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WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
Richard Hemstad Building
1300 South Evergreen Park Drive Southwest
Conference Room 206

Monthly Council Meeting held before
CHAIR BILL LYNCH
Verbatim Transcript of Proceedings

1:30 p.m. - 2:38 p.m.
February 16, 2016
Olympia, Washington

Mary M. Paradise, CSR 2469

A P P E A R A N C E S

Council Members Present:

Bill Lynch, Chair

Greg Shafer, Clark County

Dennis Moss, Utilities and Transportation
Commission

Cullen Stephenson, Department of Ecology

Joe Stohr, Fish and Wildlife

Jaime Rossman, Department of Commerce
(Via phone line)

Assistant Attorney General:

Ann C. Essko, Senior Counsel

Administrative Law Judge

Cassandra Noble

Local Government and Optional State Agency:

Bryan Snodgrass, City of Vancouver
(Via phone line)

Larry Paulson, Port of Vancouver
(Via phone line)

Staff in Attendance:

Stephen Posner

Sonia Bumpus

Jim LaSpina

Joan Aitken

Kali Wraspir

Tammy Mastro

1 Guests in Attendance:

2 Mark Miller, PacifiCorp

3
4 Guests in Attendance Via Phone Line:

5 Bronson Potter, City of Vancouver

6 Jennifer Diaz, Puget Sound Energy

7 Brad Barfuss, Energy Northwest

8 Brooks Johnson, The Columbian and Vancouver

9 Eric Melbardis, Horizon Wind Energy

10 Pete Valinski, Grays Harbor Energy

11 * * * *

OLYMPIA, WASHINGTON FEBRUARY 16, 2016

1:30 p.m.

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P R O C E E D I N G S

CHAIRMAN LYNCH: Let's go ahead and get started. Good afternoon. Today is February 16th, and it is the February meeting of the Energy Facility Site Evaluation Council. If we could please have staff call the roll.

MS. MASTRO: Department of Commerce.

MR. ROSSMAN: Jaime Rossman present by phone.

MS. MASTRO: Department of Ecology.

MR. STEPHENSON: Cullen Stephenson here.

MS. MASTRO: Fish and Wildlife.

MR. STOHR: Joe Stohr here.

MS. MASTRO: Department of Natural Resources.

CHAIRMAN LYNCH: Dan Siemann is excused.

MS. MASTRO: Utilities and Transportation Commission.

CHAIRMAN LYNCH: I believe Mr. Moss will be coming in later.

MS. MASTRO: Local government and optional

1 state agencies, Department of Transportation.

2 CHAIRMAN LYNCH: Mr. Stone is excused.

3 MS. MASTRO: City of Vancouver.

4 MR. SNODGRASS: Bryan Snodgrass on the
5 phone.

6 MS. MASTRO: Clark County.

7 MR. SHAFER: Greg Shafer present.

8 MS. MASTRO: Port of Vancouver.

9 MR. PAULSON: Larry Paulson on the phone.

10 MS. MASTRO: Chair, there is a quorum for
11 the regular council and for the Tosoro Savage
12 Project.

13 CHAIRMAN LYNCH: Thank you. And if we
14 could please have the council review the proposed
15 agenda for today and see if they have any suggested
16 changes to the agenda, and you will note that there
17 are no action items for today.

18 Hearing no proposed changes, we will
19 proceed. And could we please have those people who
20 wish to identify themselves who are on the phone,
21 other than the council members who have already
22 identified themselves, please do so now.

23 MR. POTTER: Bronson Potter from
24 Vancouver.

25 MS. DIAZ: Jennifer Diaz, Puget Sound

1 Energy.

2 MR. BARFUSS: Brad Barfuss, Energy
3 Northwest.

4 MS. MCGAFFEY: Karen McGaffey, Perkins
5 Coie.

6 MR. JOHNSON: This is Brooks Johnson from
7 the Columbian and Vancouver.

8 MR. MELBARDIS: Eric Melbardis.

9 CHAIRMAN LYNCH: We've got you,
10 Mr. Melbardis. Thank you. Anybody else?

11 Okay. Let's go ahead and move forward to
12 the minutes. And first of all, let's take a look
13 at the meeting minutes for the December 15th
14 meeting. And we'll have the council members, we'll
15 give them a minute to take a last look through
16 these to see if there is any proposed changes. And
17 when you're ready, I'll entertain a motion for
18 their adoption.

19 MR. STEPHENSON: Chairman Lynch, I'll so
20 move.

21 CHAIRMAN LYNCH: It's been moved that the
22 minutes from the December 15th council meeting be
23 adopted. Do we have a second?

24 MR. STOHR: I'll second.

25 CHAIRMAN LYNCH: It's been moved and

1 seconded that the council meeting minutes from
2 December 15th be adopted. All those in favor say
3 aye.

4 MR. STOHR: Aye.

5 MR. STEPHENSON: Aye.

6 MR. MOSS: Aye.

7 ~~MR. STONE:~~ Aye.

8 MR. SHAFER: Aye.

9 MR. ROSSMAN: Aye.

10 CHAIRMAN LYNCH: Opposed? Motion carries.
11 Let's take a look at the council minutes for -- we
12 had a special meeting, I believe, in January -- on
13 January 19th. If you'd take a look at -- that had
14 to do with the NPDES permit. We had a public
15 hearing on that. ROSSMAN

16 MR. ~~PAULSON:~~ Mr. Chair --

17 CHAIRMAN LYNCH: I'm sorry, could you
18 either get a little closer to your phone or --
19 we're having trouble hearing, and identify yourself
20 again. ROSSMAN

21 MR. ~~PAULSON:~~ On page 8, line 6 --

22 CHAIRMAN LYNCH: Page 8, line 6. And who
23 is this speaking? ROSSMAN

24 MR. ~~PAULSON:~~ Sorry, this is council
25 member Paulson.

1 CHAIRMAN LYNCH: Okay. Thank you.

~~ROSSMAN~~

2 MR. ~~PAULSON~~: The comment there where it
3 says section B, I believe it should say section D,
4 on page 8, line 6 of the -- of the minutes. D as
5 in dog, rather than B as in boy.

6 CHAIRMAN LYNCH: Okay. And does the court
7 reporter have that change? Any other suggested
8 changes? Hearing none, I would entertain a motion
9 for the adoption of the January 19th minutes, as
10 amended.

11 MR. STEPHENSON: I'll so move.

12 CHAIRMAN LYNCH: And do we have a second?

13 MR. STOHR: Second.

14 CHAIRMAN LYNCH: It's been moved and
15 seconded that the minutes from the January 19th
16 meeting, as amended, be approved. All those in
17 favor say aye.

18 MR. STEPHENSON: Aye.

19 MR. STOHR: Aye.

20 MR. MOSS: Aye.

21 ~~MR. PAULSON: Aye.~~

22 MR. SHAFER: Aye.

23 MR. ROSSMAN: Aye.

24 CHAIRMAN LYNCH: Opposed? Motion carries.

25 Well, we were going to go a little bit out of order

1 today, and we have a resolution honoring past
2 council member Liz Green-Taylor, and unfortunately,
3 she's not actually here today, so -- but we have
4 these sad faced cookies that we brought for her
5 last -- to commemorate how we're feeling about her
6 not being here, but we'll just have to eat -- think
7 of her while we're eating these cookies later. So
8 we'll do the resolution honoring her for the next
9 council meeting.

10 So at this point in time, if we could have
11 an update on the Kittitas Valley Wind Project, and
12 Mr. Melbardis.

13 MR. MELBARDIS: Good afternoon, Chair
14 Lynch, EFSEC council. This is Eric Melbardis with
15 EDP Renewables for the Kittitas Valley Wind Power
16 Project.

17 CHAIRMAN LYNCH: I'm sorry, but Eric,
18 Mr. Melbardis, our court reporter can't hear you.
19 So is there a way you could move closer to the
20 phone?

21 MR. MELBARDIS: Yes, sir, I will try.
22 Good afternoon, Chair Lynch, EFSEC council. This
23 is Eric Melbardis with EDP Renewables for the
24 Kittitas Valley Wind Power Project, and we have
25 nothing non-routine to report.

1 CHAIRMAN LYNCH: All right. And we did --
2 you provided us a copy of your report indicating
3 that the no complaints, no incidences, and the
4 project is in compliance. Any questions for
5 Mr. Melbardis? No questions for Mr. Melbardis.
6 Thank you, sir.

7 Let's turn now to the Wild Horse Wind
8 Power Project. Ms. Diaz.

9 MS. DIAZ: Yes. Thank you, Chair Lynch.
10 Can you hear me?

11 CHAIRMAN LYNCH: Yes.

12 MS. DIAZ: All right. For the record
13 report, my name is Jennifer Diaz. I'm the project
14 manager for Puget Sound Energy at the Wild Horse
15 Wind facility. I have no non-routine updates for
16 the month of December 2015, and have one update for
17 January 2016.

18 We held a tax meeting on January 27th to
19 provide members with an update on the Eagle
20 Conservation Plan and to share results on sage-
21 grouse habitat monitoring.

22 The TAC also reviewed updates to the
23 written hunting plan that includes a new process
24 for issuing permits for hunt at Wild Horse.
25 Hunting permits will now be issued through the

1 Department of Fish and Wildlife on line, Hunt by
2 Reservation Program, and a limited amount of
3 permits will be issued during the modern firearm
4 general elk season.

5 The TAC unanimously recommended approval
6 of the revised plan, and EFSEC staff formally
7 approved revisions of the plan, based on the
8 recommendation from the TAC. And that's all I
9 have.

10 CHAIRMAN LYNCH: Any questions for
11 Ms. Diaz? Hearing none, thank you, Ms. Diaz.

12 And just for the council's benefit, you
13 heard me -- Ms. Diaz reference the hunting plan
14 that was approved by staff, and from time to time,
15 you've heard me say that that's not the sort of
16 plan that the full -- will come before the full
17 council, but we're actually very close to providing
18 the council with a draft policy, which lists all of
19 the -- Mr. Posner and I have been working on a
20 draft policy, which would list the type of plans
21 that come before the council and the ones that
22 probably shouldn't come before the council, and
23 there will be -- I'm not sure we'll be providing
24 that for purposes of the March meeting or the April
25 meeting, but we worked a lot on that and we're

1 fairly far along.

2 So that way, you'll have a -- you won't
3 have to keep wondering, is this the type of plan
4 that we approve or not approve. You'll just have a
5 pretty good overview of -- of how we do that.

6 MS. DIAZ: Great. I appreciate that. I
7 look forward to seeing the list.

8 CHAIRMAN LYNCH: Thank you.

9 MS. DIAZ: Thank you.

10 CHAIRMAN LYNCH: We'll turn now to
11 Mr. Valinski, Grays Harbor Energy Center.
12 Mr. Valinski, we've heard from you a few times when
13 Mr. Downen was unavailable. Welcome.

14 MR. VALINSKI: Thank you. Good afternoon,
15 Chair Lynch, council, EFSEC staff. My name is Pete
16 Valinski. I'm the new plant manager at Grays
17 Harbor Energy. You should have our January and
18 December reports in your folder, and we have
19 nothing new to report. No anomalies. No upsets.

20 CHAIRMAN LYNCH: Very good. Any questions
21 for Mr. Valinski? Thank you, Mr. Valinski. I
22 should have asked Mr. Valinski, when he was up at
23 the microphone, is it true that you were carrying
24 Mr. Downen all this time?

25 MR. VALINSKI: Just rumors.

1 CHAIRMAN LYNCH: Just rumors. Okay.
2 Thank you. And now we have Mr. Miller for the
3 Chehalis Generation Facility.

4 MR. MILLER: Good afternoon, Chair Lynch,
5 council members and staff, I'm Mark Miller, the
6 plant manager at the PacifiCorp Chehalis Generation
7 Facility.

8 I have a few non-routine comments to add.
9 As I noted in the December 2015 report, the
10 Washington state deputy fire marshall conducted a
11 follow-up inspection regarding certain items that
12 needed correction. During the subsequent visit, he
13 found everything was satisfactorily addressed, and
14 certified that the plant was in full compliance.

15 The installation work on high efficiency
16 lighting, which was related to the carbon offset
17 requirements, the -- that was completed in the
18 month of December 2015, and the Chehalis staff will
19 be filing certification requests with EFSEC staff
20 that this project has been completed, and request
21 an acquisition commitment requirement be adjusted
22 to reflect that financial expenditure.

23 We are saving 246 megawatt hours per year
24 with. This corresponds to 48 tons of CO2 emissions
25 per year.

1 There are two additional projects that I
2 note in the January report that have not had any
3 advancement at this time.

4 Also, as noted in the previous report, the
5 plant, in late November, experienced catastrophic
6 failure of one of the compressor sections on the
7 combustion unit number 2. The manufacturer,
8 General Electric, has completed the refurbishment
9 of that unit rotor, and it actually departed
10 Greenville, South Carolina this morning, and we
11 expect to have that unit back in operation the
12 first of March.

13 And finally, I have received a question
14 from Mr. Stephenson after the December meeting, I
15 guess it was, and I will address that after the
16 meeting. I spoke with him earlier. It's in
17 regards to the question he had on wastewater
18 results. Are there any questions?

19 CHAIRMAN LYNCH: Any questions for
20 Mr. Miller? Very good. Thank you, Mr. Miller.

21 MR. MILLER: Thank you.

22 CHAIRMAN LYNCH: If we could now hear from
23 Ms. Shannon Khounnala, Energy Northwest, for the
24 Columbia Generating Station, and then WNP 1 and 4?

25 MR. BARFUSS: Good afternoon, Chair Lynch

1 and council members and staff. My name is Brad
2 Barfuss. I am sitting in for Shannon Khounnala
3 this afternoon.

4 You'll see in our standard information in
5 your packet, and while there are no other events,
6 safety incidences or regulatory issues to report,
7 I'd like to mention that Columbia Generating
8 Station, in December, broke its monthly generation
9 record. We've seen over 859,000 megawatt hours of
10 net generation.

11 This January, Columbia broke the monthly
12 generation record for a second consecutive month,
13 sending more than 860,000 megawatt hours of
14 electricity to the grid, the most in a single month
15 since the plant began commercial operation in 1984.

16 We are proud of this accomplishment,
17 attribute it to the work we did during the last
18 refueling outage of having the expected results of
19 increased generation. Are there any questions
20 regarding the ~~Columbia?~~ Columbia

21 CHAIRMAN LYNCH: Any questions for
22 Mr. Barfuss regarding the Columbia Generating
23 Station? Go ahead and proceed to WNP 1 and 4,
24 Mr. Barfuss.

25 MR. BARFUSS: Okay. Thank you. Regarding

1 WNP 1 and 4, some progress this past month has been
2 achieved with the Department of Energy on the
3 development of the NEPA environmental assessment
4 effort. That scope of work and cost estimate has
5 been prepared and finalized.

6 Energy Northwest is reviewing these
7 documents, and if approved, the NEPA EA process
8 would be completed in approximately October of this
9 year. Energy Northwest has committed to responding
10 to DOE by early March. Any questions regarding WNP
11 1 and 4?

12 CHAIRMAN LYNCH: And do you have anything
13 else, Mr. Barfuss?

14 MR. BARFUSS: Nothing else for me. End of
15 report.

16 CHAIRMAN LYNCH: Any questions for
17 Mr. Barfuss? Thank you, Mr. Barfuss. I understand
18 you're often confused with Ms. Khounnala. We'll
19 try not to do that again.

20 MR. BARFUSS: Not a problem.

21 CHAIRMAN LYNCH: Thank you. At this point
22 in time, I'd like to get a project update regarding
23 the Tesoro Savage Vancouver energy distribution
24 terminal from our staff, Ms. Bumpus.

25 MS. BUMPUS: Thank you. Good afternoon,

1 Chair Lynch and council members. The comment
2 period on the draft EIS closed January 22nd, 2016,
3 and since that time, EFSEC staff and our
4 independent consultant have been counting and
5 sorting the comments that we received.

6 This has taken quite a bit of time to do.
7 We had some challenges in sorting these comments.
8 They came in in various forms for the DEIS comment
9 web site. We had submittals that came in with
10 attachments, and within those attachments, we
11 found, in some cases, tens of thousands of
12 individual letters.

13 And the same thing occurred with comments
14 that we received by mail, where we received
15 portable storage devices, such as CDs and flash
16 drives, that also, when opened, had several
17 comments enclosed.

18 And so this is an approximate number, but
19 I can tell you that as of today, we're thinking
20 we're going to land somewhere around 248,900
21 comments. So we're still checking for duplicates,
22 but we are pretty confident with a number that's
23 going to land somewhere there.

24 Before I continue, are there any questions
25 about the DEIS comment?

1 CHAIRMAN LYNCH: Any questions regarding
2 the comments for staff?

3 MR. STEPHENSON: Can you give us that
4 number again? I think I blanked out.

5 MS. BUMPUS: 248,900.

6 MR. STEPHENSON: Thank you.

7 CHAIRMAN LYNCH: And that's what you've
8 counted so far, or is that what you expect to have?

9 MS. BUMPUS: This is how many we expect to
10 have.

11 CHAIRMAN LYNCH: Okay.

12 MS. BUMPUS: We're -- yes, we just need to
13 doublecheck everything and make sure none of these
14 are -- are duplicates. We're pretty confident with
15 this number.

16 CHAIRMAN LYNCH: Thank you.

17 MR. STEPHENSON: To be clear, I'm happy
18 that we have this much interest, just -- that's a
19 lot of comments.

20 MS. BUMPUS: Yes. So moving on for the
21 rest of the project update, for permits, I just
22 wanted to let council members know that for some of
23 the permits, we are asking for additional
24 information, such as the NPDES storm water
25 industrial permit.

1 We're going to request some additional
2 information from the applicants. Also, for the 401
3 water quality certification review, and they are
4 also going to be working with us as we move forward
5 on the NOC draft air permit, and things like that.
6 So I'll continue to keep you updated on the
7 development of the permits.

8 CHAIRMAN LYNCH: And NOC stands for notice
9 of construction, right?

10 MS. BUMPUS: Correct.

11 CHAIRMAN LYNCH: Do you have anything
12 else, Ms. Bumpus?

13 MS. BUMPUS: That is all I have.

14 CHAIRMAN LYNCH: And before we leave the
15 update, I think this is a good time for the council
16 to recognize the exemplary job that the staff did
17 in putting on those comment -- public comment
18 hearings, in the two hearings in Vancouver and the
19 one hearing in the Spokane Valley.

20 They were exceptionally well organized,
21 both the area where the public could go into in the
22 foyer, and there was the permit available for
23 people to see. There was staff and our consultant
24 available to answer questions. There was a court
25 reporter there who could take down additional

1 testimony from people. There were poster boards up
2 hitting the main points of the -- of the -- of the
3 application -- excuse me -- not the application --
4 of the draft EIS.

5 And then how the council -- how the
6 hearing was conducted by our prominent and
7 efficient ALJ, Sandra Noble, who we'll be hearing
8 from in a few minutes. She did a very good job of
9 being courteous and yet efficient in moving people
10 along, and I think at the end of the day, everybody
11 was happy with us, or at least most people were
12 happy with us, and that's about all you can hope
13 for under a situation where you have thousands of
14 people who are lined up trying to testify.

15 And then I also want to thank all our
16 council members who stayed late on all three of
17 those evenings, with very limited breaks, to hear
18 with great interest what the public had to say. So
19 I want to thank each and every one of you for your
20 good work on those three hearings. Thank you.

21 So let's go ahead and turn to our
22 procedural adjudication update by our ALJ,
23 Cassandra Noble.

24 MS. NOBLE: Thank you, Chair Lynch. I
25 just want to give a brief procedural rundown of

1 what's happened so far for your benefit and for the
2 benefit of the public. You know most of this
3 already, but on February 3rd, I issued an order
4 clarifying EFSEC's process, modifying by
5 dispositive motion deadline that some are
6 preliminary issues, as they were expressed by the
7 parties, in setting hearing dates.

8 The adjudicative hearing was set in that
9 order to commence on June 27 and to run for five
10 weeks through the month of July, for four days each
11 week, so that we'll not be having formal hearings
12 on the Fridays of each week, or not having a
13 hearing on July 4th either.

14 We're having the hearing in Vancouver for
15 the first and the last week, so that the public can
16 make sure that they can come in person. And in
17 Olympia, in the intervening weeks. In Vancouver,
18 we will be at Clark College, and in Olympia, we'll
19 be in the large senate hearing room in Olympia,
20 Washington on the capitol campus.

21 Ms. Wraspir is working on the
22 communication electronically of the hearing so that
23 the public will be able to watch the whole thing.

24 We're -- we're even open to be able to get a live

25 feed, and Ms. Wraspir is working with ^{TVW}~~TBW~~ to see if

1 that's going to be possible for the public. But in
2 any event, it will at least be recorded and then
3 posted, so that everyone is going to be able to
4 watch.

5 We have -- I have also set a different
6 date for the parties' motions that are basically
7 summary judgment motions, big jurisdictional
8 motions. I moved that back to March 29, because
9 when the parties submitted their proposed issues
10 and exhibits and witnesses, it was really
11 voluminous, and you're going to have an awful lot
12 to do.

13 And in order for people to be able to
14 address the bigger motions, I reset the date for
15 that, because of the volume of issues to be dealt
16 with, eventually to March 29. So if parties are
17 going to be bringing summary judgment motions, they
18 will have to bring them by March 29. And if they
19 do, then they will have to be dealing with them
20 after that.

21 All the major pleadings are being posted
22 on our web site, and also, they are going up on the
23 SharePoint site so that you all will be able to see
24 them on the SharePoint site. If you have any
25 trouble at all with the web site, you can contact

1 Ms. Wraspir, but I expect that mostly, you will be
2 looking at the pleadings on the SharePoint site,
3 and Tammy Mastro is the one to call about that, if
4 you have any difficulty in connecting up on the
5 SharePoint site.

6 So once we get rolling, and I think we are
7 kind of rolling already, the parties can file
8 motions and objections, and they will all have to
9 be dealt with. Everyone is allowed time to respond
10 and reply to any such filings. And already, in an
11 early order, I set the time frame for that, so that
12 for non-jurisdictional motions, people have seven
13 days to respond, and then the person filing the
14 motion/objection has four more days to reply to the
15 response.

16 But for the summary judgment motions, if
17 any are filed by March 29, the responses have to
18 come in within 30 days after the filing of the
19 motion, and any replies have to be done in seven
20 days. So you can see that a lot of time will be
21 taken up, and we will be busy, as will the parties
22 be busy. And that's your update on what's
23 happening in the adjudication.

24 CHAIRMAN LYNCH: Thank you, Ms. Noble.
25 Any questions for our ALJ, Ms. Noble? Thank you.

1 MS. NOBLE: Thank you.

2 CHAIRMAN LYNCH: We have a couple other
3 things to take care of. Mr. Posner, if you will
4 inform us about the third quarter cost allocations.

5 MR. POSNER: Good afternoon, Chairman
6 Lynch, council members. In your packet is the
7 non-direct cost allocation calculations for the
8 third quarter. We do this at the beginning of each
9 quarter. We re-calculate the non-direct costs that
10 we charge our applicants and certificate holders.

11 These percentages are based on a previous
12 quarter's work and current work and anticipated
13 work that technical staff is performing for the
14 various projects. The percentages are listed for
15 each of the projects, and for the benefit of those
16 who are on the line, I'll just go ahead and read
17 them off.

18 For the Kittitas Valley Wind Power
19 Project, 7 percent. Wild Horse Wind Project, 7
20 percent. Columbia Generating Station, 16 percent.
21 WNP 1, 3 percent. Whistling Ridge Energy Project,
22 3 percent. Grays Harbor 1 and 2, 8 percent.
23 Chehalis Generation Facility, 8 percent. Desert
24 Claim Wind Power Project, 3 percent. Grays Harbor
25 Energy 3 and 4, 3 percent, and Vancouver Energy, 42

1 percent. And that's all I have.

2 CHAIRMAN LYNCH: Thank you. For the
3 benefit of those listening, the council actually
4 does not vote on these cost allocations. It's just
5 information that we receive from our -- our EFSEC
6 manager.

7 Now, we're going to turn to -- and have an
8 Open Public Meetings Act public records update
9 Power Point by our senior counsel, Ann Essko. And
10 this is something that the council members have had
11 training on in the past, but this is a refresher
12 that's being provided for us, and we thought it
13 would be good if the public got an opportunity to
14 see and hear the sort of background that we -- that
15 we receive. So please, proceed, Ms. Essko.

16 MS. ESSKO: Thank you, Chair Lynch. Thank
17 you all for the opportunity to meet with you this
18 afternoon. Today, I'm going to go over some
19 important provisions of the Open Public Meetings
20 Act and the Public Records Act.

21 My office typically and routinely does
22 these sorts of presentations for its clients who
23 are board and commission members, and I know the
24 council values transparency and openness, and so
25 this is an opportunity to let EFSEC stakeholders

1 know about the standards that the council follows.
2 There will be an opportunity for questions at the
3 end, but if you have questions as I go along,
4 please don't -- you don't need to wait until the
5 end to pose the questions.

6 There are two Washington Sunshine laws
7 that I've referred to, and the name is significant,
8 because their purpose is stated to be, and the
9 court will interpret them in favor of transparency
10 and liberal openness to government processes for
11 the public.

12 Both laws, as I said, are liberally
13 construed, so if there's ever a time when you can't
14 quite figure out whether you should or shouldn't do
15 something, the guiding principle will probably be
16 do the thing that makes the most information open
17 to the public. And again, both laws are enforced
18 by the courts, and we'll talk about the penalties
19 later on, if there is a -- a violation of -- of one
20 of the provisions in these laws.

21 So I'm going to start with the Open Public
22 Meetings Act and then finish up with the Public
23 Records Act. So as you might tell from the name,
24 the Open Public Meetings Act requires that the
25 EFSEC meetings be open to the public, gavel to

1 gavel.

2 The only exception is if there is a --
3 either an exemption, an entire exemption from the
4 the Act for some activities, and we'll talk about
5 that, because they will be significant for the
6 Tesoro project, or if the Act itself allows a
7 particular type of activity to occur in private.
8 And we'll talk about that, also.

9 So three general rules of the road. The
10 public can attend meetings, but sometimes there are
11 questions about whether this gives members of the
12 public a right to participate, and the answer is
13 no. Under the Act, at least, they have no right to
14 do that.

15 The council cannot impose conditions on
16 attendants. For example, people cannot be required
17 to sign in or identify themselves on the phone, but
18 they certainly can elect to do so if they wish to.
19 And also, the council can impose reasonable rules
20 of conduct.

21 So let's talk about what sorts of meetings
22 are covered, and I'm going to delve into the
23 definitions of some terms, and please bear with me
24 on this. It can be a little bit boring, but the
25 principles that I'm going to be talking about will

1 be really helpful to you as you sort through what
2 sorts of conversations need to occur in what sort
3 of forum.

4 So in order to know what the OPMA
5 requires, you need to know three things. What's a
6 meeting? What's an action, and what's a quorum?
7 And I want to talk a little bit about EFSEC's
8 quorums. Your rules say that a majority of voting
9 members for the conduct of council business
10 constitutes a quorum.

11 So remember, as you -- as you can tell
12 from from when Tammy Mastro calls the order at the
13 beginning of meetings, there are actually two
14 EFSECs and two quorums related to those two EFSECs.
15 There's the EFSEC that deals with Tesoro, which
16 consist of additional members, one of whom is not a
17 voting member, and then there is the EFSEC that
18 deals with regular EFSEC non-Tosoro activities.

19 So note with regard to the Tosoro EFSEC,
20 that the council member -- that the Council Member
21 Paulson is not a voting member. So when you're
22 counting how many people you need to have a quorum
23 and whether you've got a quorum, Council Member
24 Paulson's presence or absence is not pertinent to
25 that determination.

1 So again, we need to know what's a
2 meeting, what's a quorum and what's an action. So
3 an action is a transaction of official EFSEC
4 business, and this has probably a broader
5 definition than you might think at the outset.
6 It's taking public testimony, all deliberations,
7 discussions, considerations, reviews and
8 evaluations.

9 So you don't have to be taking a vote or
10 taking an action that changes things in three-
11 dimensional reality for there to be a final -- for
12 it to be considered an action, because you can see
13 those lists of things, you were just considering
14 something or reviewing it. You're not voting,
15 you're not making a decision.

16 When you're voting or making a decision,
17 you're making a collective thumbs up or thumbs down
18 decision, then that's what's called final action.
19 And so remember that term, final action is a subset
20 of action, because that will become important in
21 just a minute.

22 So to sum this -- to sum up this portion
23 of discussion, an open meeting has to occur. You
24 have to have a meeting in public whenever a quorum
25 takes an action. And that's whether or not a final

1 action is taken. The only exceptions are if there
2 is an OPMA exemption from the coverage of the --
3 from coverage of the Act or you're allowed to have
4 an executive session. And again, you have to keep
5 in your mind that there are two -- two EFSECs.

6 So here's a little asterisk to what I just
7 said. EFSEC does not currently have any
8 committees. It has had committees in the past, so
9 if you ever do have a committee, keep this
10 principle in mind. Those committee meetings need
11 to be open to the public, and this requirement
12 pertains, regardless of whether there is a quorum
13 of council members or any council members on the
14 committee.

15 So if you designate a committee of EFSEC
16 staff members that contains no council members to
17 do something for you, to act on your behalf, that
18 committee meeting is open to the public under the
19 OPMA, whenever it's acting on behalf of the
20 council, conducting hearings or taking testimony or
21 public comment. So again, it does not pertain to
22 you now, but it could pertain to you in the future
23 if you have committees.

24 All right. So another aspect of the Open
25 Public Meeting Act is voting. In a minute, we're

1 going to see that you are able to have executive
2 sessions in which portions of your proceedings can
3 take place in private. The important thing to
4 remember is even if a portion of your meeting is
5 allowed to be in private, voting about whatever
6 that subject is cannot occur in private. Voting
7 always has to occur in public.

8 And so the corollary to voting also has to
9 occur in public. So for example, sometimes you
10 could be in a room of people and you could say,
11 okay, well, we're not going to vote, but let's just
12 have a discussion, sort of get a general sense of
13 where people are standing. You can't do that in
14 private either. That has to occur in public. So
15 if it quacks -- if it quacks like voting, it's
16 voting. You can't do it in private. You have to
17 do it in public.

18 So here's another area that sometimes
19 trips up board -- board and commission members.
20 You'll see these in the case notes or in the news
21 articles in the paper sometimes. It's easy to
22 think of a meeting as just something like we're
23 what we're doing here, where we're all in the same
24 room or we're all on the phone at the same time,
25 and that sounds like a meeting.

1 But other things can include meetings, and
2 so here are some areas to be cautious about. First
3 of all, exchanges of e-mails by a quorum that are
4 action can be a meeting. So in other words, if
5 you've got a quorum of EFSEC and you're taking
6 action -- remember the things we talked about,
7 either final action or things like consideration or
8 discussions -- you will be having a meeting if one
9 council member e-mails a second council member who
10 e-mails a third council members who e-mails a
11 fourth council member, and that's a quorum. You've
12 now had a meeting, and that e-mail exchange had to
13 have occurred in public or there's a violation of
14 the Act.

15 A permutation of that is instead of a
16 serial A to B to C to D, the same thing can occur
17 if council member A sends an e-mail to council
18 member B, and then council member A sends an e-mail
19 to council member C, and so on, on the same subject
20 that falls within the definition of an action.
21 Again, a discussion that occurs that way is a
22 meeting that has to take place in public.

23 And you can -- you can see where I'm going
24 on meetings. The same thing can occur if -- if you
25 have a series of -- a series of meetings or if you

1 have one person having a meeting with various
2 council members on the same subject, and together,
3 it all constitutes a meeting.

4 So the difficulty is if you're just one
5 person in that stream, how do you know that you're
6 having a discussion that is one part of a larger
7 series that is actually a meeting? My
8 recommendation is that you ask, just to make sure
9 that it's just -- you can have a two-person
10 conversation about something, but if it starts
11 expanding, then you -- you are in danger of falling
12 afoul of this -- of this principle.

13 So two things -- two areas where people
14 frequently ask questions are is, well, can -- can
15 Stephen Posner send council members written
16 materials without triggering an OPMA meeting? So
17 for example, if a council packet comes to you a
18 week before a council meeting, does that violate
19 the OPMA? So far, the answer to that question is
20 no.

21 The same thing in reverse. If you each
22 individually send e-mails to the council manager,
23 does that constitute a meeting? So far, as best
24 anyone can speculate, the answer to that question
25 is also no. Both of those things are acceptable.

1 They are not violations of the Open Public Meetings
2 Act.

3 Okay. Two more terminology questions that
4 are -- that are kind of boring but have an
5 important point. The OPMA establishes two
6 different categories of meetings; regular meetings,
7 which you don't need to think about, because EFSEC
8 doesn't have regular meetings. Even these
9 meetings, which occur every month, are not regular
10 meetings, because the definition of a regular
11 meeting is one where the -- the dates of the
12 meetings are set in a rule or statute. You do not
13 have meetings where the dates are set in rule or
14 statute.

15 So by default, all you have is special
16 meetings. And for whatever it's worth, per your
17 rules, the chair or a majority of the voting
18 members can call a special meeting at any time.

19 So I'm going to talk about the notice --
20 special meeting notice requirements, because
21 there's a -- we'll get to the italicized language
22 at the end of what's on this slide, and that's the
23 important point where I'm heading. Written notice
24 for a special meeting has to be given to each
25 member, and it has to be given to certain media

1 outlets that have requested notice, and the notice
2 has to go to these entities 24 hours before the
3 meeting.

4 And unlike the case with regular meetings,
5 it has to specify not only the time and the place,
6 but also, the agenda. So what you'll see is that
7 the agenda, what's on that agenda will limit what
8 you can do at the meeting.

9 Okay. So -- and that's -- I'm going to
10 emphasize that with the next slide. What's
11 important here, in particular, is that final action
12 cannot be taken on any matter that isn't on the
13 agenda. So if some -- if somebody has a great
14 idea, wants to talk about it, the OPMA does not
15 allow that matter to be acted on because it wasn't
16 on the agenda.

17 And obviously, the reason is because the
18 public didn't know that it was going to be in it,
19 and the public has a right to be at your meetings,
20 and part of that is knowing what's going to be on
21 the agenda, so they know whether they want to be
22 there or not.

23 Now, there is the exception. If you are
24 meeting to discuss an emergency involving personal
25 injury or property damage and notice is impractical

1 and would increase damage, then these notice
2 requirements don't apply. So although this has
3 never happened, to my knowledge, if there was an
4 issue of some sort at an EFSEC facility and you
5 needed to meet to decide what to do, you can do
6 that without following these -- all of these
7 requirements.

8 All right. I promised you we would talk
9 about what the OPMA says about situations in which
10 you are allowed to meet in private, and these are
11 called executive sessions. And there's a list of
12 topics in the Act, and per your rules, the chair or
13 a majority of members can call an executive
14 session.

15 And for those of you who have been here
16 for executive sessions, you'll see what the chair
17 does. In the public meeting, he announces the
18 purpose of the session and the time it will end.
19 And then the members go in to have the executive
20 session. So that's when the public knows that, you
21 know, they have 10 minutes to go get a cup of
22 coffee, but you're going to be back in 20 minutes,
23 so they know to be back here when you -- when you
24 show up.

25 You also have notice that when you've gone

1 into executive session and it's going to take
2 longer than had been announced, the chair comes
3 back out at the time you were going to be back here
4 and tell us what the new extended time is. And
5 again, that's to give the public an opportunity to
6 be here and observe what you are doing.

7 So as I said, there are a list of possible
8 reasons to have an executive session, and the one
9 that is probably most pertinent to you and what you
10 do is meetings with legal counsel regarding
11 enforcement actions, litigation or potential
12 litigation, when public knowledge is likely to
13 result in adverse legal or financial consequences.
14 So this is litigation that's either been
15 specifically threatened or you have a reasonable
16 reason to think that there will be litigation on
17 this matter.

18 So earlier, I mentioned that in addition
19 to the provisions of the OPMA that allow you to
20 meet in private, there are some exemptions from the
21 OPMA. When one of these exemptions applies, then
22 you don't have to think about the OPMA at all,
23 because it just simply doesn't apply.

24 There are several, but the one that is
25 most pertinent to you is matters governed by the

1 APA, and you will be -- you have -- you are in
2 adjudication for Tesoro and you have done
3 rulemaking, so when you are doing those things, the
4 OPMA does not apply.

5 Although frequently, for example, when you
6 do rulemaking, the -- the agenda and the notice
7 will go out just like it was in OPMA meeting, just
8 because it's easier for staff to do it that way.
9 It's the most conservative way to give notice, but
10 as a matter of law, those provisions do not
11 actually apply to rulemaking or adjudications.

12 So here is the last slide on the OPMA
13 about the penalties for violating it. There is a
14 \$100 civil penalty to be paid by each council
15 member, and this is personal to them. The attorney
16 general, this session, is proposing legislation to
17 raise the penalty to \$500 for the first offense and
18 a thousand dollars for any repeat offense.

19 And then notice that costs and attorneys'
20 fees are awarded to the successful plaintiff. So
21 if somebody challenges EFSEC and wins, not only do
22 they get the statutory penalties, but they also get
23 all of their costs and all of their attorneys'
24 fees, which could be substantial.

25 And also, action taken at a meeting that

1 violates the OPMA can be declared void. And this
2 is where that distinction between action and final
3 action can matter. Any -- any violation -- any
4 time you take an action that violates the OPMA,
5 these penalties are potentially assessible against
6 the council.

7 But in addition, if you've taken final
8 action, that action can be declared void. And
9 because these lawsuits occur sometimes somewhere
10 down the road, it's hard to unwind the results of
11 the action that was taken six months ago.
12 Everybody has acted in reliance on that action, and
13 now it's void, and you have to go back and redo
14 that and then redo other things. So it can be --
15 it can be complicated and expensive to fix that.

16 Okay. Let's go on to the Public Records
17 Act. This is a shorter presentation than on the
18 OPMA. As you know, all public records are open and
19 accessible to the public unless they're within an
20 exemption, either in the Act itself or some other
21 law that the Act recognizes. And it's up to EFSEC
22 to prove that a withheld record is within a
23 particular exemption.

24 So let's talk about, what is a public
25 record. And it's a little bit broader than you

1 might think. It's any writing, and we'll talk
2 about what a writing is in a minute. It isn't just
3 a piece of paper.

4 Any writing that contains information
5 relating to the conduct of government or the
6 performance of a governmental function. But this
7 includes not only information that you prepare or
8 own, but it's also information that you use. So if
9 you use a book that you don't own, if you use a
10 report that you read on a web site from some other
11 agency, that could be a writing within this
12 definition.

13 All right. Again, another way that the
14 definition of public records could be broader than
15 you expect includes this list of things; e-mails,
16 voice mail messages, computer data, handwritten
17 notes, photographs, the metadata around those
18 things, if they're electronic, and day planners,
19 and just about anything that you can think of that
20 you use to communicate.

21 We'll go to the next slide. And this is
22 probably the most important thing to keep in mind
23 on this subject, if you've been reading the Tacoma
24 newspapers about whether text messages on an
25 elected official's personal phone are public

1 records. You'll see that this can be a thorny
2 area.

3 So regardless of whether the record is --
4 if you have a record related to your work for
5 EFSEC, whether it's on your private computer, your
6 employing entity's computer, whether state or local
7 government or a state agency or a private or
8 employer entity's own handheld devices, all of
9 those places could be where public records are
10 located.

11 And that's why we always advise folks to
12 use caution in having EFSEC records on those
13 devices. And if they have them on those devices,
14 to recognize that they're subject to the Public
15 Records Act, and they are subject to records
16 retention schedules. And that for your benefit,
17 they -- all those records should be in a separate
18 location on your device so that -- so there isn't a
19 situation where they're interspersed within other,
20 you know, private information that is not subject
21 to the Public Records Act.

22 All right. Let's go to the next slide.
23 So if EFSEC gets a public records request, they
24 have got a very short time frame to get back to the
25 requesting party to tell them what they're going to

1 do with the request and how long it's going to take
2 to get them their records.

3 So all of us -- I know my office, the AG's
4 Office, gets Public Records requests all the time,
5 and we have to do very quick turnaround times to
6 tell our public records officers whether we have
7 records, and we are required to do an adequate
8 search. We could be deposed and cross-examined on
9 the adequacy of our search.

10 So if you get communications from Steve or
11 Tammy or Kali or somebody saying, you know, go look
12 for these records and hold onto them, this is the
13 standard that all state employees follow, is you do
14 an adequate search to make sure that you found --
15 sorry -- an adequate, reasonable search to make
16 sure you found records that are responsive.

17 So once you get that request, the records
18 have to be retained. And so for those of you who
19 don't work for EFSEC, you need to be thinking about
20 whether those records are on a records destruction
21 schedule that was put in place for your own agency,
22 but -- but would not necessarily take EFSEC's needs
23 into account and may not take the fact that there's
24 a pending public records request into
25 consideration.

1 So if you get a request, remember to
2 think, okay, how do I make sure that these records
3 are retained as long as they need to be retained.
4 And if you have questions, call Stephen or Tammy or
5 me, and we'll help figure out how to deal with
6 that.

7 So what records are exempt from
8 disclosure? There's a whole bunch. The one that's
9 most pertinent for you are attorney-client
10 privileged communications, and then preliminary
11 drafts in which opinions are expressed or policies
12 are discussed. That exemption only lasts as long
13 as the decision has not yet been made. So once the
14 decision is made, then those records will be
15 released.

16 However, the fact that a record is exempt
17 from disclosure doesn't mean that you don't have to
18 disclose the existence of the record and explain
19 why an exemption applies. So for example, if I
20 wrote Stephen an attorney-client privileged memo
21 and Kali filed a request for -- a public records
22 request for that record, EFSEC would have to reveal
23 to Kali that the record existed and explain that
24 it's -- it's protected by the attorney-client
25 privilege. In other words, there can't be any

1 silent withholding, where there's a responsive
2 record and you're just not telling them that it
3 even exists.

4 So what does this mean for council
5 members? Pretty simple, I think. Respond to EFSEC
6 staff requests for records, do it quickly, because
7 they have got some time frames on them. And
8 sometimes, they have court orders on them from when
9 things have to be disclosed. Do an adequate
10 search, a reasonable, adequate search. Hold on to
11 your records when you're asked to do so. Think
12 about whether your employing entity's records
13 destruction protocols need to be halted in some
14 way.

15 Like, if you've got an automatic system
16 that destroys your e-mails in 45 days, you're going
17 to have to figure out how to deal with that. In
18 general, keep EFSEC records separate and secure.
19 And if and when you leave the council, be aware
20 that you should be transferring all of your records
21 to EFSEC when you leave.

22 Now, that doesn't -- now, if your
23 employing agency wants duplicates over there, that
24 may be fine, but it's important, for EFSEC's
25 purposes, that it have access to council member

1 records going into the future, even if that council
2 member has left.

3 So again, are there penalties? Yes, the
4 court can order destruction of the records. Again,
5 payment of attorneys' fees and costs and payment of
6 penalties ranging from zero to \$100 a day. An
7 outstanding issue that I think is still in the
8 Supreme Court is whether that \$100 a day penalty
9 applies per violation or per page. So if an agency
10 has withheld 10,000 documents and the court has
11 said that was done incorrectly, could the entity
12 end up paying \$100 per page per day for 10,000
13 records? We'll see what the Supreme Court says
14 about that.

15 The big dollar number, of course, is the
16 attorneys' fees. The agencies have paid 3, 4, 5,
17 \$600,000, \$700,000 in attorneys fees, costs and
18 penalties for some of these when -- when, you know,
19 as best you can tell from reading the newspaper
20 article, it -- nobody set out to violate the act.
21 It just -- it just happened, so it can -- it can be
22 a real -- a real problem.

23 So that's the end of my presentation. Do
24 you have any questions today? You can ask them now
25 or you can contact me. There's my contact

1 information.

2 CHAIRMAN LYNCH: Any questions for
3 Ms. Essko? Thank you. It's a nice overview of
4 both laws.

5 MS. ESSKO: Thank you.

6 CHAIRMAN LYNCH: Thank you. And before I
7 adjourn, I just want to point out that our March
8 meeting will most likely be moved a week back, in a
9 month. I'm sorry, we have -- I don't have a
10 calendar with me, but do we have a date for when
11 that would be, the following Tuesday? Ms. Wraspir?

12 MS. WRASPIR: Chair, I note March 22nd.

13 CHAIRMAN LYNCH: So our next meeting will
14 be March 22nd. Very good. Thank you. And I'd
15 like to thank Ms. Mary Paradise of Buell Realtime
16 Reporting, who is our court reporter today, and
17 Buell Realtime Reporting continually furnishes us
18 with prodigious and proficient court reporters, and
19 we thank them for that.

20 Is there any further business before the
21 council today? Hearing none, we're adjourned.
22 Thank you.

23 (The meeting adjourned at 2:38 p.m.)
24
25

C E R T I F I C A T E

STATE OF WASHINGTON

COUNTY OF KING

I, Mary M. Paradise, a Certified Shorthand Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the meeting minutes of the Energy Facility Site Evaluation Council is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of March, 2016.

MARY M. PARADISE, CSR

Kittitas Valley Wind Power Project

Monthly Project Update

January 19, 2016

Project Status Update

December Production Summary:

Power generated: 9656 MWh
Wind speed: 4.3 m/s or 9.6 mph
Capacity Factor: 12.9%

Safety:

No incidents

Compliance:

Project is in compliance as of January 15, 2016.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Kittitas Valley Wind Power Project

Monthly Project Update

February 16, 2016

Project Status Update

January Production Summary:

Power generated: 5587 MWh

Wind speed: 3.6 m/s or 8.1 mph

Capacity Factor: 7.5%

Safety:

No incidents

Compliance:

Project is in compliance as of February 11, 2016.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Wild Horse
December update

Wind Production: December generation totaled 48,717 MWh for an average capacity factor of 24%.

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

Compliance/Environmental: Nothing to report.

Wild Horse
January update

Wind Production: January generation totaled 40,795 MWh for an average capacity factor of 20.11%.

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

Compliance/Environmental: A TAC meeting was held on January 27th to provide members with an update on the Eagle Conservation Plan and to share results on sage-grouse habitat monitoring. The TAC also reviewed updates to the written Hunting Plan that includes a new process for issuing permits to hunt at Wild Horse. Hunting permits will now be issued through WDFW's on-line Hunt by Reservation Program and a limited amount of permits will be issued during the Modern Firearm General Elk Season. The TAC unanimously recommended approval of the revised plan which will be implemented in the 2016 hunting season.

EFSEC Monthly Operational Report

December, 2015

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of December.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.

2. Environmental

- 2.1. Submitted the November Discharge Monitor Report (DMR) to WebDMR.
- 2.2. Received and submitted the final RATA Report.
- 2.3. Collected additional raw water samples to better quantify the arsenic level coming into the plant. Those sample results are pending.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 29 days and generated 370,981 MWh during the month of December.
- 3.2. The capacity factor (CF) was 80.4% in December, and 55.6% YTD.
- 3.3. The availability factor (AF) was 100% in December, and 95.6% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of December.

5. Site Visits

- 5.1. There were no site visits during the month of December.

6. Other

- 6.1. Grays Harbor is fully staffed with 22 personnel.

EFSEC Monthly Operational Report

January, 2016

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of January.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.

2. Environmental

- 2.1. Submitted the December Discharge Monitor Report (DMR) and the 2015 Annual Priority Pollutant sample results to WebDMR.
- 2.2. Submitted the 2015 Q4 Emissions Data Report (EDR) to EFSEC and ORCAA.
- 2.3. Submitted the 2015 Tier II Hazardous Chemical Inventory to state and local entities.
- 2.4. Submitted the 2015 Base Flow Restriction Report to EFSEC.
- 2.5. Submitted the 2015 Dangerous Waste Report to Department of Ecology.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 30 days and generated 382,617 MWh during the month of January.
- 3.2. The capacity factor (CF) was 82.9% in January, and 6.5% YTD.
- 3.3. The availability factor (AF) was 100% in January, and 100% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of January.

5. Site Visits

- 5.1. There were no site visits during the month of January.

6. Other

- 6.1. Grays Harbor is staffed with 21 personnel. We have one open position for the Maintenance Manager that we plan to fill with an internal candidate.

Chehalis Generation Facility----Monthly Plant Report - December 2015

Washington Energy Facility Site Evaluation Council

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4792 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month of December 2015.
- Waste water monitoring results were in compliance with the permit limits for the month of December 2015.

Personnel:

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

Operations and Maintenance Activities:

- The Plant generated 82,609 MWhrs in December. The capacity factor for the year ending December 31, 2015 was 25.4% with a generation total of 1,099,023 MWhrs.

Regulatory/Compliance:

- The Washington State Deputy Fire Marshal completed a follow up site inspection and certified that the plant was in compliance meeting annual inspection and code compliance requirements.

Sound monitoring:

- There were no noise complaints to report.



Carbon Offset Mitigation

- The installation work on the high efficiency lighting Project was completed during the month of December 2015. The Chehalis staff will be filing a certification with EFSEC staff that the lighting efficiency project has been completed with a request that the acquisition commitment requirement be adjusted to reflect the financial expenditure. This project is saving a projected 246 MWh/year energy which corresponds to a reduction of 48.7 tons CO2 emissions per year.
- Design engineering firms and equipment supply vendors are being researched for the variable frequency drives (VFD's) for the water treatment reverse osmosis pumps.
- Design engineering firms and equipment supply vendors are being researched for the VFD's for the closed cooling water system.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Miller".

Mark A. Miller
Manager, Gas Plant

Chehalis Generation Facility----Monthly Plant Report – January 2016

Washington Energy Facility Site Evaluation Council

02-11-2016

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4823 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month of January 2016.
- Waste water monitoring results were in compliance with the permit limits for the month of January 2016.

Personnel:

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

Operations and Maintenance Activities:

- The Plant generated 83,743 MWhrs in January 2016 for a total YTD capacity factor of 22.2%.
- Repair of the unit #2 combustion turbine continues with an expected completion date on or about March 1, 2016.

Regulatory/Compliance:

- No inspections or issues this period.

Sound monitoring:

- There were no noise complaints to report.



Carbon Offset Mitigation

- No updates on the remaining carbon offset mitigation projects.
 - Design engineering firms and equipment supply vendors are being researched for the variable frequency drives (VFD's) for the water treatment reverse osmosis pumps.
 - Design engineering firms and equipment supply vendors are being researched for the VFD's for the closed cooling water system.

Respectfully,

Mark A. Miller
Manager, Gas Plant

**Energy Northwest
EFSEC Council Meeting
February 16, 2016
(Brad Barfuss)**

I. Columbia Generating Station Operational Status

Columbia is online at 100% power and producing 1158 MWs. The plant has been online for 233 days.

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

II. WNP 1/4 Water Rights

The Department of Energy and Energy Northwest have agreed on a scope of work to complete the NEPA Environmental Assessment (EA) for WNP 1/4. Energy Northwest has the scope of work and cost estimate and are reviewing these documents through the end of February. The NEPA Environmental Assessment will allow a new lease to be signed between EN and the Department of Energy, and thereby allow for use of the water rights obtained in January of last year.

Energy Facility Site Evaluation Council

Non Direct Cost Allocation

for

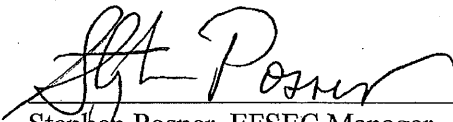
3rd Quarter FY 2016

January 1, 2016 – March 31, 2016

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 2nd quarter of FY 2016, 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 3rd quarter of FY 2016:

| | |
|------------------------------------|-----|
| Kittitas Valley Wind Power Project | 7% |
| Wild Horse Wind Power Project | 7% |
| Columbia Generating Station | 16% |
| WNP-1 | 3% |
| Whistling Ridge Energy Project | 3% |
| Grays Harbor 1&2 | 8% |
| Chehalis Generation Project | 8% |
| Desert Claim Wind Power Project | 3% |
| Grays Harbor Energy 3&4 | 3% |
| Tesoro Savage | 42% |


Stephen Posner, EFSEC Manager

Date: 2/4/16

Summary of FY 2016 Non Direct Allocation Rates

| | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr | Yr Avg |
|-----------------|---------|---------|---------|---------|---------------|
| Kittitas Valley | 8% | 7% | 7% | | 7.5% |
| Desert Claim | 2% | 2% | 3% | | 2.5 % |
| Whistling Ridge | 3% | 3% | 3% | | 3.0% |
| Columbia GS | 16% | 17% | 16% | | 16.5 % |
| WNP1 | 3% | 3% | 3% | | 3.0% |
| G.H. 1&2 | 9% | 9% | 8% | | 8.7% |
| Chehalis | 9% | 8% | 8% | | 8.5% |
| Wild Horse | 8% | 7% | 7% | | 7.5 % |
| G.H. 3&4 | 3% | 3% | 3% | | 3.0% |
| Tesoro Savage | 39% | 41% | 42% | | 40.6% |
| | | | | | |
| | | | | | |

Summary of FY 2015 Non Direct Allocation Rates

| | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr | Yr Avg |
|-----------------|---------|---------|---------|---------|---------------|
| Kittitas Valley | 5% | 6% | 6% | 6% | 5.6% |
| Desert Claim | 2% | 2% | 2% | 2% | 2.0% |
| Whistling Ridge | 3% | 3% | 3% | 3% | 3.0% |
| Columbia GS | 20% | 17% | 18% | 17% | 18.3 % |
| WNP1 | 3% | 3% | 3% | 3% | 3.0% |
| G.H. 1&2 | 9% | 10% | 8% | 9% | 9.0% |
| Chehalis | 9% | 9% | 9% | 9% | 9.0% |
| Wild Horse | 7% | 7% | 7% | 7% | 7.0% |
| BP | 2% | 2% | 2% | 2% | 2.0% |
| G.H. 3&4 | 3% | 3% | 3% | 3% | 3.0% |
| Tesoro Savage | 37% | 38% | 39% | 39% | 38.4% |

Summary of FY 2014 Non Direct Allocation Rates

| | 1st Qtr | 2nd Qtr | 3rd Qtr | 4th Qtr | Yr Avg |
|-----------------|---------|---------|---------|---------|--------------|
| Kittitas Valley | 10% | 7% | 6% | 5% | 7.0% |
| Desert Claim | 3% | 2% | 2% | 2% | 2.3% |
| Whistling Ridge | 9% | 4% | 3% | 3% | 4.8% |
| Columbia GS | 33% | 22% | 23% | 21% | 24.8% |
| WNP1 | 4% | 3% | 3% | 3% | 3.3% |
| Satsop | 12% | 9% | 10% | 11% | 10.5% |
| Chehalis | 10% | 9% | 9% | 10% | 9.5% |
| Wild Horse | 10% | 7% | 6% | 5% | 7.0% |
| BP | 3% | 2% | 2% | 2% | 2.3% |
| G.H. Energy | 6% | 4% | 3% | 3% | 4.0% |
| Tesoro Savage | | 31% | 33% | 35% | 33.0% |

Open Public Meetings Act
Public Records Act
February 16, 2016

Presented by Senior Counsel Ann Essko

Two Washington “Sunshine” Laws

Open Public Records – Public Records Act (RCW 42.56)

Open Public Meetings – Open Public Meetings Act (RCW 42.30)

Both laws are to be liberally
construed in favor of government
transparency

Both laws are enforced by the courts

Open Public Meetings Act (OPMA)

Meetings shall be open

Meetings of governing bodies like EFSEC must be open to the public, gavel to gavel, unless exempted from the OPMA or the OPMA allows a closed executive session

- Public can attend (no right to participate)
- Cannot impose conditions on attendance (i.e., e.g. requiring people to sign in or identify themselves)
- Can impose reasonable rules of conduct

What “meetings” are covered?

A “meeting” occurs whenever a quorum
takes “action”

What is a covered “action?”

“Action”=transaction of official EFSEC business, including:

- taking public testimony
- all deliberations
- discussions
- considerations
- reviews
- evaluations
- final action (collective + or – decision, or a vote by the majority of the members)

Thus, an open meeting must occur whenever a quorum takes action, *whether or not final* action is taken, unless subject to an OPMA exemption or the OPMA allows a closed executive session

- Remember that EFSEC currently has two different quorums:
General EFSEC; Tesoro EFSEC

Committee meetings must be open, regardless of quorum requirement

The OPMA applies to any committee that:

- acts on behalf of EFSEC
- conducts hearings
- takes testimony or public comment

The committee does not need to contain a quorum of Council members – or any Council members – for this requirement to apply

Voting must take place in public

“Final action” subject to the OPMA includes voting

- All votes must be in public, even if underlying discussions were in a properly closed session.
- Prohibited “votes” include “getting a sense of the room” – or other functional equivalents of voting

Caution about what can constitute a meeting

Meetings include:

- Exchanges of emails by a quorum that = action
- Serial exchanges of emails
 - $A \rightarrow B \rightarrow C \rightarrow D$
 - $A \rightarrow B$ then $A \rightarrow C$ then $A \rightarrow D$
- Serial meetings
 - $A \rightarrow B \rightarrow C \rightarrow D$
 - $A \rightarrow B$ then $A \rightarrow C$ then $A \rightarrow D$

Reviewing background information and communicating with EFSEC staff

- Council members may review written materials from EFSEC staff without triggering an OPMA meeting
- Council members may individually send emails to EFSEC staff without triggering an OPMA meeting

Types of OPMA meetings

- Two types of meetings: regular special
- Regular meetings – EFSEC doesn't have regular meetings
- Special meetings – EFSEC has special meetings
 - Per EFSEC's rules, the chair or a majority of voting members can call a special meeting at any time

Special meeting notice requirements

- Written notice must be:
 - given to each member
 - given to each local newspaper of general circulation, radio, TV station that has requested notice
- Notice must:
 - be provided at least 24 hours before meeting
 - specify time, place, and *the agenda*

Special meeting agenda limits final action

- *Final action cannot be taken on any matter that isn't on the agenda*
- Notice requirements don't apply to meeting called to address an emergency involving personal injury or property damage when notice is impractical and would increase damage

Executive Sessions

- Executive sessions are the parts of a meeting that can be *closed to the public*
- Limited to a specific topic list in the Act
- Per EFSEC's rules, the chair or a majority of voting members can call an executive session
- When an executive session is held, the presiding officer must announce the purpose of the session and the time it will end

Statutory purposes for executive sessions include:

- Meeting with legal counsel regarding enforcement actions, litigation, or potential litigation when public knowledge is likely to result in adverse legal or financial consequences to the agency.
 - Litigation that has been specifically threatened
 - Litigation that EFSEC reasonably believes will be commenced by or against EFSEC or a Council member.

Exemptions from the OPMA Requirements

- *Matters governed by the APA*
 - *Adjudications, rulemaking, declaratory orders*

Are there penalties for violating the OPMA?

- \$100 civil penalty to be paid by each Council member
 - The Attorney General has proposed legislation this session to raise the penalty to \$500 for 1st offense; \$1000 for repeat offenses
- Costs and attorneys' fees awarded to successful plaintiffs
- Action taken at a meeting that violates the OPMA can be declared void

Public Records Act

General Rule

- All public records must be open and accessible to the public unless within an exemption
- Agency must prove a withheld record is within an exemption

What is a public record?

- Any “writing” that contains information relating to
 - Conduct of government, or
 - Performance of any governmental function
- Include information that the agency:
 - Prepares
 - Owns
 - Uses
 - Retains

What is a public record?

- Includes records in any form:
 - Email and voicemail messages
 - Paper documents
 - Computer data
 - Handwritten notes (including Post-Its)
 - Photographs and file
 - Sound recordings
 - Electronically stored information
 - Metadata

What if the public record is on a non-EFSEC device?

The PRA applies regardless of where the record is located

- private computers
- employing entity computers
- private or employing entity owned hand held devices

How does an agency respond to a request?

- Within 5 days the agency must:
 - Provide the record
 - Deny the request and cite an exemption
 - Acknowledge the request and give a reasonable estimate of response time
- Agency employees and officers must do an adequate search (could be deposed and cross-examined on the issue)

The agency or local government employees
and officers must retain covered records
once disclosure is requested

- Records also cannot be destroyed unless in compliance with the agency's records retention schedule

What records are exempt from disclosure?

Examples include:

- Attorney-client privileged communications
- Preliminary drafts in which opinions are expressed or policies discussed (until decision is made)

But the agency must disclose the existence of the record and explain why an exemption applies

What does this mean for Council members?

- Respond to EFSEC staff requests for records
- Adequate search
- Hold records when asked to do so
 - Address your employing entities' records destruction protocols
- In general – keep EFSEC records separate and secure
- Provide all of your EFSEC records to EFSEC if you leave the Council

Are there penalties for violating the Public Records Act?

Court may order:

- Production of the records
- Payment of attorney's fees and costs to the plaintiff
- Payment of penalties ranging from \$0 to \$100/day

Questions?

Or contact me at:

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