present.
25 OAH DAN GERARD: Thank you, Ms. Shiley.

1 And, Mr. Thompson, I know you're an Assistant
2 Attorney General. Go ahead and please announce in what
3 capacity you are here with EFSEC.

4 JONATHAN THOMPSON: Yeah, hi. This is, again,
5 Jonathan Thompson. I am EFSEC's assigned Assistant
6 Attorney General legal advisor. So not appearing in the
7 case but just listening in, and I'll be advising the
8 council in this matter.

9 Also I believe Jenna Slocum is in the same
10 capacity here as well.

11 JENNA SLOCUM: Yes, hi. I am present as well.
12 Thank you.

13 OAH DAN GERARD: Excellent.

14 Anybody else currently present on behalf of
15 EFSEC, again, as either I have not identified or who has
16 not identified themselves?

17 All right. We will come back to determine if
18 Ali Smith is on the call or if it's just a placeholder.
19 I'm not quite sure what's going on.

20 ALI SMITH: Oh, I apologize. I am here. I'm
21 here.

22 Yeah, my name is Ali Smith. I am here as an
23 observer for EFSEC.

24 OAH DAN GERARD: Very good. Thank you.

25 All right. So with that, let's move on to the

1 next party.

2 With the applicant Wautoma or Innergex. Do we
3 have any representatives? If so, go ahead and state your
4 name, please, and what roll you're participating in.

5 LAURA O'NEILL: Hi. I'm Laura O'Neill with
6 Innergex, with the applicant. I don't see Erin Anderson
7 on yet, our attorney, unless she is that unidentified
8 phone number.

9 ERIN ANDERSON: Good afternoon. This is Erin
10 Anderson.

11 LAURA O'NEILL: Oh, you are that phone number.
12 Fantastic. Thanks.

13 OAH DAN GERARD: Ms. O'Neill, what is your
14 relation with the applicant? I don't see it typed or
15 anything. I know Ms. Anderson is the attorney of record.
16 Go ahead.

17 LAURA O'NEILL: Yes. I'm an employee of the
18 applicant who has been working with EFSEC on this file.

19 OAH DAN GERARD: And, Ms. Anderson, anyone else
20 besides you and Ms. O'Neill participating in today's
21 prehearing conference for the applicant?

22 ERIN ANDERSON: Your Honor, I may also have one
23 of my colleagues at Van Ness Feldman. His name is Andrew
24 Lewis, although I will be speaking for the applicant.

25 OAH DAN GERARD: Okay. Mr. Lewis, are you on

1 the call?

2 ANDREW LEWIS: Yes. This is me on the call,
3 Andrew Lewis.

4 I'm having trouble joining visually. So I'll
5 apologize for the delay.

6 OAH DAN GERARD: Actually, none of us are
7 joining visually. We have -- no one's appearing by
8 video. It's the audio portion, but we can have small
9 little icons with everyone's initials. That's how we
10 know who's here. So you're not missing anything by doing
11 it over the phone.

12 ANDREW LEWIS: All right. Well, that explains
13 it, then.

14 Thank you. It is good to be here.

15 OAH DAN GERARD: Very good. Thank you.

16 All right. So let's move on to the other
17 participants who I received notification from as to their
18 intent to participate.

19 Starting with Benton County.

20 Do we have someone on the line on behalf of
21 Benton County?

22 LEEANN HOLT: Yes. This is LeeAnn Holt. I'm an
23 attorney with the civil division of Benton County.

24 And I believe on the line we also have Michelle
25 Mercer, our planning manager; and Greg Wendt, our

1 director of community development.

2 OAH DAN GERARD: Give me just a second. I'm
3 writing this down as we go, so I may have to have you
4 repeat those names.

5 Ms. Mercer, are you on the call?

6 MICHELLE MERCER: Yes, I am.

7 OAH DAN GERARD: Thank you.

8 And, Mr. Wendt, are you on the call as well?

9 GREG WENDT: Yes.

10 OAH DAN GERARD: Thank you.

11 All right. Who is going to -- Ms. Holt, are you
12 representing Benton County in today's proceedings?

13 LEEANN HOLT: I am.

14 OAH DAN GERARD: I didn't actually receive a
15 notice of appearance for you. I received it from Eric
16 Eisinger.

17 Did you send one or did I simply overlook that
18 you are attorney of record for this matter?

19 LEEANN HOLT: I should be an attorney of record
20 in this matter. I would have to double-check, but I
21 believe the notice of appearance has Eric Eisinger and
22 then me as the other assigned attorney for -- appearing
23 for him.

24 OAH DAN GERARD: Okay. We'll go ahead and --
25 you're an officer of the court, so I would say you can

1 participate today, based on the representation.

2 If after the proceedings there is not a proper
3 notice of appearance, let me just send one. If there is,
4 I'll go back and double-check, then obviously you don't
5 need to do anything with the follow-up. But I just need
6 to make sure who is speaking on behalf of Benton County
7 today.

8 LEEANN HOLT: That would be me.

9 OAH DAN GERARD: Very good.

10 And, Ms. Holt, anyone else besides the three of
11 you on behalf of Benton County?

12 LEEANN HOLT: Not that I'm aware of.

13 OAH DAN GERARD: All right. Thank you.

14 Let's move on to the next participant, which is
15 the counsel for the environment.

16 Do we have anyone on the line on behalf of that
17 agency?

18 SARAH REYNEVELD: Yes. Sarah Reyneveld,
19 managing Assistant Attorney General is participating
20 today on behalf of my colleague, Yuriy Korol, who is the
21 assigned counsel for the environment in this matter but
22 unable to join us because he's on vacation.

23 OAH DAN GERARD: Okay. And, Ms. Reyneveld, are
24 you acting just as a representative in this prehearing
25 conference for scheduling and whatnot, or do you also

1 intend to participate further down the line?

2 SARAH REYNEVELD: Just as the representative for
3 this prehearing conference, Your Honor.

4 OAH DAN GERARD: Very good.

5 And anyone else besides you on behalf of the
6 counsel for the environment?

7 SARAH REYNEVELD: No. It's just me. Thank you.

8 OAH DAN GERARD: Okay. All right. I'm going to
9 see if I can pick out who else has not been named and
10 what they are here for.

11 I see a Linnea Fossum.

12 Would you please tell me who you are and what
13 your point in participating today is?

14 LINNEA FOSSUM: Yes, Your Honor.

15 I am employed by Tetra Tech, which is a
16 consultant to the applicant, and I'm just here to
17 observe.

18 OAH DAN GERARD: Would you spell the name of
19 your company, please?

20 LINNEA FOSSUM: Tetra Tech, T-e-t-r-a, T-e-c-h.

21 OAH DAN GERARD: All right. And rather than
22 trying to piece together who I have or have not called,
23 is there anybody else on the call either I have not
24 identified or who has not identified themselves before we
25 begin?

1 DAVID WITT: Yes.

2 Hello. This is David Witt. I'm an assistant
3 State archeologist with DAHP. I'm just observing.

4 OAH DAN GERARD: Thank you, sir.

5 AMI HAFKEMEYER: And this is Ami Hafkemeyer from
6 EFSEC.

7 OAH DAN GERARD: All right.

8 Well, thank you all for your patience while we
9 did the lengthy roll call.

10 Now that we do have everyone announced, let's go
11 ahead and discuss the purpose of today's prehearing
12 conference and then get into the issues themselves.

13 So for today's -- during this conversation,
14 we're establishing the issues, disputed or otherwise, and
15 issues related to the adjudication.

16 I'm going to speak mostly to the three parties
17 of interest: Innergex Renewable Development, at least
18 the parties of interest who had declared their intent to
19 participate.

20 So I'll be speaking mostly to Ms. Anderson,
21 Ms. Holt, and Ms. Reyneveld.

22 Obviously, when there are scheduling issues,
23 we'll consult with the other parties, including EFSEC for
24 the council's availability.

25 And then any other parties wish to interject,

1 depending on how far it goes, we'll see if the point has
2 merit.

3 So with that, the purpose of today's prehearing
4 conference is to -- first to determine if there are any
5 issues that are ripe for this adjudication, which can be
6 stipulated to to streamline the process. If we can
7 articulate -- if everyone would go ahead and put yourself
8 on mute real fast just so we're not getting background
9 noise. Thank you -- we can first identify if there are
10 any issues that can be stipulated to by the parties.

11 Whoever the 360-772 number, would you go ahead
12 and put yourself on mute, please. Thank you.

13 As I was saying, first to determine if there are
14 issues we can stipulate to. So we don't need to rehash
15 information and draw the process any longer -- out any
16 longer than further -- than necessary.

17 Then to discuss if there are any -- outside of
18 the articulated issues, if there are any other disputed
19 issues that need to be addressed.

20 Once we have framed what the issues are, at
21 least the issues in dispute are, then we will discuss how
22 long the parties believe they are going to need to
23 present their case in chief, when parties will be
24 available to hold the hearing, and then any other
25 prehearing issues that need to be discussed ahead of

1 time, such as potentially discovery.

2 So in the Order of Commencing Adjudication that
3 was mailed to all parties, the broader issues, as framed,
4 in that Order of Commencing Adjudication were whether the
5 council should recommend to the governor that the State
6 preempt the land use plan, the zoning ordinances, or
7 other development regulations for the site for the
8 alternative energy resource proposed by the applicant.

9 And if the council approves the applicant's
10 request for preemption, what conditions the council
11 should include, if any, in a draft certification
12 agreement to consider State or local government or
13 community interest affected by the construction or
14 operation of the alternative energy resource and the
15 purpose of laws or ordinances or rules or regulations
16 promulgated thereunder that are preempted pursuant to
17 RCW, that is Revised Code of Washington, 80.50.110,
18 Subsection 2. So those are the broader issues that we
19 are dealing with.

20 I would like to start first with -- if there
21 have been any preliminary discussions amongst the parties
22 as to any issues that may be stipulated to ahead of the
23 actual hearing.

24 So, Ms. Anderson, we'll begin with you.

25 Have you had any discussions with either Benton

1 County or the counsel for the environment about possible
2 stipulated issues ahead of today's prehearing conference?

3 ERIN ANDERSON: Good afternoon, Your Honor.

4 No, I have not had any conversations with them
5 about whether there are stipulations relating to the two
6 issues. We have discussions about whether there are
7 other issues to add.

8 OAH DAN GERARD: Okay. In the I believe it's
9 the Notice of Prehearing Conference, we did set out four
10 requests of the parties to prepare ahead of time. And
11 one of those was issues within the scope of topic for
12 adjudication, which are ripe for stipulation to
13 streamline the hearing.

14 Had you made a list, at least for yourself, of
15 any of those issues that we can discuss today with the
16 other two parties, or have you not reached that part of
17 your preparation yet?

18 ERIN ANDERSON: Your Honor, the applicant would
19 be happy to stipulate to Issue 1, but I would defer to
20 the County and CFE as to their agreement to stipulate to
21 Issue 1.

22 OAH DAN GERARD: All right.

23 Ms. Holt, we'll begin with you.

24 Does Benton County wish to stipulate to Issue
25 No. 1 and limit the adjudication to Issue No. 2?

1 LEEANN HOLT: We would like to present and
2 discuss whether or not the council should make that
3 recommendation to the governor. We would not stipulate
4 that the council should at this time.

5 OAH DAN GERARD: Okay. Very good.

6 So, Ms. Reyneveld, obviously, if there's no
7 agreement at this point between those two parties,
8 whether or not you're going to stipulate to it is sort of
9 a moot point at this point.

10 SARAH REYNEVELD: That's correct.

11 OAH DAN GERARD: Okay. Ms. Anderson, were there
12 any specific factual issues outside the broader issues
13 that you would -- the applicant would be willing to
14 stipulate to or at least discuss stipulating to so that
15 evidence doesn't need to be put before the board, if
16 everyone is going to represent the same facts?

17 ERIN ANDERSON: Yes, Your Honor. I have spoken
18 with the counsel for Benton County, Ms. Holt, regarding a
19 stipulation of facts and had explored a filing deadline
20 to submit a stipulation, if we can reach a stipulation to
21 submit those agreed facts, August 13th, at least one week
22 before opening of prefiled testimony, wherever that date
23 lands.

24 OAH DAN GERARD: Okay. And, Ms. Anderson, those
25 conversations would also need to be held with the counsel

1 for the environment, too, as they are the party to this.
2 It's not simply between you and Benton County.

3 Are you aware of that?

4 ERIN ANDERSON: Yes, Your Honor, yes. And I
5 shared those dates with Ms. Reyneveld and Mr. Korol.
6 Ms. Reyneveld returned from a two-week vacation today,
7 and she has a copy of this, but she has not had an
8 opportunity to speak with Mr. Korol, who is going to
9 represent CFE on this case. He is on vacation now.

10 OAH DAN GERARD: Okay. And, Ms. Reyneveld, is
11 that your understanding of where we are with this
12 process?

13 SARAH REYNEVELD: That's correct.

14 I don't know to what extent Mr. Korol has
15 participated in conversations regarding stipulations, but
16 we would request that counsel for the environment is a
17 full participant in those conversations moving forward.

18 OAH DAN GERARD: Okay. And, Ms. Holt, do you
19 agree with Ms. Anderson that there was a discussion of
20 possibly setting the stipulation submission to
21 August 13th?

22 LEEANN HOLT: Yes, we agree with that.

23 OAH DAN GERARD: Okay. Ms. Reyneveld, if we did
24 build into the calendar, just preliminary at this point,
25 a stipulation deadline of August 13th for the parties to

1 mutually agree upon something and submit both to me as
2 well as the counsel, would you agree with that date?

3 SARAH REYNEVELD: Yes. That date is agreeable,
4 as I communicated to Ms. Anderson, to counsel for the
5 environment.

6 OAH DAN GERARD: Very good.

7 I was hoping to get some more concrete issues
8 nailed or set aside because it's going to impact how long
9 we're going to take for the hearing.

10 I think if we can get it done before the
11 hearing, even if we schedule too long of a time, it still
12 will shorten the process. So we'll set the stipulation
13 agreement deadline, if one is reached with all of the
14 parties, as August 13th.

15 Let's move on, then, to the secondary need,
16 which is discovery.

17 Now, this matter has been obviously before EFSEC
18 for a few years, at this point. And I really don't see
19 what discovery would be needed that hadn't already been
20 done or could have been done ahead of scheduling this
21 prehearing conference. But I'm also not going to
22 preclude someone's presentation of their case if those
23 discovery needs are legitimate.

24 So starting first with Ms. Anderson.

25 Ms. Anderson, are there any -- do you anticipate

1 any discovery deadlines or any discovery conferences will
2 need to be held with other the parties, or is that
3 something you believe you and the other two parties can
4 handle informally, as you're all attorneys?

5 ERIN ANDERSON: Your Honor, I don't believe we
6 need any discussion -- excuse me, discovery in this
7 matter.

8 OAH DAN GERARD: Okay. And, Ms. Holt, does
9 Benton County have any take one way or the other on
10 discovery?

11 LEEANN HOLT: At this time I don't foresee a lot
12 of discovery being needed on our end. I would like to
13 keep the option open, however. I think that's something
14 that can be handled between the parties.

15 But if the Court would prefer to impose a
16 deadline, that would be fine with us.

17 OAH DAN GERARD: My preference is always to have
18 the parties work it out informally. That way no one
19 feels that they are being strong-armed. Usually you can
20 get a better result when people work collaboratively.
21 Though, obviously, I have an option for motions to compel
22 if the discovery discussed requests do fall through.

23 Ms. Reyneveld, will the counsel for the
24 environment request any discovery intervention on behalf
25 of myself?

1 SARAH REYNEVELD: Counsel for the environment
2 does not anticipate conducting discovery in this matter.

3 Thank you, Your Honor.

4 OAH DAN GERARD: Perfect. Okay.

5 Then let's move on to how long everyone believes
6 they are going to need to present their case. And that
7 will obviously frame how long we're going to need for the
8 totality of the hearing and then also help us in finding
9 dates that work for everyone's calendar.

10 We go on this understanding that those potential
11 stipulated issues may be resolved ahead of time and not
12 accounted into the overall part of the places people need
13 to hold their hearings. But I think at this stage, it
14 would be better for everyone to anticipate nothing is
15 going to be stipulated to and we have more time on their
16 hands than not enough. I think that's a better practice.

17 So, Ms. Anderson, with that, how long will the
18 applicant need to present their entire case in chief?

19 Now, previous adjudications before EFSEC or most
20 recent adjudications have done a prehearing written
21 submissions of direct examination. I'm not going to do
22 that in this particular one. I think given the fact that
23 there aren't that many parties and the issues are
24 relatively straightforward, I think a better use of
25 everyone's time is simply to have everyone present their

1 witnesses, have them sworn in, and take direct
2 examination before the council and myself, allow for
3 cross-examination and redirect at that, rather than
4 artificially extend the deadline with written submissions
5 and then exclusively deal with cross-examination at the
6 live hearing.

7 So a long explanation.

8 Ms. Anderson, how long do you believe that the
9 applicant will need to present the entirety of their case
10 in chief?

11 ERIN ANDERSON: Well, we had prepared for this
12 prehearing conference exchanging schedules that
13 compensated prefile testimony in order to expedite the
14 actual time needed at the proceeding.

15 If we are not going to be doing prefiled
16 testimony response and rebuttal, I would need a full day
17 to present our case in chief. If we do prefiled, I would
18 need a half a day.

19 OAH DAN GERARD: No. Okay. At this point we're
20 going to go ahead and just do the -- no prefile, no
21 response rebuttal. Just treat it as a normal hearing. I
22 think that's the best use of everyone's time.

23 So one day, you believe, and that's --

24 ERIN ANDERSON: (Garbled due to multiple
25 speakers.)

1 OAH DAN GERARD: Yes, ma'am, go ahead.

2 ERIN ANDERSON: If I may, I do want to revise my
3 response.

4 I understand that you don't see the need for
5 discovery and you don't see the need for prefiled, but I
6 am going to change my position that we do indeed want to
7 leave discovery open. I am willing to work
8 collaboratively with the parties, but I will not go into
9 a hearing without discovery or prefiled. I mean, I would
10 need to reserve one of those. So discovery.

11 OAH DAN GERARD: Okay. I will not set a
12 deadline for discovery. I will leave the parties the
13 ability to work collaboratively together.

14 If those collaborations do fail, simply reach
15 out to my office and request a status conference. And
16 then we can meet with the participants to determine where
17 we are with the discovery, what potential solutions we
18 can do, if it will affect the deadline we're setting.

19 But at this point, I'm not going to build in an
20 artificial deadline, if it may not be necessary.

21 ERIN ANDERSON: Okay. And I would respectfully
22 ask the Court whether the other parties are interested in
23 prefiled testimony as an alternative to discovery as a
24 means of shortening the adjudication process.

25 OAH DAN GERARD: It will shorten the

1 adjudication time but it will lengthen the period that we
2 have to actually get to adjudication. So that's the
3 front end that I'm concerned about. Because oftentimes
4 that will belabor the point for two or three weeks while
5 people submit those. While it shortens your presentation
6 by a half a day, it extends the resolution of the overall
7 recommended order by a significant period of time. And
8 that's my aversion to building in those deadlines.

9 ERIN ANDERSON: I understand that.

10 The parties have exchanged a proposed schedule
11 for prefiled testimony that allows us to have an
12 adjudication in the window that the Court had asked us to
13 consider. That's the position that we're coming from.

14 OAH DAN GERARD: Okay. Ms. Holt, would you like
15 to add to this issue?

16 LEEANN HOLT: Yes.

17 I did discuss that with Ms. Anderson last week.

18 Benton County is also inclined to request
19 written submissions in advance. And we were aware of the
20 timelines proposed by Ms. Anderson and our agreement with
21 that as well. If the Court were so inclined to allow
22 that.

23 OAH DAN GERARD: Ms. Reyneveld.

24 SARAH REYNEVELD: I would defer to the other
25 parties. Counsel for the environment does not anticipate

1 presenting its own case in chief in this matter but may
2 reserve time to cross-examine witnesses.

3 OAH DAN GERARD: Ms. Anderson, what were your
4 proposed deadlines you and Ms. Holt had discussed, then?

5 ERIN ANDERSON: Sure, Your Honor.

6 What the parties had done is we looked at the
7 window of time that the notice of prehearing conference
8 instructed us to look at and found that with the
9 exception of October 4, the parties are available the
10 week of the 29th of September through the 3rd of October,
11 recognizing that the council or Your Honor may not be.

12 But we chose a day, October 1, and worked back
13 from that to identify a proposed prehearing brief
14 schedule, requirements were prefiled, opening response
15 and reply as well as the deadline to submit stipulation
16 of facts. So the stipulation of facts comes in on
17 August 13th. But the parties' opening prefiled would be
18 due a week later on August 20th. That responses would be
19 due two weeks later on September 3rd and replies on the
20 10th of September.

21 And recognizing that there may be motions to
22 strike. Proposing that motions to strike would have to
23 be filed five days from the prefiling submittal and a
24 response three business days from the actual filing of
25 the motion.

1 We didn't propose -- or I didn't propose any
2 oral arguments on motions to strike. I think those have
3 traditionally been handled by the judge. And really
4 within three business days from the response. What that
5 did when we were talking about this is that put all of
6 the prefiled testimony into EFSEC by September 10. And
7 were we to go out to October 1, we would have two weeks
8 for prefiled briefs and prehearing briefs on
9 September 24.

10 OAH DAN GERARD: Ms. Holt?

11 LEEANN HOLT: That is my understanding of the
12 schedule. And we would be all right with that.

13 OAH DAN GERARD: Usually I try to accommodate
14 the parties' request. In this matter, we're going to
15 keep it just for the presentation of the cases without
16 the prefiled testimony. Stipulated facts, we'll agree to
17 that part.

18 But in this particular case, I'm going to have
19 everyone prepare their entirety of their case in chief
20 and present it to them when we actually get to the
21 hearing.

22 So your recommended schedule is -- I'm not going
23 to adopt.

24 So one day for the case in chief, Ms. Anderson.
25 Ms. Reyneveld, you did say just a moment ago

1 that you don't anticipate the counsel for the environment
2 presenting a case but you still wish to reserve the
3 ability to cross-examine.

4 Is that correct? Is that your position?

5 SARAH REYNEVELD: That's my position, yes.

6 Thank you, Your Honor.

7 OAH DAN GERARD: Okay. And, Ms. Holt, how long
8 would Benton County need to present their entire case in
9 chief?

10 LEEANN HOLT: Your Honor, I wasn't quite
11 prepared for that calculation.

12 We only have two witnesses. I anticipate the
13 two witnesses probably would not take more than an hour
14 each. Probably less than that.

15 OAH DAN GERARD: Now, obviously I will have the
16 opportunity to question the witness and so will the EFSEC
17 counsel.

18 If we schedule this matter for its entirety for
19 two consecutive days, Ms. Anderson, do you believe that
20 will be sufficient time?

21 ERIN ANDERSON: Yes.

22 OAH DAN GERARD: Ms. Holt?

23 LEEANN HOLT: Yes, I believe so.

24 OAH DAN GERARD: And, Ms. Reyneveld?

25 SARAH REYNEVELD: Yes, that should be

1 sufficient. Thank you.

2 OAH DAN GERARD: Okay. Now that we have
3 narrowed down, at least, the anticipated or the expected
4 presentation of the testimony as well as the dates, let's
5 talk about everyone's availability. And then once we get
6 the hearing down, we will work backwards with a witness
7 and exhibit list deadline that will be required of
8 everyone.

9 Given, again, that there are not many parties
10 involved in these proceedings, I would like to get this
11 done as -- obviously sooner rather than later.

12 Ms. Holt, can you put yourself on mute really
13 quick until we need you. I'm getting feedback from your
14 line.

15 Thank you.

16 We have the stipulated agreement deadline of
17 August 13th. I would like to look in the first week or
18 first two weeks of September when parties would be
19 available.

20 Ms. Anderson, if we start looking for two days
21 in early September, would that be ample time for you to
22 prepare your case in chief and present it to the council?

23 ERIN ANDERSON: No, Your Honor. I'll need more
24 time than that.

25 OAH DAN GERARD: What reason will you need more

1 time?

2 ERIN ANDERSON: My client won't be available,
3 and I'm going to have to reorganize the way we're going
4 to be presenting information rather than in the prefiled.
5 And even with the prefiled, I didn't anticipate being
6 ready by the beginning of September because we don't have
7 prefiled, I'm going to be needing some discovery.

8 OAH DAN GERARD: Ms. Hafkemeyer, you have your
9 hand raised?

10 AMI HAFKEMEYER: Yes. Thank you.

11 I know that we have some information on council
12 availability for those time frames. I'm wondering if it
13 would be helpful to identify those dates for the parties
14 to consider?

15 OAH DAN GERARD: Yes. Go ahead and propose
16 that. And we'll see if that works for everyone's
17 availability. So go ahead. And if it doesn't work, I'll
18 chime in.

19 AMI HAFKEMEYER: Okay. I will also post them in
20 the chat so that people can read them.

21 But we have, for council availability in August,
22 the 16th, 26th, 27th, 29th, and 30th. For September we
23 have the 17th, 23rd, 24th, and 25th.

24 In October the 10th and 11th.

25 OAH DAN GERARD: All right. We'll give you a

1 minute to go ahead and put that in the chat and then
2 we'll see.

3 Ms. Grantham, go ahead.

4 ANDREA GRANTHAM: Yes.

5 I would advise to take off the 29th, as I was
6 reminded that we are also looking at for something else
7 on EFSEC's matter to schedule on that day. So that day
8 would probably not be the best day for the council. That
9 is August 29th.

10 OAH DAN GERARD: Okay. And it's -- I think the
11 parties have made it clear they are not going to be ready
12 sometime in August. So I think those dates themselves
13 will just be stricken.

14 So we'll look towards the second batch of dates
15 and see if there is availability.

16 So, Ms. Anderson, do you have access to the chat
17 and do you see the dates listed by Ms. Hafkemeyer?

18 ERIN ANDERSON: I have looked away. I am
19 looking now. One moment.

20 OAH DAN GERARD: I can read them to you if you
21 prefer.

22 ERIN ANDERSON: That would be good.

23 OAH DAN GERARD: Very good.

24 So as I said, we're taking August off the table,
25 based on your representations, but they have

1 September 17th and then September 23rd, 24th, and 25th,
2 or October 10th through 11th.

3 Of those dates, are you and your witnesses
4 available and be able to participate in any of those?
5 Preferably two consecutive days, if possible.

6 ERIN ANDERSON: I am going to ask the project
7 manager on this case. Her husband is Australian. She
8 will be in Australia I believe from the -- Ms. O'Neill is
9 on the call -- from the 22nd of August to the 22nd of
10 October. So the 17th --

11 LAURA O'NEILL: Thanks, Erin. I can jump in.
12 This is Laura O'Neill with the applicant.

13 Yeah, the availability conflicts we had --
14 Ms. Anderson had proposed with the other parties, ideally
15 the week of September 30th, as I am traveling
16 internationally and not traveling home until
17 September 23rd.

18 So turning around to go straight into hearings
19 the next day is not feasible on our end.

20 OAH DAN GERARD: Are you going to be a witness,
21 Ms. O'Neill? Is that why your participation is
22 necessary?

23 LAURA O'NEILL: Yes, that's correct.

24 OAH DAN GERARD: So, Ms. Anderson, are you
25 telling me, then, that the only days you're available

1 would be at least -- at least her availability would be
2 October 10th or 11th?

3 ERIN ANDERSON: She is available then. I'm in
4 New Zealand that week.

5 OAH DAN GERARD: I'm sorry. You broke up.
6 You're busy that week? Is that what you said?

7 ERIN ANDERSON: I'm in New Zealand the week of
8 the 10th and 11th.

9 Let's have a look at the 29th. If I can get
10 some discovery done, it's possible we could do this in
11 one day on the 29th.

12 OAH DAN GERARD: Is that September 29th?

13 ERIN ANDERSON: Yes.

14 OAH DAN GERARD: The council may not be
15 available.

16 Ms. Hafkemeyer?

17 Sorry, Ms. O'Neill.

18 Ms. Hafkemeyer and then we'll come back to you.
19 Otherwise, it's confusing.

20 AMI HAFKEMEYER: That's correct. We don't have
21 September 29th listed as a date that the council has
22 indicated available.

23 OAH DAN GERARD: Ms. O'Neill, you were going to
24 add something?

25 LAURA O'NEILL: I was going to add that

1 September 29th is a Sunday.

2 OAH DAN GERARD: Oh.

3 LAURA O'NEILL: So if council availability is on
4 the 30th or October 1st, that could work.

5 OAH DAN GERARD: I don't think it's going to
6 work for EFSEC council.

7 Ms. Hafkemeyer, I want to know what flexibility
8 outside of the dates you have proposed, if any.

9 AMI HAFKEMEYER: So we can reach out to council.
10 There may be other dates available, but we would be
11 missing more of the council members, which isn't ideal.
12 They could watch recordings, potentially, to catch up.

13 OAH DAN GERARD: It doesn't give them the
14 opportunity to -- well, I have pause with that because it
15 doesn't give them the opportunity to question the parties
16 in live time, which is a requirement, that they have that
17 opportunity. So I'm not willing to have council rely on
18 recordings if it's going to handicap their ability to
19 make an accurate and complete decision.

20 ERIN ANDERSON: Ms. Hafkemeyer, is the council
21 still available on the 25th of September?

22 AMI HAFKEMEYER: Yes.

23 OAH DAN GERARD: Okay. And we did propose it
24 for two days, though a majority of that time was built
25 into -- as a buffer.

1 If the parties legitimately believe we can
2 complete this in one day, and if need be, we can finish
3 it up on a second day to be discussed after the end of
4 the 25th, I'm open to that.

5 Ms. Anderson, if we set this for September 25th?

6 ERIN ANDERSON: I'm open to that as well, Your
7 Honor.

8 OAH DAN GERARD: And, Ms. Holt?

9 LEEANN HOLT: So my witnesses are available on
10 September 25th. I do, however, have one of my witnesses,
11 she's going to be gone on the 26th. So I don't -- I have
12 not heard back from her on whether that would be an issue
13 for her. Maybe Michelle Mercer could speak to that.

14 OAH DAN GERARD: Right now we're not
15 contemplating blending into the 26th. Just holding the
16 entirety of the hearing on the 25th. And then at the end
17 of that hearing, if we need more time, then we can
18 coordinate amongst ourselves for when we can meet next.

19 It's not the best -- it's not ideal to split up
20 proceedings, but if we can get it on the books earlier, I
21 think that's -- and then roll the dice that we're not
22 going to need the 26th, I think that's the best tack.

23 So with just the 25th, are you and your
24 witnesses available?

25 LEEANN HOLT: Yes.

1 OAH DAN GERARD: Great.

2 Ms. Reyneveld?

3 SARAH REYNEVELD: Yes. That should work for
4 Mr. Korol and counsel for the environment.

5 OAH DAN GERARD: Okay. Very good.

6 And, Ms. Hafkemeyer, just to confirm before we
7 get too much further, the council, in their entirety,
8 most of them, at least, can participate on
9 September 25th; is that correct?

10 AMI HAFKEMEYER: That is correct.

11 OAH DAN GERARD: Very good.

12 All right. So the hearing per the council's
13 request will be set over a Teams video rather than in
14 person. So we will hold it much like we're doing today
15 with a video component on September 25th.

16 I like to start early but most people don't like
17 to start their day at 8:00 o'clock. So if we did it from
18 9:00 a.m. to 5:00 p.m. with a reasonable break in
19 between, Ms. Anderson, would that work for the applicant?

20 ERIN ANDERSON: Yes, that works, Your Honor.

21 I would be interested in knowing if you are
22 wanting us to go fully through and put the public comment
23 period at the end or in between? I just want to make
24 sure if we agree to this that the time for the parties to
25 present isn't shortened by the need to have public

1 comment.

2 OAH DAN GERARD: Sure.

3 Ms. Hafkemeyer, you were going to add something?

4 AMI HAFKEMEYER: For public comment meetings,
5 EFSEC traditionally holds those after the traditional
6 workday, 8:00 to 5:00, to allow members of the public to
7 come speak after their workday.

8 So for Horse Heaven and for other public
9 meetings, the public comment portion has happened in the
10 evening.

11 OAH DAN GERARD: So, Ms. Hafkemeyer, just for
12 sake of my understanding, in the Horse Heaven project,
13 those public comments, were all parties, including the
14 judge, were they present during those public comments or
15 were they simply made available to review after?

16 AMI HAFKEMEYER: I don't recall. I'm sorry. I
17 would have to go back and look. I can do that and get
18 back to the group.

19 OAH DAN GERARD: Thank you. Go ahead and do
20 that real quick, then.

21 All right. So we'll set that issue aside for
22 now.

23 But going back with the proposed times,
24 Ms. Holt, if we did it from 9:00 a.m. to 5:00 p.m., would
25 that work for Benton County?

1 LEEANN HOLT: That would, Your Honor.

2 OAH DAN GERARD: Ms. Reyneveld.

3 SARAH REYNEVELD: Yes, that would work for
4 counsel for the environment. Thank you.

5 OAH DAN GERARD: Okay. And there are other
6 people that are going to participate, including the AAG's
7 advising the EFSEC.

8 Mr. Thompson and Ms. Slocum, would you be
9 available to observe in whatever capacity you are on that
10 date and time?

11 JONATHAN THOMPSON: Yes, that works for us -- or
12 for me.

13 OAH DAN GERARD: Ms. Slocum?

14 JENNA SLOCUM: Yes. Thank you.

15 OAH DAN GERARD: Okay. All right. So from
16 that, we're going to discuss next the prehearing brief
17 and witness and exhibit list deadline for all parties.

18 Customarily, I set those witness exhibit list
19 deadlines, submitted to all parties of interest,
20 including myself and the council, two weeks prior to the
21 evidentiary hearing, which would put us near the first --
22 about the 11th of September.

23 Just a moment here.

24 Ms. Anderson, would the two weeks prior to the
25 evidentiary hearing work for the applicant or would you

1 prefer a week on the same day we're going to set
2 prehearing brief so you would have more time to prepare?

3 ERIN ANDERSON: The 11th is fine.

4 OAH DAN GERARD: I'm sorry. You're very
5 soft-spoken. I didn't hear that at all.

6 ERIN ANDERSON: September 11th is fine. Two
7 weeks.

8 OAH DAN GERARD: Thank you. Very good.

9 Ms. Holt, will the witness list and exhibit
10 deadline of September 11th work for Benton County?

11 LEEANN HOLT: It will.

12 OAH DAN GERARD: And, Ms. Reyneveld, counsel for
13 the environment?

14 SARAH REYNEVELD: Yes, that date will work.
15 Thank you.

16 OAH DAN GERARD: Okay. Within my prehearing
17 conference order, I will give instructions on how to
18 properly label and submit the documents to the other
19 parties.

20 So the next deadline we're going to set in will
21 be the voluntary hearing brief or prehearing brief, if
22 you will. Strictly voluntary. Nobody is required to
23 submit one. We'll set that one week prior to the hearing
24 of September 18th.

25 Ms. Anderson, does that work for you?

1 ERIN ANDERSON: Yes, it does. Thank you.

2 OAH DAN GERARD: Ms. Holt?

3 LEEANN HOLT: Yes, it does. Thank you.

4 OAH DAN GERARD: All right. And, Ms. Reyneveld?

5 SARAH REYNEVELD: Yes, it does. Thanks.

6 OAH DAN GERARD: Okay. A few final questions

7 for the parties and we're going to go around and see if

8 there's any final questions.

9 Ms. Anderson, will either you or any of your --

10 obviously not you, but any of your witnesses benefit from

11 the services of an interpreter in these proceedings?

12 ERIN ANDERSON: No, sir.

13 OAH DAN GERARD: And will either you or any of

14 your witnesses need any reasonable accommodations to

15 meaningfully participate in a video hearing?

16 ERIN ANDERSON: No, sir.

17 OAH DAN GERARD: Ms. Holt, same two questions

18 for you.

19 Will either you or any of your participants need

20 either an interpreter or any reasonable accommodations?

21 LEEANN HOLT: I do not believe so.

22 OAH DAN GERARD: Thank you.

23 Ms. Reyneveld?

24 SARAH REYNEVELD: No. I don't anticipate that.

25 OAH DAN GERARD: Okay. So let me briefly recap

1 what was discussed and see if there's any final orders of
2 business and then we'll go ahead and end today's
3 prehearing conference.

4 Just a moment while I will write this down,
5 please.

6 So the parties have agreed to set the
7 stipulation of issue deadline as August 13th, 2024. All
8 deadlines are by 5:00 p.m. Pacific.

9 The parties have agreed to hold the evidentiary
10 hearing over video format on September 25th, 2024, from
11 9:00 a.m. to 5:00 p.m.

12 The witness and exhibit list for all parties
13 will be September 11th, 2024, also by 5:00 p.m., with a
14 voluntary hearing brief of September 18th, 2024, by
15 5:00 p.m.

16 The parties -- none of the parties have
17 indicated they will benefit from the services of an
18 interpreter or any reasonable accommodations.

19 Ms. Anderson, do you agree that was what was
20 discussed and what we agreed upon today?

21 ERIN ANDERSON: Yes, I do.

22 OAH DAN GERARD: Ms. Holt?

23 LEEANN HOLT: Yes, I do.

24 OAH DAN GERARD: And, Ms. Reyneveld?

25 SARAH REYNEVELD: Yes, that's correct. Thank

1 you.

2 OAH DAN GERARD: Okay. And following today's
3 prehearing conference, I will issue my prehearing
4 conference order with everything we did discuss,
5 including the proper way to list -- exhibit labeling,
6 just to avoid confusion. And those are the things I
7 wanted to discuss today.

8 I'm going to start first with EFSEC to see if
9 there's anything else we need to discuss. There's a
10 couple people on right now that need to speak and then
11 we'll go around the horn to the actual participants.

12 Ms. Holt, we'll come to you second. Let's start
13 with Ms. Hafkemeyer.

14 AMI HAFKEMEYER: I don't have anything else to
15 be discussed today.

16 But I did want to confirm that the council and
17 judge were present at the Horse Heaven public comment
18 meeting associated with the adjudication. So that will
19 also be our plan for this hearing as well.

20 OAH DAN GERARD: Okay. Thank you for that.

21 If that's the case, we probably should build in
22 at least a tentative deadline.

23 When do you anticipate setting that meeting, or
24 is that something I will need to establish,
25 Ms. Hafkemeyer? You have to forgive me for my

1 unfamiliarity with those nuanced practices.

2 AMI HAFKEMEYER: We will look at the calendar
3 and set the dates and notice, but we will certainly reach
4 out for scheduling and availability.

5 OAH DAN GERARD: Thank you. I will not include
6 it my case schedule, if that's the case.

7 All right. Anything else we need to discuss,
8 Ms. Hafkemeyer or Ms. Grantham? I'm not sure who is
9 speaking on behalf of EFSEC at this point.

10 AMI HAFKEMEYER: Nothing else from EFSEC. Thank
11 you.

12 OAH DAN GERARD: Ms. Holt, you have your hand
13 raised? Go ahead, please.

14 LEEANN HOLT: Yes. I just wanted some
15 clarification.

16 We did review the issues that were going to be
17 discussed as listed in the initial order commencing
18 adjudication. And I just want to, I guess, make a record
19 or ask for clarification that since those are quite
20 broad, Benton County would like to reserve the
21 opportunity to discuss things like environmental impact,
22 cultural impact, societal economical impact, and a
23 cumulative impact of the preemption and approval. I
24 think it could kind of fall under both should the
25 counselor preempt and then what conditions may need to be

1 imposed if the council does so make that recommendation.
2 I just wanted to check.

3 OAH DAN GERARD: Well, I can't tell you --

4 ERIN ANDERSON: Your Honor?

5 OAH DAN GERARD: Yes, go ahead, please.

6 ERIN ANDERSON: EFSEC has deliberately and
7 purposefully limited this adjudication to land use alone.
8 And land use has become the comprehensive plan and
9 development code.

10 The matters of environmental, socioeconomic,
11 economic, cumulative impacts and the like fall under the
12 gambet ambit different topics. Those are SEPA, the State
13 Environmental Policy Act, as well as different segments
14 of the EFSEC regulations.

15 I don't believe it's appropriate to, at this
16 point, reopen the council's decision about limiting the
17 topic to land use, with all due respect.

18 OAH DAN GERARD: Ms. Holt.

19 ERIN ANDERSON: And this matter received a
20 mitigated determination of nonsignificance that has not
21 been appealed. So we have a decision already from
22 council that the impacts of this project on each of those
23 topics is not significant.

24 OAH DAN GERARD: Ms. Holt, can you describe for
25 me how that wouldn't be revisiting those issues that have

1 already been decided by that side?

2 LEEANN HOLT: Again, I think they perhaps touch
3 a little bit on things like what conditions the council
4 should include and things of that nature.

5 I understand that this is mostly whether or not
6 this is a land use issue. But in at least the second
7 issues, Your Honor, I do believe they are relevant.

8 OAH DAN GERARD: I think it can be framed in
9 with those issues that have already been decided and
10 established without challenging the underlying facts
11 determined in that.

12 You can certainly make an argument as to what
13 the conditions should be in light of those. And I think
14 that's something you can present, limited to what the
15 conditions the council should include. But not
16 challenging the actual underlying facts themselves.

17 So without telling you how I'm going to rule
18 when you present those -- those evidence or that
19 testimony, you can certainly use that to frame how you're
20 going to prepare your case.

21 LEEANN HOLT: Thank you. Understood.

22 OAH DAN GERARD: Okay. Anything else,
23 Ms. Holt, before we end today's prehearing conference?

24 LEEANN HOLT: No, sir.

25 OAH DAN GERARD: And, Ms. Anderson, anything

1 else before we end today's prehearing conference?

2 ERIN ANDERSON: I did, Your Honor.

3 I was just looking for guidance or affirmation
4 from you and the parties that filing electronically for
5 all future pleadings is acceptable without needing to
6 submit hard copies to everybody. That would be my first
7 follow-up question.

8 OAH DAN GERARD: Service to -- I will access the
9 documents through EFSEC SharePoint. So service to EFSEC,
10 and Ms. Hafkemeyer can confirm this, is acceptable
11 through electronic service.

12 Customarily -- well, actually before I get too
13 far into this, Mr. Thompson, did you want to go ahead and
14 respond?

15 JONATHAN THOMPSON: No, I don't have a response,
16 sorry to this point, but it raised another issue in my
17 mind that I want to just put a bookmark in. Sorry. Go
18 ahead with this topic.

19 OAH DAN GERARD: Okay.

20 Customarily in OAH proceedings, which is what
21 I'm accustomed to working under, service -- electronic
22 service to the other parties is not acceptable, unless
23 there's mutual agreement to do so.

24 I do recall, I think it was in Mr. Korol's --
25 perhaps it was Mr. Eisinger's. I'm not entirely sure

1 whose notice of appearance, that electronic service was
2 not acceptable. So perhaps an agreement between those.

3 I would ask the parties submit electronic
4 documents in accordance with the prescriptions that will
5 be outlined in the prehearing conference.

6 So with that long explanation, Ms. Holt, does
7 Benton County -- are you willing to waive the right to
8 actual physical service and accept it uploading through
9 the SharePoint to be acceptable?

10 LEEANN HOLT: Yes, sir.

11 OAH DAN GERARD: You are willing to -- again,
12 don't feel compelled. I'm not compelling you one way or
13 the other. I'm just -- if we can nail this down now,
14 it's easier because we're all here.

15 LEEANN HOLT: Yes.

16 No, we're fine with electronic service.

17 OAH DAN GERARD: Ms. Reyneveld?

18 SARAH REYNEVELD: We are also fine with
19 electronic service.

20 OAH DAN GERARD: Okay. Then, Ms. Anderson, I
21 think you have your answer for that one.

22 ERIN ANDERSON: Very good.

23 My only other area of -- actually, two of
24 clarification. On the prehearing briefs, the parties had
25 discussed a limit that was consistent with the limit that

1 was used in Horse Heaven, which is 15 pages of written
2 memoranda, double spaced, font size no less than 12
3 point, and a prohibition on oversize briefs. But not --
4 the 15-page count will not include exhibits and
5 attachments.

6 Is that a suggestion so that we can start
7 working on our briefs now? We know what the page limit
8 and size are.

9 OAH DAN GERARD: Customarily I don't set a limit
10 on prehearing briefs. The submission of exhibits within
11 prehearing briefs is not, in my mind, appropriate because
12 those exhibits, at the point, would not have been
13 admitted into the record.

14 So we do run the issue at that point of relying
15 on information within your briefs as -- for more than
16 just argument.

17 So given the limited scope of the issues before
18 us, I don't think it's necessary to set a limit. But I
19 would ask that the parties also understand, if you submit
20 a brief that is too voluminous, there is a very strong
21 possibility your lack of conciseness in your argument
22 will be lost upon the parties reading it. So that's a
23 decision you'll make as an attorney.

24 ERIN ANDERSON: Okay. Then last, I just want to
25 get a clarification so that I understand.

1 On the County's position, they are asking to
2 recommend conditions be placed on the permit to ensure
3 that permit considers local government interests on land
4 use; is that correct?

5 And if that is correct, are they to look to the
6 conditions that are included in the MDNS and advocate for
7 those, or are they opening the book to everything?

8 OAH DAN GERARD: Is that question directed to me
9 or Ms. Holt? I guess I'm not really sure who you're
10 directing that question to.

11 ERIN ANDERSON: I'm directing it, I think to
12 you.

13 Are -- first of all, are the conditions limited
14 to what will -- I mean, issues to say we are limited to
15 conditions that reflect community interest on the topic
16 of land use.

17 And I was looking for affirmation on that. And
18 then was asking whether or not those conditions are to be
19 drawn from those included in the MDNS alone?

20 OAH DAN GERARD: I think at this point, the way
21 that the issues have been initially articulated, where
22 the council should recommend to the governor that the
23 State preempt the land use plans or other development
24 regulations for the site -- hold on. That was the wrong
25 portion.

1 So are you asking if the scope of their
2 arguments or presentation of their cases are limited to
3 what's already been established in the MDNS?

4 ERIN ANDERSON: Let me try again.

5 OAH DAN GERARD: Rephrase your question. I
6 didn't mean to get lost on it.

7 ERIN ANDERSON: I think I can make this easier.

8 The topic of the adjudication of the land use,
9 will their conditions that they wish to explore
10 advocating for, be limited to those that reflect the
11 community interest and (unintelligible) issue to the
12 community interests related to land use?

13 OAH DAN GERARD: Ms. Holt, if you can chime in
14 on that. I'm not really sure I'm comfortable opining at
15 this point on that.

16 LEEANN HOLT: Sure.

17 So I think community interest certainly are
18 going to be our main focus. However, we do not want to
19 close the door on the other impacts, environmental,
20 cultural, societal if that's something that comes up in
21 discovery and is relevant and it has not -- does not
22 deviate from the prior adjudication.

23 ERIN ANDERSON: I'm not sure what we're talking
24 about, the prior adjudication, first of all. So that
25 would be my point.

1 Can you clarify?

2 LEEANN HOLT: Sorry. The MDNS. Sorry.

3 ERIN ANDERSON: I see. Okay. I understand now.

4 What you're saying is the conditions that
5 reflect community interests, you're going to be looking
6 to the MDNS and saying how those inform community
7 interests and how this land is used?

8 LEEANN HOLT: I'm sorry. I couldn't hear you in
9 the last part.

10 ERIN ANDERSON: Let me take this off speaker and
11 speak directly.

12 What I think I heard you say, and I would agree,
13 you are saying that the conditions that you wish to
14 address, land use topic under land use issue 2, are those
15 contained in MDNS; is that correct?

16 LEEANN HOLT: That is what we anticipate at this
17 time. But I don't want to fully close the door if
18 additional things come up based on discovery.

19 ERIN ANDERSON: Your Honor, I would object to
20 that.

21 The topic that EFSEC has defined for this
22 adjudication is clearly land use. We're basing our
23 schedule, we're basing the time that we need for
24 adjudication on a land use adjudication.

25 Reopening environmental, socioeconomic, cultural

1 and the like, turns this into a multi-day, multi-topic
2 adjudication that the council is not instructing us to
3 perform.

4 I would ask that the County addressing of
5 conditions be limited to those factors that speak to land
6 use and how the conditions that have been put out by
7 EFSEC in the land use context reflect the County's and
8 community's interests.

9 OAH DAN GERARD: Ms. Anderson, I think at this
10 point, your objection is a bit -- is premature.

11 Once the submission of the exhibits is -- well,
12 the prehearing briefs and the submission of the exhibits
13 lists are given by all parties, we have an actual firm
14 case of what people's presentations are going to be, once
15 we deal with the admission of the exhibits and potential
16 witnesses, you can object at that point and then we can
17 revisit this.

18 But at this point, I don't have enough
19 information to limit what they may or may not present in
20 their case.

21 ERIN ANDERSON: Very good.

22 Can we address at that time a continuation of
23 the adjudication if the topics expand beyond the land
24 use?

25 OAH DAN GERARD: If it's necessary, that's

1 certainly something you can request, yes.

2 ERIN ANDERSON: Thank you.

3 OAH DAN GERARD: Anything else, Ms. Anderson?

4 ERIN ANDERSON: No, sir.

5 OAH DAN GERARD: Mr. Thompson, you had something
6 else you wanted to bring up. Please go ahead.

7 JONATHAN THOMPSON: Yes. Thank you.

8 So this was just back to the topic of service.

9 And I had -- I had received some calls from some
10 of the counsel for other agencies that have the
11 opportunity to participate in EFSEC adjudication but who
12 haven't exercised that right here. And they had received
13 notices from the parties and were wondering what that was
14 about.

15 So what I have told them is that my
16 understanding would be that from this point forward,
17 there wouldn't be a need to serve those other agencies
18 anymore since they have not indicated they would be
19 participating.

20 So I just want to make sure that's consistent
21 with your -- with your --

22 OAH DAN GERARD: It does appear that everyone is
23 amenable to filing all of their documents through
24 SharePoint or through the online portal with EFSEC.

25 I think that would still -- if the parties have

1 access to that, then they still have access to documents
2 without being inundated with documents they don't
3 otherwise have a basis for. I believe it is consistent.

4 JONATHAN THOMPSON: Very good. Thank you.

5 OAH DAN GERARD: All right. So at this point,
6 I'm just going to open the floor to any other questions
7 or anything else we need to discuss before we conclude
8 today's prehearing conference.

9 Maybe each individual, if you have something, go
10 ahead and raise your hand and I'll call you in the order
11 that the hand is raised. Otherwise, we're going to go
12 ahead and conclude today.

13 Ms. Reyneveld, go ahead, please.

14 SARAH REYNEVELD: Yes. I would just add that
15 our understanding from counsel for the environment's
16 perspective, at least according to my colleague, is that
17 the issues are going to be defined and limited to the
18 land use issues specifically stipulated within these
19 issue areas. And if that broadens, then we may need
20 to -- I would just reserve the right for him to call
21 additional witnesses. So I did want to raise that.

22 And then in addition to that -- there's
23 background noise -- in addition to that, is there going
24 to be a posthearing brief deadline set or did I -- will
25 that be set at a later time or did I miss that?

1 OAH DAN GERARD: No, I didn't set it. I was
2 going to wait until we get to the evidentiary hearing and
3 discuss it at that point to see how long the parties will
4 need. I don't want to set an artificial date too far out
5 if people are going to need less time than more. So we
6 will discuss that at the end of the adjudication.

7 SARAH REYNEVELD: Okay. Thank you so much.
8 That's it.

9 OAH DAN GERARD: Very good.

10 And as far as the concerns about the broadening
11 of the scope, since the parties -- the three parties in
12 particular are, at least in theory, collaborating to find
13 the stipulated facts, at that point, the parties can
14 discuss those concerns about the scope and the limitation
15 of those issues which fall outside of the two issues that
16 have been articulated.

17 So hopefully by that point, everyone can reframe
18 where we are with the issue. If not, I will take it up
19 with any objections at the first part of the hearing.

20 With this --

21 ERIN ANDERSON: May --

22 OAH DAN GERARD: Just a moment, please.

23 Yes, you can, in just a moment.

24 I would actually like to set another date to, if
25 everyone is available, to deal with prehearing matters

1 such as the admission of evidence. I think having the
2 evidence before the council prior to the hearing would be
3 beneficial so they do have context.

4 So I just wanted to put a pin in that and then
5 we'll get back to it after Ms. Anderson was going to add.

6 Ms. Anderson, go ahead.

7 ERIN ANDERSON: I would like clarification from
8 Mr. Thompson about how EFSEC approaches the distinction
9 between topics for an adjudication and issues for
10 adjudication, because I raised a concern about this
11 earlier and was affirmed by the council's counsel that
12 the topic for this adjudication is land use. I would
13 hate to have to reopen that, absent somebody leaving the
14 council to do so.

15 And I think (inaudible) from the counsel. So
16 there is difference between topic and issue. And perhaps
17 Mr. Thompson can explain for the benefit of everybody on
18 this call, what the distinction is.

19 OAH DAN GERARD: Mr. Thompson, if you're willing
20 to answer that question. If you don't wish to, I'm not
21 going to compel you.

22 JONATHAN THOMPSON: And I don't want to step on
23 Your Honor's toes either in terms of how you want to
24 manage the scope of the issues.

25 And I appreciate the point about not answering

1 the question in the abstract if you don't have some
2 specifics in front of you. But I would generally say
3 that my interpretation is that the -- yeah, that the
4 topic is generally limited to whether the council should
5 recommend preemption of land use regulations. And then
6 if it does so, what conditions, if any, it should
7 recommend to include as conditions of site certification
8 to basically serve the purposes or the objectives of the
9 preempted land use regulations.

10 So that would be my interpretation of the scope,
11 the intended scope of the adjudication.

12 OAH DAN GERARD: Ms. Holt, in reviewing what
13 we're looking at, the what conditions should include, I
14 don't -- again, we're a little bit early in the
15 proceedings to really see what your case presentation is
16 going to be, but to have witnesses provide factual
17 testimony that are contrary to the MDNS, I can tell you
18 at this point, I am very strongly going to not allow that
19 testimony, as those have been established; that these
20 considerations, in light of the MDNS, may be better
21 suited for legal argument in a posthearing brief or
22 prehearing brief as to how those would work in after for
23 that second issue.

24 So you certainly can raise -- you can attempt to
25 tell me and the other parties why substantive testimony

1 on those is necessary for that second one. But at this
2 point, I'm not seeing it.

3 But, again, I'm uncomfortable making rulings on
4 the abstract without seeing how it plays in. So that's
5 something we'll pick up at a later date.

6 But please keep that in mind in the case
7 presentation.

8 LEEANN HOLT: Understood, sir.

9 OAH DAN GERARD: Okay. Now, getting back, we'll
10 go around the horn one last time before, but we're
11 pushing the end of where we are today.

12 I would like, actually, to meet ahead of the
13 evidentiary hearing to deal with any prehearing issues,
14 so we're not shortening the time we have for the
15 presentation of the case, as we narrowed it down to one
16 day.

17 I would like to meet sometime, preferably
18 between the voluntary hearing brief and the actual
19 evidentiary hearing of the 25th for a couple hours to
20 deal with the preadmission of the documents and any other
21 thing we need to discuss.

22 And this is going to be, as far as I understand,
23 just the three parties, Benton County, counsel for the
24 environment, Innergex, and EFSEC four parties and then
25 myself.

1 Ms. Anderson, if we meet for two hours sometime
2 between the 18th and the 25th, would you be available to
3 discuss the evidentiary rulings?

4 ERIN ANDERSON: Yes.

5 OAH DAN GERARD: Okay.

6 ERIN ANDERSON: I will be available any of those
7 days.

8 OAH DAN GERARD: Okay. Thank you for that.

9 Then we'll see who has limitations and we'll
10 work backwards from there.

11 Ms. Holt, do you have -- could you meet for two
12 hours sometime between the 18th and the -- preferably the
13 24th to deal with those preadmission?

14 LEEANN HOLT: I can make most times work between
15 the 18th and the 24th, yes.

16 OAH DAN GERARD: Ms. Reyneveld?

17 SARAH REYNEVELD: Yes. It seems like Yuriy
18 has -- Mr. Korol has some availability in that window.

19 And we're talking about September right before
20 the hearing; is that correct?

21 OAH DAN GERARD: Yes. Yeah. I just want to --
22 I want to take care of everything before we get to the
23 hearing, and just hit the ground running once we start.

24 SARAH REYNEVELD: Okay. Yeah, Friday is --

25 OAH DAN GERARD: Ms. -- I'm sorry. You broke

1 up.

2 SARAH REYNEVELD: Friday the 20th looks very
3 free, just FYI.

4 OAH DAN GERARD: Okay. I probably should
5 consult with my calendar to. I haven't been doing that.

6 Yep, Friday the 20th is available for me too.
7 If we did it from 9:00 a.m. to 11:00 a.m. on Friday,
8 September 20th, Ms. Anderson, could you participate at
9 that point?

10 ERIN ANDERSON: 9:00 to 11:00, that certainly
11 works.

12 OAH DAN GERARD: Excellent.

13 Ms. Holt, would that work for you as well?

14 LEEANN HOLT: Yes, sir.

15 OAH DAN GERARD: Very good.

16 Ms. Hafkemeyer, does EFSEC anticipate
17 participating in the prehearing matters?

18 AMI HAFKEMEYER: We would likely sit in to be
19 aware.

20 OAH DAN GERARD: Okay. As long as there's no
21 one actually from the council present, because we may be
22 discussing stuff that otherwise won't be before them. So
23 I just need to put that out there, that I don't want them
24 exposed to information that may otherwise not be
25 admitted.

1 AMI HAFKEMEYER: It would be people on the call
2 today, technical and support staff.

3 OAH DAN GERARD: Okay. Very good.

4 All right. Then we'll set it for -- the second
5 prehearing conference for admission September 20th, from
6 9:00 a.m. and to 11:00 a.m.

7 All right. So one last final opportunity to go
8 around the board to discuss new matters or things we
9 haven't -- we need to talk about before we conclude.

10 One last chance.

11 Ms. Anderson, we'll begin with you. Anything
12 else before we close out today?

13 ERIN ANDERSON: No, sir. Thank you.

14 OAH DAN GERARD: Ms. Holt?

15 LEEANN HOLT: No, sir. Thank you.

16 OAH DAN GERARD: Ms. Reyneveld?

17 Ms. Hafkemeyer, we'll get to you in just a
18 moment.

19 Ms. Reyneveld?

20 SARAH REYNEVELD: Nothing further, Your Honor.
21 Thank you.

22 OAH DAN GERARD: Ms. Hafkemeyer, please go
23 ahead.

24 AMI HAFKEMEYER: For the previous adjudications,
25 filings were sent to our adjudication email,

1 adjudication@efsec.wa.gov and then shared with the judge
2 through the SharePoint.

3 I don't know that all of the parties have access
4 to our SharePoint, so I would anticipate that we would
5 want the filings to be received the same way.

6 ERIN ANDERSON: I don't have access to the
7 SharePoint. This is Ms. Anderson.

8 OAH DAN GERARD: Ms. Taliaferro, I know you
9 handled the SharePoint. Did you want to add?

10 CATHY TALIAFERRO: Yes. I just wanted to -- I
11 agree with Ami Hafkemeyer, the way that we did it in the
12 Horse Heaven, which was our most recent adjudication.
13 Filings were received via email at that email address and
14 then also served on the other parties via email.

15 And then just for you to access through the
16 SharePoint site would be only for internal use and for
17 the judge.

18 OAH DAN GERARD: Okay. The parties can
19 coordinate with EFSEC independently on accessing the
20 SharePoint. That's something beyond me purview.

21 I will consult with EFSEC, including the
22 language for the service in accordance to their practices
23 in my prehearing conference order. So everything we
24 discussed today, within the limitations of my authority,
25 will be included in the prehearing conference order.

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 #1 was taken before me and completed on July 22, 2024, and thereafter was transcribed under my direction; that the Prehearing Conference #1 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 #1 and promptly delivering the same to EFSEC.

IN WITNESS WHEREOF, I have hereunto set my signature on the 6th day of August, 2024.

/s/MICHELLE D. ELAM, RPR, CCR
State of Washington CCR #3335
My CCR certification expires on 6/12/24

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