
WASHINGTON STATE

ENERGY FACILITY SITE EVALUATION COUNCIL

Richard Hemstad Building

1300 South Evergreen Park Drive Southwest

Conference Rooms 206 and 133

Olympia, Washington

Tuesday, October 15, 2013

MONTHLY COUNCIL MEETING

Verbatim Transcript of Proceedings

REPORTED BY: ELIZABETH PATTERSON HARVEY, RPR, CCR 2731

Buell Realtime Reporting, LLC
1411 Fourth Avenue
Suite 820
Seattle, Washington 98101
206.287.9066 | Seattle
206.534.9066 | Olympia
800.846.6989 | National
www.buellrealtime.com

A P P E A R A N C E S:

Councilmembers Present:

Dennis Moss, Acting Chair
 Liz Green-Taylor, Department of Commerce
 Cullen Stephenson, Department of Ecology
 Joe Stohr, Department of Fish and Wildlife
 Andrew Hayes, Department of Natural Resources

Staff in Attendance:

Stephen Posner
 Jim LaSpina
 Tammy Talburt
 Sonia Bumpus
 Kali Wraspir

Local Government and State Agencies in Attendance:

Christina Martinez, Department of Transportation
 Bryan Snodgrass, City of Vancouver
 Jeff Swanson, Clark County
 Larry Paulson, Port of Vancouver

Guests in Attendance:

Adam Torem, Washington Utilities and Transportation
 Commission Administrative Law Judge
 Richard Downen, Grays Harbor Energy Project
 Matt Kernutt, Counsel for the Environment
 Irina Makarow, Bruger Abram
 Tm McManahn, Stoel Rives

Guests in Attendance Via Telephone:

Shannon Khounnala, Energy Northwest
 Jennifer Diaz, Puget Sound Energy\

* * * * *

OLYMPIA, WASHINGTON OCTOBER 15, 2013

10:30 a.m.

-o0o-

P R O C E E D I N G S

~~CHAIR~~ MOSS: It looks like we are at the appointed hour of 10:30. My name is Dennis Moss. I'm the acting chair of the Washington Energy Facility Site Council, and we are convened today in our monthly meeting.

I think the first order of business, having called us to order, is to have Ms. Talburt give us the roll call.

MS. TALBURT: Thank you, Chair Moss.

Department of Commerce?

MS. GREEN-TAYLOR: Liz Green-Taylor for the Department of Commerce.

MS. TALBURT: Department of Ecology?

MR. STEPHENSON: Cullen Stephenson, here.

MS. TALBURT: Department of Fish and Wildlife?

MR. STOHR: Joe Stohr is here.

MS. TALBURT: Department of Natural Resources?

MR. HAYES: Andy Hayes is here.

1 MS. TALBURT: Utilities and Transportation
2 Commission?

3 ~~CHAIR~~ MOSS: I suppose I serve in that
4 capacity as well, since I kept my day job. So I'm Dennis
5 Moss for UTC as well.

6 MS. TALBURT: Thank you.

7 Also local governments and optional state
8 agencies; Department of Transportation?

9 MS. MARTINEZ: Christina Martinez here.

10 MS. TALBURT: Thank you.

11 City of Vancouver?

12 MR. SNODGRASS: Brian Snodgrass here.

13 MS. TALBURT: Thank you.

14 The Clark County representative?

15 MR. SWANSON: Jeff Swanson, here.

16 MS. TALBURT: And the Port of Vancouver?

17 MR. PAULSON: Larry Paulson here.

18 MS. TALBURT: There is a quorum.

19 ~~CHAIR~~ MOSS: Thank you very much.

20 I'm feeling a little behind the curve this
21 morning. I'm just remembering to turn my cell phone down
22 and remind others who might want to be reminded to do the
23 same thing.

24 We have a proposed agenda. Are there any
25 comments, questions? Apparently not.

1 I'll just comment on one point, which is Item
2 6. We have with us today Adam Torem, who is an
3 administrative law judge with the UTC. And he's going to be
4 giving us a bit of a talk on ex parte communications and
5 other matters that are important to all of us as we are on
6 the verge of moving forward, or I guess in a sense are
7 moving forward with the Tesoro Savage application, which
8 will include adjudicatory proceedings. So we'll have more
9 about that later, but I just want to call that to your
10 attention up front.

11 So if there are no changes to the agenda, we
12 will proceed with it as written.

13 Meeting minutes of September 18, 2013 are
14 included in your packets. Councilmembers, are there any
15 changes or comments on the minutes?

16 If not, I will entertain a motion that they
17 be approved. Anyone?

18 MR. HAYES: Chair, I move to approve the
19 minutes.

20 ~~CHAIR~~ MOSS: Is there a second?

21 MR. STEPHENSON: Second.

22 ~~CHAIR~~ MOSS: All those in favor signify by
23 saying "aye."

24 MULTIPLE VOICES: Aye.

25 ~~CHAIR~~ MOSS: It appears that the minutes are

1 approved.

2 All right. We have our project updates. And
3 I'll just go through these one at a time, and if there's a
4 representative either present or on the phone, we'll get an
5 indication of that and proceed it with that.

6 At our last meeting I dispensed with having
7 the representatives from the various companies read through
8 the pre-filed reports.

9 Again, I'll confess that I've been rather
10 busy. I haven't read them before getting here this morning.
11 And so I'm going to ask that you actually do present them in
12 summary fashion, as a favor to me, at least. The others
13 will just have to be bored, I'm afraid. But perhaps there
14 will be some questions.

15 So let's start with the Kittitas Valley Wind
16 Project. Let's see. Mr. Melbardis? Not present and on not
17 on the phone line? Apparently not.

18 We do have the monthly update showing the
19 September production summary. There were no safety
20 incidents, and the project appears to be in compliance as of
21 September 11, 2013 with no complaints as to sound or shadow
22 flicker and no stormwater discharge.

23 Grays Harbor?

24 MR. DOWNEN: Chair Moss, Council, my name is
25 Rich Downen. I'm the plant manager at Grays Harbor Energy.

1 Forgive my cough drop.

2 ~~CHAIR~~ MOSS: That's all right.

3 MR. DOWNEN: This is our report for the month
4 of September. We had no accidents or injuries during the
5 month. Typical environmental reporting.

6 One thing to note, and I'll get to that after
7 the normal routine things.

8 Operations and maintenance, we operated 17
9 days during the month of August -- I'm sorry. That's a
10 typo. I had to think about what month it is. That is
11 during the month of September, producing about 200,000
12 megawatts, and no site visits for the month.

13 So the off normal things, the engineering
14 report is steadily progressing, kind of in its final stages.
15 There will be more to come in the months to come.

16 We received our draft RATA and Emissions
17 Testing Report. On Unit 2, the testing for sulfuric acid
18 mist emissions were analyzed to be greater than the
19 permitted limit. And the number that they came out to be is
20 -- there's a few different methods of performing that test,
21 and you kind of do a dummy check on it by saying this is the
22 sulfur content for the volume of fuel that we brought in,
23 and the number that came out from the testing is greater
24 than by about factor of ten, I believe of what could
25 possibly be in there, so -- for that test.

1 And at the same time Unit 2, which is the
2 twin, right, came out with a normal rating.

3 So we think that that's a faulty test. And
4 we're working with Mr. LaSpina and ORCAA to draft a letter
5 to talk about resolution of that.

6 ACTING CHAIR MOSS: Is it anticipated there will
7 be a retest or something?

8 MR. DOWNEN: This has happened in the past.
9 And our permit requires us -- I'm sorry; I don't have the
10 method number correct. But it's our permit number requires
11 a specific method that Bob Moody (phonetic) from ORCAA is
12 not very fond of, but it's what's required. And he's not
13 very fond of it because you get some bad test results like
14 this.

15 This has happened once, I believe about three
16 years ago. And so that's -- that's what happened three
17 years ago, is the two units are identical. So if they were
18 both at that -- at an elevated value, you would think maybe
19 there's something wrong. But in this case, one is right
20 where it should be and the other is erroneous.

21 So in the past that's what's happened. But
22 I'll leave that to the process of ORCAA making a
23 recommendation. So that will probably be something that we
24 discuss, I would think next month at the meeting.

25 And then the other -- only other thing was

1 there's a noise complaint received by EFSEC staff on
2 September 19, communicated to the plant on the 20th. The
3 complaint was regarding noise on the 19th at about 5:00 in
4 the morning.

5 Our response to EFSEC was that Thursday
6 morning during the plant startup, we had a steam turbine
7 trip due to an operator error implementing the plant startup
8 procedure. After the trip, a low pressure steam vent was
9 opened to prevent the lifting of relief valves. This vent
10 was the likely source of the noise.

11 Review of my data determined relief valves
12 did not lift during the trip. The vents, which are called
13 sky vents, are used to dump excess steam to prevent lifting
14 relief valves. The vents discharge to the atmosphere
15 through installed silencers.

16 So there was a brief few minutes there when
17 the steam turbine trips, you've got steam built up. You
18 have to get rid of it, And you can't put it through the
19 steam turbines. So some of that steam was vented.

20 I would say that that's not an -- obviously a
21 trip is an abnormal condition, but it's not something that
22 we -- you know, I think in the months of August and
23 September we probably had three plant trips prior to this.
24 And everything was the same between those trips and this
25 trip. So I'm not sure, you know, if a neighbor -- if it was

1 just the right atmospheric conditions so that a neighbor
2 could hear it when they're not used to hearing that, or I'm
3 not sure.

4 But there was nothing out of the ordinary
5 with that plant trip compared to others.

6 ACTING CHAIR MOSS: Was there any danger
7 associated with that event?

8 MR. DOWNEN: No. That's what these valves
9 are for. They're just really -- you know, they're 120 feet
10 in the air.

11 ACTING CHAIR MOSS: Only to birds, then.

12 MR. DOWNEN: Right.

13 ACTING CHAIR MOSS: Mr. LaSpina, did you have
14 something for us on this?

15 MR. LASPINA: I can provide a bit of context
16 to the situation.

17 The SEA for the facility requires the
18 facility comply with the state noise standards. The state
19 noise standards make provision for temporary exceedances of
20 the noise standards.

21 And I'm not saying that they exceeded the
22 standards. But so for instance, the rule allows a 15-minute
23 period during which -- it reflects the idea that
24 occasionally industrial facilities do make temporary loud
25 noises. So the rule provides for 15-minute exceedances of

1 the standards, if necessary, in such a case as Mr. Downen is
2 talking about.

3 MR. DOWNEN: Or if I could, it just increases
4 the maximum noise. So there's still a limit, but it bumps
5 up. It would be like bumping up the speed limit for 15
6 minutes during an upset condition. And then it comes back
7 to normal.

8 ACTING CHAIR MOSS: And the report indicates
9 that Grays Harbor Energy tried to contact the complaining
10 party, but was unable to reach them. I assume there will be
11 some further followup to make sure that that contact is
12 made?

13 MR. DOWNEN: We will attempt. We've left
14 messages.

15 ACTING CHAIR MOSS: And I know EFSEC staff
16 has in the past taken a hand in this. Will we be making
17 effort to do that?

18 MR. LASPINA: Yes, sir.

19 ACTING CHAIR MOSS: Questions?

20 MR. STEPHENSON: Thank you, Chair Moss.

21 Rich, operational error, I understand these
22 things happen. But have we counseled the employee and let
23 other folks know about this possible problem during the
24 startup procedure?

25 MR. DOWNEN: Yes. It's not a black and

1 white, don't touch this switch. Startup is pretty
2 complicated. There's an elaborate warmup procedure because
3 you're got cold metal that you're trying to heat up and
4 wherever it heats up, it's a different rate than the shell.
5 And so every startup is dynamic and every one is a little
6 bit different.

7 So we talk about it. We do lessons learned on
8 any of these things that, you know, we miss some generation
9 and so it costs us. So we train on every event like that
10 with all of the staff.

11 ACTING CHAIR MOSS:. Okay. Anything else,
12 Mr. Downen?

13 MR. DOWNEN: I don't have anything. But I'm
14 willing to answer any questions.

15 ACTING CHAIR MOSS: Any other questions from
16 Council?

17 All right. Well, thank you very much for
18 being here. And we appreciate your explanations on our
19 various questions. Thank you very much.

20 MR. DOWNEN: Thank you.

21 ACTING CHAIR MOSS: All right. Next is the
22 Chehalis Generation Facility. Anybody present or on the
23 phone for Chehalis?

24 Apparently I scared everybody off last month
25 by not letting them read their reports.

1 What do we have here? No safety incidents at
2 Chehalis. 3968 days without a lost time accident. That
3 seems pretty impressive to me. I don't know.

4 The stormwater and wastewater is in
5 compliance with permits.

6 Staffing is full at the plant at 19.

7 Capacity factor operations last month of
8 83.75 percent, with the year to date capacity factor of
9 37.28 percent.

10 No operational or maintenance anomalies in
11 September.

12 No air emission deviations, wastewater or
13 stormwater exceedances or spills during the month of
14 September, and no noise complaints.

15 All right. So that's Chehalis.

16 Anything from staff on Chehalis? Okay.

17 MR. HAYES: Chair, are we certain that the
18 phone line is working? I haven't heard anybody trying to
19 call in.

20 ACTING CHAIR MOSS: That's a good question.
21 It's supposed to be working.

22 THE COURT: Jennifer Diaz here from Wild
23 Horse.

24 ACTING CHAIR MOSS: Ah, Jennifer Diaz saves
25 the day and lets us know our sound system is working.

1 And you are indeed next, the Wild Horse Wind
2 Project, so if you would like to proceed.

3 MS. DIAZ: Sure. Thank you, Chair Moss and
4 Councilmembers. For the record, my name is Jennifer Diaz,
5 environmental manager for Puget Sound Energy up at the Wild
6 Horse Wind Facility.

7 I have a very short project update for this
8 month. For wind production, generation totaled 47,684
9 megawatt hours for an average capacity factor of 24.29
10 percent.

11 The Solar Demonstration Project generated
12 70.4 megawatt hours.

13 There were no lost time accidents or safety
14 incidents.

15 And I have nothing to report this month for
16 compliance or environmental.

17 I'd be happy to answer any questions
18 councilmembers have.

19 ACTING CHAIR MOSS: Any questions,
20 Councilmembers? No? Apparently not.

21 Well, Ms. Diaz, thank you very much for being
22 here or present on the phone and giving your report. We
23 look forward to hearing from you next month.

24 All right. That brings us to the Columbia
25 Generating station and WPN 1/4.

1 Ms. Khounnala, are you on the phone?

2 THE COURT: Yes. This is Shannon Khounnala
3 from Energy Northwest. And thank you, Chair Moss.

4 To start out, reviewing Columbia Generating
5 Station operational status, we're operating at 100 percent
6 power, and we've been online for 112 days and have no events
7 or safety incidents or any other regulatory issues to report
8 out on Columbia.

9 ACTING CHAIR MOSS: All right. Any questions
10 on Columbia? Apparently not.

11 MS. KHOUNNALA: All right. Moving on to WNP
12 1/4, to give the Council an update on our water rights
13 discussion, the month of October has been a good month for
14 us in regard to water rights.

15 In the early part of this month, we had the
16 opportunity to perform a critical step in our application
17 process for water rights for the facility, and with the
18 support of EFSEC staff, as well as the Department of Energy,
19 we met with the Department of Ecology for our
20 pre-application meeting.

21 And we expect that we will be working with
22 the Department of Energy on the submission of our water
23 rights application, certainly by the end of this month. And
24 from what we learned at our pre-application meeting, the
25 Department of Ecology will begin working on our applications

1 essentially right away. So we found this month to be a good
2 step forward in this long awaited process.

3 ACTING CHAIR MOSS:. You sound encouraged.

4 MS. KHOUNNALA: Yes. Finally some
5 encouragement.

6 ACTING CHAIR MOSS: Great.

7 MS. KHOUNNALA: Any questions regarding WNP
8 1/4?

9 ACTING CHAIR MOSS: Councilmembers have
10 questions on this? No? Apparently not.

11 Well, thank you very much, and we'll look
12 forward to hearing future updates as you move forward with
13 the process.

14 MS. KHOUNNALA: Thank you, Chair Moss.

15 ACTING CHAIR MOSS: And let's see. This
16 brings us to Item G on the agenda, which is referred to here
17 as the Vancouver Energy Distribution Terminal. And Ms.
18 Bumpus?

19 MS. BUMPUS: Good morning, chair Moss and
20 Councilmembers. My name is Sonia Bumpus, and I'll be
21 providing the update for the Tesoro Savage Vancouver Energy
22 Distribution Terminal Project.

23 Just a few things: EFSEC and our consultant
24 are currently reviewing the application for site
25 certification.

1 A determination of significance and SEPA
2 scoping notice were issued on October 3.

3 The public comment period will be from
4 October 3 to November 18, providing a 45-day comment period.

5 Also there are currently two public meetings
6 scheduled in the Port of Vancouver.

7 The first public informational meeting will
8 be held October 28 at Clark College from 6:00 to 9:00 p.m.

9 The following evening, on October 29, the
10 first SEPA scoping meeting will be held also at Clark
11 College from 6:00 to 9:00 p.m.

12 Does Council have any questions at this
13 time?

14 ACTING CHAIR MOSS: I'm wondering in
15 connection with this, Ms. Bumpus, if you were also following
16 the activities that are taking place throughout the state
17 with respect to the various coal train and other oil
18 projects as well.

19 I know that under SEPA at some point there
20 will be some consideration of cumulative impacts, and I'm
21 wondering what efforts staff is making to follow these
22 various projects.

23 MS. BUMPUS: Yes. We are aware that there's
24 the Millennium Project and also some other crude by rail
25 projects that are going on in Hoquiam.

1 And we are following those and just watching
2 to see what unfolds with those.

3 ACTING CHAIR MOSS: Okay. Thank you for
4 confirming that.

5 Any other questions of Vancouver Energy
6 concerning the Tesoro Savage project in Vancouver?

7 MR. POSNER: Chair Moss, I'd just like to
8 also carry the conversation on a little more just in terms
9 of logistics for the two days.

10 ACTING CHAIR MOSS: Sure.

11 MR. POSNER: Just to let you know that we are
12 in the process right now of looking at the various options
13 as far as lodging. We're planning on staying -- staff is
14 planning on staying the first night, and also planning on
15 staying over most likely the second night as well.

16 We're expecting both meetings to go probably
17 at least until 9:00 p.m., and by the time we get packed up
18 and out of there, we expect it to be later than that.

19 So we are planning on staying over the first
20 night and most likely the second night as well.

21 We will be able to provide transportation for
22 councilmembers here in Olympia if you wish to drive with us.
23 We will have a couple vehicles available. So we plan to
24 leave here probably around 1:30 from the UTC office on the
25 28th, which will give us enough time to get down there and

1 then also eat, have dinner, and then be at Clark College
2 probably about an hour before the meeting starts.

3 So the other option is if councilmembers
4 choose, you can drive yourself or find other means to get
5 there.

6 And then of course our local representatives
7 we expect will take care of your own lodging and whatever.
8 So this is mainly for the Olympia councilmembers just in
9 terms of logistics.

10 So that's -- what we'd like to do is by the
11 end of the week if you could let Kali know your preferences
12 in terms of whether you want us to drive you down there.

13 And then also for the non-UTC councilmembers,
14 which is most of you, we can reserve a room for you;
15 however, we would need your credit card. Or you can do it
16 yourself. We will know probably on Friday where we'll be
17 actually staying or a suggestion of a good place to stay.
18 So we can provide that information to you Friday or Monday.

19 So if you could just let us know what your
20 travel preferences are, we could work with you on that.

21 ACTING CHAIR MOSS: Okay. Thank you for that
22 briefing.

23 And I will say I think Andy ~~Harris~~ and I are
24 the only two sitting members of the Council at the moment
25 who have been through this process before. And I can say

1 from that experience that the staff works a lot harder than
2 we do and will be there before we have to arrive and will be
3 there after we leave. So just a caution about tying
4 yourselves to them for transportation or other purposes.
5 You may find yourself standing around being asked to carry
6 boxes or whatnot. So not that that's a bad thing; I just
7 want you to be alert.

8 In addition to that, these meetings do
9 sometimes run over if we have surplus of turnout and we feel
10 we can extend it a little bit and the facility will let us.
11 So that could run a little later than 9:00. And that's
12 happened in the past, too.

13 And I know some years ago, we had -- the
14 turnout promises to be large based on what we've seen with
15 respect to other projects around the state. Some years ago
16 we had the Sumas Energy Project back around 2000. It
17 produced turnouts in the hundreds. And by the end of the
18 evening, you'll be tired. So just a caution.

19 So of course those of you who are local, it's
20 not an issue. But for those of you who choose to drive
21 home, it can be a long evening, so just a few words of
22 caution.

23 Any other comments?

24 MR. STOHR: Steve, I was wondering if there
25 are any other materials we can read in terms of doing some

1 homework and being as familiar as possible with the site,
2 the issues, et cetera. Anything more that you have that you
3 could share?

4 MR. POSNER: Well, I assume all of you have
5 copies of the application for site certification. I think
6 that's probably the best document for you to become familiar
7 with if you have time to read that. I think that would be
8 very helpful.

9 We really don't have any other documents.

10 If you've read some of the notices we've
11 issued, the SEPA scoping notice, the public comment notice,
12 we expect that we will actually have our -- fulfill our
13 requirements to issue notice in local papers this week with
14 the legal ad.

15 And then we're going to have a display ad
16 that runs the weekend just to make sure that we get the
17 information out to the public so that they have an
18 opportunity to participate.

19 One other thing, though, that I just want to
20 bring up is that there had been some questions asked of me
21 concerning -- and we brought this up at the last month's
22 meeting about a possible site tour, and there were questions
23 about whether or not that was going to happen.

24 And I defer that to Chair Moss to talk in
25 detail, but my understanding is that it would probably be

1 best to wait as far as scheduling that until we have a
2 permanent appointment for the EFSEC chairperson.

3 ACTING CHAIR MOSS:. Yes, I should comment on
4 that. In fact, I did have a conversation with the
5 governor's office yesterday to get an update on the process.
6 And I understand that the governor's office is on track, but
7 they will not have any action today or yesterday, they told
8 me. So I'm not sure how long I will be sitting here as
9 acting chair or who will be sitting here when I'm no longer
10 acting chair.

11 But in any event, we have been a little bit
12 reluctant to get too much formal process under way for the
13 reason that it would lock whoever occupies the seat on a
14 more permanent basis, lock them in. If it turned out to be
15 me, that would be fine. But if it didn't, that would not be
16 fine.

17 So we will, though, I think depending on how
18 things eventually -- I'm sure it will be either I or whoever
19 is the permanent chair will want to initiate something of a
20 more formal process promptly so we can start receiving more
21 information through the formal processes by which we do
22 that. And then in addition to having the 600-some page
23 application to read, we'll have all sorts of other things to
24 read.

25 And you'll all hear as soon as I do in terms

1 of any action from the governor's office.

2 All right. If there's nothing else on that
3 project?

4 All right. Let's move on to the report from
5 EFSEC staff, second quarter cost allocation. I guess Mr.
6 Posner, is that the next?

7 MR. POSNER: Yes. Let's do that next on the
8 agenda and then we can do the ex parte presentation.

9 ACTING CHAIR MOSS: Yes, let's do that.

10 MR. POSNER: So as we do at the beginning of
11 every quarter, we calculate the nondirect cost allocation as
12 the percentage that we charge each one of our projects for
13 nondirect costs.

14 And there is in your packet a copy of the
15 latest calculations for the second quarter fiscal year 2014,
16 October 1 through December 31. And as we typically do just
17 for those who are on the line, we read off percentages so
18 I'll go ahead and do that.

19 For the Kittitas Valley Wind Power Project, 7
20 percent; Columbia Generating Station, 22 percent; Wild
21 Horse, 7 percent; WNB 1-4, 3 percent; Whistling Ridge Energy
22 Project, 4 percent; the Satsop Combustion Turbine Project, 9
23 percent; Chehalis Generation, 9 percent; Desert Claim, 2
24 percent; BP Cogeneration, 2 percent; Grays Harbor Energy, 4
25 percent; and Tesoro Savage 31 percent.

1 That concludes my presentation. Happy to
2 answer questions councilmembers have.

3 ACTING CHAIR MOSS: Any questions?
4 Apparently not.

5 All right. So that brings us to the final
6 item of substance on our agenda. And I see Judge Torem has
7 taken the hot seat here in the center of the room.

8 And I'll just ask to you go ahead and take
9 the floor.

10 JUDGE TOREM: Thank you, Chair Moss.

11 Let me introduce myself to those of you I
12 haven't met yet. I'm Adam Torem. I've been an
13 administrative law judge going on 13 years now, first with
14 the Office of Administrative Hearings. And that's how I met
15 this Council initially. I was appointed back in 2003 or '4
16 to work with the Council on the Kittitas Valley Wind Power
17 Project, and subsequent to that, although we took it up
18 first at the hearing stage, the Wild Horse Wind Power
19 project.

20 I'm back now as a UTC ALJ, and with the
21 merger of these two agencies in some function have been
22 asked to serve as the administrative law judge for the
23 upcoming hearing on the Tesoro Savage project.

24 I'm going to be working with an Ann Essko,
25 who I've worked with in the past as well. She's our

1 assistant attorney general. She's not here today, but will
2 be back -- I think she's on an extended trip. She'll be
3 back the first part of November. So for those of you who
4 have not met Ms. Essko, you will after this informational
5 hearing in a couple of weeks and the first SEPA scoping
6 meeting.

7 Now I want to talk to you today about some
8 things you are going to be doing differently than you just
9 heard on the agenda. The monthly business of EFSEC at these
10 Council meetings tends to be reviewing the status of already
11 approved projects, pending adjudications, and it's that word
12 "adjudication" that triggers some special rules.

13 Some of you, again, have not sat with EFSEC
14 on an adjudication ever, but you may have done it at a local
15 governing body acting in a quasi-judicial fashion.

16 And when you're a decision maker, you have to
17 take into consideration what everybody behind me and
18 everybody in the public thinks about what you're doing. And
19 their number one concern is not only based on what the
20 outcome is, but how you reached that outcome and whether
21 your decision making process is fair, transparent and free
22 from bias. And that's really the concern up front that you
23 want to make sure the appearance you have and the actual
24 decisions are fair.

25 So the application from Tesoro Savage is

1 going to be considered under the Administrative Procedure
2 Act. It's RCW 34.05. And there's a prohibition in there on
3 ex parte communications.

4 I've got a handout for you that's going to go
5 through sort of a question and answer format. I cobbled it
6 together from previous handouts on this topic. And between
7 Judge Moss and I, we tailored it to something only on ex
8 parte and considerations of appearance of fairness. I'll
9 give that to you when I'm done today. And make sure, if you
10 have any questions once you read it, please be in touch with
11 me or Ms. Essko.

12 It's a three-page handout. And the fourth
13 page is a copy of RCW 34.05.455, and that's the ex parte
14 rule.

15 You're going to be hearing about the ex parte
16 communications prohibition, as well as something called the
17 Appearance of Fairness Doctrine.

18 The Appearance of Fairness Doctrine, probably
19 those of you from the City of Vancouver, maybe the Port and
20 Clark County, know it applies in land use hearings
21 specifically. There's a separate statute on that.

22 ~~CHAIR~~ MOSS: Could those on the bridge line
23 please mute your phones. We're getting all sorts of
24 interesting sounds of things being poured and whatnot. So
25 please mute your phones if you're on the bridge line.

1 Otherwise, I'll have to turn you off.

2 JUDGE TOREM: What's key under all of these
3 issues, whether it's a local issue, or now with this Council
4 under the state law, is you're all considered to be
5 presiding officers, individually and as a group.

6 And when I sit with you in the adjudicative
7 phase, I'll also be a presiding officer. But as Ms. Essko
8 likes to remind me, I'm more of a traffic cop than I am an
9 actual decision maker. I don't get a final vote in how the
10 recommendation to the governor will go.

11 But I will be delegated to assist in making
12 individual decisions on procedural issues if there are
13 written motions during the case. But certainly if there's
14 an objection to hearing evidence, I'll be ruling on that,
15 probably in conjunction with some elbow pushing from the
16 chair, depending on who that is. But I'll be issuing the
17 ruling verbally and on behalf of the Council. That will be
18 my role as we go forward.

19 Your role as we go forward is -- you might as
20 well consider it started when you were appointed and when
21 you got a copy of the application. From that point forward,
22 we know we're going to have this two-track process: One
23 under the SEPA rules, and another one of adjudicating the
24 application. It's that latter one that the ex parte rules
25 strictly apply to.

1 The Appearance of Fairness Doctrine, does it
2 strictly apply to this Council? There's some disagreement.
3 Our AAG says probably not. But she knows that she had to go
4 back and defend it to the Supreme Court in the Kittitas
5 Valley case, which did say that we didn't violate the
6 doctrine. So if we didn't violate it, there's an argument
7 that it applies to us. So if you want to read that piece of
8 the Kittitas Valley opinion, I have an excerpt of that I can
9 send to you as well.

10 As presiding officers, all of your decisions
11 have to be made on the record. The record is being taken,
12 as you can see, by a court reporter today for this hearing,
13 and at the adjudication it will be the same thing.

14 We're going to talk about some things that
15 are not strictly on the record. You can't help but hear
16 what's happening in the newspapers and on television about
17 this project. But this is not like a criminal trial
18 proceeding where we need to sequester the jury and worry
19 about these outside influences.

20 What we do want to make sure is while you
21 continue to read the newspaper and listen to the news and
22 maybe read the blogs, you probably shouldn't be commenting
23 and adding to the blogs as an EFSEC Council member. You
24 want to keep your opinions to yourself. And you want to let
25 those opinions continue to develop, but you don't want to

1 prejudge anything that's out there.

2 So I won't tell you, and I don't think the
3 chairman will tell you, don't read about it. Get informed.
4 You're supposed to have expertise. Each of your agencies
5 appointed you for that exact reason. You'll continue to
6 develop that expertise. We can't adjudicate this in a
7 vacuum.

8 But we will have a full record, a lot of
9 expert testimony, and an opportunity to cross-examine those
10 experts and watch other attorneys do the same thing, and
11 really flesh out difficult issues on what your ultimate
12 recommendation to the governor is going to be.

13 If you read something that you think should
14 be in the record for everybody, bring it to the chairman's
15 attention or my attention or maybe Ms. Essko, and we can see
16 if there's a way to make it an exhibit so that you're not
17 the only one influenced by that.

18 But again, newspaper articles are not written
19 by the experts. They're summaries. News stories are not
20 nearly as in depth as what you're going to experience over
21 the next months, course of a year. So any of those pieces
22 probably isn't going to be the triggering factor. But if
23 you think it is, let us know, and we'll make sure that that
24 particular piece gets due attention for the Council and that
25 there's no outside influence that someone can't respond to.

1 And that's really the key for the ex parte
2 rule. If you are approached by somebody outside a council
3 meeting, you're approached by somebody outside of a hearing,
4 and you find yourself in a conversation, that's an ex parte
5 communication. It's by one of the other parties in the
6 absence of the others. Or maybe it's in the absence of no
7 parties; it's just some other interested person who really
8 is not directly involved in the case but bent your ear.

9 Discourage that kind of interaction at
10 cocktail parties as they come up in the holiday season.

11 Discourage that even when you come to the
12 informational meeting next week. We'll introduce you and
13 excuse you from socializing with folks right up front and
14 explain to people you have to act like a judge and you can't
15 be out there glad handing with the general public. They may
16 introduce themselves, but cut them off if they say they want
17 to say something to you individually. They're going to have
18 a microphone and three to five minutes to comment to you
19 anyway. And at that point, you're a captive audience.

20 Out in the audience, as you're mingling and
21 introducing yourself and your position, leave it at that.

22 If you find somebody does bend your ear, let
23 us know on the record at a meeting like this. You make a
24 disclosure.

25 If needed, we can make a written notice to

1 the rest of the parties. And the way to cure that,
2 according to the law, is to go out and say, Does anybody
3 want to comment on this particular issue.

4 And worst case scenario, if you were the one
5 being interviewed on TV news and said your piece about the
6 project before we decide, maybe there's a challenge to
7 disqualify you. It's rare. You'd have to step way over the
8 line.

9 But I want to let you know if you have an ex
10 parte communication, that's not too unusual. At the
11 beginning of every session, we might have an opportunity for
12 disclosures. You might say, "I was at the city council
13 meeting and somebody else commented on this. There's a
14 record of it from this date. I was there. And if anybody
15 wants to review the transcript, I can provide it." That
16 would suffice.

17 All of that is contained in this handout.
18 And I hope it will give you an idea of the special status
19 you take on as councilmembers and the responsibilities you
20 have to each other, the Council as a whole, the integrity of
21 the process, the applicant, and all the eventual parties
22 we're going to see over the next months.

23 Chairman Moss, anything else?

24 ACTING CHAIR MOSS: Thank you, Judge Torem.

25 I'll add a couple points, and we'll take

1 questions as well.

2 And for those of you who don't know about my
3 day job, I'm also an administrative law judge for the
4 Utilities and Transportation Commission. I've been doing
5 this for 16 years here, and I've been practicing in this
6 type of arena for 30-some years. So I have a little bit of
7 experience with it.

8 The couple of things that Judge Torem said
9 that I want to just touch on, one is the appearance of
10 fairness. This is critically important, whether it
11 technically applies to us or not. To me, it doesn't matter.
12 It applies to us. We have to keep -- give scrupulous
13 attention to conducting ourselves in a way that shows the
14 public that we are deciding these matters as we are supposed
15 to, exclusively on the record in the case, and not being
16 influenced by individual communications or getting
17 information from inappropriate sources that's not being
18 shared with others.

19 Ex parte communications almost every time can
20 be cured. They happen. They're inevitable. You will find
21 it very challenging to go to one of these public comment
22 hearings and get up and walk to the door without having
23 someone approach you and say something about the project.
24 Technically speaking, that's an ex parte contact. You need
25 to stop the conversation and say, I'm sorry; we can only

1 receive your comments on the record. That's what we're here
2 for.

3 We don't engage the public in a conversation
4 when we go out on the road. We listen politely to what they
5 have to say. It's all recorded. And we consider the
6 comments during the deliberative process. So it can be
7 challenging.

8 And then there are those who may wish to
9 influence you for reasons of their own. And they may call
10 you. They may send you a letter.

11 If they send you a letter, that's
12 particularly easy. You just put that letter in the record
13 and explain that the communication came to you unsolicited.
14 And that way, any party in the case can respond if they feel
15 the need to do so.

16 That's the whole point, is to maintain the
17 fairness. So if somebody sends a letter and says, This is
18 the greatest thing since sliced bread, somebody else can
19 send me a letter and say, We're going to make toast out of
20 that. So that's the whole idea, is to maintain this balance
21 and fairness.

22 I think for now that's all have I to say
23 about the concerns that Judge Torem has has addressed.

24 I know some of you probably sit on city,
25 county governments. You have these same issues there.

1 Our other councilmembers may have
2 participated in the formal adjudicative process in one
3 capacity or another, so have some familiarity with this.

4 But we do have Judge Torem available. We do
5 have the value of my experience in this regard. So any time
6 you have a question or a concern, please don't hesitate to
7 bring it to our attention. It's far better to let us know
8 and let's get it cured quick if there's a need to do so.
9 And typically there won't be any problems.

10 JUDGE TOREM: One of the things that comes
11 up, and Chair Moss and I talked about this before, is who
12 can you talk to?

13 You shouldn't feel completely isolated. As
14 you look around, you have the whole Council. Individually,
15 talk to each other. You have me as the ALJ. You have Ms.
16 Essko as the attorney general you can call about particular
17 issues. And you can also talk to EFSEC staff.

18 Those of you that come from an agency that
19 might be intervening in the case or might be having active
20 staff investigation or involved in making comments, you can
21 talk to agency staff, but I think you need to be careful to
22 avoid those that are taking a partisan role in the case.

23 ~~CHAIR~~ MOSS: Well, indeed, you can't talk to
24 them.

25 JUDGE TOREM: Those folks, you can't talk to.

1 Other agency staff, if you need them to run
2 down something within Transportation, within Commerce,
3 within Ecology for you to help focus your expertise that you
4 bring, make sure that there's sort of a screening, that this
5 person is working with you and is not participating actively
6 in the agency's formal presentation of the case. We can
7 help work that out for you with your agency director as
8 needed and formalize that so there's no question in an
9 appearance of fairness that you're being influenced by your
10 agency's position.

11 You're here as an independent decision maker
12 and representing the Council. You may have a complete
13 difference of opinion from the person that testifies, if
14 any, from your agency.

15 So who can you talk to? It's mainly within
16 EFSEC. And we can help you figure out within your agency if
17 there are special considerations.

18 ACTING CHAIR MOSS: At the risk of belaboring
19 this, I should mention the one important exception to the ex
20 parte rule, which is procedural matters. If a question or
21 concern or a point someone wishes to make is exclusively
22 concerning the process or procedure, that's not considered
23 to be an ex parte communication.

24 So if one of you local representatives is
25 approached, for example, by someone in your community that

1 says, What happens next?, you can have that conversation.
2 You can say, What happens next is we're having this meeting
3 or that meeting or hearing, or whatever it may be. That's
4 fine.

5 It's probably not a bad idea to still let the
6 judge know you had the conversation at some point. But it's
7 not an ex parte contact.

8 And we frequently get that as administrative
9 law judges. We have lawyers walk into our offices all the
10 time who say, Judge, I have a procedural question for you,
11 which means they're probably going to try to do something
12 inappropriate, so you better be on guard.

13 All right. I think that's probably enough on
14 the subject for today.

15 JUDGE TOREM: Unless there's specific
16 questions, but I'll hand out the item.

17 And you can find me. The last name is
18 T-O-R-E-M in the UTC global directory on the e-mail. And
19 those of you that need my phone number, I'm happy to give it
20 to you after the meeting today.

21 ACTING CHAIR MOSS: All right. Is there any
22 other business to come before us today?

23 Anyone have any comments, questions?

24 Anything from staff? Yes, Mr. Posner.

25 MR. POSNER: One other item, just so

1 everybody's aware of it, and you may have already seen it.
2 In your packets is an updated roster. We have quite a few
3 new Council members, and I just wanted to make sure that
4 this is your contacts list, if you will, for other folks,
5 including staff.

6 That's all. Thank you.

7 ACTING CHAIR MOSS: Okay. All right. Well,
8 it appears that we have no further business to conduct
9 today. So I thank you all very much for being here today
10 and participating with us, and we will be adjourned.

11 (Whereupon, the meeting was adjourned at
12 11:15 a.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4 CERTIFICATE OF REPORTER)
5 STATE OF WASHINGTON)
6) ss
7 COUNTY OF KING)

8 I, Elizabeth Patterson Harvey, a Certified
9 Shorthand Reporter, Registered Professional Reporter within
10 and for the State of Washington, do hereby certify that the
11 foregoing proceedings were taken by me to the best of my
12 ability and thereafter reduced to typewriting under my
13 direction; that I am neither counsel for, related to, nor
14 employed by any of the parties to the action in which these
15 proceedings were taken, and further that I am not a relative
16 or employee of any attorney or counsel employed by the
17 parties thereto, nor financially or otherwise interested in
18 the outcome of the action.
19
20
21
22
23
24
25
26

Certified Court Reporter in
The State of Washington

My license expires December 21, 2013

Kittitas Valley Wind Power Project

Monthly Project Update

October 15, 2013

Project Status Update

September Production Summary:

MWh 22,573 **MWh**
Wind 6.7 m/s or 15 mph
CF 31%

Safety:

No incidents

Compliance:

Project is in compliance as of September 11, 2013.

Sound:

No complaints

Shadow Flicker:

No complaints – automatic curtailments on A1 & A2 have resumed.

Environmental:

No stormwater discharge to report.

September, 2013

EFSEC Monthly Operational Report

Safety:

- There were no accidents or injuries in the month of September.

Environmental:

- Submitted August Discharge Monitor Report.
- Received the draft RATA and Emissions Testing Report. Unit #2 Sulfuric Acid mist emissions were analyzed to be greater than the permitted limit. This is not physically possible based on the fuel sulfur content, pointing to an issue with the testing or analysis. All other emissions were within permitted limits, and RATA evaluations were satisfactory.
- The Engineering Report is steadily progressing and in its final stage.

Operations & Maintenance:

- Grays Harbor operated 17 days during the month of August, producing 199,028 MW.
- The capacity factor (CF) was 44.6% in September, and 22.7% YTD.
- The availability factor (AF) was 100% in September, and 94.5% YTD.

Noise and/or Odor:

- There was one noise complaint received by EFSEC staff on 9/19/13, and communicated to GHE staff on 9/20/13. The complaint was regarding noise on 9/19 at ~5:00 in the morning. The following was communicated to EFSEC staff via email on 9/20:

Thursday morning, during the plant startup, the steam turbine tripped at 0454 due to operator error implementing the plant start procedure. After the trip, a low pressure steam vent was opened to prevent lifting relief valves. This vent was the likely source of the noise. A review of plant data determined relief valves did not lift during the plant trip.

The vents (sky vents) are used to dump excess steam to prevent lifting relief valves. The vents discharge to atmosphere through the installed silencers.

GHE staff called the concerned neighbor and left a message. The call has not been returned.

Site Visits:

- There were no site visits for the month.

Other:

- None

**Chehalis Generation Facility---Monthly Plant Report to the Washington
Energy Facility Site Evaluation Council – September 2013**

1813 Bishop Road Chehalis, WA 98532
Phone (360) 748-1300, FAX (360) 740-1891

7 October 2013

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 3968 days without a Lost Time Accident.

Environment:

- Storm water and waste water monitoring results are in compliance with the permit limits for the month of September 2013.

Personnel:

- Authorized plant staffing level is currently 19 with 19 positions filled.

Operations and Maintenance Activities:

- The Plant generated 292,369 megawatt-hours at a capacity factor of 83.75% for the month of September and the year-to-date capacity factor is 37.28%.
- There were no operational and no maintenance anomalies during the month September 2013.

Regulatory/Compliance:

- There were no air emissions deviations, waste-water or stormwater exceedances or spills during the month of September 2013.

Other:

- Sound monitoring: There were no noise complaints to report.
-

Mark A. Miller
Manager, Gas Plant
PacifiCorp-Chehalis Power
1813 Bishop Road
Chehalis, WA 98532
360-827-6462

E-mail: mark_a.miller@pacificorp.com

Monthly operational/compliance update for Wild Horse.

Wind Production: September generation totaled 47,684 MWh for an average capacity factor of 24.29%.

Solar Production: The Solar Demonstration Project generated 70.4 MWh in September.

Safety: No lost-time accidents or safety incidents to report in September.

Compliance/Environmental:
Nothing to report.

**Energy Northwest
EFSEC Council Meeting
October 15, 2013
(Shannon Khounnala)**

I. Columbia Generating Station Operational Status

Columbia is currently operating at 100% power, generating 1112 megawatts, and has been online for 112 days.

There are no other events, safety incidents, or regulatory issues to report.

II. WNP 1/4 Water Rights

On October 2nd, 2013 Energy Northwest (EN) technical staff, accompanied by the Department of Energy, and EFSEC staff meet with the Department of Ecology for our pre-application meeting to submit a water rights application. Following the meeting, EN has been actively working on finalizing the water rights application and will submit the application to the Department of Energy later this month, who will submit to the Department of Ecology. Based on the information gathered at the pre-application meeting, we expect to begin working with the Department of Ecology on the water rights application within a couple weeks following submission by the application.

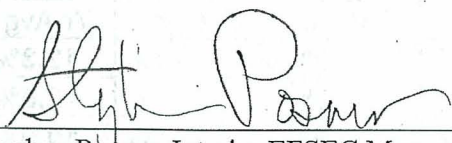
Energy Facility Site Evaluation Council

Non Direct Cost Allocation for 2nd Quarter FY 2014 October 1, 2013 – December 31, 2013

The EFSEC Cost Allocation Plan (Plan) was approved by the Energy Facility Site Evaluation Council in September 2004. The Plan directed review of the past quarter's percentage of EFSEC technical staff's average FTE's, charged to EFSEC projects. This information is used as the basis for determining the Non Direct Cost percentage charge, for each EFSEC project. In addition, the Plan allows for adjustment due to anticipated work load and the addition of new projects.

Based on the levels of work during the 1st quarter of FY 2014, using the procedures for developing cost allocation, and allowance for new projects, the following percentages shall be used to allocate EFSEC's non direct costs for the 2nd quarter of FY 2014:

Kittitas Valley Wind Power Project	7%
Wild Horse Wind Power Project	7%
Columbia Generating Station	22%
WNP-1	3%
Whistling Ridge Energy Project	4%
Satsop CT	9%
Chehalis Generation Project	9%
Desert Claim Wind Power Project	2%
BP Cogeneration Project	2%
Grays Harbor Energy	4%
Tesoro Savage	31%


Stephen Posner, Interim EFSEC Manager

Date: 10/9/13

Summary of FY 2014 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	10%	7%			8.5%
Desert Claim	3%	2%			2.5%
Whistling Ridge	9%	4%			6.5%
Columbia GS	33%	22%			27.5%
WNP1	4%	3%			3.5%
Satsop	12%	9%			10.5%
Chehalis	10%	9%			9.5%
Wild Horse	10%	7%			8.5%
BP	3%	2%			2.5%
G.H. Energy	6%	4%			5.0%
Tesoro Savage		31%			31%

Summary of FY 2013 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	13%	13%	11%	10%	11.7%
Desert Claim	3%	3%	3%	3%	3%
Whistling Ridge	9%	10%	15%	15%	12.3%
Columbia GS	23%	25%	25%	26%	24.8%
WNP1	4%	4%	4%	4%	4%
Satsop	12%	11%	11%	10%	11.0%
Chehalis	10%	10%	10%	10%	10%
Wild Horse	10%	10%	10%	10%	10%
BP	2%	2%	2%	2%	2%
G.H. Energy	14%	12%	9%	10%	11.3%

Summary of FY 2012 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	11%	13%	12%	13%	12.3%
Desert Claim	2%	2%	3%	3%	2.5%
Whistling Ridge	27%	20%	18%	11%	19.0%
Columbia GS	16%	18%	19%	21%	18.5%
WNP1	2%	3%	3%	4%	3.0%
Satsop	12%	15%	15%	16%	14.5%
Chehalis	10%	8%	10%	9%	9.3%
Wild Horse	9%	10%	9%	8%	9.0%
BP	4%	2%	2%	2%	2.5%
G.H. Energy	7%	9%	9%	13%	9.5%

Summary of FY 2011 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	22%	18%	13%	12%	16.3%
Desert Claim	5%	8%	9%	4%	6.5%
Whistling Ridge	21%	28%	25%	28%	25.5%
Columbia GS	9%	12%	18%	18%	14.3%
WNP1	2%	3%	2%	2%	2.3%
Satsop	12%	7%	14%	13%	11.5%
Chehalis	4%	6%	6%	7%	5.8%
Wild Horse	7%	8%	7%	10%	8.0%
BP	1%	1%	1%	1%	1.0%
G.H. Energy	17%	9%	5%	5%	9.0%

Summary of FY 2010 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	7%	14%	19%	21%	15.3%
Desert Claim	13%	17%	14%	12%	14.0%
Whistling Ridge	24%	13%	9%	11%	14.3%
Columbia GS	19%	15%	6%	9%	12.3%
WNP1	0%	12%	10%	4%	6.5%
Satsop	13%	10%	21%	22%	16.5%
Chehalis	5%	7%	6%	5%	5.8%
Wild Horse	18%	11%	14%	8%	12.8%
BP	1%	1%	1%	1%	1.0%
G.H. Energy				7%	1.8%

Summary of FY 2009 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Regional Compact	1%	0%	0%	0%	0%
Kittitas Valley	19%	23%	25%	3%	18%
PMEC	1%	7	3%	1%	3%
Desert Claim	1%	0%	0%	9%	3%
Whistling Ridge				5%	1%
Columbia GS	17%	24%	25%	31%	24%
WNP1	2%	3%	4%	4%	3%
Satsop	31%	13%	16%	16%	19%
Chehalis	14%	9%	9%	6%	10%
Wild Horse	10%	19%	17%	25%	18%
BP	4%	2%	1%	0%	2%