

1 BEFORE THE STATE OF WASHINGTON 1 10:51
 2 ENERGY FACILITY SITING EVALUATION COUNCIL
 3
 4 IN THE MATTER OF THE)
 APPLICATION OF:)
 5)
 6 SCOUT CLEAN ENERGY, LLC, FOR) NO. EF-210011
 HORSE HEAVEN WIND FARM, LLC,)
 7)
 8 Applicant.)

11 DEPOSITION UPON ORAL EXAMINATION OF
 DAVID KOBUS
 12 Benton County Public Services Building (Large
 Conference Room)
 13 102206 E Wiser Parkway
 Kennewick, WA 99336

15 FRIDAY, JULY 21, 2023
 16 11:05 A.M.

18 TAKEN AT THE INSTANCE OF THE APPLICANT

21 REPORTED BY:
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12 ALSO PRESENT:
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1 APPEARANCES: 2
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1 I N D E X 4
 2 IN RE: SCOUT CLEAN ENERGY
 CASE NO. EF-210011
 3 FRIDAY, JULY 21, 2023
 4 WITNESS: DAVID KOBUS PAGE
 5 EXAMINATION BY MR. ARMBURU: 5
 EXAMINATION BY MS. VOELCKERS: 138
 6 EXAMINATION BY MS. FOSTER: 192
 EXAMINATION BY MR. ARMBURU: 211
 7

8 EXHIBITS
 9 NUMBER DESCRIPTION PAGE
 10 Exhibit 1 Horse Heaven Wind Farm Updated11
 ASC Redline
 11 Exhibit 2 Letter from Mr. Ritter to EFSEC 175
 1/31/2022

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1 BE IT REMEMBERED that on FRIDAY,
 2 JULY 21, 2023, at 11:05 A.M., the
 3 deposition of DAVID KOBUS was taken before
 4 Monna J. Nickeson, Certified Realtime
 5 Reporter, Registered Professional Reporter,
 6 Certified Livenote Reporter, Certified
 7 Court Reporter (WA 3322), Certified
 8 Shorthand Reporter (ID 1045), (OR 16-0441),
 9 (CA 14430), the following proceedings took
 10 place:
 11 DAVID KOBUS
 12 having been first duly sworn to tell the truth, the
 13 whole truth, and nothing but the truth,
 14 testified as follows:
 15 EXAMINATION
 16 BY MR. ARAMBURU:
 11:05 17 Q. Mr. Kobus, would you state your full
 11:05 18 name and business address?
 11:05 19 A. David Kobus, D-a-v-i-d, K-o-b-u-s.
 11:05 20 My business address is 1385 Cortland Avenue,
 11:05 21 Richland, Washington.
 11:05 22 Q. I'm Richard Aramburu. I'm the
 11:05 23 attorney for Tri-Cities C.A.R.E.S, one of the
 11:06 24 intervenors in the EFSEC proceeding. We're
 11:06 25 here today to take your deposition.
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11:06 1 Have you ever had your deposition
 11:06 2 taken before?
 11:06 3 A. No, I have not.
 11:06 4 Q. Okay. Let me just, and with
 11:06 5 permission of your counsel, try to talk about
 11:06 6 some ground rules as we go through the
 11:06 7 deposition.
 11:06 8 So, first of all, we can't talk over
 11:06 9 each other because the court reporter has
 11:06 10 difficulty taking down both of us speaking at
 11:06 11 the same time. So if you will allow me to --
 11:06 12 even though you may think you know the answer
 11:06 13 before I finish it, let me finish my question,
 11:06 14 and then we'll give you time to finish your
 11:06 15 answer. So let's not talk over each other,
 11:06 16 okay?
 11:06 17 And if you don't understand the
 11:06 18 question that's being asked to you, let me know
 11:06 19 right away, and I'll try to reformulate the
 11:06 20 question, put it in clearer terms, but please
 11:06 21 let me know. We don't want to have any
 11:06 22 confusion later on.
 11:07 23 This deposition will be transcribed.
 11:07 24 It may be used for various purposes. It may be
 11:07 25 used as a part of the EFSEC proceedings. So
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11:07 1 you should consider the things that you're
 11:07 2 saying today may become a part of the record
 11:07 3 before EFSEC.
 11:07 4 You're not permitted under the
 11:07 5 rules, the Civil Rules for Superior Court, to
 11:07 6 confer with your counsel after I have asked you
 11:07 7 a question. You can't ask her, so what do you
 11:07 8 think of the question, how should I answer,
 11:07 9 those kinds of things. Outside of that, you
 11:07 10 can confer with her as you like.
 11:07 11 We're starting at 11:00 today. If
 11:07 12 you need a break at any time, you just let me
 11:07 13 know and we'll do that. I would like to do
 11:07 14 this in one fell swoop, so to speak, if we can,
 11:07 15 but let's -- we'll see how it goes.
 11:07 16 I understand counsel for Benton
 11:08 17 County and for Yakima will also have questions
 11:08 18 for you as time goes by.
 11:08 19 So do you understand those kind of
 11:08 20 parameters we're talking about?
 11:08 21 A. I do.
 11:08 22 Q. Okay. Okay. Well, let's get
 11:08 23 started, then.
 11:08 24 I don't know a great deal about you,
 11:08 25 Mr. Kobus. Could you tell us your education
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11:08 1 and background professional experience?
 11:08 2 A. Sure. Education-wise, I have a
 11:08 3 bachelor's in nuclear technology and a master's
 11:08 4 in engineering management. My background is I
 11:08 5 worked for -- well, I was in the Navy for eight
 11:08 6 and a half years in the Navy nuclear program.
 11:08 7 Then came to work -- well, I worked
 11:08 8 in the nuclear industry, ultimately came to
 11:08 9 work for Energy Northwest here, and held
 11:08 10 various positions out at the nuclear plant.
 11:08 11 And eventually transitioned into being their
 11:09 12 project manager, developer for renewable energy
 11:09 13 projects. And ended up developing the Nine
 11:09 14 Canyon Wind Project, which was built in three
 11:09 15 phases, permitted through the county.
 11:09 16 And then, after leaving Energy
 11:09 17 Northwest, I was in the financial services
 11:09 18 industry for a while. And then, eventually,
 11:09 19 hired on with Scout Clean Energy, and am now
 11:09 20 the project manager for the Horse Heaven Clean
 11:09 21 Energy Center.
 11:09 22 Q. And when did you come to work for
 11:09 23 Scout?
 11:09 24 A. 2018.
 11:09 25 Q. And you indicated -- were you the
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11:09 1 project manager for the Nine Canyon project?
 11:09 2 A. I was. Developer, project manager,
 11:09 3 yes.
 11:09 4 Q. And are you a licensed professional
 11:09 5 engineer?
 11:09 6 A. I am not.
 11:09 7 Q. Before you came to work for Scout,
 11:10 8 had you worked -- outside of Nine Canyon, had
 11:10 9 you worked on any other projects in the Horse
 11:10 10 Heaven Hills, wind projects?
 11:10 11 A. Not in the Horse Heaven Hills, no.
 11:10 12 But for Energy Northwest, I was developing
 11:10 13 projects all over the Pacific Northwest for
 11:10 14 them. Some -- one was sold to Avista, and
 11:10 15 others just did not come to fruition.
 11:10 16 Q. Okay. And do you recall a Columbia
 11:10 17 project in the Horse Heaven Hills?
 11:10 18 A. Sure. It's the first time I met my
 11:10 19 CEO, Michael Rucker. He was working for
 11:10 20 Clipper Windpower and was marketing a project
 11:10 21 that they were trying to develop on the BLM
 11:10 22 land initially is where they started trying to
 11:10 23 develop.
 11:10 24 And so we were looking at and
 11:10 25 engaged for, you know, many weeks trying to see

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11:11 1 if that project was something that Energy
 11:11 2 Northwest was willing to partner up, so to
 11:11 3 speak, with Clipper Windpower to build a wind
 11:11 4 project there.
 11:11 5 Q. What's the time frame of that?
 11:11 6 A. That would have been 2010, somewhere
 11:11 7 around 2009, 2010.
 11:11 8 Q. And where was -- and that was the
 11:11 9 Columbia project, correct? Is that what we're
 11:11 10 talking about, the same thing?
 11:11 11 A. Yeah, that's what was the name of it
 11:11 12 at that time. Yeah.
 11:11 13 Q. And give me a general geographic
 11:11 14 description of the Columbia project.
 11:11 15 A. Well --
 11:11 16 Q. You might do it in relation to
 11:11 17 this -- the project we're here. Is it part of
 11:11 18 it, some of it, is it --
 11:11 19 A. It's part of it, but the Columbia
 11:11 20 project also included the BLM land, which is
 11:11 21 the higher ground which goes over towards
 11:12 22 Benton City and over to Chandler Butte. And
 11:12 23 that was about the extent of it.
 11:12 24 I actually had wind leases west of
 11:12 25 that on that same ridge line for Energy

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11:12 1 Northwest. And so I was looking at combining
 11:12 2 the project I was developing further west with
 11:12 3 what Clipper was developing along the BLM area
 11:12 4 and partially on what now is part of the Horse
 11:12 5 Heaven leasehold that we're trying to develop.
 11:12 6 Q. And was the Columbia project -- is
 11:12 7 the land for the Columbia project now part of
 11:12 8 the -- this project?
 11:12 9 A. My understanding is yes. I know one
 11:12 10 landowner that was part of Columbia that we
 11:12 11 have a lease with. But, you know, to be honest
 11:12 12 with you, I really don't remember what was all
 11:13 13 in the Columbia footprint.
 11:13 14 Q. Okay. Thank you. Thank you.
 11:13 15 So, today, we're going to have a
 11:13 16 number of questions about the updated ASC. And
 11:13 17 I have put in front of you what's been marked
 11:13 18 as Exhibit 1 for this deposition.
 11:13 19 (Exhibit 1 was identified.)
 11:13 20 BY MR. ARAMBURU:
 11:13 21 Q. And I will represent to you and to
 11:13 22 your counsel that we downloaded this paper copy
 11:13 23 from the EFSEC website, and we have downloaded
 11:13 24 the redline version of the amended ASC.
 11:13 25 MR. ARAMBURU: And, Counsel, is

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11:13 1 there any objection to this document being
 11:13 2 used by the witness?
 11:13 3 MS. PERLMUTTER: No. Based on your
 11:13 4 representation that it was -- that it's the
 11:13 5 document you downloaded from the EFSEC
 11:13 6 website, we're good to go.
 11:13 7 BY MR. ARAMBURU:
 11:13 8 Q. And you also notice when you open it
 11:13 9 that it's double-sided, so we're trying to save
 11:13 10 a little paper here.
 11:14 11 So we have a number of questions
 11:14 12 about the amended ASC, as I will refer to it.
 11:14 13 And can you tell me who wrote the document?
 11:14 14 A. Yeah, sure. It was Tetra Tech was
 11:14 15 our primary contributor who prepared the
 11:14 16 redline under my guidance.
 11:14 17 Q. Okay. So we have redline portions
 11:14 18 of the document, and those were amended from
 11:14 19 the original February 2021 application; is that
 11:14 20 correct?
 11:14 21 A. Correct, yes.
 11:14 22 Q. And who wrote the original
 11:14 23 application?
 11:14 24 A. Tetra Tech did as well under my
 11:14 25 guidance.

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11:14 1 Q. And were any portions of the
 11:14 2 application that were written by anyone else,
 11:14 3 other than Tetra Tech?
 11:14 4 A. There were contributors to it, like,
 11:14 5 various section -- for example, the wildlife
 11:14 6 section, Western Ecosystems contributed to
 11:15 7 that. And then there were various functional
 11:15 8 areas within Tetra Tech that also contributed
 11:15 9 expertise related to various sections in the
 11:15 10 document.
 11:15 11 Q. And did you write any sections of
 11:15 12 the document yourself?
 11:15 13 A. There may have been paragraphs or
 11:15 14 sections, like, for example, looking at
 11:15 15 alternatives to the proposal we were making and
 11:15 16 describing -- you know, being the initial
 11:15 17 author of describing what those alternatives
 11:15 18 were and how they were evaluated.
 11:15 19 And then, from that point on, it was
 11:15 20 a collaborative effort from the team that, you
 11:16 21 know, any of us could have added redlines and
 11:16 22 scrubbed content that was provided by Tetra
 11:16 23 Tech.
 11:16 24 But -- so there were a few sections
 11:16 25 that I was the original author. For the most
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11:16 1 part, I relied on Tetra Tech to author the
 11:16 2 majority of it because of their extensive
 11:16 3 expertise in, you know, many projects,
 11:16 4 different regions, and having a lot of talent
 11:16 5 readily available to contribute that
 11:16 6 information.
 11:16 7 Q. Okay. I don't want to put words in
 11:16 8 your mouth, and feel free to disagree with my
 11:16 9 characterization.
 11:16 10 Would it be fair to call you the
 11:16 11 editor of the document?
 11:16 12 A. It would. I had the last word on
 11:16 13 it.
 11:16 14 Q. Okay. Okay. Good. Good.
 11:16 15 Now, did the lawyers review the
 11:17 16 document?
 11:17 17 A. Yes, absolutely.
 11:17 18 Q. And did the lawyers write -- I'm
 11:17 19 talking about lawyers, counsel for Scout, did
 11:17 20 the lawyers write any sections of the
 11:17 21 amended -- of the updated ASC?
 11:17 22 MS. PERLMUTTER: I'm going to object
 11:17 23 on the grounds -- on privilege grounds.
 11:17 24 You don't have to answer that question.
 11:17 25 MR. ARAMBURU: Counsel, I'm simply
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11:17 1 asking whether lawyers did it. I'm not
 11:17 2 asking for particulars regarding what the
 11:17 3 lawyers did. I'm simply asking whether the
 11:17 4 lawyers were involved. I think that's a
 11:17 5 fair question.
 11:17 6 MS. PERLMUTTER: It calls for work
 11:17 7 product, but you can answer.
 11:17 8 THE WITNESS: Okay. There were
 11:17 9 contributions in the form of redlines. I
 11:17 10 do not recall any original authoring
 11:17 11 material.
 11:17 12 BY MR. ARAMBURU:
 11:17 13 Q. Okay. So if we look through here,
 11:17 14 some of the redline provisions could have been
 11:17 15 authored by lawyers?
 11:17 16 A. Yeah. You know, we approached this
 11:17 17 at a team effort. We wanted to make sure that
 11:17 18 we had, you know, the best available
 11:18 19 information to fully capture what we believed
 11:18 20 was a document that, you know, in our attempt
 11:18 21 would be, you know, above reproach and, you
 11:18 22 know, best available that EFSEC has seen.
 11:18 23 Q. Let me -- as kind of an example
 11:18 24 here, there's a section in the document about
 11:18 25 land use. And that's -- I'm going to use those
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11:18 1 today as well, Mr. Kobus.
 11:18 2 A. Yeah. Give me a page number.
 11:18 3 Q. So what we've done is we've divided
 11:18 4 up into the sections 1, 2, 3, 4. So this
 11:18 5 would -- we're now looking at page 2-7.
 11:19 6 A. Okay.
 11:19 7 Q. And towards the bottom of that page,
 11:19 8 under section 2.1.3, there's a reference to
 11:19 9 land use and zoning ordinances; do you see
 11:19 10 that?
 11:19 11 A. Yes.
 11:19 12 Q. And then it goes on to the next
 11:19 13 page.
 11:19 14 A. Okay.
 11:19 15 Q. Do you know who wrote that?
 11:19 16 A. I am certain Tetra Tech wrote the
 11:19 17 basic draft, and then I know I probably diddled
 11:19 18 with it a bit as well, redlined, you know.
 11:19 19 Q. And you generally described the
 11:19 20 nature of the process in drafting and
 11:19 21 finalizing --
 11:19 22 A. Yes.
 11:19 23 Q. -- the amended ASC.
 11:19 24 Was there any input from any
 11:19 25 potential purchasers of the project to the
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11:19 **1** updated ASC?
 11:19 **2** MS. PERLMUTTER: Object as to --
 11:19 **3** THE WITNESS: No.
 11:19 **4** MS. PERLMUTTER: Object as to form.
 11:19 **5** You can answer the question.
 11:19 **6** THE WITNESS: No.
 11:19 **7** BY MR. ARAMBURU:
 11:19 **8** **Q.** And were any utilities consulted
 11:20 **9** about the content of the ASC?
 11:20 **10** **A.** You know, we -- in marketing the
 11:20 **11** project, we market to any potential offtaker,
 11:20 **12** any potential purchaser, for the entire time we
 11:20 **13** develop these projects.
 11:20 **14** And so we had many, many
 11:20 **15** conversations with regional utilities,
 11:20 **16** commercial and industrial potential offtakers.
 11:20 **17** I even had conversations with Benton PUD.
 11:20 **18** And so, in the process, we consider
 11:20 **19** designing the project and developing it so it
 11:21 **20** is the most attractive type of project that we
 11:21 **21** can put together for that mass market to try
 11:21 **22** and capture the best fit offtaker for the
 11:21 **23** project. But in no uncertain terms, there's no
 11:21 **24** input from potential offtakers in this
 11:21 **25** document.

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11:22 **1** we'll offer to pay you for your service.
 11:22 **2** Please sign or tell me what change you'd make.
 11:22 **3** **Q.** And what --
 11:23 **4** **A.** It was to that extent.
 11:23 **5** **Q.** Excuse me. I'm violating my own
 11:23 **6** rule here.
 11:23 **7** MS. PERLMUTTER: Happens all the
 11:23 **8** time.
 11:23 **9** BY MR. ARAMBURU:
 11:23 **10** **Q.** And was that an agreement to acquire
 11:23 **11** the entire project?
 11:23 **12** **A.** No, no. At that point, it was an
 11:23 **13** agreement to work together on potential
 11:23 **14** infrastructure sharing and finding the most
 11:23 **15** optimal economical way to interconnect the
 11:23 **16** project with the Bonneville grid.
 11:23 **17** **Q.** So you were going to possibly share
 11:23 **18** Benton County easements?
 11:23 **19** **A.** Sure. I'll give you an example.
 11:23 **20** The City of Richland and Benton County were
 11:23 **21** working together to supply or provide a high
 11:23 **22** voltage transmission line in the Dallas Road
 11:23 **23** area.
 11:23 **24** And the City of Richland built the
 11:23 **25** line to a terminus and it was never energized.

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11:21 **1** **Q.** Okay. You indicated that you had a
 11:21 **2** conversation with someone from Benton PUD?
 11:21 **3** **A.** Correct.
 11:21 **4** **Q.** And can you tell me who that was?
 11:21 **5** **A.** Rick Dunn.
 11:21 **6** **Q.** And can you tell me the nature of
 11:21 **7** the conversation?
 11:21 **8** **A.** We were, at one point, considering
 11:21 **9** utilizing right-of-way easements that they have
 11:21 **10** for their system, and the possibility of
 11:22 **11** co-locating transmission lines in their
 11:22 **12** easements, as well as the possibility of
 11:22 **13** engaging in -- I forget the exact terminology
 11:22 **14** for it, but a cooperative agreement where we
 11:22 **15** could work together in finding ways that we
 11:22 **16** could collaborate on the project relative to
 11:22 **17** the infrastructure and relative to potential
 11:22 **18** interest that the PUD might have to become part
 11:22 **19** of it.
 11:22 **20** **Q.** Can you be a little more specific
 11:22 **21** about was there -- well, let me ask this
 11:22 **22** question.
 11:22 **23** **A.** I offered them a draft agreement
 11:22 **24** that said, here's what we can do for you.
 11:22 **25** Here's what you can do for us. Here's what

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11:24 **1** So it's a 115 high voltage line sitting out
 11:24 **2** there alongside the highway. Was a great
 11:24 **3** opportunity for us to potentially co-locate
 11:24 **4** transmission to be able to interconnect with
 11:24 **5** the Bonneville grid.
 11:24 **6** And it did not become fruitful. The
 11:24 **7** PUD chose not to work with us on it. The City
 11:24 **8** of Richland indicated that if we could do
 11:24 **9** something with the PUD, then they'd maybe be
 11:24 **10** interested and talk to us about it. But the
 11:24 **11** PUD kind of changed their whole approach after
 11:24 **12** that.
 11:24 **13** **Q.** So was there ever a proposal to
 11:24 **14** acquire power from Benton PUD?
 11:24 **15** **A.** Yes.
 11:24 **16** **Q.** And what was the nature of that
 11:24 **17** proposal?
 11:24 **18** **A.** That, you know, offtakes available,
 11:24 **19** you know. If you're interested, we'd be
 11:25 **20** willing to talk about it.
 11:25 **21** **Q.** My question was, was there ever
 11:25 **22** discussion that Scout would buy power from
 11:25 **23** Benton PUD?
 11:25 **24** **A.** Well, for sure. And those
 11:25 **25** discussions are ongoing and continue because,

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11:25 **1** you know, understand that when we locate a
11:25 **2** collector substation in a utility territory,
11:25 **3** we're going want backup service from the local
11:25 **4** distribution system in the event we become
11:25 **5** disconnected from the grid.
11:25 **6** We're going to need power to run the
11:25 **7** SCADA, you know, keep all the metering
11:25 **8** energized, run the air conditioners. We also
11:25 **9** need back feed service from the grid to power
11:25 **10** the heaters and oil pumps and those sorts of
11:25 **11** things when there's no wind on the system.
11:26 **12** And so the way Bonneville
11:26 **13** orchestrates those contracts is that we
11:26 **14** actually sign up to interconnect with the grid,
11:26 **15** but then we also have to have an agreement with
11:26 **16** the PUD to provide that back feed service.
11:26 **17** Because Bonneville won't deal directly with us,
11:26 **18** it has to go through the local PUD.
11:26 **19** So, in fact, if at the end of the
11:26 **20** month we net -- actually haven't drawn power
11:26 **21** from the grid in the form of back feed, we have
11:26 **22** to pay the PUD for that. And so that's ongoing
11:26 **23** for the life of the project.
11:26 **24** And we also have crossing agreements
11:26 **25** that we're going to have to have with the PUD.

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11:26 **1** We're going to cross their distribution. We're
11:26 **2** actually going to have to bury and reroute some
11:26 **3** of their distribution so that it is -- we have
11:27 **4** the appropriate setbacks and meet their
11:27 **5** criteria for proximity to their infrastructure.
11:27 **6** So it's an ongoing relationship.
11:27 **7** And I've been working -- Pat, in fact, and I,
11:27 **8** have been meeting with the PUD, and we have --
11:27 **9** the next step in our process is that I have to
11:27 **10** offer them an easement agreement and designate
11:27 **11** everywhere where we're going to cross or have
11:27 **12** to move their infrastructure.
11:27 **13** **Q.** So has there been discussions with
11:27 **14** the PUD to acquire power from them to use for,
11:27 **15** for example, the batteries?
11:27 **16** MS. PERLMUTTER: Objection. Asked
11:27 **17** and answered. You can answer.
11:27 **18** THE WITNESS: Yeah, one of the
11:27 **19** things with the battery storage portion of
11:27 **20** the system is you have the option of
11:28 **21** charging it from the output of the wind
11:28 **22** project, charging it from the solar
11:28 **23** project, or charging it from the grid.
11:28 **24** And so we discussed and entertained
11:28 **25** those options with the PUD to see if they

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11:28 **1** would be interested in providing grid
11:28 **2** charge power for the batteries in the event
11:28 **3** that, you know, they need to be charged and
11:28 **4** there isn't adequate solar available at the
11:28 **5** time or there isn't adequate wind
11:28 **6** generation at the time.
11:28 **7** BY MR. ARAMBURU:
11:28 **8** **Q.** So was there ever a calculation of
11:28 **9** the expected energy that might be acquired on
11:28 **10** an average basis from Benton for the purpose of
11:28 **11** that recharging of the batteries?
11:28 **12** **A.** Not recharging of the batteries, no.
11:28 **13** We -- we did have calculations and had
11:28 **14** discussions about the backup station service
11:28 **15** that would be needed.
11:29 **16** But when it came to the battery, the
11:29 **17** PUD indicated that they didn't believe -- well,
11:29 **18** first, they didn't have the energy to do it.
11:29 **19** They didn't have the power supply to do it.
11:29 **20** And they didn't believe that they could acquire
11:29 **21** it from Bonneville to do it. And so the
11:29 **22** discussions ended at that point because we
11:29 **23** didn't see a success path.
11:29 **24** **Q.** So if you don't get this energy from
11:29 **25** Benton, where are you going get it?

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11:29 **1** **A.** We either -- from the output of the
11:29 **2** wind project, from the solar, or from the
11:29 **3** offtake utility. That's actually -- see, with
11:29 **4** the battery, the way that will work in the
11:29 **5** marketplace is, we will allow them to dispatch
11:29 **6** it, and then we just have a tolling agreement
11:29 **7** that, you know, pays us for the amount of
11:30 **8** dispatch they utilize.
11:30 **9** And the ideal situation is, you
11:30 **10** know, they're going to take transmission from
11:30 **11** the project, and when they need to charge the
11:30 **12** battery, they would just decrement some of that
11:30 **13** transmission to provide grid charge for the
11:30 **14** battery through their contractual arrangements
11:30 **15** with Bonneville. That's the optimal way.
11:30 **16** I mean, with the PUD, I was just
11:30 **17** thinking, you know, maybe they'd want to get
11:30 **18** into that business, and, you know, have a
11:30 **19** potential revenue stream, but it isn't proving
11:30 **20** to be viable.
11:30 **21** **Q.** So the alternative to that is to get
11:30 **22** it from BPA (indecipherable).
11:30 **23** (The Court Reporter requested
11:30 **24** clarification.)
11:30 **25**

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11:30 1 BY MR. ARAMBURU:
 11:30 2 Q. Get it from BPA through the grid.
 11:30 3 A. No. BPA has indicated they will not
 11:30 4 supply it, but they'll wheel it. I mean,
 11:30 5 that's what BPA generally does is, they have an
 11:30 6 open access transmission tariff where they
 11:30 7 allow utilities and IPPs like we are to
 11:31 8 interconnect with the grid, and then you
 11:31 9 contract for who you're sending power to or who
 11:31 10 you're getting power from, and then you pay
 11:31 11 Bonneville for the wheeling on their system.
 11:31 12 So they're responsible for the
 11:31 13 reliability of the system. They may provide
 11:31 14 you balancing services that are required, you
 11:31 15 know, to maintain grid stability. But
 11:31 16 Bonneville doesn't sell power.
 11:31 17 They are -- they're fully
 11:31 18 contracted. They may be able to sell power to
 11:31 19 the wholesale markets when they have excess.
 11:31 20 But, you know, generally Bonneville is just the
 11:31 21 wheeler. They're the grid interconnect and the
 11:31 22 grid manager.
 11:31 23 Q. I understand the concept of a
 11:31 24 wheeling agreement with Bonneville, but who
 11:32 25 would be the source of the power that would be

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11:32 1 wheeled to this project to take care of
 11:32 2 batteries, for example?
 11:32 3 A. The offtaker.
 11:32 4 Q. Who is the offtaker?
 11:32 5 A. We don't -- we don't have an
 11:32 6 offtaker identified yet.
 11:32 7 Q. Is it likely that we're going have
 11:32 8 an offtaker identified within the next year?
 11:32 9 A. Let me answer the question this way.
 11:32 10 It's challenging to market a large
 11:32 11 commercial-scale energy project and finance it
 11:32 12 without a permit.
 11:32 13 And an offtaker, this is, you know,
 11:32 14 a risky scenario bringing on new generation,
 11:32 15 period. And, clearly, if you don't have a
 11:32 16 permit -- if you don't have a permit to build
 11:32 17 the project, it's difficult for an offtaker to
 11:33 18 make commitments.
 11:33 19 And so until we get that permit,
 11:33 20 it's not very likely that we're going to have
 11:33 21 that offtake identified.
 11:33 22 Q. As I understand the situation, that
 11:33 23 Scout is actively marketing this project now to
 11:33 24 utilities, to various --
 11:33 25 A. Anybody who will listen. I'm sorry,

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11:33 1 I interrupted. I'm sorry.
 11:33 2 Q. That's fine.
 11:33 3 So there is an active marketing
 11:33 4 project -- or effort ongoing, even though
 11:33 5 there's no license from EFSEC?
 11:33 6 A. That's correct.
 11:33 7 Q. And I just had a couple of questions
 11:33 8 here that I'm -- I'm confused about in the ASC,
 11:33 9 and perhaps you can just help me clarify here.
 11:33 10 A. Sure.
 11:33 11 Q. On page 285 -- 2-85. I think it's
 11:34 12 here. Costs. It says the cost of the project
 11:34 13 would be \$1.727 billion; is that correct?
 11:34 14 A. Yes.
 11:34 15 Q. Is that whether you build the 244
 11:34 16 turbine version or the 150 version?
 11:34 17 A. The best response I can give you to
 11:35 18 that is, you know, at the time we originally,
 11:35 19 you know, developed the application, we were
 11:35 20 looking at the most likely equipment that would
 11:35 21 have the best fit and the best economics for
 11:35 22 the project.
 11:35 23 And so, you know, in response, my
 11:35 24 belief is that represents the ideal turbine for
 11:35 25 the project, which still remains the ideal

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11:35 1 turbine for the project, and that's the 244,
 11:35 2 smaller platform equipment.
 11:35 3 Q. Okay. And I noticed that this cost
 11:35 4 was not -- was not updated.
 11:35 5 So are these costs from February of
 11:35 6 2021?
 11:35 7 A. Yes. And they're no longer
 11:36 8 accurate. Tremendous things have happened in
 11:36 9 the market, inflation, supply constraints,
 11:36 10 changes that the manufacturers are making in
 11:36 11 actually how they market turbines.
 11:36 12 But, you know, we have an exclusive
 11:36 13 arrangement with General Electric associated
 11:36 14 with this particular project development. And
 11:36 15 so the expectation there is that we will use
 11:36 16 General Electric equipment unless we can
 11:36 17 demonstrate that there is a more economically
 11:36 18 viable available, as high a quality model of
 11:36 19 turbine that can be built and delivered in the
 11:36 20 timeframe we need for the project.
 11:36 21 And then, at that point, we would,
 11:36 22 you know, pursue legal challenge to that
 11:37 23 exclusivity if we deemed it necessary.
 11:37 24 Q. Let me understand what's going on
 11:37 25 here.

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11:37 **1** So at the moment, Scout has a
 11:37 **2** contract with GE?
 11:37 **3** **A.** No, no contract.
 11:37 **4** **Q.** I'm sorry.
 11:37 **5** **A.** We have exclusivity. We're
 11:37 **6** obligated with exclusivity.
 11:37 **7** **Q.** Exclusivity --
 11:37 **8** **A.** Yeah.
 11:37 **9** **Q.** -- with GE to buy a GE turbine?
 11:37 **10** **A.** Yes.
 11:37 **11** **Q.** And you would -- that is considered
 11:37 **12** to be a binding contract, then, correct?
 11:37 **13** **A.** The exclusivity aspect of it.
 11:37 **14** **Q.** Okay.
 11:37 **15** **A.** Let me explain a little bit more.
 11:37 **16** **Q.** And you don't have to. I want you
 11:37 **17** to fully answer the questions that are put to
 11:37 **18** you, Mr. Kobus.
 11:37 **19** And you've been kind of extending
 11:37 **20** the answers, and I'm happy to have you do that,
 11:38 **21** and I want you to answer your questions fully.
 11:38 **22** But I sense somehow that a little bit we're
 11:38 **23** going off.
 11:38 **24** **A.** Well, I don't want to waste
 11:38 **25** anybody's time if it's not information you want

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11:38 **1** to hear. I just want to explain, you're asking
 11:38 **2** for terms such as, do we have a contract with
 11:38 **3** GE? No, we have not procured turbines from GE.
 11:38 **4** Do we have an obligation from a prior
 11:38 **5** arrangement that gives them exclusivity? Yes,
 11:38 **6** we do.
 11:38 **7** **Q.** Okay. Okay. And so you indicated
 11:38 **8** in your previous answer that the cost estimate
 11:38 **9** found on page 2-85 of the amended ASC is
 11:38 **10** probably too small?
 11:38 **11** **A.** Too small.
 11:38 **12** **Q.** And do you have any information to
 11:38 **13** give us about how much too small it is?
 11:39 **14** **A.** Well, the greatest component of the
 11:39 **15** cost of the project is the turbines, the
 11:39 **16** turbine supply. And the way the current market
 11:39 **17** is, every time we ask GE for a price update, it
 11:39 **18** has an escalator on it.
 11:39 **19** So, you know, this was a '21 price
 11:39 **20** basis. In fact, for the redline, we didn't
 11:39 **21** even update it because we know it's out of date
 11:39 **22** and it's going to change likely the next time
 11:39 **23** we ask GE for a price update.

I mean, that's just how this market
 11:39 **25** works. And the components supply, the material

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11:39 **1** supply, the fundamental commodities have
 11:39 **2** escalated up and gone down just in the last six
 11:39 **3** months.
 11:39 **4** **Q.** Okay. I understand the answer.
 11:40 **5** And on a general basis, is this
 11:40 **6** 10 percent wrong, 20 percent wrong? Order of
 11:40 **7** magnitude, if you can. If you can.
 11:40 **8** **A.** I can't answer that.
 11:40 **9** **Q.** GE also makes the bigger turbines,
 11:40 **10** don't they?
 11:40 **11** **A.** Yes, they do.
 11:40 **12** **Q.** And on the construction side of
 11:40 **13** things, have you updated estimates for the
 11:40 **14** construction side?
 11:40 **15** **A.** We continue to update estimates and
 11:40 **16** we continue to work with vendors, you know, for
 11:40 **17** example, the EPC-type vendors that we've been
 11:40 **18** engaged with. We try and update -- refresh our
 11:41 **19** request for proposals related to the balance of
 11:41 **20** plant cost for the project, which are also a
 11:41 **21** major -- one of the major components of the
 11:41 **22** ultimate cost.
 11:41 **23** **Q.** Okay. Someone may be reading this
 11:41 **24** deposition and doesn't know --
 11:41 **25** **A.** Sure.

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11:41 **1** **Q.** -- what EPC is. Could you define
 11:41 **2** that?
 11:41 **3** **A.** That's engineer procure construct.
 11:41 **4** And so those are the type of contractors that,
 11:41 **5** you know, they come in, they provide
 11:41 **6** engineering for the balance of the plan. They
 11:41 **7** work with the turbine supplier which is a
 11:41 **8** separate contract. The turbine supply
 11:41 **9** agreement is separate.
 11:41 **10** But it's EPC contractor who arranges
 11:41 **11** and erects and constructs the project. So
 11:42 **12** they're like the general contractor. If you
 11:42 **13** were to go out and build a building, they'd be
 11:42 **14** the general contractor that you hire even
 11:42 **15** though you may be buying a Butler building.
 11:42 **16** That's a similar analogy.
 11:42 **17** **Q.** Would it be fair to characterize it
 11:42 **18** as a sort of design build contract, EPC?
 11:42 **19** **A.** Yeah, elements of it. We don't
 11:42 **20** design in-house, but we do have design
 11:42 **21** capability internally within the company. And
 11:42 **22** they're actually the ones that work with the
 11:42 **23** contractors we hire.

And we have other consultants that
 11:42 **25** we bring in as well. Like the electrical

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11:42 1 design is done by a separate consultant.
11:42 2 That's even prior to letting the EPC contract.
11:42 3 Q. So the current preferred plan is
11:43 4 244 turbines?
11:43 5 A. Up to 244.
11:43 6 Q. Okay.
11:43 7 A. We're permitting the maximum extent
11:43 8 we believe we can optimally site on that
11:43 9 project.
11:43 10 Q. And I don't mean to be facetious in
11:43 11 any manner, but the plan for 244 turbines maxes
11:43 12 out the project, is that for to say?
11:43 13 A. We will -- we will not go more than
11:43 14 244, but we cannot build more than 235 because
11:43 15 we have an agreement with the Department of
11:43 16 Defense that's -- it's called a mitigation
11:43 17 agreement. We're in the viewshed of the fossil
11:43 18 Oregon NORAD facility.
11:43 19 And so they've -- as part of the
11:43 20 mitigation response team, they evaluated our
11:43 21 turbine layouts and have indicated places where
11:44 22 we had to reduce the number of turbines. So
11:44 23 we've -- we have an agreement with them where
11:44 24 we could not build more than 235.
11:44 25 Q. And is the 235 turbine layout shown
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11:44 1 in the amended ASC?
11:44 2 A. No, because we want to permit all
11:44 3 244 so we have the flexibility as we optimize
11:44 4 this project, until we get to the point where
11:44 5 we pull the trigger on the construction, we
11:44 6 need all of those locations available.
11:44 7 I don't know what I'm going to lose
11:44 8 in the next week for something to pop up that
11:44 9 says, that's too much cut and fill. We can't
11:44 10 build that one. You got to use one of the
11:44 11 others that you got on the bench, and replace
11:44 12 it.
11:45 13 So I've got to have all 244 sites
11:45 14 permitted so I have that flexibility to build
11:45 15 the optimal, most suitable project for whoever
11:45 16 the ultimate offtake entity is, or entities.
11:45 17 It could be more.
11:45 18 Q. Okay.
11:45 19 A. Or we could sell the project to
11:45 20 somebody. I mean, all these things are on the
11:45 21 table. It's what developers do. I mean, we're
11:45 22 a private developer. We're trying to satisfy a
11:45 23 market. And, you know, as opportunities come
11:45 24 available, we'll evaluate them to the fullest.
11:45 25 Q. So the change from the 244 to the
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11:45 1 235, which is the maximum, is that -- that does
11:45 2 not identify specific turbines. It just says
11:45 3 you can't have more than 244, is that the way
11:45 4 the arrangement is?
11:45 5 A. The 235 turbines that we can build
11:46 6 are precisely identified by coordinates in the
11:46 7 mitigation agreement, yes, and that's publicly
11:46 8 available.
11:46 9 Q. Okay. So that's where I'd go to
11:46 10 look for that?
11:46 11 A. Yeah, yeah.
11:46 12 Q. Okay. So I want to go back a little
11:46 13 bit of the history of the project.
11:46 14 I understand you got involved in
11:46 15 2016?
11:46 16 A. 2018.
11:46 17 Q. 2018?
11:46 18 A. Yes.
11:46 19 Q. Okay. And what was the project when
11:46 20 you got involved?
11:46 21 A. When I got involved, it was a
11:46 22 250-megawatt project intending to interconnect
11:46 23 at Red Mountain.
11:46 24 Q. And 250?
11:46 25 A. 250 megawatts of wind, yes.
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11:46 1 Q. Of wind only?
11:46 2 A. Yes.
11:46 3 Q. And that was in 2018?
11:46 4 A. That was in 2018, yes.
11:46 5 Q. And was that a viable project?
11:46 6 MS. PERLMUTTER: Objection as to
11:46 7 form. You can answer.
11:47 8 THE WITNESS: Every iteration we
11:47 9 have in the development of the project is
11:47 10 intended to get it to the most viable state
11:47 11 we can.
11:47 12 As it turns out, you know, we never
11:47 13 did have a success path to interconnect at
11:47 14 Red Mountain, and that's why we gave up
11:47 15 that interconnection request.
11:47 16 BY MR. ARAMBURU:
11:47 17 Q. That was a BPA connection?
11:47 18 A. Yeah, yeah.
11:47 19 Q. And what was wrong with Red
11:47 20 Mountain?
11:47 21 A. We -- how do I say it? It was
11:47 22 challenging to get all of the easements that
11:47 23 were required to get our gen-tie installed from
11:48 24 the project site to actually to the Red
11:48 25 Mountain substation.
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11:48 **1** In the interim, we were competing
 11:48 **2** against another wind developer that had leases
 11:48 **3** and interconnections in the queue interspersed
 11:48 **4** with our leases on the project site.
 11:48 **5** And, ultimately, we worked with that
 11:48 **6** competitor, acquired their assets, acquired two
 11:48 **7** interconnection queue positions that they had
 11:48 **8** for the 230 kV line on the east and the 500 kV
 11:48 **9** line on the west, which made the 115 kV
 11:48 **10** interconnect no longer viable because now the
 11:48 **11** project had expanded to be -- well, I think at
 11:48 **12** that stage it was 850 megawatts at that time.
 11:48 **13** **Q.** Okay.
 11:49 **14** **A.** But, you know, our job as developers
 11:49 **15** is we're continuing to finesse and optimize and
 11:49 **16** make this more attractive for an offtake
 11:49 **17** market. And so we're constantly working.
 11:49 **18** That's my job, is to look for ways to make this
 11:49 **19** better, to make it more attractive, to make it
 11:49 **20** more economical.
 11:49 **21** **Q.** So there was capacity at the Red
 11:49 **22** Mountain substation to take the 250 turbine
 11:49 **23** project?
 11:49 **24** **A.** Yes, yes.
 11:49 **25** **Q.** Who was with the competitor?
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11:49 **1** **A.** WPD Incorporated. In fact, we have
 11:49 **2** an ongoing -- similar to exclusivity with GE,
 11:49 **3** have an ongoing contract obligation with them
 11:49 **4** as a result of acquiring those assets.
 11:49 **5** **Q.** Which include leases?
 11:49 **6** **A.** I'm sorry?
 11:49 **7** **Q.** Which include leases, land leases?
 11:50 **8** **A.** No. With WPD, we've acquired all of
 11:50 **9** the land lease that we desire. And they've
 11:50 **10** given up the ones we didn't desire. And so,
 11:50 **11** yes, we're the only ones out there that have
 11:50 **12** leases, that I know of.
 11:50 **13** **Q.** So just to backtrack a little bit.
 11:50 **14** When you came on board in 2018, the
 11:50 **15** project that was then under consideration was a
 11:50 **16** 250 megawatt wind project?
 11:50 **17** **A.** Yes.
 11:50 **18** **Q.** So, then, what was the next
 11:50 **19** iteration of the project?
 11:50 **20** **A.** Well, the next iteration was to
 11:50 **21** acquire leases from WPD and this eastern
 11:50 **22** interconnection that they had that was in the
 11:50 **23** queue for 250 megawatts.
 11:50 **24** But then, since we had more assets,
 11:50 **25** more ability to interconnect, we added another
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11:51 **1** 100 megawatt interconnect request to use up the
 11:51 **2** remaining available capacity on the 230 kV side
 11:51 **3** of the project. So that then went up to 350
 11:51 **4** megawatts.
 11:51 **5** **Q.** That was all wind?
 11:51 **6** **A.** Yes. At the time, that was all
 11:51 **7** wind.
 11:51 **8** **Q.** And did you take over a queue
 11:51 **9** position --
 11:51 **10** **A.** Yes.
 11:51 **11** **Q.** -- from them?
 11:51 **12** **A.** Two of them.
 11:51 **13** **Q.** Two of them?
 11:51 **14** **A.** Yeah.
 11:51 **15** **Q.** A 250 megawatt and a 100 megawatt?
 11:51 **16** **A.** No. We filed the 100 on our own.
 11:51 **17** You can file and terminate and file
 11:51 **18** interconnect requests to your heart's content.
 11:51 **19** So we acquired their 250. We then
 11:51 **20** filed for another 100 megawatts of wind. And
 11:51 **21** then we filed for another 300 megawatt of
 11:51 **22** solar. And then we filed for another
 11:51 **23** 100 megawatt of solar overbuild.
 11:52 **24** **Q.** Okay. I don't mean to interrupt
 11:52 **25** you. I was just trying to get a consecutive
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11:52 **1** arrangement here.
 11:52 **2** So 250 to begin with?
 11:52 **3** **A.** Yes.
 11:52 **4** **Q.** Then we go from 250 plus 100. And
 11:52 **5** then what's the next iteration after that?
 11:52 **6** **A.** The next iteration after that was to
 11:52 **7** file a 300 megawatt solar. So that would make
 11:52 **8** it 650 megawatts of interconnection on the
 11:52 **9** 230 kV system.
 11:52 **10** **Q.** And that was east or west?
 11:52 **11** **A.** That was the east side.
 11:52 **12** **Q.** Okay. So 350 of wind and 300 of
 11:52 **13** solar?
 11:52 **14** **A.** Yes.
 11:52 **15** **Q.** And was there a layout for that
 11:52 **16** project? I mean, was there a design --
 11:52 **17** **A.** It's in the -- it's in the
 11:52 **18** application for site certification, yes.
 11:52 **19** **Q.** Okay. Okay. So that adds up to
 11:52 **20** 650, then?
 11:52 **21** **A.** Yes.
 11:53 **22** **Q.** Then what was the next iteration of
 11:53 **23** the project?
 11:53 **24** **A.** We filed for 100 megawatts of solar
 11:53 **25** overbuild.
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11:53 1 Q. Okay.

11:53 2 A. Want me to explain that?

11:53 3 Q. Yes. And what do you mean by

11:53 4 overbuild?

11:53 5 A. It means that we're interconnecting

11:53 6 100 megawatts, but it's not -- it's not in

11:53 7 increasing the amount of transmitted energy on

11:53 8 the system. It's literally behind the meter.

11:53 9 So it says you can never exceed

11:53 10 350 megawatts on the system. But you have

11:53 11 100 megawatts of solar that if, say, the wind

11:53 12 dies down, then you can interject that into the

11:53 13 system as long as you maintain below

11:54 14 350 megawatts. So that's -- available

11:54 15 transmission capacity is the terminology that's

11:54 16 used.

11:54 17 Q. So in various places in the

11:54 18 application you use the term "grid injection

11:54 19 capacity"?

11:54 20 A. Yes.

11:54 21 Q. Is that what we're talking about?

11:54 22 A. Grid injection capacity is kind of

11:54 23 the term that relates to what you can inject

11:54 24 into the system and have it go where you

11:54 25 desire.

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11:54 1 Q. So why is there a grid injection

11:54 2 capacity? What causes that to happen?

11:54 3 A. That's the capability of the

11:54 4 Bonneville system. It has limitations. I

11:54 5 mean, wires have limits. Bonneville has to

11:54 6 manage reliability on the grid, so they have to

11:54 7 maintain the electrical characteristics of

11:54 8 everybody that's interconnected with the grid.

11:54 9 And so they do a lot of study to determine, you

11:55 10 know, how much can be inter -- injected at any

11:55 11 point in the system.

11:55 12 Q. And any hope that you can get your

11:55 13 overbuild into the system?

11:55 14 MS. PERLMUTTER: Objection as to

11:55 15 form. You can answer.

11:55 16 THE WITNESS: We don't need to.

11:55 17 It's overbuild.

11:55 18 BY MR. ARAMBURU:

11:55 19 Q. Okay.

11:55 20 A. You inject it whenever you drop

11:55 21 below 350 megawatts injection, you can use some

11:55 22 of that overbuild. Let me just go through.

11:55 23 Let's say, you know, the wind is blowing, we're

11:55 24 generating 350 megawatts injection of wind on

11:55 25 the east side, and the wind starts to die down.

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11:55 1 Okay. The solar's there and

11:55 2 available. It's daytime. We can just start

11:55 3 injecting the solar to maintain 350 megawatts,

11:55 4 even though the wind has died down.

11:55 5 Q. So over the course of a year, what

11:56 6 period of time in percentages, perhaps, would

11:56 7 you not be able to use the full capacity, the

11:56 8 full nameplate capacity and interject it into

11:56 9 the grid?

11:56 10 MS. PERLMUTTER: Objection. Calls

11:56 11 for speculation. You can answer.

11:56 12 THE WITNESS: You know, that's kind

11:56 13 of a commercial concern. That's -- I mean,

11:56 14 that's the intellectual property that,

11:56 15 we're trying to market this project, and

11:56 16 we're designing various components of it to

11:56 17 optimize the output relative to the

11:56 18 climatic conditions that are here.

11:56 19 And we spend a lot of effort to make

11:56 20 sure those numbers are ideal. And we work

11:56 21 with our potential offtakers -- I mean,

11:57 22 that's why we did the 100 megawatts

11:57 23 overbuild was in response to an offtaker's

11:57 24 desire to be able to optimize the

11:57 25 transition on the grid.

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11:57 1 And what I mean by that is, if you

11:57 2 have 350 megawatts of wind, you've got have

11:57 3 350 megawatts of capacity. Well, what

11:57 4 happens when the wind stops blowing? You

11:57 5 still have that obligation. You're still

11:57 6 paying for that capacity on the system.

11:57 7 So what if you could add solar that

11:57 8 would ramp up using that same contractual

11:57 9 capacity to use it when the wind is not?

11:57 10 You're optimizing your system.

11:57 11 And the same thing goes for battery

11:57 12 storage. The intent is to optimize it so

11:57 13 when you've got solar, when you've got that

11:57 14 excess solar that's there and able to

11:57 15 generate, you can divert it to charge the

11:57 16 battery without using the transmission

11:58 17 system.

11:58 18 And so all of these things work

11:58 19 together to optimize the project for the

11:58 20 eventual offtaker.

11:58 21 BY MR. ARAMBURU:

11:58 22 Q. I understand that.

11:58 23 And who was the offtaker that wanted

11:58 24 the 100 overbuild, the 100 megawatts overbuild?

11:58 25 A. I can't answer that.

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11:58 **1** MS. PERLMUTTER: You tell me. If
11:58 **2** that's confidential, then I'm going to
11:58 **3** object and ask him not to respond.
11:58 **4** THE WITNESS: It's confidential
11:58 **5** negotiations. I'm not at liberty to say
11:58 **6** that.
11:58 **7** BY MR. ARAMBURU:
11:58 **8** **Q.** Are these ongoing negotiations now?
11:58 **9** **A.** Yes.
11:58 **10** **Q.** My question to you is without regard
11:58 **11** to an offtaker or purchaser of the project.
11:58 **12** My question to you is, you've
11:58 **13** described a scenario by which wind slows down,
11:58 **14** but the sun keeps shining just like it's
11:58 **15** shining out today?
11:58 **16** **A.** Yeah.
11:58 **17** **Q.** And then you can ramp up the sun to
11:58 **18** take account of the declining production from
11:58 **19** your wind turbines, correct?
11:59 **20** **A.** Exactly. You got it. You got.
11:59 **21** **Q.** Okay. Now, my question to you is,
11:59 **22** how often does that happen? What period of
11:59 **23** time over the year? Is this 10 percent of the
11:59 **24** year, 20 percent of the year, 50 percent of the
11:59 **25** year? How often does this happen?
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11:59 **1** **A.** Frequently.
11:59 **2** **Q.** Well, I mean, but can you help me
11:59 **3** with some sort of quantification if you would,
11:59 **4** Mr. Kobus?
11:59 **5** **A.** I would rather refrain from it
11:59 **6** because we're still optimizing the project. I
11:59 **7** mean, we don't know what size the batteries are
11:59 **8** going to be. You know, we know what size the
11:59 **9** solar is going to be, but that is our
11:59 **10** intellectual property. That's what we do for a
11:59 **11** living.
11:59 **12** **Q.** But these are mathematical
11:59 **13** calculations, are they not? These are
11:59 **14** calculations that you make?
11:59 **15** **A.** I have to know the exact conditions
11:59 **16** of what size the battery is, what time of year
12:00 **17** that you're talking about, to, you know, be
12:00 **18** able to determine what that optimization level
12:00 **19** is. But bottom line, I can't spout it off, off
12:00 **20** the cuff. If I said a number, I'd be wrong.
12:00 **21** **Q.** Why?
12:00 **22** **A.** Because -- you said this is a big
12:00 **23** document. And I'm the project manager for this
12:00 **24** site, and I have to know a little bit about
12:00 **25** everything. So I can be a few questions deep
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12:00 **1** on anything, but I don't have all those numbers
12:00 **2** at my -- on the tip of my tongue.
12:00 **3** **Q.** Okay. But there are certain times
12:00 **4** of the year when the overbuild for solar or the
12:00 **5** overbuild for wind, correct? There's an
12:00 **6** overbuild for wind?
12:00 **7** **A.** Yes.
12:00 **8** **Q.** Okay. Both of those might be
12:00 **9** optimized when one or the other declines in
12:01 **10** production?
12:01 **11** **A.** Correct. Well, the overbuild on the
12:01 **12** wind is a bit different.
12:01 **13** **Q.** Explain why.
12:01 **14** **A.** The overbuild on the wind is, from
12:01 **15** the point of generation to the actual point of
12:01 **16** delivery to the grid, there's electrical
12:01 **17** losses.
12:01 **18** And so, with the wind, you can
12:01 **19** technically have those overbuilt turbines
12:01 **20** functioning all the time because all they're
12:01 **21** doing is making up for the losses between your
12:01 **22** nameplate generation and what's actually
12:01 **23** getting injected into the grid.
12:01 **24** **Q.** I'm sorry, doesn't that depend on
12:01 **25** the length of the transmission?
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12:01 **1** **A.** It depends on all things electrical
12:01 **2** related to the project. There could be
12:01 **3** turbines on one side of the project generating
12:01 **4** fairly strongly and on the other side not.
12:02 **5** So it's just, you know, a dynamic
12:02 **6** where you have the overbuild design to be the
12:02 **7** desired amount to make up for the average
12:02 **8** electrical losses on the project. But
12:02 **9** recognize you can never exceed your available
12:02 **10** injection capacity.
12:02 **11** **Q.** Okay. But you're talking about line
12:02 **12** losses, right?
12:02 **13** **A.** Yeah.
12:02 **14** **Q.** That's, what, 3, 4 percent at most?
12:02 **15** **A.** That's probably a fairly good
12:02 **16** number, yeah.
12:02 **17** **Q.** But you're not overbuilding because
12:02 **18** you're losing 3 or 4 percent on the
12:02 **19** transmission, are you?
12:02 **20** **A.** Oh, yes, we are.
12:02 **21** **Q.** That's the sole reason for
12:02 **22** overbuild?
12:02 **23** **A.** Oh, yes.
12:02 **24** MS. PERLMUTTER: Objection.
12:02 **25** Mischaracterizes his testimony. But you
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12:02 1 can answer.

12:02 2 THE WITNESS: Yes. We have other

12:02 3 projects within the Scout portfolio that we

12:02 4 have overbuilt turbines for that exact

12:02 5 reason, and it works quite well.

12:02 6 BY MR. ARAMBURU:

12:02 7 Q. So if you get to a situation where

12:03 8 the grid can no longer take power because

12:03 9 you've reached grid injection capacity, then at

12:03 10 that point, whatever solar energy is being

12:03 11 produced or turbine energy is being produced

12:03 12 isn't doing anything, is it?

12:03 13 A. We have -- we will have what's

12:03 14 called a park controller for the output of

12:03 15 project that will make sure you don't exceed

12:03 16 your injection limit for the grid. And it will

12:03 17 ramp back on any generators as necessary to

12:03 18 remain below that maximum injection capacity.

12:03 19 Q. Okay. So if you've reached grid

12:03 20 injection capacity, and you've got -- do you

12:03 21 turn off the turbines, then? Is that what you

12:03 22 do?

12:03 23 A. No. They're ramped back. I mean,

12:04 24 you have the ability to dial back the

12:04 25 generation of any turbine, individually or as

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12:05 1 I can actually have more solar

12:05 2 panels than the nameplate rating of the

12:05 3 inverter to increase efficiency of the

12:05 4 operative project.

12:05 5 Because the sun doesn't shine all

12:05 6 the time. And so we actually optimize the

12:05 7 number of solar panels. So if you're looking

12:05 8 at nameplate solar panels, that can actually

12:05 9 even be higher.

12:05 10 That's a difficulty with evaluating

12:05 11 it this way is that, you know, these are

12:05 12 parameters related to our agreements with

12:06 13 Bonneville, which is a federal power marketer.

12:06 14 And, you know, the State's just concerned that

12:06 15 you meet Bonneville's criteria. And so, you

12:06 16 know, we're designing the project with that in

12:06 17 mind.

12:06 18 But the key parameters are what we

12:06 19 say in the application for site certification,

12:06 20 and that's the nameplate capacity of the wind

12:06 21 and the nameplate capacity of inverters.

12:06 22 Q. I'm going to really try to simplify

12:06 23 this, and if you don't agree with me, tell me.

12:06 24 BPA doesn't care how many turbines

12:06 25 you build, how many solar panels you put, or

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12:04 1 an entire park.

12:04 2 Q. Okay. And you do that by changing

12:04 3 pitch of the blades; is that right?

12:04 4 A. Generally, yeah. Yeah.

12:04 5 Q. Okay. We were going through the

12:04 6 project here, and you've been very helpful with

12:04 7 trying to provide a bit of a kind of continuum

12:04 8 here.

12:04 9 So I think we're at the point of

12:04 10 350 wind, 300 solar, 650 total megawatts.

12:04 11 A. Okay. I thought we were at the

12:04 12 point of 350 wind, 300 solar, 100 solar.

12:04 13 Q. Okay. Okay.

12:04 14 A. Overbuild, 100 overbuild.

12:04 15 Q. And if I'm trying to put words in

12:04 16 your mouth, Mr. Kobus, tell me to stop, okay?

12:05 17 A. All right.

12:05 18 Q. So now we're up to it looks like, if

12:05 19 my math is right, 750?

12:05 20 A. Of generation, yes.

12:05 21 Q. Okay.

12:05 22 A. I mean, it can actually be more than

12:05 23 that because the solar generation is based on

12:05 24 the inverter, the nameplate rating of the

12:05 25 inverter.

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12:06 1 anything else, as long as you don't try to put

12:06 2 more than a certain amount into the grid?

12:06 3 A. That's not true.

12:06 4 Q. Okay. Why am I wrong?

12:06 5 A. BPA has to manage the electrical

12:06 6 characteristics of the grid and maintain

12:07 7 reliability for everyone that's interconnected.

12:07 8 I can't overbuild any more than four turbines

12:07 9 because that's what we filed in our

12:07 10 interconnection application.

12:07 11 So BPA cares very much. In fact,

12:07 12 they care that the turbines we interconnect are

12:07 13 state of the art technology and have certain

12:07 14 electrical control characteristics that meet

12:07 15 their criteria for grid reliability. So, yes,

12:07 16 of course, Bonneville cares.

12:07 17 Q. But their principle concern is that

12:07 18 a solar farm, wind farm, hybrid project doesn't

12:07 19 try to inject into the system more than a

12:07 20 certain amount?

12:07 21 MS. PERLMUTTER: Objection as to

12:07 22 foundation. But you can answer if you can.

12:07 23 THE WITNESS: They will assure that

12:08 24 we do not inject more than we are

12:08 25 contractually allowed, and they'll require

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12:08 **1** us to have devices associated with the
 12:08 **2** project that control that.
 12:08 **3** BY MR. ARAMBURU:
 12:08 **4** **Q.** Okay. Okay. Now, I think we're up
 12:08 **5** to around 750. Now, what's the next step in
 12:08 **6** the continuum of the project?
 12:08 **7** **A.** We terminated the 300 megawatt
 12:08 **8** interconnection request on the east side.
 12:08 **9** **Q.** Why was that?
 12:08 **10** **A.** We discovered that when Bonneville
 12:08 **11** was doing their feasibility studies, that what
 12:08 **12** they would have required to do for the network
 12:08 **13** would have been extremely costly. And we
 12:09 **14** decided that it would not have been in the best
 12:09 **15** interest of our potential offtake market to
 12:09 **16** shoulder that kind of cost.
 12:09 **17** **Q.** So you forgot about the 350, then?
 12:09 **18** MS. PERLMUTTER: Objection. Form.
 12:09 **19** You can answer.
 12:09 **20** THE WITNESS: The 350 is still
 12:09 **21** there. This is the extra 300 solar that we
 12:09 **22** added and then terminated.
 12:09 **23** BY MR. ARAMBURU:
 12:09 **24** **Q.** Okay. But as I understand it,
 12:09 **25** the -- you terminated the -- your position in
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12:09 **1** the queue for the 350?
 12:09 **2** **A.** No. For the 300.
 12:09 **3** **Q.** Oh, for the 300. Excuse me.
 12:09 **4** **A.** The extra 300 solar. Every one of
 12:09 **5** these interconnects is a precise application
 12:09 **6** document and a precise queue position and, you
 12:09 **7** know, meets all of Bonneville's tariff
 12:10 **8** requirements related to it.
 12:10 **9** So they manage the queue. And so if
 12:10 **10** you put in 300 and then terminate it, it
 12:10 **11** doesn't affect anything else in the queue. You
 12:10 **12** just terminated your queue position for that
 12:10 **13** 300 desired injection.
 12:10 **14** **Q.** Somebody else moves up?
 12:10 **15** **A.** In this case, anybody could file,
 12:10 **16** but there wasn't capacity to do it because, as
 12:10 **17** I said, when we had our feasibility study, it
 12:10 **18** was determined that the network upgrades that
 12:10 **19** would be required -- well, I don't want to
 12:10 **20** repeat myself, so...
 12:10 **21** **Q.** Network upgrades on the BPA side?
 12:10 **22** **A.** On the BPA side would be very
 12:10 **23** expensive, yes.
 12:10 **24** **Q.** So has a decision been made now
 12:10 **25** between the 244 smaller turbines and the
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12:10 **1** 150 larger turbines? Is that a corporate
 12:11 **2** decision made as of now?
 12:11 **3** **A.** No. We -- that will be a
 12:11 **4** last-minute determination when we go to the
 12:11 **5** turbine supplier and negotiate for the turbine
 12:11 **6** that we desire to have.
 12:11 **7** **Q.** So there's interconnect proposals
 12:11 **8** that have been made to BPA, am I correct about
 12:11 **9** that?
 12:11 **10** **A.** Yeah.
 12:11 **11** **Q.** For the whole project?
 12:11 **12** **A.** Yes.
 12:11 **13** **Q.** And what's the status of those?
 12:11 **14** **A.** We have -- we're at the E&P
 12:11 **15** agreement stage for both interconnections,
 12:11 **16** which means Bonneville is doing engineering and
 12:11 **17** procurement that we have funded to advance the
 12:11 **18** design of the projects, culminating in a large
 12:11 **19** generator interconnection agreement once we
 12:11 **20** have unappealable permit available.
 12:12 **21** **Q.** And when do you expect the decision
 12:12 **22** on the interconnect with BPA?
 12:12 **23** **A.** At the point we have an unappealable
 12:12 **24** permit.
 12:12 **25** **Q.** If you got your permit today, would
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12:12 **1** you get the approval from the interconnect --
 12:12 **2** large interconnect agreement with BPA?
 12:12 **3** **A.** Within a very short period of time,
 12:12 **4** yes.
 12:12 **5** **Q.** I understand from the application
 12:12 **6** that they're going through a NEPA review
 12:12 **7** process?
 12:12 **8** **A.** Yes, yeah.
 12:12 **9** **Q.** And when will that be complete?
 12:12 **10** MS. PERLMUTTER: Objection.
 12:12 **11** Foundation. You can answer if you know.
 12:12 **12** THE WITNESS: Typically, it's the
 12:12 **13** last thing they do before issuing the large
 12:12 **14** generator interconnect agreement.
 12:12 **15** BY MR. ARAMBURU:
 12:12 **16** **Q.** Okay. And then I gather from
 12:12 **17** reading the application, sometime or another,
 12:12 **18** batteries were added to this thing?
 12:12 **19** **A.** Yes, battery storage.
 12:12 **20** **Q.** And when did that happen?
 12:13 **21** **A.** When we added the solar. It was a
 12:13 **22** solar battery. So it was a hybridization that
 12:13 **23** was done at the same time.
 12:13 **24** **Q.** Okay. And reading the application,
 12:13 **25** it looks to me that there's 300 megawatts of
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12:13 **1** batteries in two -- and 1550 in each place, am
12:13 **2** I right about that?
12:13 **3** **A.** Yes. We intended -- we have two
12:13 **4** points of interconnection. And so, to optimize
12:13 **5** the project, we wanted the solar and the
12:13 **6** battery to be clustered by the interconnection
12:13 **7** to minimize the amount of wires to make it as
12:13 **8** cost effective as possible.
12:13 **9** Because we didn't know where
12:13 **10** Bonneville was actually going to finally decide
12:13 **11** where the western interconnect would be, we had
12:13 **12** to have a redundant part of the application to
12:13 **13** cover whichever decision Bonneville would make
12:13 **14** so that we wouldn't have to add it to the
12:14 **15** application later on in the process, which
12:14 **16** would, you know, be an increased impact
12:14 **17** environmentally, so...
12:14 **18** **Q.** So I don't see any drawings or
12:14 **19** designs or any engineering for the battery
12:14 **20** project. Is that ongoing that?
12:14 **21** **A.** That is ongoing, yes.
12:14 **22** **Q.** But it's not here, is it? Here --
12:14 **23** I'm sorry, here as in the updated amended site
12:14 **24** application?
12:14 **25** **A.** There's as much in there about the
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12:14 **1** battery as I believe there is about solar and
12:14 **2** wind.
12:14 **3** **Q.** Okay. Well, we have locations for
12:14 **4** the turbines.
12:14 **5** **A.** And the type of battery technology
12:14 **6** that's available in the market, the size of
12:14 **7** battery that we are anticipating using.
12:14 **8** **Q.** And the batteries are going to be
12:14 **9** lithium ions?
12:15 **10** **A.** That's the most commercially viable
12:15 **11** economical technology on the market today.
12:15 **12** However, it's going to be whatever the offtaker
12:15 **13** desires. The offtaker could step up and say, I
12:15 **14** want eight hour batteries, or I want a flow
12:15 **15** battery of a different technology, and we would
12:15 **16** scramble to accommodate that, if necessary, do
12:15 **17** an amendment to our SCA, and a supplemental
12:15 **18** EIS, if necessary, to accommodate it.
12:15 **19** **Q.** So let me understand that scenario.
12:15 **20** Scout would build the project to the
12:15 **21** specifications of the offtake, is that the way
12:15 **22** it works?
12:15 **23** **A.** We would attempt to design the
12:15 **24** project to meet their specifications, but we'd
12:15 **25** have to permit it. We'd have to adjust our
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12:15 **1** permitting to incorporate it.
12:16 **2** **Q.** So would it be more than
12:16 **3** 300 megawatts for batteries?
12:16 **4** MS. PERLMUTTER: Objection.
12:16 **5** Speculation. You can answer.
12:16 **6** THE WITNESS: We don't intend to
12:16 **7** increase the size of the batteries, no.
12:16 **8** BY MR. ARAMBURU:
12:16 **9** **Q.** And I read in the application that
12:16 **10** the size of the area for the batteries is
12:16 **11** six acres; is that right?
12:16 **12** **A.** Could be if we build the largest
12:16 **13** amount we were contemplating, yes.
12:16 **14** **Q.** But as we're sitting here today and
12:16 **15** we're thinking about whether this ought to be
12:16 **16** approved or not, we should assume two battery
12:16 **17** locations with 150 megawatts each, correct?
12:16 **18** **A.** That's correct.
12:16 **19** THE COURT REPORTER: Can we take a
12:23 **20** break?
12:23 **21** MR. ARAMBURU: Yes.
12:23 **22** (A recess was taken.)
12:23 **23** BY MR. ARAMBURU:
12:23 **24** **Q.** Mr. Kobus, we're back on the record
12:23 **25** now. I want to have you turn to page 2-15 of
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12:23 **1** the amended ASC. So there's -- under
12:23 **2** section 2.3, there's some redline language that
12:23 **3** was added here.
12:23 **4** Was that something you were
12:23 **5** responsible for?
12:24 **6** **A.** Yes, I was.
12:24 **7** **Q.** So do I have the right person as the
12:24 **8** one who wrote it?
12:24 **9** **A.** Yes, yes.
12:24 **10** **Q.** Okay. Wonderful, wonderful. Okay.
12:24 **11** And so why was the redline put in?
12:24 **12** What was the change that was necessary? Can
12:24 **13** you explain?
12:24 **14** MS. PERLMUTTER: Objection. The
12:24 **15** document speaks for itself. You can
12:24 **16** answer.
12:24 **17** THE WITNESS: There were two things
12:24 **18** that were going on, one with Bonneville and
12:24 **19** one with EFSEC staff. The EFSEC staff
12:24 **20** exchange was when EFSEC was going to
12:24 **21** publish the -- their notice, their SEPA
12:24 **22** notice for having to do an EIS --
12:24 **23** BY MR. ARAMBURU:
12:25 **24** **Q.** Let me interrupt you.
12:25 **25** A determination of significance,
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12:25 1 would that be the document?
12:25 2 A. Yes.
12:25 3 Q. Okay. Excuse me for the
12:25 4 interruption.
12:25 5 A. Yeah. And I had an exchange with
12:25 6 Amy Hafkemeyer at EFSEC about the concept of
12:25 7 nameplate capacity. That, you know, I had
12:25 8 discovered that, you know, for example, on the
12:25 9 solar, if the application materials say
12:25 10 nameplate capacity, it depends on whether it's
12:25 11 the solar inverters or the solar modules
12:25 12 themselves, which as I said earlier, could add
12:25 13 up to a larger amount of generation potential
12:25 14 than the inverter itself. And so we were
12:26 15 clarifying the terminology related to nameplate
12:26 16 capacity so it was clear that you could
12:26 17 overbuild.
12:26 18 What was happening with Bonneville
12:26 19 is, Bonneville was, you know, maintaining the
12:26 20 policy of the inverter nameplate for solar, but
12:26 21 they were also saying that you could not
12:26 22 overbuild wind.
12:26 23 And so we engaged in further
12:26 24 conversation with Bonneville and eventually
12:26 25 came to the understanding -- we got to the
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12:26 1 right person in Bonneville, and came to
12:26 2 understand that you could overbuild the wind,
12:26 3 you just have to have a separate interconnect
12:26 4 to do it. You have to spell out how many
12:27 5 turbines, what type of turbines that you would
12:27 6 use to be able to overbuild the wind.
12:27 7 So at that point it was clear we had
12:27 8 to change the terminology so that it supported
12:27 9 the fact that you could do overbuild of both
12:27 10 solar panels and wind turbines.
12:27 11 And so this redline was an intent to
12:27 12 just bring together all of that mutual
12:27 13 understanding that occurred between us and
12:27 14 EFSEC and Bonneville at the time.
12:27 15 Q. Well, let's stick with page 2-15.
12:27 16 A. Sure.
12:27 17 Q. You indicated that you could
12:27 18 overbuild, wind turbines -- push solar off to
12:27 19 the side for a second -- overbuild wind
12:27 20 turbines even though -- okay.
12:27 21 You could overbuild wind turbines,
12:27 22 but BPA had to know how these wind turbines
12:27 23 were going to get -- these overbuilt turbines
12:28 24 were going to get on the system.
12:28 25 A. Yeah.
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12:28 1 Q. And have you provided that
12:28 2 information to them?
12:28 3 A. Yes. We filed an interconnection
12:28 4 request to add four turbines, four additional
12:28 5 turbines of the same kind of turbine to the
12:28 6 project configuration.
12:28 7 Q. Okay. And so over onto page --
12:28 8 A. Just can I clarify one thing?
12:28 9 Q. Okay.
12:28 10 A. These four overbuild turbines are
12:28 11 part of the 235. They're not four additional
12:28 12 that we're slamming out there. Okay. They
12:28 13 would be part of the 235 that we're allowed to
12:28 14 build.
12:28 15 Q. Okay.
12:28 16 A. We would just configure the site so
12:28 17 that whatever was injecting on the east side
12:28 18 had those four additional turbines injecting
12:28 19 there, so they wouldn't be available to inject
12:29 20 on the west side.
12:29 21 Q. Okay. And more capacity in the east
12:29 22 side substation than the west?
12:29 23 MS. PERLMUTTER: Objection as to
12:29 24 form. You can answer if you can.
12:29 25 THE WITNESS: On the east side per
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12:29 1 the interconnect applications we have in
12:29 2 the queue, we have the ability to interject
12:29 3 350 megawatts of wind turbines, plus four
12:29 4 more or -- or 13.6 more megawatts above
12:29 5 that 350 as overbuild.
12:29 6 BY MR. ARAMBURU:
12:29 7 Q. Let me have you look at page 2-15,
12:29 8 the second full paragraph.
12:29 9 A. Okay.
12:29 10 Q. Is this something you wrote?
12:29 11 A. Well, again, it's -- working with
12:30 12 Tetra Tech, I contributed, you know, editorial,
12:30 13 yes.
12:30 14 Q. So I'm reading this, and it says
12:30 15 that the transmitted the two -- two
12:30 16 transmission lines, two interconnections, one
12:30 17 east, one west.
12:30 18 A. Okay.
12:30 19 Q. And 650 megawatts of nameplate
12:30 20 generating capacity could interconnect at the
12:30 21 Bofer Canyon substation.
12:30 22 A. Correct.
12:30 23 Q. But that's limited to the
12:30 24 350 megawatts injection capacity, right?
12:31 25 A. That's actually an error. I need to
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12:31 **1** fix that.
 12:31 **2** **Q.** Okay.
 12:31 **3** **A.** Because at that time, the 650 was
 12:31 **4** the 350 wind plus that additional 350 solar,
 12:31 **5** which we subsequently terminated.
 12:31 **6** **Q.** So this is incorrect?
 12:31 **7** **A.** Yeah, this is incorrect. I need to
 12:31 **8** fix that.
 12:31 **9** **Q.** So tell me how we can fix it.
 12:31 **10** **A.** We can only inject -- per our
 12:31 **11** current interconnection request, we can inject
 12:31 **12** 350 megawatts on that 230 kV system.
 12:31 **13** **Q.** That's what it says.
 12:31 **14** **A.** It says up to 650.
 12:32 **15** **Q.** Well, it says up to 650 --
 12:32 **16** **A.** Could interconnect. It says up to
 12:32 **17** 650 could interconnect, but that it's limited
 12:32 **18** to 350 injection capacity. While, if we were
 12:32 **19** doing 650, we would need 650 of injection
 12:32 **20** capacity.
 12:32 **21** **Q.** But you don't have 650, you only
 12:32 **22** have 350?
 12:32 **23** **A.** Wind only we have 350, and we
 12:32 **24** terminated the interconnection for the
 12:32 **25** 300 solar. So I could tomorrow file a new one

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12:33 **1** capacity, could interconnect to the BPA 500 kV
 12:34 **2** Webber Canyon substation.
 12:34 **3** But that doesn't say whether that's
 12:34 **4** wind or solar.
 12:34 **5** **A.** No. You said up to 350, but it's up
 12:34 **6** to 500 is what it says. Up to 500 megawatts.
 12:34 **7** **Q.** As I read the sentence, and I don't
 12:34 **8** want to argue with you, Mr. Kobus, but as I
 12:34 **9** read the sentence, it says that 350 nameplate
 12:34 **10** generating capacity could be wind or solar. It
 12:34 **11** doesn't separate it --
 12:34 **12** **A.** I'm sorry, you've lost me. Are you
 12:34 **13** on second full paragraph on 2-16?
 12:34 **14** **Q.** I'm on the third sentence:
 12:34 **15** Up to 500 megawatts of nameplate
 12:34 **16** generating capacity/grid interconnect.
 12:34 **17** **A.** Correct. I'm with you.
 12:34 **18** **Q.** But that doesn't say that that's
 12:34 **19** wind or solar or combination of the two, just
 12:34 **20** 500 megawatts, period.
 12:35 **21** **A.** Okay.
 12:35 **22** **Q.** Is that right?
 12:35 **23** **A.** That's what it reads, yes.
 12:35 **24** **Q.** And is that correct? Have I got it
 12:35 **25** right?

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12:32 **1** for that 350 solar and be within my, you know,
 12:32 **2** EFSEC permitting bounds, but we don't intend to
 12:32 **3** do that.
 12:32 **4** **Q.** So, I'm sorry, the way I read the
 12:32 **5** sentence, and this appears to be your sentence,
 12:32 **6** so I want to make sure we get it right.
 12:33 **7** It says up to 650 megawatts of
 12:33 **8** nameplate generating capacity, limited to
 12:33 **9** 350 megawatts grid injection capacity, could go
 12:33 **10** to the planned 230 kV Bofer substation.
 12:33 **11** So as I understand it, we have
 12:33 **12** 650 megawatts of nameplate generating capacity
 12:33 **13** that can be hooked up to the system, but the
 12:33 **14** most you can do is 350. That's the way I read
 12:33 **15** that sentence.
 12:33 **16** **A.** Well, that is correct. That's the
 12:33 **17** most we can do, yeah.
 12:33 **18** **Q.** Okay. Good.
 12:33 **19** Now, so that -- so that sentence is
 12:33 **20** fine?
 12:33 **21** **A.** Yeah, that's true. At this point in
 12:33 **22** time, that's fine. We terminated the extra
 12:33 **23** 300.
 12:33 **24** **Q.** Then it says, up to 350 megawatts of
 12:33 **25** nameplate generating capacity, grid injection

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12:35 **1** **A.** At the time we updated it, that was
 12:35 **2** correct. Originally, this was a 500 megawatt
 12:35 **3** interconnection request for wind, but we
 12:35 **4** subsequently did material modification and
 12:35 **5** evaluation and it is now 340 megawatts of wind
 12:35 **6** and 160 megawatts of solar, per those --
 12:35 **7** **Q.** So is this information correct or
 12:35 **8** not?
 12:35 **9** **A.** This is the application information,
 12:35 **10** yes.
 12:35 **11** **Q.** Okay. We don't need to correct
 12:35 **12** this, this isn't wrong?
 12:35 **13** **A.** No, it doesn't need to be corrected.
 12:35 **14** But we've filed another interconnect request
 12:35 **15** for another 100 megawatts of solar there. So
 12:35 **16** if you look in the queue, we have 600 megawatts
 12:36 **17** of interconnect request right now at that 500
 12:36 **18** kV.
 12:36 **19** **Q.** So let me go over and let's talk
 12:36 **20** about solar now, if we may. And look over on
 12:36 **21** page 2-49 of the application.
 12:36 **22** **A.** Okay. I am there.
 12:36 **23** **Q.** And it's paper, Mr. Kobus, my
 12:36 **24** goodness.
 12:36 **25** **A.** Yeah.

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12:36 1 Q. Down in the second paragraph --
12:36 2 A. Slick paper, too.
12:36 3 Q. We had it printed thickly so it
12:36 4 wouldn't bleed through.
12:36 5 A. Yeah.
12:36 6 Q. Second paragraph talks about solar
12:36 7 arrays --
12:36 8 A. Yes.
12:36 9 Q. -- and nameplate generation
12:36 10 capacity. And then there would be -- first
12:36 11 sentence says micrositing factors, solar
12:37 12 technology. Then it says:
12:37 13 Nameplate generation capacity of
12:37 14 solar arrays may be greater than --
12:37 15 (The Court Reporter requested
12:37 16 clarification.)
12:37 17 BY MR. ARAMBURU:
12:37 18 Q. We'll start that sentence over
12:37 19 again.
12:37 20 The nameplate generation capacity of
12:37 21 the solar arrays may be greater than the
12:37 22 maximum grid injection capacity, but will be
12:37 23 limited to the maximum grid injection capacity
12:37 24 as a function of the AC ratings of the
12:37 25 inverters.

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12:37 1 Is that right?
12:37 2 A. Yes.
12:37 3 Q. Okay. So what's the maximum grid
12:37 4 generation -- you refer to maximum grid
12:37 5 injection capacity here. What is that number?
12:37 6 A. Well, the purpose of this sentence
12:37 7 is to state what I've already related to you
12:37 8 about that the solar arrays, the modules, can
12:38 9 actually be greater than the inverter capacity.
12:38 10 And so our interconnect is limited to the
12:38 11 inverter nameplate rating. That's what that's
12:38 12 intended to say.
12:38 13 Q. I'm going to try to make this
12:38 14 simple, and correct me if I'm wrong.
12:38 15 The solar panels can create all the
12:38 16 generation that you want, but what actually is
12:38 17 produced and goes into the grid is limited by
12:38 18 the inverter?
12:38 19 A. Correct.
12:38 20 Q. And how much of -- how much more
12:38 21 nameplate capacity of the panels would there be
12:38 22 than the inverter capacity?
12:38 23 A. That's a design parameter we're
12:38 24 still optimizing.
12:38 25 Q. I mean, in general terms, 5 percent,

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12:38 1 2 percent, 20 percent?
12:39 2 A. 20.
12:39 3 Q. 20 percent?
12:39 4 A. Yeah.
12:39 5 Q. Okay. Can you buy a different
12:39 6 inverter and get it to produce more power?
12:39 7 A. Sure.
12:39 8 Q. So as we go through this process and
12:39 9 we're looking at these turbines, can you tell
12:39 10 me what the output of each individual turbine
12:39 11 is that's located on your maps?
12:39 12 MS. PERLMUTTER: Objection to form.
12:39 13 Answer if you can.
12:39 14 THE WITNESS: The smaller size
12:39 15 turbine?
12:39 16 BY MR. ARAMBURU:
12:39 17 Q. Well, let's say bigger size. We'll
12:39 18 talk about the 244 smaller turbine arrangement.
12:39 19 A. Okay.
12:40 20 Q. Is there data available that
12:40 21 predicts the amount of generation that comes
12:40 22 from each turbine as shown on your drawing that
12:40 23 locates the turbine?
12:40 24 MS. PERLMUTTER: Renew the
12:40 25 objection. You can still answer.

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12:40 1 THE WITNESS: It's the nameplate
12:40 2 capacity of the turbine itself. If at the
12:40 3 time we submitted the application we had a
12:40 4 3 megawatt model versus a 6 megawatt model.
12:40 5 Now, that 3 megawatt model is likely to be
12:40 6 a 3.4 megawatt turbine, and that is its
12:40 7 limit, 3.4 megawatts.
12:40 8 BY MR. ARAMBURU:
12:40 9 Q. Okay. I think I misspoke --
12:40 10 A. Okay.
12:40 11 Q. -- when I did my question. Let's go
12:40 12 at it again.
12:40 13 The -- can you predict, let's say,
12:40 14 for a 3 megawatt turbine that's located in each
12:40 15 part of the site, how much power would actually
12:41 16 come from that, given wind parameters, other
12:41 17 parameters for the property?
12:41 18 MS. PERLMUTTER: Object as to form.
12:41 19 You can answer if you can.
12:41 20 THE WITNESS: Depends on the wind
12:41 21 how much it's generating. It can't
12:41 22 generate more than 3.4 megawatts.
12:41 23 BY MR. ARAMBURU:
12:41 24 Q. But let me put it this way.
12:41 25 Is your assumption when you give us

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12:41 1 this drawing that shows all the wind turbines,
 12:41 2 and I know they're going to be moved around,
 12:41 3 but the assumption is each one of these
 12:41 4 turbines is going produce the same amount of
 12:41 5 power?
 12:41 6 A. Well, they're not going to be moved
 12:41 7 around. The micro siting corridors are the
 12:41 8 micro siting corridors.
 12:41 9 Q. Okay. We'll leave that out of the
 12:41 10 question.
 12:41 11 A. Okay.
 12:41 12 Q. We'll leave that out of the
 12:41 13 question.
 12:41 14 A. Okay. Can you repeat the --
 12:41 15 Q. Is the assumption, the operating
 12:41 16 assumption when you locate these turbines on
 12:41 17 the map, that each one of them is going to be
 12:41 18 equal in production to every other one?
 12:41 19 A. They're all going to be different.
 12:41 20 Q. And --
 12:41 21 A. But they can't exceed 3.4 megawatts.
 12:42 22 Q. I understand that.
 12:42 23 But do you have information that
 12:42 24 might indicate which of the turbines would be
 12:42 25 better producers than other turbines?

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12:42 1 A. Yes, we do. That's how we cited the
 12:42 2 turbines on the site originally is, you look
 12:42 3 for the highest wind spot and you put a dot
 12:42 4 there. So I want that turbine, that's the
 12:42 5 highest one.
 12:42 6 Then you fill out the site and force
 12:42 7 rank the turbines based on their production
 12:42 8 potential. And when you get to the maximum
 12:42 9 injection capacity you can inject, the rest of
 12:42 10 the turbines are on the bench because they're
 12:42 11 lower producers.
 12:42 12 Q. Okay. But is that data, is that --
 12:42 13 does that data exist for the individual
 12:42 14 turbines?
 12:42 15 A. Well, yeah, we create that data.
 12:42 16 That's the intellectual property that gives us
 12:42 17 our competitive advantage.
 12:42 18 Q. Okay. I understand your position on
 12:43 19 that, but that data does exist?
 12:43 20 A. Well, we're marketing a project so,
 12:43 21 of course, we're going to analyze it to the
 12:43 22 fullest extent, yes.
 12:43 23 Q. I'm not trying to get into marketing
 12:43 24 or proprietary interest or anything of that
 12:43 25 nature.

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12:43 1 A. Okay.
 12:43 2 Q. My question is simple.
 12:43 3 Is the data available by which we
 12:43 4 could look at each turbine to see what its
 12:43 5 production is?
 12:43 6 MS. PERLMUTTER: Objection as to
 12:43 7 form. You can answer it if you can.
 12:43 8 THE WITNESS: I cannot answer it,
 12:43 9 and the reason I cannot answer it is we
 12:43 10 have obligations with the turbine suppliers
 12:43 11 that we will not disclose their power
 12:43 12 curves, period.
 12:43 13 MS. PERLMUTTER: If I may, for a
 12:43 14 second. My objection was to form because
 12:43 15 of the question available. I think you
 12:43 16 guys are talking cross purposes.
 12:43 17 If your question is, does data
 12:43 18 exist, there's one answer. If your
 12:44 19 response is, can I disclose the data,
 12:44 20 that's a different answer.
 12:44 21 Now I'll let it to you guys to
 12:44 22 figure out what you want to do.
 12:44 23 BY MR. ARAMBURU:
 12:44 24 Q. It was the first question, does this
 12:44 25 data exist, no matter proprietary, secret,

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12:44 1 triple X secret?
 12:44 2 A. Yes.
 12:44 3 Q. Okay. And that would be data for
 12:44 4 each turbine?
 12:44 5 A. I mean, we wouldn't be flying blind
 12:44 6 designing a project without knowing that
 12:44 7 information. The data exists and it's our
 12:44 8 competitive advantage.
 12:44 9 Q. I understand. It was not intended
 12:44 10 to be a disparaging question. I just want to
 12:44 11 know whether the data exists or not.
 12:44 12 A. Okay.
 12:44 13 Q. I read some information about the
 12:44 14 impacts of wakes from one turbine on the next
 12:45 15 downstream turbine. Are you familiar with that
 12:45 16 concept?
 12:45 17 A. Yes, I am.
 12:45 18 Q. And so other people who may be
 12:45 19 reading this for the first time, what is the
 12:45 20 wake effect?
 12:45 21 A. Well, the wake effect is that every
 12:45 22 turbine has an influence on the wind that goes
 12:45 23 past it because it extracts energy and it
 12:45 24 creates turbulence.
 12:45 25 Just like, you know, a boat on the

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12:45 1 river. There's a wake of stirred-up water that
12:45 2 is there after the boat leaves, and it makes
12:45 3 waves and reverberates and eventually
12:45 4 dissipates.

12:45 5 With turbines, there's a wake effect
12:45 6 that influences that downstream wind. And so
12:45 7 when you design a project, you make sure you
12:46 8 have certain distance between turbines on a
12:46 9 string and between subsequent strings of
12:46 10 turbines to make sure that that wake has
12:46 11 adequately dissipated so it doesn't have a
12:46 12 dominant effect on the performance of the
12:46 13 turbine that's just downwind of it.

12:46 14 Q. And was the wake effect studied for
12:46 15 either the 244 turbine or the 150 turbine
12:46 16 project?

12:46 17 MS. PERLMUTTER: Objection as to
12:46 18 form. You can answer if you can.

12:46 19 THE WITNESS: The layout of the site
12:46 20 is precisely that way to make sure that the
12:46 21 wake effects are minimized to the extent
12:46 22 necessary to maintain the performance of
12:47 23 the turbines that we desire.

12:47 24 BY MR. ARAMBURU:

12:47 25 Q. I understand that was the intention.
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12:48 1 Q. And did ArcVera run a model to
12:48 2 assess the effect of wake turbulence on
12:48 3 downstream turbines?

12:48 4 MS. PERLMUTTER: Objection.

12:48 5 Foundation. You can answer if you can.

12:48 6 THE WITNESS: On our turbines, yes.

12:48 7 BY MR. ARAMBURU:

12:48 8 Q. And when was that done?

12:48 9 A. It's continually done on a frequent
12:48 10 basis. Every time we change the layout we
12:48 11 reevaluate it.

12:49 12 Q. And in my readings, it appears that
12:49 13 Mr. Poulos has been active in the community
12:49 14 talking about the impacts of wake turbulence.

12:49 15 Are you familiar with that work?

12:49 16 A. Yes, yeah.

12:49 17 Q. And was that model that he was
12:49 18 talking about in those studies been applied to
12:49 19 this project?

12:49 20 A. I do not know what model you're
12:49 21 referring to. I'm sure my resource manager
12:49 22 would, but I don't keep up with the different
12:49 23 names and vintages of the software.

12:49 24 Q. Okay.

12:50 25 A. I might add that the turbine
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12:47 1 What engineering or design was done
12:47 2 to assess the wake effect of the turbines?

12:47 3 MS. PERLMUTTER: Object as to form.
12:47 4 You can answer if you can.

12:47 5 THE WITNESS: We know the wind
12:47 6 resource profile. We know the performance
12:47 7 characteristics of a given wind turbine.
12:47 8 We model them together to come up with what
12:47 9 we believe the production profile is for
12:47 10 the site.

12:47 11 BY MR. ARAMBURU:

12:47 12 Q. I understand that.

12:47 13 But is there a specific modeling
12:47 14 that takes into account the wake turbulence?

12:47 15 A. Our internal modeling, yes, it does.
12:47 16 Yeah, we have to know that. Yeah.

12:47 17 Q. And that was done for this project?

12:47 18 A. Of course, yes.

12:47 19 Q. And did you have Greg Poulos do that
12:48 20 work?

12:48 21 A. We do it internally, and then we
12:48 22 also have independent evaluators that do it.
12:48 23 So, you know, Greg Poulos is affiliated with
12:48 24 ArcVera. And so ArcVera is our second check of
12:48 25 our internal assessments, yes.

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12:50 1 supplier as well restricts how close you can
12:50 2 have turbines to each other.

12:50 3 Q. Why does the turbine supplier care?

12:50 4 MS. PERLMUTTER: Objection.

12:50 5 Foundation. You can answer if you can.

12:50 6 THE WITNESS: Because the loading,
12:50 7 the mechanical loading on the turbine, is
12:50 8 affected by wakes as well.

12:50 9 So it's not just production. It's
12:50 10 the structural integrity and the -- they
12:50 11 have to warrant it to last a period of
12:50 12 time. And so in order to honor the
12:50 13 warranty, they have to make sure you're not
12:50 14 overloading the turbines by exposing them
12:50 15 to a greater wake.

12:50 16 BY MR. ARAMBURU:

12:50 17 Q. Let me try to make it simple, and
12:50 18 disagree with me if you like.

12:50 19 There are two concerns with wake
12:50 20 turbulence. One is, you're robbing the
12:50 21 downstream turbine of wind, affecting its
12:50 22 efficiency, and you're also creating
12:51 23 turbulence.

12:51 24 A. No. That is the same thing.

12:51 25 Q. Okay.

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12:51 **1** **A.** The two concerns are the impacts of
12:51 **2** the turbulence on the downstream turbines, plus
12:51 **3** the mechanical loading that occurs from that
12:51 **4** turbulence.
12:51 **5** **Q.** So I understand.
12:51 **6** The wind is now uneven, it's not a
12:51 **7** linear path?
12:51 **8** **A.** Right.
12:51 **9** **Q.** We've got a bunch of wind that's
12:51 **10** running around like that, and that may put
12:51 **11** additional pressures on the downstream turbine,
12:51 **12** and so the manufacturers want to assess that;
12:51 **13** is that right?
12:51 **14** **A.** Exactly, yeah.
12:51 **15** **Q.** Okay. Okay.
12:51 **16** **A.** You got it.
12:51 **17** **Q.** See, we're going to agree on
12:51 **18** something.
12:51 **19** **A.** Yeah.
12:51 **20** MS. PERLMUTTER: Excuse me if I
12:51 **21** throw up for a moment.
12:51 **22** BY MR. ARAMBURU:
12:51 **23** **Q.** Let's turn to page 2-103. I
12:52 **24** understand that the proposal is to phase this
12:52 **25** project?

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12:52 **1** **A.** When we were initially conceiving
12:52 **2** how to permit this, we wanted to accomplish two
12:52 **3** main things. Number one is, we wanted to
12:52 **4** permit it all at once because we wanted to
12:52 **5** assure that for all of the stakeholder concerns
12:52 **6** out there, that we are putting forth the
12:52 **7** maximum extent of what we conceive we can
12:52 **8** develop in this -- in Benton County.
12:52 **9** And so at the time, the
12:52 **10** interconnections were on separate paths in the
12:52 **11** Bonneville evaluation system. We didn't know
12:52 **12** which interconnect was going to get built
12:53 **13** first, east or west.
12:53 **14** So it could have been that we were
12:53 **15** thinking of Phase 1 initially, but the Phase 2
12:53 **16** interconnect became federalized and got built,
12:53 **17** and we wanted to shift to then starting on
12:53 **18** Phase 2 first.
12:53 **19** We also conceived that maybe we
12:53 **20** could build the whole thing all at once. But
12:53 **21** in the application, we had to accommodate all
12:53 **22** of those concepts, but at the end of the day,
12:53 **23** we had to make sense of it, too, so that people
12:53 **24** can understand it.
12:53 **25** But the decision as to how we build

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12:53 **1** the project, whether phasing, all at once, will
12:53 **2** in large part be determined by the turbine
12:53 **3** supply. You know, turbine suppliers are
12:53 **4** changing how they commit their production
12:54 **5** capacity.
12:54 **6** And so the turbines, we may not be
12:54 **7** able to get all the turbines in a single
12:54 **8** season. We may not be able to get all the
12:54 **9** craft people that we need to construct it all
12:54 **10** in the same season.
12:54 **11** You know, it's the concept where if
12:54 **12** it takes so long to do something with ten
12:54 **13** people, adding ten more can cut it in half, no,
12:54 **14** that isn't how it works. But, also, we don't
12:54 **15** know if the craft capacity is going to be
12:54 **16** available at the time that we need them. They
12:54 **17** could be building a solar project in
12:54 **18** Yakima County and Benton County at the same
12:54 **19** time, as well as a wind project in Oregon.
12:54 **20** And so until we get to the final
12:54 **21** throes after we get an unappealable permit and
12:54 **22** actually start the contracting process and the
12:54 **23** financing process, we won't know for sure how
12:54 **24** this is going to be staged.
12:55 **25** **Q.** Okay. Well, I've been reading table

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12:55 **1** 2.15-1, and seeing that as the phases that
12:55 **2** would be followed. Is that table still
12:55 **3** accurate?
12:55 **4** **A.** Yeah. Relatively speaking, yeah.
12:55 **5** **Q.** So I have not seen a drawing or a
12:55 **6** map of where Phase 1 is. Can you tell me where
12:55 **7** Phase 1 is?
12:55 **8** **A.** It can change.
12:55 **9** **Q.** Well --
12:55 **10** **A.** The concept at the time we did this,
12:55 **11** you can see Phase 1 says 230 kV, right? So
12:55 **12** it's turbines and solar and battery in
12:55 **13** proximity to the 230 kV point of
12:55 **14** interconnection.
12:55 **15** **Q.** But right now, I don't see a map
12:55 **16** that shows where Phase 1 and Phase 2 is; is
12:55 **17** that correct?
12:55 **18** **A.** It hasn't been determined yet.
12:55 **19** **Q.** Would it be fair to say that one is
12:56 **20** east and one is west?
12:56 **21** **A.** That's where the 230 kV interconnect
12:56 **22** is on the east, yeah. You can say that, yeah.
12:56 **23** **Q.** So Phase 1 on the -- I'm trying to
12:56 **24** figure out --
12:56 **25** **A.** Okay.

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12:56 **1** **Q.** -- because we're working towards the
 12:56 **2** hearing where we are here.
3 **A.** Yeah.
 12:56 **4** **Q.** So the battery system, Phase 1,
 12:56 **5** 150 megawatts of battery.
 12:56 **6** **A.** Yeah.
 12:56 **7** **Q.** Phase 2-A another 150 --
 12:56 **8** **A.** Yeah.
 12:56 **9** **Q.** -- megawatts. But Phase 2-B, the
 12:56 **10** alternative, has no batteries in it at all.
 12:56 **11** **A.** Because the only reason phase --
 12:56 **12** alternative B exists is as an all wind
 12:56 **13** alternative. That's why there's no battery on
 12:56 **14** alternate B.
 12:56 **15** **Q.** Okay.
 12:56 **16** **A.** There's only two phases that were
 12:56 **17** contemplated, but Phase 2 was portrayed as one
 12:57 **18** with battery and one with no battery.
 12:57 **19** **Q.** Phase 2?
 12:57 **20** **A.** Phase 2, yeah.
 12:57 **21** **Q.** Okay. And why wouldn't you do
 12:57 **22** batteries for the wind project?
 12:57 **23** **A.** Well, we're optimizing the project
 12:57 **24** for the interest of the offtakers. They may
 12:57 **25** not want the battery portion of the

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12:57 **1** hybridization.
 12:57 **2** **Q.** They may not want either of them?
 12:57 **3** **A.** There's potential that no one wants
 12:57 **4** the battery, in which case, we just wouldn't
 12:57 **5** build it.
 12:57 **6** **Q.** It becomes a very different project,
 12:57 **7** though, without the battery, doesn't it?
 12:57 **8** **MS. PERLMUTTER:** Objection as to
 12:57 **9** form.
 12:57 **10** **THE WITNESS:** Not really. The
 12:57 **11** battery optimizes it, but it's a great
 12:57 **12** project without the battery.
 12:58 **13** **BY MR. ARAMBURU:**
 12:58 **14** **Q.** So over on page 2-102, Phase 2 A and
 12:58 **15** B, one includes 10.2 miles of transmission and
 12:58 **16** the other one has 19. What's the difference?
 12:58 **17** **A.** There's a keyword in there called
 12:58 **18** intertie. It says:
 12:58 **19** Up to 19.4 miles of 230 kV intertie
 12:58 **20** between the east substation and the west
 12:58 **21** substation.
 12:58 **22** **Q.** Okay.
 12:58 **23** **A.** And on Phase 2 alternative A, it's
 12:58 **24** 10.2 miles of 230 kV gen-tie from the
 12:59 **25** intermediate substation to the step-up

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12:59 **1** substation. And -- well, you can read it.
 12:59 **2** **Q.** So gen-tie is a transmission line?
 12:59 **3** **A.** Yeah. Gen-tie is from the generator
 12:59 **4** to tie into the transmission system, yes.
 12:59 **5** **Q.** Okay. And then how do we get to the
 12:59 **6** 19 on the second one?
 12:59 **7** **A.** Because we have initially designed
 12:59 **8** in an intertie between the east side of the
 12:59 **9** project and the west side of the project.
 12:59 **10** **Q.** And that's Phase 2-B?
 12:59 **11** **A.** That's where it's depicted, yes.
 12:59 **12** **Q.** That's 2-B?
 12:59 **13** **A.** Yeah.
 12:59 **14** **Q.** Okay. Page 2-103 says:
 12:59 **15** The turbine supplier and EPC
 01:00 **16** contractor would be selected during the EFSEC
 01:00 **17** ASC review process.
 01:00 **18** Is that an accurate statement? Do
 01:00 **19** you see where I'm pointing you, Mr. Kobus?
 01:00 **20** **A.** No, I don't, but --
 01:00 **21** **Q.** Okay. It's --
 01:00 **22** **A.** So the intention is that we would
 01:00 **23** have the project permitted as considered in the
 01:00 **24** application. And then we would select the
 01:00 **25** turbine supply, the solar supply, the EPC

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01:00 **1** contractor. And we have an obligation to
 01:00 **2** provide the final design of the site before we
 01:01 **3** start construction. In fact, we -- currently,
 01:01 **4** the DEIS says we have to do it 180 days prior
 01:01 **5** to the start of construction.
 01:01 **6** **Q.** Okay. But this says it would be
 01:01 **7** selected during the review process. Is that
 01:01 **8** going to happen? We're in the review process
 01:01 **9** now.
 01:01 **10** **A.** Yeah. And we'll be in the review
 01:01 **11** process until the SCA is approved by the
 01:01 **12** governor.
 01:01 **13** **Q.** The question is, is that process, is
 01:01 **14** that selection process ongoing now?
 01:01 **15** **A.** We're constantly working with the
 01:01 **16** turbine suppliers, the solar suppliers, all the
 01:01 **17** equipment suppliers.
 01:01 **18** **Q.** So I've also looked at the schedule
 01:01 **19** here of construction, which is broken down into
 01:01 **20** two phases.
 01:01 **21** **A.** Yes.
 01:01 **22** **Q.** Appears to me to be a pretty
 01:01 **23** aggressive schedule working beginning just a
 01:02 **24** few months after the ASC is approved; is that
 01:02 **25** right?

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01:02 **1** **A.** That's -- that's correct.

01:02 **2** **Q.** Is that the current plan, to build

01:02 **3** it that quickly?

01:02 **4** **A.** We're going to build it absolutely

01:02 **5** as quickly as we can get started.

01:02 **6** **Q.** Okay.

01:02 **7** **A.** But we're going to need to finance

01:02 **8** it first.

01:02 **9** **Q.** But it's not financed now?

01:02 **10** **A.** No. We don't have a permit. So you

01:02 **11** can't finance something that doesn't have a

01:02 **12** permit.

01:02 **13** **Q.** Look at page 2-118, please. Very

01:02 **14** last sentence on that page, would you read

01:02 **15** that? You can read it to yourself.

01:03 **16** **A.** Okay.

01:03 **17** **Q.** Is that an accurate statement today?

01:03 **18** **A.** Absolutely.

01:03 **19** **Q.** You say there that it's:

01:03 **20** Favorable for regional utilities as

01:03 **21** it is coincident with peak loading demand.

01:03 **22** Does this represent your

01:03 **23** conversation with regional utilities?

01:03 **24** **A.** Absolutely.

01:03 **25** **Q.** And who would those utilities be?

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01:03 **1** **A.** All utilities in the region.

01:03 **2** **Q.** Like?

01:03 **3** **A.** Avista, Portland Sound Energy,

01:03 **4** Portland General, Benton PUD. Anybody that has

01:03 **5** a demand for clean energy.

01:03 **6** **Q.** And are these utilities ready to

01:03 **7** purchase the output?

01:03 **8** MS. PERLMUTTER: Objection.

01:03 **9** Foundation. Answer if you can.

01:04 **10** THE WITNESS: It's -- there are

01:04 **11** press releases constantly about the

01:04 **12** procurement activities of the regional

01:04 **13** utilities. You can find exactly what they

01:04 **14** want based on active RFPs that are

01:04 **15** currently in existence. You can follow

01:04 **16** their IRPs, which are publicly available,

01:04 **17** that actually forecast what their demands

01:04 **18** are going to be and where they're going to

01:04 **19** get it and what they think their best

01:04 **20** viable resource is for them.

01:04 **21** And we are trying to optimize and

01:04 **22** formulate this project to meet that

01:04 **23** evolving demand.

01:04 **24** BY MR. ARAMBURU:

01:04 **25** **Q.** I understand that.

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01:04 **1** But in terms of regional utilities,

01:04 **2** is there any regional utility that indicates

01:04 **3** they want to buy the output of this project?

01:05 **4** **A.** Is there any that indicate -- yes.

01:05 **5** **Q.** How many?

01:05 **6** **A.** All of them.

01:05 **7** **Q.** All of them are interested in buying

01:05 **8** the output?

01:05 **9** **A.** Plus -- plus C&Is. There's a high

01:05 **10** demand right now for clean energy. There's

01:05 **11** going to be shortages in the very near future.

01:05 **12** There's going to be slim pickings as to what's

01:05 **13** available to meet those demands. And the

01:05 **14** closer, the better. The closer we are to the

01:05 **15** load, the desired market, the better. They all

01:05 **16** want it. They're clamoring for it.

01:05 **17** **Q.** If I was to call PSE this afternoon

01:05 **18** and ask them whether they want to buy the

01:05 **19** output of this project, what would they say?

01:05 **20** MS. PERLMUTTER: Objection. Calls

01:05 **21** for speculation. And also on foundation.

01:05 **22** You can answer if you can.

01:06 **23** THE WITNESS: I can't answer that.

01:06 **24** They change their minds every day. I'm

01:06 **25** sorry. They have procurement cycles and

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01:06 **1** they're a regulated utility. They have to

01:06 **2** follow the rules on how to procure new

01:06 **3** resources.

01:06 **4** BY MR. ARAMBURU:

01:06 **5** **Q.** Has PSE issued an RFP for a project

01:06 **6** this size?

01:06 **7** **A.** Oh, yeah. They just closed one, in

01:06 **8** fact. And they've said they're working on

01:06 **9** another.

01:06 **10** **Q.** Okay. The second part of your

01:06 **11** sentence says that it's a commercially viable

01:06 **12** site, favorable for utilities, as it is

01:06 **13** coincident with peak loading demand.

01:06 **14** Could you explain that?

01:06 **15** **A.** The loading demands in the Pacific

01:06 **16** Northwest are winter. So there are peak winter

01:06 **17** loading demands. This region is a storm-driven

01:06 **18** climate. So when the winter storms come in and

01:07 **19** when the spring storms come in as the seasons

01:07 **20** change, that's when we get our peak generation.

01:07 **21** You know, as opposed to a gorge

01:07 **22** project per se, is more predominantly summer,

01:07 **23** summer peaking. This is winter peaking, and

01:07 **24** that's when the utilities' loads peak the

01:07 **25** largest.

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01:07 **1** So the generation profile of this
 01:07 **2** project is a very good match for the load
 01:07 **3** profile that the utilities have to serve.
 01:07 **4** **Q.** Well, is it not the case that
 01:07 **5** particularly wind during cold times in the
 01:07 **6** Tri-Cities doesn't blow for days and days?
 01:07 **7** **A.** There are times it doesn't blow for
 01:07 **8** days and days, that's right.
 01:07 **9** **Q.** So that's not coincident with peak
 01:07 **10** loading demand, is it?
 01:07 **11** **A.** Sure is. Because when it does blow,
 01:07 **12** there's a lot of it available. It's an
 01:07 **13** intermittent resource. It generates when the
 01:08 **14** wind blows, correct.
 01:08 **15** MR. ARAMBURU: So it's 1 o'clock.
 01:08 **16** Maybe we --
 01:08 **17** MS. PERLMUTTER: Off the record.
 01:48 **18** (A recess was taken.)
 01:48 **19** BY MR. ARAMBURU:
 01:48 **20** **Q.** We're back on the record so everyone
 01:52 **21** can hear.
 01:52 **22** Now I'd like you to turn over to
 01:52 **23** 2-118.
 01:52 **24** **A.** Okay.
 01:52 **25** **Q.** Exhibit 1, or the updated ASC.
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01:52 **1** **A.** Yes.
 01:52 **2** **Q.** Section -- paragraph 2.22 is the
 01:52 **3** analysis of alternatives. And it says:
 01:52 **4** The application shall include
 01:52 **5** analysis of alternatives for site, route, and
 01:52 **6** other major elements of the proposal.
 01:52 **7** And there's a page or two here.
 01:52 **8** Goes over to page 121, about alternatives?
 01:52 **9** Did you have any hand in writing
 01:52 **10** this?
 01:52 **11** **A.** Yes.
 01:52 **12** **Q.** Did you write it? Are you the
 01:52 **13** author?
 01:52 **14** **A.** I initiated it, yes. But then it
 01:52 **15** was a team effort, like the entire document.
 01:52 **16** **Q.** And I have not seen in the ASC or in
 01:53 **17** this particular section of the updated ASC an
 01:53 **18** alternate site layout with fewer turbines; is
 01:53 **19** that correct?
 01:53 **20** **A.** That's correct.
 01:53 **21** **Q.** And why isn't -- why haven't you
 01:53 **22** presented a project that has an alternative for
 01:53 **23** site?
 01:53 **24** **A.** I mean, the ASC explains why we
 01:53 **25** didn't. But it was EFSEC's choice as to how
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01:53 **1** they were going to evaluate alternatives, and
 01:53 **2** they chose the no alternative, and then the two
 01:53 **3** turbine options for the proposed alternative.
 01:53 **4** That was an EFSEC decision. We didn't --
 01:53 **5** couldn't influence that.
 01:53 **6** **Q.** So the two alternative turbines were
 01:53 **7** the 244 and the 150 layouts?
 01:53 **8** **A.** That's correct.
 01:54 **9** **Q.** So who at EFSEC told you that's the
 01:54 **10** way it's going to be?
 01:54 **11** **A.** EFSEC staff. So the official is
 01:54 **12** Sonia Bumpus.
 01:54 **13** **Q.** Is she the one that told you that?
 01:54 **14** **A.** She's the one that made the
 01:54 **15** decision. And then, you know, we had many
 01:54 **16** conversations about it. We have staff calls
 01:54 **17** regularly with EFSEC.
 01:54 **18** They're not required to evaluate
 01:54 **19** alternatives. It's an option, they're not
 01:54 **20** required.
 01:54 **21** **Q.** Well, let's not get into a legal
 01:54 **22** argument over that.
 01:54 **23** **A.** Okay.
 01:54 **24** **Q.** I just want to know what's actually
 01:54 **25** happening here.
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01:54 **1** So the original ASC, which was
 01:54 **2** February of 2021, as I recall?
 01:54 **3** **A.** Yeah, yeah.
 01:54 **4** **Q.** Contained pretty -- a lot of the
 01:54 **5** same language, but some further explanation
 01:54 **6** with the updates.
 01:54 **7** **A.** Right.
 01:54 **8** **Q.** So did EFSEC staff tell you you
 01:55 **9** didn't have to consider alternatives before
 01:55 **10** February of '21?
 01:55 **11** **A.** No.
 01:55 **12** MS. PERLMUTTER: Objection as to
 01:55 **13** form. It's unclear as to -- if you can
 01:55 **14** answer, go ahead.
 01:55 **15** BY MR. ARAMBURU:
 01:55 **16** **Q.** Well, let me clarify the question.
 01:55 **17** Let's not have questions that are out of order.
 01:55 **18** You indicated you were told by EFSEC
 01:55 **19** staff that you didn't have to consider options
 01:55 **20** other than the 244, 150, correct?
 01:55 **21** **A.** When they were ready to complete the
 01:55 **22** DEIS they made that determination and informed
 01:55 **23** us of it.
 01:55 **24** **Q.** Okay. But this was done before --
 01:55 **25** **A.** Yeah, this was --
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01:55 1 Q. -- the DEIS was started?

01:55 2 A. I don't believe they need to

01:55 3 evaluate alternatives, and so we wrote this

01:55 4 accordingly.

01:55 5 Q. Okay. But was this part of the

01:55 6 application done in concert with EFSEC staff?

01:55 7 A. No. This was our application for

01:56 8 site certification. And we evaluated the

01:56 9 alternatives as we deemed necessary.

01:56 10 Q. Okay. But EFSEC staff said you did

01:56 11 not have to consider a smaller project; is that

01:56 12 correct?

01:56 13 A. They ultimately came to that

01:56 14 decision when they were finalizing the draft

01:56 15 EIS.

01:56 16 Q. Was that in consultation with you?

01:56 17 A. They independently came to that

01:56 18 decision.

01:56 19 Q. Well, was this discussed in

01:56 20 communications, in conversations with EFSEC

01:56 21 staff?

01:56 22 A. I'm certain I've told them what I

01:56 23 just told you, that I don't believe we're

01:56 24 obligated to evaluate alternatives. It doesn't

01:56 25 make sense to evaluate alternatives. We need

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01:56 1 to permit the optimal project and be nimble to

01:57 2 continue to optimize it until we actually are

01:57 3 to the point where we're ready to finance the

01:57 4 project.

01:57 5 Q. I understand the business objectives

01:57 6 that are here, and I appreciate what you're

01:57 7 telling me.

01:57 8 The question is, when did EFSEC

01:57 9 staff tell you that you didn't have to consider

01:57 10 alternatives? When were those conversations?

01:57 11 A. What EFSEC told us is that they

01:57 12 determined that the only alternatives that need

01:57 13 to be evaluated are the no alternative and the

01:57 14 proposal, with the exception that the proposal

01:57 15 would be the two turbine option alternatives.

01:57 16 Q. So the original ASC came in, was

01:57 17 filed on February -- in February of 2021 --

01:57 18 A. Right.

01:57 19 Q. -- is that correct?

01:57 20 A. Right.

01:57 21 Q. Did you have those conversations

01:58 22 with EFSEC about the alternatives prior to

01:58 23 filing the application?

01:58 24 MS. PERLMUTTER: Objection as to

01:58 25 form. You can answer.

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01:58 1 THE WITNESS: I'm sure I told them,

01:58 2 we don't think you need to evaluate

01:58 3 alternatives.

01:58 4 BY MR. ARAMBURU:

01:58 5 Q. So was it your request that they not

01:58 6 be considered?

01:58 7 A. I can't request that. They're the

01:58 8 decision-maker.

01:58 9 Q. I understand they're the

01:58 10 decision-maker, but you can also ask them to do

01:58 11 things, and I don't think you're shy about

01:58 12 that.

01:58 13 So did you ask them to not consider

01:58 14 any alternatives?

01:58 15 A. No, I did not make a request that

01:58 16 said, please do not consider alternatives. I

01:58 17 said, you make the decision as you see fit.

01:58 18 Q. And was that decision made for the

01:58 19 ASC and for the DEIS, for both of the

01:58 20 documents?

01:58 21 A. No, no.

01:58 22 MS. PERLMUTTER: Object as to form.

01:58 23 Go ahead, you can answer.

01:58 24 THE WITNESS: It wasn't the decision

01:59 25 until the DEIS came out.

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01:59 1 BY MR. ARAMBURU:

01:59 2 Q. Well, but this document came out --

01:59 3 the original document here updated now --

01:59 4 A. Yeah.

01:59 5 Q. -- with new language, that came out

01:59 6 in February of '21. The draft impact statement

01:59 7 didn't come out until December of '22.

01:59 8 A. This is our document. We created

01:59 9 this, and we updated it in the image that we

01:59 10 expect to be permitted for. And EFSEC's

01:59 11 responsible for their independent environmental

01:59 12 impact statement and determination of what

01:59 13 alternatives would be evaluated. They made

01:59 14 their choice. We submitted our application as

01:59 15 you see it.

01:59 16 Q. But your application doesn't contain

01:59 17 any discussion of alternatives other than no

01:59 18 action or the 244, 150?

01:59 19 A. What's required by EFSEC is what's

01:59 20 in this analysis of alternatives.

01:59 21 Q. Did you present this analysis to

02:00 22 EFSEC as consistent with

02:00 23 WAC (indecipherable) --

02:00 24 (The Court Reporter requested

02:00 25 clarification.)

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02:00 **1** BY MR. ARAMBURU:
 02:00 **2** **Q.** Did you go to EFSEC and ask -- and
 02:00 **3** present to EFSEC draft language in compliance
 02:00 **4** with WAC 463-60-296 and ask them to approve it?
 02:00 **5** MS. PERLMUTTER: Objection as to
 02:00 **6** form. And calls for a legal conclusion.
 02:00 **7** If you can answer it, you can.
 02:00 **8** THE WITNESS: We submitted the
 02:00 **9** document to them and asked them to process
 02:00 **10** it. That's -- I mean, that's the form it
 02:00 **11** took. I did not request them to not
 02:00 **12** evaluate alternatives. I likely told them,
 02:00 **13** you don't need to, because that's what I
 02:00 **14** believe.
 02:00 **15** BY MR. ARAMBURU:
 02:00 **16** **Q.** Okay.
 02:00 **17** **A.** I can read WACs, too, just like
 02:01 **18** anybody else.
 02:01 **19** **Q.** Okay. So that's your reading of the
 02:01 **20** WAC 463-60-296?
 02:01 **21** **A.** I think it's EFSEC's, too.
 02:01 **22** **Q.** Okay. Now --
 02:01 **23** **A.** Well, that was speculating. I
 02:01 **24** probably shouldn't have done that.
 02:01 **25** **Q.** Okay. So you're very determined to
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02:01 **1** talk about only what I'm going to call the 244,
 02:01 **2** 150 options. We understand what those are?
 02:01 **3** **A.** That's what I want to permit, yeah.
 02:01 **4** I need that flexibility.
 02:01 **5** **Q.** Okay. Now, why can't we do half
 02:01 **6** that project?
 02:01 **7** MS. PERLMUTTER: Objection.
 02:01 **8** BY MR. ARAMBURU:
 02:01 **9** **Q.** What's wrong with that?
 02:01 **10** MS. PERLMUTTER: Object as to form.
 02:01 **11** And calls for speculation. But you can
 02:01 **12** answer.
 02:01 **13** THE WITNESS: We need to be able to
 02:01 **14** get an offtaker for this project. One of
 02:02 **15** the key factors in determining the
 02:02 **16** economics of the project is the economy of
 02:02 **17** scale.
 02:02 **18** So we need to build it -- you know,
 02:02 **19** if we could add any more turbines that
 02:02 **20** would increase the overall average capacity
 02:02 **21** factor, we would do that because that
 02:02 **22** improves the economics.
 02:02 **23** So we've built it out to the extent
 02:02 **24** we believe maintains a viable, desirable,
 02:02 **25** competitive offering for our marketplace.
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02:02 **1** And so anything we do to knock off turbines
 02:02 **2** is changing that economy of scale and
 02:02 **3** making it less economic.
 02:02 **4** BY MR. ARAMBURU:
 02:02 **5** **Q.** Well, I don't understand the
 02:02 **6** difference of economy of scale. We've got a
 02:02 **7** certain number of turbines here. We've got a
 02:02 **8** certain -- they can be cut in half.
 02:02 **9** What's the economy of scale? Why
 02:02 **10** isn't the option of half the turbines something
 02:03 **11** that can be explored?
 02:03 **12** MS. PERLMUTTER: Object as to form.
 02:03 **13** You can answer.
 02:03 **14** THE WITNESS: I know every
 02:03 **15** combination of turbines versus
 02:03 **16** infrastructure cost. We've evaluated the
 02:03 **17** full spectrum over and over and over
 02:03 **18** exhaustively.
 02:03 **19** And you have to accept that there is
 02:03 **20** economy of scale when you have a certain
 02:03 **21** basic economic infrastructure cost. And so
 02:03 **22** the more generation you can pile onto it,
 02:03 **23** the cheaper that generation per unit is
 02:03 **24** going to be.
 02:03 **25** That's -- this is our business.
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02:03 **1** This is what we do to develop projects that
 02:03 **2** the market will prefer.
 02:03 **3** BY MR. ARAMBURU:
 02:03 **4** **Q.** Well, for example, Phase 1 of the
 02:03 **5** project --
 02:03 **6** **A.** Yes.
 02:03 **7** **Q.** -- on page 2-101, if you would like
 02:03 **8** to refer to it.
 02:04 **9** **A.** Okay.
 02:04 **10** **Q.** Phase 1 and Phase 2, right?
 02:04 **11** **A.** Yes.
 02:04 **12** **Q.** Why don't we just build Phase 1 of
 02:04 **13** the project? What are the economies of scale
 02:04 **14** that prevent you from just building that
 02:04 **15** project?
 02:04 **16** **A.** Scout has been investing
 02:04 **17** considerable time and capital in building the
 02:04 **18** largest project we can bring to market because
 02:04 **19** that's what makes us successful.
 02:04 **20** So the commercial case for this site
 02:04 **21** is to build absolutely as much as we can to
 02:04 **22** satisfy the market need. So any whittling away
 02:04 **23** that we do of anything that generates as a part
 02:04 **24** of this mix is hurting our prospects.
 02:05 **25** **Q.** Well, I understand that there are
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02:05 **1** certain sunk costs of wages and engineering and
02:05 **2** various other things, salaries of people that
02:05 **3** have already been spent for this project.
02:05 **4** **A.** Uh-huh.
02:05 **5** **Q.** But just in terms of Phase 1, it
02:05 **6** consists of turbines on the east side, consists
02:05 **7** of a substation on the east side, a battery
02:05 **8** operation --
02:05 **9** **A.** Yeah.
02:05 **10** **Q.** -- on the east side, substation,
02:05 **11** some connections, and a large generation
02:05 **12** request of BPA.
02:05 **13** Why isn't that a standalone project?
02:05 **14** MS. PERLMUTTER: Objection. Asked
02:05 **15** and answered. If you can answer it, you
02:05 **16** can.
02:05 **17** THE WITNESS: We have no interest in
02:05 **18** tying our hands behind our back and
02:05 **19** limiting the competitiveness and the
02:05 **20** ultimate revenue potential of this project
02:05 **21** for our company. Why would we shoot
02:06 **22** ourselves in the foot and make it smaller?
02:06 **23** BY MR. ARAMBURU:
02:06 **24** **Q.** Could you --
02:06 **25** **A.** That's not our business.
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02:06 **1** **Q.** I understand that Scout is in the
02:06 **2** business of selling wind turbines, solar, et
02:06 **3** cetera.
02:06 **4** **A.** Yeah.
02:06 **5** **Q.** I understand that.
02:06 **6** **A.** Yeah, yeah.
02:06 **7** **Q.** My question is, if you built
02:06 **8** Phase 1, would somebody buy it?
02:06 **9** MS. PERLMUTTER: Objection. Calls
02:06 **10** for speculation. And asked and answered.
02:06 **11** You can answer.
02:06 **12** THE WITNESS: I would believe there
02:06 **13** might be somebody out there that just wants
02:06 **14** Phase 1.
02:06 **15** BY MR. ARAMBURU:
02:06 **16** **Q.** Okay. And so why isn't then Phase 1
02:06 **17** an alternative to this project that avoids
02:06 **18** certain environmental impacts, cultural
02:06 **19** impacts, impacts --
02:06 **20** **A.** Because it doesn't meet our needs.
02:06 **21** **Q.** If that's the reason then --
02:06 **22** **A.** We're a private developer. We want
02:06 **23** to build as much capacity to meet the market
02:06 **24** need in the Pacific Northwest as we can
02:06 **25** possibly do. That what makes us survive and
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02:07 **1** prosper, right?
02:07 **2** **Q.** Okay. I understand the objectives.
02:07 **3** I don't have disagreement with them.
02:07 **4** But you've indicated to me that
02:07 **5** there's a really high demand for renewable
02:07 **6** projects now.
02:07 **7** **A.** The entire thing, yep, and more.
02:07 **8** There's not enough to meet the demand.
02:07 **9** **Q.** So to use the vernacular, people are
02:07 **10** snapping them up? Disagree with that?
02:07 **11** **A.** No, that doesn't --
02:07 **12** **Q.** Okay.
02:07 **13** **A.** That doesn't meet it. Because
02:07 **14** there's a long, long process in negotiations to
02:07 **15** get to the point where you ultimately come to a
02:07 **16** completed offtake agreement with an entity.
02:07 **17** And it takes years. I mean look at how long
02:07 **18** we've been developing this. I mean, it takes
02:07 **19** years.
02:07 **20** So when it's ready, when we have our
02:07 **21** permit in hand, we've got a good chance of
02:07 **22** winning a market bid for it.
02:07 **23** **Q.** But there are projects that are much
02:08 **24** smaller than this that are being developed and
02:08 **25** sold either to commercial entities or to
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02:08 **1** utilities; isn't that true?
02:08 **2** MS. PERLMUTTER: Objection.
02:08 **3** THE WITNESS: That is true. Sorry.
02:08 **4** MS. PERLMUTTER: Objection.
02:08 **5** Argumentative. You can answer.
02:08 **6** THE WITNESS: Yeah, there are small
02:08 **7** projects, there are big projects. We're a
02:08 **8** big project builder.
02:08 **9** BY MR. ARAMBURU:
02:08 **10** **Q.** I want to go back and talk about the
02:08 **11** batteries a little bit.
02:08 **12** **A.** Sure.
02:08 **13** **Q.** The batteries, as I understand, are
02:08 **14** a bit of a latecomer to this project?
02:08 **15** **A.** We chose -- when batteries started
02:08 **16** becoming commercially feasible, when the
02:08 **17** technology evolved and the prices dropped where
02:09 **18** it started to get in the ballpark of something
02:09 **19** that would be interesting to our offtake
02:09 **20** market -- and like I say, we converse with our
02:09 **21** offtakers all the time, and they're telling us,
02:09 **22** this is what we desire.
02:09 **23** You're probably not familiar with
02:09 **24** the Wheatridge Project, which was built, you
02:09 **25** know, 30 miles south of Umatilla. That was one
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02:09 **1** of the first hybrid projects in the region.
 02:09 **2** We saw that happening. We conversed
 02:09 **3** with our market and they said, yeah, we're
 02:09 **4** looking at wanting hybrid, you know, if you can
 02:09 **5** make the economics work.
 02:09 **6** So we evaluate the heck out of it
 02:09 **7** and get ourselves to a point where we feel we
 02:09 **8** have something that is competitive in the
 02:09 **9** market.
 02:09 **10** And there is interest in the
 02:09 **11** batteries by some utilities, but whether we
 02:10 **12** build it or not will depend on what the market
 02:10 **13** will bear.
 02:10 **14** **Q.** So would you say that the project as
 02:10 **15** a whole would have commercial viability without
 02:10 **16** the batteries?
 02:10 **17** MS. PERLMUTTER: Objection. Calls
 02:10 **18** for speculation. And lack of foundation.
 02:10 **19** But you can answer.
 02:10 **20** THE WITNESS: The batteries add an
 02:10 **21** optimization element, but it's in the eye
 02:10 **22** of the beholder, in this case, the market,
 02:10 **23** whether it's advantageous for them or not.
 02:10 **24** And also understand, it may not be
 02:10 **25** advantageous for a party today, but
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02:10 **1** ten years from now it might be. So I want
 02:10 **2** it in there. I want it permitted so
 02:10 **3** ten years from now, if that market
 02:10 **4** develops, I can build it.
 02:10 **5** BY MR. ARAMBURU:
 02:11 **6** **Q.** Okay. And so what -- so it was
 02:11 **7** decided that the batteries, there would be one
 02:11 **8** on each side of the project?
 02:11 **9** **A.** Well, you couple the batteries
 02:11 **10** ideally with solar. Because you know solar
 02:11 **11** only generates when the sun shines. And so,
 02:11 **12** since it's not generating at night, it would be
 02:11 **13** nice to have an option. And it's, you know, an
 02:11 **14** optimization technique to add the storage.
 02:11 **15** So you can phase shift the
 02:11 **16** generation of the solar from the daytime when
 02:11 **17** the sun's shining to like a high peak time when
 02:11 **18** the sun goes down.
 02:12 **19** (Telephone interruption.)
 02:12 **20** THE WITNESS: That's typically how
 02:12 **21** utilities use it in the current market is,
 02:12 **22** they'll use the solar to charge it, and
 02:12 **23** then they'll dispatch it sometime later
 02:12 **24** when there is no solar and they still have
 02:12 **25** peak needs.
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02:12 **1** BY MR. ARAMBURU:
 02:12 **2** **Q.** Okay. So have you estimated the
 02:12 **3** amount of time it would take for the solar or
 02:12 **4** for the batteries to discharge into the grid?
 02:12 **5** **A.** Just like your car battery, it
 02:12 **6** depends on how long you're cranking it as to
 02:12 **7** how long it's going to last. I'll be
 02:12 **8** dispatched. So if it's a four-hour battery, it
 02:12 **9** means if you're dispatching it at maximum
 02:12 **10** capacity, it'll last four hours.
 02:12 **11** **Q.** How long does it take to charge?
 02:12 **12** **A.** Depends on what you're charging it
 02:13 **13** with. You can charge it pretty quick or can
 02:13 **14** you charge it all day long. You optimize it.
 02:13 **15** **Q.** What's your experience of batteries?
 02:13 **16** **A.** I have -- well, every car I've had
 02:13 **17** has one. I know how they work. It's very
 02:13 **18** similar.
 02:13 **19** **Q.** I'm not talking about car batteries,
 02:13 **20** Mr. Kobus. I'm talking about commercial-grade
 02:13 **21** lithium-ion batteries of 150 megawatts.
 02:13 **22** What experience do you have with
 02:13 **23** anything -- with lithium-ion batteries at that
 02:13 **24** scale?
 02:13 **25** **A.** I've studied the heck out of it, and
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02:13 **1** I have very good experts that support me with
 02:13 **2** any demand or question I desire. And the
 02:13 **3** manufacturers are more than eager to tell us
 02:13 **4** all the technical details we need.
 02:13 **5** And we're evaluating -- we have a
 02:13 **6** whole group that we've hired at Scout that
 02:13 **7** knows batteries and knows what to do with them.
 02:14 **8** **Q.** Okay. So are there some reports
 02:14 **9** about the operation of the battery --
 02:14 **10** (The Court Reporter requested
 02:14 **11** clarification.)
 02:14 **12** BY MR. ARAMBURU:
 02:14 **13** **Q.** Are there any reports that have been
 02:14 **14** done with regard to the operations of the
 02:14 **15** batteries?
 02:14 **16** MS. PERLMUTTER: Objection.
 02:14 **17** Foundation and form.
 02:14 **18** You can answer, if you can.
 02:14 **19** THE WITNESS: We have lots of
 02:14 **20** information from the manufacturers --
 02:14 **21** BY MR. ARAMBURU:
 02:14 **22** **Q.** And do you --
 02:14 **23** **A.** -- on how they work, yeah.
 02:14 **24** **Q.** And do you have a manufacturer for
 02:14 **25** the batteries that has been selected?
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02:14 1 A. Same as for solar and wind turbines.
 02:14 2 We're constantly evaluating the market and
 02:14 3 looking at available technology and price
 02:14 4 points. And when the time comes, I'll
 02:14 5 guarantee you we're going to choose the most
 02:14 6 optimal arrangement and manufacturer at the
 02:14 7 time.
 02:14 8 Q. But it may be that the operator
 02:14 9 doesn't need the batteries?
 02:14 10 A. Yeah.
 02:14 11 MS. PERLMUTTER: Objection as to
 02:15 12 form. You can answer.
 02:15 13 THE WITNESS: It may be we don't
 02:15 14 build it on the first buildout, that it'll
 02:15 15 be five years from now before we decide to
 02:15 16 put the batteries in and upgrade the
 02:15 17 project. But I got to have it in here to
 02:15 18 do that, so...
 02:15 19 BY MR. ARAMBURU:
 02:15 20 Q. But if one's analyzing the project
 02:15 21 now, one should consider the batteries are a
 02:15 22 part of it?
 02:15 23 MS. PERLMUTTER: Objection. Form
 02:15 24 and foundation. You can answer.
 02:15 25 THE WITNESS: Our market looks at
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02:15 1 all of these optimizations constantly.
 02:15 2 They're constantly evaluating what's
 02:15 3 optimal, and it changes literally from day
 02:15 4 to day.
 02:15 5 So today, right now, I can't tell
 02:15 6 you what our first buildout is going to
 02:15 7 look like because I can't tell you who the
 02:15 8 oftaker is. We haven't selected our
 02:16 9 equipment, so I can't tell you what brand
 02:16 10 name of battery we're going have. We may
 02:16 11 have a six-hour battery. We may have an
 02:16 12 eight-hour battery. I can't tell you right
 02:16 13 now. I would if I could, but we have to be
 02:16 14 nimble. We have to keep this flexible.
 02:16 15 BY MR. ARAMBURU:
 02:16 16 Q. So for people looking at it and
 02:16 17 talking about the application and whether EFSEC
 02:16 18 ought to grant a permit for this, we go with
 02:16 19 the current technology, which is lithium-ion
 02:16 20 four-hour batteries?
 02:16 21 MS. PERLMUTTER: Objection.
 02:16 22 Foundation. You can answer.
 02:16 23 THE WITNESS: No. We go with
 02:16 24 150 megawatt battery potential. We can
 02:16 25 build up to 150 megawatts of battery at
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02:16 1 each point of interconnection.
 02:16 2 BY MR. ARAMBURU:
 02:16 3 Q. No, I understand you're going buy a
 02:16 4 lot of batteries.
 02:16 5 A. Yeah.
 02:16 6 Q. But we're basically talking about
 02:16 7 four-hour lithium-ion batteries, correct?
 02:17 8 A. Not necessarily. I mean, that was
 02:17 9 our target at the time we last updated the ASC.
 02:17 10 I don't know what it's going to turn out.
 02:17 11 Q. Well --
 02:17 12 A. I want to do the most optimal. I
 02:17 13 want to sell the most of this project that I
 02:17 14 can to meet regional needs for clean energy.
 02:17 15 That's what this is all about. That's what we
 02:17 16 need to do.
 02:17 17 Q. Okay. I understand that.
 02:17 18 A. Yes.
 02:17 19 Q. The question is, for people who are
 02:17 20 assessing the project now, we're not going to
 02:17 21 base that on something 15 or 20 years from now
 02:17 22 when the batteries may be bigger or longer or
 02:17 23 different composition.
 02:17 24 We need to do it on the basis of
 02:17 25 what's currently commercially available; isn't
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02:17 1 that correct?
 02:17 2 MS. PERLMUTTER: Objection. Form
 02:17 3 and foundation. You can answer, if you
 02:17 4 can.
 02:17 5 THE WITNESS: We have what we need
 02:17 6 to tell EFSEC. They can make a decision on
 02:17 7 what's in here.
 02:17 8 BY MR. ARAMBURU:
 02:17 9 Q. Okay. Good.
 02:17 10 So in connection with the discussion
 02:18 11 of batteries is this question of water for the
 02:18 12 project.
 02:18 13 A. (Witness nodded head up and down.)
 02:18 14 Q. And I understand -- I'm, again,
 02:18 15 looking at the application, page 2-86 talks
 02:18 16 about water supply.
 02:18 17 Have you been involved in assessing
 02:18 18 and getting water rights for the project?
 02:18 19 A. I'm the key person doing that, yes.
 02:18 20 Q. You're the one?
 02:18 21 A. Yes.
 02:18 22 Q. Okay. Okay. And I understand from
 02:18 23 reading the document that drilling a well and
 02:18 24 getting water from a well on the site is not
 02:18 25 feasible.
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02:18 **1** **A.** Not true.

02:18 **2** **Q.** Well, the --

02:18 **3** **A.** There are wells out there.

02:19 **4** **Q.** I understand that. I'm not talking

02:19 **5** about those wells.

02:19 **6** **A.** But if you want to go dig dry holes

02:19 **7** to try and see if you can get water, no thanks.

02:19 **8** No thanks.

02:19 **9** **Q.** So as I understand, that no new

02:19 **10** water rights are anticipated for this project.

02:19 **11** You're not going to be getting new water rights

02:19 **12** to provide for water for the project.

02:19 **13** **A.** Not true. We will have rights for

02:19 **14** whatever water supply we need, and contract for

02:19 **15** the project. And we have that identified, and

02:19 **16** it's perfectly valid.

02:19 **17** **Q.** Page 1-10 under energy and natural

02:19 **18** resources, it says:

02:19 **19** No new water rights are anticipated

02:19 **20** to be necessary for the use of local off-site

02:19 **21** water resources.

02:19 **22** Is that correct?

02:19 **23** MS. PERLMUTTER: Objection as to

02:19 **24** form. You can answer, if you can.

02:19 **25** THE WITNESS: This update indicated
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02:20 **1** we do not need to obtain new water rights.

02:20 **2** We have water supply potential that has

02:20 **3** water rights.

02:20 **4** BY MR. ARAMBURU:

02:20 **5** **Q.** And what's that?

02:20 **6** **A.** Appendix -- which -- the one in

02:20 **7** there that identifies the Port of Walla Walla

02:20 **8** agreement.

02:20 **9** **Q.** Okay. So that's what you're relying

02:20 **10** on?

02:20 **11** **A.** We may find others.

02:20 **12** **Q.** Okay. Has an investigation been

02:20 **13** made of other water suppliers for the project

02:20 **14** other than the Port of Walla Walla?

02:20 **15** **A.** I've been working on it for two

02:20 **16** years. In fact, we originally thought we

02:20 **17** would -- the most convenient and obvious would

02:20 **18** be Kennewick. They have a huge water --

02:20 **19** municipal water system, and they were selling

02:21 **20** water to anybody that applied and checked out a

02:21 **21** water meter. And then they decided to change

02:21 **22** their policy and say, no, we're going to keep

02:21 **23** it for only within the city limits.

02:21 **24** **Q.** Okay. So --

02:21 **25** **A.** That's too bad. That was water
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02:21 **1** literally right next to the project.

02:21 **2** **Q.** Not available now, though?

02:21 **3** **A.** Not available now.

02:21 **4** **Q.** And have you talked to other water

02:21 **5** districts or water utilities about getting

02:21 **6** water?

02:21 **7** **A.** Almost all of them, yeah.

02:21 **8** **Q.** And has anybody else other than the

02:21 **9** Port of Walla Walla said they will provide

02:21 **10** water?

02:21 **11** **A.** Yes. We've turned down suppliers of

02:21 **12** water.

02:21 **13** **Q.** Okay. And where would those be?

02:21 **14** **A.** Locally, yeah.

02:21 **15** **Q.** Locally?

02:21 **16** **A.** I'm not going to name parties that

02:22 **17** we're in negotiations with.

02:22 **18** **Q.** But you don't have a signed

02:22 **19** agreement water right for any of those parties,

02:22 **20** do you?

02:22 **21** **A.** From Port of Walla Walla, yeah.

02:22 **22** **Q.** Yeah.

02:22 **23** But not the other ones you're

02:22 **24** talking about?

02:22 **25** **A.** No, I don't -- I don't have signed
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02:22 **1** agreements.

02:22 **2** **Q.** And --

02:22 **3** **A.** You know a lot of agreements don't

02:22 **4** get signed until they're needed, right? You

02:22 **5** sign them just in time when you've found the

02:22 **6** optimal source and the most economic and best

02:22 **7** opportunity for you.

02:22 **8** **Q.** That's the way business works?

02:22 **9** **A.** Yeah.

02:22 **10** **Q.** So let's look over page 2-150,

02:22 **11** please.

02:22 **12** **A.** Boy, this is a big document. Okay.

02:23 **13** I'm there.

02:23 **14** **Q.** Under statement of compliance on

02:23 **15** that page.

02:23 **16** **A.** Yes.

02:23 **17** **Q.** The first sentence reads:

02:23 **18** Construction and operation of the

02:23 **19** project would comply with certain sections of

02:23 **20** the Benton County code.

02:23 **21** And the last one listed there is:

02:23 **22** Minimum standard -- minimum

02:23 **23** standards fire flows, water mains, fire

02:23 **24** hydrants, and roads.

02:23 **25** Do you see that?
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02:23 1 A. Yes.

02:23 2 Q. Did you write this?

02:23 3 A. No. Tetra Tech wrote this.

02:23 4 Q. And has the project -- can the

02:23 5 project meet these requirements?

02:23 6 A. I'm absolutely convinced we can.

02:23 7 Q. And what would be the source of

02:23 8 water for the minimum fire flows, water mains,

02:23 9 fire hydrants, roads, et cetera, particularly

02:23 10 for the batteries?

02:23 11 MS. PERLMUTTER: Objection to form.

02:23 12 And asked and answered. But you can

02:23 13 answer, if you can.

02:23 14 THE WITNESS: The batteries may not

02:24 15 have water suppression. They're not

02:24 16 required to.

02:24 17 BY MR. ARAMBURU:

02:24 18 Q. Okay. But I'm asking about the

02:24 19 minimum standard fire flows.

02:24 20 What information can you provide me

02:24 21 that those fire flows are being met?

02:24 22 A. The standards are not going to

02:24 23 expect you to have water available when there's

02:24 24 no hydrants. So, obviously, you have to have

02:24 25 some capability to get the water to where it's

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02:24 1 needed. So I'm absolutely convinced we can

02:24 2 meet the standards. We just said that here.

02:24 3 Q. No, I understand what you've said

02:24 4 here.

02:24 5 My question is, where are -- where

02:24 6 are the drawings, where are the specifications,

02:24 7 where are the other materials that indicate

02:24 8 these minimum standards can be met?

02:25 9 A. In the section of the ASC where it

02:25 10 addresses water. It addresses it in various

02:25 11 places.

02:25 12 Q. I understand, and I've read through

02:25 13 a lot of the document, but I have seen no

02:25 14 drawings. I've seen no standards. I've seen

02:25 15 nothing about fire hydrants. And I've seen

02:25 16 nothing about the --

02:25 17 A. There will be no fire hydrants.

02:25 18 There is no water service out there. We have

02:25 19 to have contracted sources of water. We do not

02:25 20 intend to drill our own wells.

02:25 21 We will have water storage at the

02:25 22 site because we'll need water for domestic

02:25 23 needs as well in normal operation on a daily

02:25 24 basis. We will rely on Benton County Fire

02:25 25 Services in the event of an emergency.

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02:25 1 Q. Well, if there was a fire up there

02:26 2 now, what would be the source of water for

02:26 3 extinguishing it?

02:26 4 MS. PERLMUTTER: Objection.

02:26 5 Foundation. Calls for speculation. You

02:26 6 can answer.

02:26 7 THE WITNESS: Well, I can answer

02:26 8 it's BC-1, Benton County Number 1.

02:26 9 BY MR. ARAMBURU:

02:26 10 Q. And how much water do they have

02:26 11 available to fight a fire?

02:26 12 MS. PERLMUTTER: Objection. Lack of

02:26 13 foundation. Answer if you can.

02:26 14 THE WITNESS: I don't know what

02:26 15 their equipment -- current equipment is. I

02:26 16 know they have water tankers, I've seen

02:26 17 them out fighting fires.

02:26 18 They have interagency agreements

02:26 19 where, if they need more, they can get it

02:26 20 from BC-2, they can get it from

02:26 21 Walla Walla, they can get it from any of

02:26 22 the local fire departments. They will meet

02:26 23 the need.

02:26 24 BY MR. ARAMBURU:

02:26 25 Q. So on page 2-151, there's further

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02:26 1 discussion of water. Could you turn over

02:26 2 there?

02:26 3 A. Sure.

02:26 4 Q. And about two-thirds of the way down

02:27 5 that first paragraph --

02:27 6 A. Okay.

02:27 7 Q. -- there are two sentences that say:

02:27 8 Proof of water availability is

02:27 9 addressed in section 3.3 of this ASC.

02:27 10 Automatic sprinkler systems would be installed

02:27 11 in the project O&M building and in the BESS

02:27 12 containers per BCC 3.04.041.

02:27 13 Do you see that sentence?

02:27 14 A. Yes.

02:27 15 Q. And so is it the intention of Scout

02:27 16 to put automatic sprinkler systems in the BESS

02:27 17 operations?

02:27 18 A. Yeah. I mean, that's our statement.

02:27 19 Q. And how big are these? How big are

02:27 20 the battery operations?

02:27 21 A. We haven't procured the battery yet,

02:27 22 so I really can't answer you.

02:28 23 Q. As best I can see, it's six acres of

02:28 24 battery.

02:28 25 A. Well, they're modularized

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02:28 **1** containers. They're self-contained. I mean,
 02:28 **2** I've seen them down at the Wheatridge facility
 02:28 **3** and there they have the suppression, it's just
 02:28 **4** not connected to anything.
 02:28 **5** We're going to have the same thing.
 02:28 **6** We're going to have modules, like C bands,
 02:28 **7** they'll be modularized components that you
 02:28 **8** build together whatever size you need.
 02:28 **9** **Q.** What's the source of water for the
 02:28 **10** automatic sprinkler systems that you mentioned
 02:28 **11** here on page 151?
 02:28 **12** **A.** I don't have an answer for you at
 02:28 **13** the moment.
 02:28 **14** **Q.** Well, there isn't any, isn't that
 02:28 **15** the case?
 02:28 **16** MS. PERLMUTTER: Objection.
 02:28 **17** Argumentative.
 02:28 **18** THE WITNESS: I just don't know what
 02:28 **19** the plan is. We haven't procured it yet.
 02:28 **20** BY MR. ARAMBURU:
 02:29 **21** **Q.** Are you aware the fire dangers with
 02:29 **22** lithium-ion batteries?
 02:29 **23** **A.** Yes, yeah.
 02:29 **24** **Q.** And what are those dangers?
 02:29 **25** **A.** They can have internal faults that

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02:29 **1** cause them to burn.
 02:29 **2** **Q.** And have you seen lithium-ion fires?
 02:29 **3** Have you seen any videos of them?
 02:29 **4** **A.** I've seen pictures of Teslas burning
 02:29 **5** up, sure. Is this a Tesla? I don't know if
 02:29 **6** we're going buy Tesla batteries. I don't know
 02:29 **7** that answer. They might be the best one in the
 02:29 **8** market.
 02:29 **9** **Q.** You're not going to buy Tesla car
 02:29 **10** batteries, are you?
 02:29 **11** **A.** Tesla makes batteries for battery
 02:29 **12** storage for commercial utility projects. Yes,
 02:29 **13** they do.
 02:29 **14** **Q.** I understand that they do, but do
 02:30 **15** you understand what the fire dangers of those
 02:30 **16** batteries are in a commercial setting on
 02:30 **17** six acres of property?
 02:30 **18** **A.** We will negotiate with the
 02:30 **19** manufacturer to make sure we meet all standards
 02:30 **20** for the batteries that we procure for the site.
 02:30 **21** And so they will be safe as the technology is
 02:30 **22** available.
 02:30 **23** **Q.** I understand they will be.
 02:30 **24** What will be the source of water to
 02:30 **25** fight a fire at the batteries?

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02:30 **1** **A.** Benton County 1.
 02:30 **2** **Q.** Okay.
 02:30 **3** **A.** Well, it's Benton County 2 at the
 02:30 **4** west site because that's over in Benton
 02:30 **5** County 2 territory. So Benton County 2.
 02:30 **6** **Q.** Okay. So if I go to Benton -- have
 02:30 **7** you asked Benton County about their ability to
 02:30 **8** fight a six-acre battery fire up on the
 02:30 **9** plateau?
 02:30 **10** **A.** Yes. Talked -- spoke with the fire
 02:30 **11** marshal myself.
 02:30 **12** **Q.** What did he say?
 02:30 **13** **A.** He said, I don't have time for this.
 02:31 **14** I'm sorry, that's what he said. He won't
 02:31 **15** answer phone calls anymore. So talk to the
 02:31 **16** Benton County fire marshal.
 02:31 **17** **Q.** So the answer is, you haven't gotten
 02:31 **18** approval --
 02:31 **19** **A.** Benton County will be the provider
 02:31 **20** of emergency services. They're going to have
 02:31 **21** to figure it out.
 02:31 **22** **Q.** But you have not gotten approval
 02:31 **23** from the Benton County fire marshal for the
 02:31 **24** plans for this six-acre battery operation, have
 02:31 **25** you?

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02:31 **1** **A.** We do not have our emergency plan
 02:31 **2** approved through the county, no. That will
 02:31 **3** likely be a condition of our site certification
 02:31 **4** agreement. That's how that works.
 02:31 **5** **Q.** Are you familiar with the concept of
 02:31 **6** thermal runaway in lithium-ion batteries?
 02:31 **7** **A.** I believe I understand. That's what
 02:31 **8** I meant by internal faults that can occur.
 02:31 **9** **Q.** And you're aware that this is a
 02:31 **10** fast-moving fire?
 02:31 **11** **A.** Yeah.
 02:31 **12** **Q.** Very fast, correct?
 02:31 **13** **A.** Within the battery, yeah. Not away
 02:32 **14** from the battery.
 02:32 **15** **Q.** Are you familiar with the concept of
 02:32 **16** repropagation of fires in lithium-ion
 02:32 **17** batteries?
 02:32 **18** **A.** I believe that's a concern, yeah.
 02:32 **19** You have to watch it.
 02:32 **20** **Q.** Have to keep water on it for days at
 02:32 **21** a time, don't you?
 02:32 **22** **A.** I can't say for sure. This is
 02:32 **23** commercially available technology, right. This
 02:32 **24** is state of the art. We're going after state
 02:32 **25** of the art lithium-ion batteries, if that's

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02:32 **1** what we install at the site.
 02:32 **2** We will get the best batteries
 02:32 **3** available in the market, and they will be
 02:32 **4** demonstrably safe and they'll be warranted.
 02:32 **5** And I'll guarantee you Benton County will make
 02:32 **6** sure that they have the emergency services
 02:32 **7** capability they need to support this project.
 02:32 **8** **Q.** You guarantee that they will?
 02:32 **9** **A.** They have to. That's their
 02:32 **10** responsibility.
 02:32 **11** **Q.** That sounds like a legal conclusion
 02:33 **12** to me.
 02:33 **13** MS. PERLMUTTER: You don't have to
 02:33 **14** answer that.
 02:33 **15** THE WITNESS: Okay.
 02:33 **16** BY MR. ARAMBURU:
 02:33 **17** **Q.** So we had a little trouble copying
 02:33 **18** page -- this is actually page 2-126. And when
 02:33 **19** we copied it, we got a couple of holes through,
 02:33 **20** but this is what it looks like. It's your --
 02:33 **21** **A.** Yes, okay.
 02:33 **22** **Q.** Do you see that?
 02:33 **23** **A.** Yeah.
 02:33 **24** **Q.** Can you find that there in the
 02:33 **25** material? Yeah, I think it's up -- yeah, I
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02:33 **1** think it's right here. Right there.
 02:33 **2** Can you turn that over? That's what
 02:33 **3** talks about the Benton County fire marshal?
 02:33 **4** **A.** Yes.
 02:33 **5** **Q.** Okay. And there's a hole through it
 02:33 **6** there, but it refers to Benton County code and
 02:33 **7** International Fire Code?
 02:33 **8** **A.** Yes.
 02:33 **9** **Q.** And have you investigated the
 02:33 **10** requirements for fighting lithium-ion fires
 02:33 **11** that are found in the International Fire Code?
 02:34 **12** **A.** Yes.
 02:34 **13** **Q.** You have.
 02:34 **14** It says a permit may be required for
 02:34 **15** the Benton County fire marshal in accordance
 02:34 **16** with International Fire Code; do you see that?
 02:34 **17** **A.** Yes.
 02:34 **18** **Q.** And have you secured that permit?
 02:34 **19** **A.** No.
 02:34 **20** **Q.** Have you received a commitment from
 02:34 **21** the Benton County fire marshal to issue such a
 02:34 **22** permit?
 02:34 **23** **A.** No. We engaged with him and, as I
 02:34 **24** said, he indicated he didn't have time to deal
 02:34 **25** with it.
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02:34 **1** **Q.** And then there's another sentence
 02:34 **2** after that that was recently added, which says:
 02:34 **3** If necessary, the applicant would
 02:34 **4** obtain these permits in coordination with
 02:34 **5** EFSEC.
 02:34 **6** Do you see that?
 02:34 **7** **A.** Yes. EFSEC has preemptive authority
 02:34 **8** to issue the permits themselves.
 02:34 **9** **Q.** So if you can't get it from the
 02:34 **10** Benton County fire marshal, you're going to ask
 02:34 **11** EFSEC to issue the permit?
 02:34 **12** **A.** Absolutely. It's a benefit of going
 02:35 **13** to EFSEC, it's a one-stop shop.
 02:35 **14** MS. PERLMUTTER: Wait until there's
 02:35 **15** a question pending.
 02:35 **16** THE WITNESS: Oh, sorry.
 02:35 **17** MS. PERLMUTTER: That's okay.
 02:35 **18** You're doing great.
 02:35 **19** BY MR. ARAMBURU:
 02:35 **20** **Q.** I'd like you to look at page 4-33,
 02:35 **21** and the very last sentence.
 02:35 **22** **A.** Got it.
 02:35 **23** **Q.** Last two sentences:
 02:35 **24** Lithium-ion battery storage may pose
 02:35 **25** a risk of fire and explosion due to the
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02:36 **1** tendency for lithium-ion batteries to overheat.
 02:36 **2** Do you see that?
 02:36 **3** **A.** Yes.
 02:36 **4** **Q.** Did you assist in writing this?
 02:36 **5** **A.** I reviewed it, yes.
 02:36 **6** **Q.** And do you think that's an accurate
 02:36 **7** statement?
 02:36 **8** **A.** I believe it is.
 02:36 **9** **Q.** And what is FPRF, which is the end
 02:36 **10** of that sentence?
 02:36 **11** **A.** I would have to look at the
 02:36 **12** references to identify that acronym. I'm not
 02:36 **13** exactly sure offhand what it stands for.
 02:36 **14** **Q.** And then it says:
 02:36 **15** If lithium-ion batteries are exposed
 02:36 **16** to abnormal heat, electrolyte products may
 02:36 **17** vaporize and be vented from the cells. This
 02:36 **18** vented electrolyte is flammable and may ignite
 02:37 **19** on contact with an ignition source.
 02:37 **20** Is that an accurate statement?
 02:37 **21** **A.** I believe it, yeah.
 02:37 **22** **Q.** And what water is currently planned
 02:37 **23** to be applied to the extinguishment of a fire
 02:37 **24** that's discussed here?
 02:37 **25** MS. PERLMUTTER: Objection. Asked
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02:37 1 and answered. You can answer if you can.
02:37 2 THE WITNESS: Well, I remember we
02:37 3 just went through a bit ago where we said
02:37 4 we were going to have fire suppression for
02:37 5 the batteries. So whatever water supply is
02:37 6 required to make that operational is what
02:37 7 it'll end up being.
02:37 8 BY MR. ARAMBURU:
02:37 9 Q. Do you know what the minimum fire
02:37 10 flows are that are required for industrial
02:38 11 commercial operations in Benton County?
02:38 12 MS. PERLMUTTER: Objection.
02:38 13 Foundation. I'm sorry. Objection. Form.
02:38 14 You can answer, if you can.
02:38 15 THE WITNESS: Not offhand, no.
02:38 16 BY MR. ARAMBURU:
02:38 17 Q. Getting near the end here. Give
02:38 18 me -- I know. I know, you can barely wait.
02:38 19 MR. ARAMBURU: Let's go off the
02:38 20 record for a second.
02:46 21 (A recess was taken.)
02:46 22 BY MR. ARAMBURU:
02:47 23 Q. A couple of questions.
02:47 24 You have been -- have you been the
02:47 25 principal contact for the applicant with EFSEC
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02:47 1 and EFSEC staff?
02:47 2 A. Yes.
02:47 3 Q. And how long has that been going on?
02:47 4 A. Since, we -- since, well, prior --
02:47 5 just prior to filing our permit and getting
02:47 6 ready to file it, and then since, I've been the
02:47 7 principal contact.
02:47 8 Now, that being said, every now and
02:47 9 then, if there's large files, I'll have Tetra
02:47 10 Tech do a manage file transfer to EFSEC, but
02:47 11 that's at my authorization and it's considered
02:47 12 coming from me when I authorize that, so...
02:47 13 Q. So as I understand the record, the
02:47 14 first contacts with EFSEC were in the fall of
02:47 15 2020. Does that comport with your chronology?
02:47 16 A. That would be -- yeah, that would be
02:48 17 the timeframe where we were deliberating
02:48 18 whether to do the county permit process or the
02:48 19 EFSEC process, yeah.
02:48 20 Q. And during that period of time,
02:48 21 let's say, through the fall of 2020, you were
02:48 22 involved at that time?
02:48 23 A. Absolutely, yeah.
02:48 24 Q. And through 2021.
02:48 25 Was there conversations with EFSEC
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02:48 1 about the content of the environmental impact
02:48 2 statements?
02:48 3 A. No.
02:48 4 Q. And have you had contact with them
02:48 5 about the content of the impact statements?
02:48 6 A. Well, when we initially filed our
02:48 7 application, we had conducted a SEPA analysis.
02:48 8 And, you know, in our belief, we felt we could
02:49 9 meet the criteria for mitigated determination
02:49 10 of nonsignificance.
02:49 11 And then, after we filed for the
02:49 12 expedited permitting process, we later decided
02:49 13 to rescind that application and agreed with
02:49 14 EFSEC that we would support them preparing an
02:49 15 environmental impact statement.
02:49 16 Q. And so there was interactions, then,
02:49 17 between EFSEC and Scout staff, including
02:49 18 yourself?
02:49 19 A. Yeah, because we had to -- we had to
02:49 20 request them to declare that it would need an
02:49 21 environmental impact statement. Because
02:49 22 they're the ones that are responsible for that
02:49 23 determination and they're the ones that
02:49 24 prepare, or have an independent expert prepare
02:50 25 the environmental impact statement.
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02:50 1 Q. And as I understand it, the
02:50 2 independent expert is being paid by Scout?
02:50 3 A. Oh, yes. EFSEC is entirely on
02:50 4 our -- our -- we have to pay -- we have to pay
02:50 5 a certain share of EFSEC's normal costs, plus
02:50 6 we have to pay everything specific to this
02:50 7 application.
02:50 8 Q. The comment period for the draft
02:50 9 impact statement ended February 1st of this
02:50 10 year. Are you aware of that?
02:50 11 A. Yes.
02:50 12 Q. Have you been working with EFSEC
02:50 13 concerning the preparation of the final impact
02:50 14 statement?
02:50 15 A. They're doing it. We're -- we filed
02:50 16 comments on the DEIS for what we would expect
02:50 17 them to consider to change or incorporate in
02:50 18 the final EIS, but that's all in the record.
02:50 19 Q. Have there been further
02:51 20 communications regarding the final impact
02:51 21 statement?
02:51 22 A. Only through data requests where
02:51 23 they're actually asking us for things that they
02:51 24 feel they need in order to make the
02:51 25 determinations they need for the final EIS,
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02:51 **1** yes.

02:51 **2** **Q.** Has EFSEC indicated to you when they

02:51 **3** expect to issue the final impact statement?

02:51 **4** **A.** When we asked to extend the EFSEC

02:51 **5** process to the point of a final document that's

02:51 **6** ready to be provided to the governor, we

02:51 **7** discussed that the final EIS would be part of

02:51 **8** that record that they create, along with the

02:51 **9** site certification agreement that would go

02:51 **10** along with that.

02:51 **11** So I don't know exactly -- exactly

02:51 **12** when the final EIS is going to be completed.

02:52 **13** **Q.** Have you asked them?

02:52 **14** **A.** Oh, yeah.

02:52 **15** **Q.** And what did they say?

02:52 **16** **A.** It depends. They still are doing

02:52 **17** evaluations. And those were documented in the

02:52 **18** recent data requests 7 and 8. We've provided

02:52 **19** information, and we still owe them a document

02:52 **20** for data request 7.

02:52 **21** **Q.** What's that?

02:52 **22** **A.** The transportation impact analysis.

02:52 **23** **Q.** Okay. And is there going to be any

02:52 **24** additional visual impact analysis provided?

02:52 **25** **A.** We did do additional, and it has

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02:52 **1** been provided in response to data request 7.

02:52 **2** **Q.** And that's been provided to EFSEC

02:52 **3** staff?

02:52 **4** **A.** Yeah, it's on the docket.

02:52 **5** **Q.** Okay.

02:52 **6** **A.** In fact, the Yakima Nation have

02:53 **7** requested some points of interest that --

02:53 **8** identified points of interest for us to do

02:53 **9** visual simulations, which we did.

02:53 **10** MR. ARAMBURU: Okay. I think that's

02:53 **11** all the questions I have right now. Thank

02:53 **12** you, Mr. Kobus.

02:53 **13** EXAMINATION

02:53 **14** BY MS. VOELCKERS:

02:54 **15** **Q.** Hello, again, Mr. Kobus. I'm

02:54 **16** Shona Voelckers from the Yakima Nation. Same

02:54 **17** ground rules apply, of course, to this

02:54 **18** conversation. And as I'm sure you expect, I'm

02:54 **19** going to jump around a bit.

02:54 **20** **A.** Okay.

02:54 **21** **Q.** Does Exhibit 1 reflect any efforts

02:54 **22** by Scout to avoid impacts to the Yakima

02:54 **23** Nation's traditional cultural properties?

02:54 **24** **A.** The intention is that we desire to

02:54 **25** know what those impacts are, and have, in fact,

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02:54 **1** requested those to be identified to the fullest

02:54 **2** extent.

02:55 **3** For those we've heard and evaluated,

02:55 **4** we've actually made an attempt to redesign the

02:55 **5** project in consideration of those. And our

02:55 **6** intent is to continue to work with the Yakima

02:55 **7** Nation to come to hopefully an agreeable

02:55 **8** compromise.

02:55 **9** **Q.** Are those attempts reflected

02:55 **10** anywhere in Exhibit 1?

02:55 **11** **A.** I'm going to say not. I don't think

02:55 **12** they are.

02:55 **13** **Q.** Have you reviewed the confidential

02:55 **14** TCP report submitted into the adjudication

02:55 **15** record by Jessica Lally?

02:55 **16** **A.** The most recent, yes.

02:55 **17** **Q.** It was just recently because --

02:55 **18** **A.** Yeah.

02:55 **19** **Q.** The -- but the report itself?

02:55 **20** **A.** Yeah.

02:55 **21** **Q.** Does Exhibit 1 reflect any efforts

02:56 **22** by Scout to minimize impacts to the Yakima

02:56 **23** Nation's traditional cultural properties?

02:56 **24** **A.** We have continued to maintain the

02:56 **25** fullest extent of the development of the

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02:56 **1** project, and have not yet reduced impacts.

02:56 **2** There are settlement discussions in

02:56 **3** progress with the parties associated with the

02:56 **4** permit. We do intend to mark up the document

02:56 **5** as part of the post-adjudication redline to

02:57 **6** make those concessions in accordance with those

02:57 **7** settlement agreements that, you know, we would

02:57 **8** like to have done prior to the end of

02:57 **9** adjudication.

02:57 **10** **Q.** So as we sit here today, there's

02:57 **11** nothing within Exhibit 1 that reflects an

02:57 **12** effort by Scout to minimize impacts to Yakima

02:57 **13** Nation's traditional cultural properties,

02:57 **14** correct?

02:57 **15** **A.** (No verbal response.)

02:57 **16** **Q.** Is it fair to say those efforts have

02:57 **17** not been yet incorporated into the application?

02:57 **18** MS. PERLMUTTER: Objection. Form.

02:57 **19** You can answer, if you can.

02:57 **20** THE WITNESS: I need to back up a

02:57 **21** step.

02:57 **22** BY MS. VOELCKERS:

02:57 **23** **Q.** Sure.

02:57 **24** **A.** I was attempting to engage with

02:57 **25** Jessica Lally literally the first week I

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02:57 **1** started working for Scout back in 2018.
 02:57 **2** There was some information available
 02:57 **3** that indicated Webber Canyon was important to
 02:58 **4** the Yakima Nation. And we did pull back and
 02:58 **5** allowed additional margin related to Webber
 02:58 **6** Canyon because we knew that to be the case.
 02:58 **7** But recent discussions, no, they
 02:58 **8** have not been incorporated into the application
 02:58 **9** as it stands today.
 02:58 **10** **Q.** So as we sit here today, just so I'm
 02:58 **11** clear, there isn't something in Exhibit 1 that
 02:58 **12** you could point me to right now that reflects
 02:58 **13** an effort by Scout to minimize impacts to TCP?
 02:58 **14** MS. PERLMUTTER: Objection. It's
 02:58 **15** been asked and answered -- asked and
 02:58 **16** answered. But you can respond.
 02:58 **17** THE WITNESS: There has been an
 02:58 **18** effort all along to attempt to optimally
 02:58 **19** design the project and not load up the west
 02:58 **20** end of it because we know that there are
 02:59 **21** important TCPs there.
 02:59 **22** You know, as it stands, there's also
 02:59 **23** airspace restrictions that kept us away
 02:59 **24** from the west as well. But, you know, I
 02:59 **25** have to admit that in what we applied for,
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02:59 **1** there, yes, there was consideration for
 02:59 **2** Yakima TCPs.
 02:59 **3** BY MS. VOELCKERS:
 02:59 **4** **Q.** But there's nothing -- I just want
 02:59 **5** to make sure I understand your answer clearly
 02:59 **6** to my question.
 02:59 **7** There's nothing that we could point
 02:59 **8** to today as we sit here that demonstrates
 02:59 **9** Scout's efforts to minimize impacts to Yakima
 02:59 **10** Nation traditional cultural properties?
 02:59 **11** MS. PERLMUTTER: Objection. Asked
 02:59 **12** and answered. You can answer again.
 02:59 **13** THE WITNESS: The only thing I could
 02:59 **14** point to -- well, I can't point to, but the
 02:59 **15** only thing I can respond with is, there are
 03:00 **16** things we intentionally didn't include in
 03:00 **17** consideration of Yakima TCPs.
 03:00 **18** BY MS. VOELCKERS:
 03:00 **19** **Q.** But it's no to my question on
 03:00 **20** whether that is reflected in Exhibit 1 as a
 03:00 **21** document?
 03:00 **22** **A.** Not as a document, no.
 03:00 **23** **Q.** So that's not reflected in the
 03:00 **24** application that EFSEC has, that's knowledge
 03:00 **25** that you hold personally?
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03:00 **1** **A.** And it's in the layout of the
 03:00 **2** project. As I said, there are things we could
 03:00 **3** have done that we chose not to.
 03:00 **4** **Q.** And have you provided information
 03:00 **5** about what you could have done that you chose
 03:00 **6** not to?
 03:00 **7** MS. PERLMUTTER: Objection as to
 03:00 **8** form. You can answer.
 03:00 **9** THE WITNESS: At that stage of the
 03:00 **10** project, we had a letter from the Yakima
 03:00 **11** Nation that said, we will not converse with
 03:00 **12** the applicant until it is part of the EFSEC
 03:00 **13** process, and we will consult government to
 03:00 **14** government. And so that was when
 03:01 **15** conversation ceased.
 03:01 **16** BY MS. VOELCKERS:
 03:01 **17** **Q.** Okay. So is there anything external
 03:01 **18** to the exhibit in front of you that you could
 03:01 **19** point to that documents that?
 03:01 **20** **A.** They're confidential. No, I
 03:01 **21** couldn't point to them. They're part of
 03:01 **22** ongoing settlement negotiations.
 03:01 **23** **Q.** And you're aware that there's not an
 03:01 **24** active settlement negotiation as of today,
 03:01 **25** correct?
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03:01 **1** **A.** I wouldn't put it that way. I would
 03:01 **2** say we've made a proposal that was rejected and
 03:01 **3** not countered. But I would say we're still
 03:01 **4** intending to negotiate, and we've requested to
 03:01 **5** do that, and our intention is to continue to
 03:01 **6** try.
 03:01 **7** **Q.** But it does take two parties to
 03:01 **8** continue a settlement discussion, correct?
 03:01 **9** MS. PERLMUTTER: Objection.
 03:01 **10** Argumentative. You can answer.
 03:01 **11** THE WITNESS: Yeah, we would like
 03:02 **12** the Yakima Nation to come to the table.
 03:02 **13** Yeah.
 03:02 **14** BY MS. VOELCKERS:
 03:02 **15** **Q.** And does Exhibit 1 reflect any
 03:02 **16** efforts by Scout to mitigate impacts to Yakima
 03:02 **17** Nation's traditional cultural properties?
 03:02 **18** MS. PERLMUTTER: Objection. Asked
 03:02 **19** and answered. Answer if you can, or you
 03:02 **20** want to answer again.
 03:02 **21** BY MS. VOELCKERS:
 03:02 **22** **Q.** I'm going to clarify my question. I
 03:02 **23** have not asked about mitigation yet.
 03:02 **24** So does Exhibit 1 reflect any
 03:02 **25** efforts by Scout to mitigate impacts to Yakima
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03:02 **1** Nation's traditional cultural properties?
 03:02 **2** **A.** I believe we've offered very robust
 03:02 **3** mitigation that benefits Yakima Nation as well,
 03:02 **4** yes.
 03:02 **5** **Q.** That mitigates impacts to
 03:02 **6** traditional cultural properties?
 03:02 **7** **A.** I believe so, yeah.
 03:02 **8** **Q.** And how do you understand me to be
 03:02 **9** using that term?
 03:02 **10** **A.** I understand that the identification
 03:03 **11** of traditional cultural properties is a complex
 03:03 **12** concept. And with, you know, all respect to
 03:03 **13** the Yakima Nation, we need that articulated to
 03:03 **14** the fullest extent. And that's what we hope to
 03:03 **15** come to the table with, and have precise,
 03:03 **16** concise conversations about things that are
 03:03 **17** possible.
 03:03 **18** You know, but declaring the whole
 03:03 **19** thing is a TCP that's unmitigable doesn't help.
 03:03 **20** **Q.** So I just want to make sure I'm not
 03:03 **21** using terms that we're not clear on.
 03:03 **22** Do you know what I mean when I say,
 03:03 **23** "legendary sites"?
 03:03 **24** **A.** Yes.
 03:03 **25** **Q.** And you know what I mean when I say,
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03:03 **1** monumental sites"?
 03:04 **2** **A.** Not real clear on the distinction
 03:04 **3** between the two.
 03:04 **4** **Q.** How do you understand me to be using
 03:04 **5** the words, "legendary sites"?
 03:04 **6** **A.** Sites that the Yakima Nation
 03:04 **7** believes since creation have been utilized and
 03:04 **8** passed down from generation to generation what
 03:04 **9** the significance is and how they've been
 03:04 **10** utilized and what their value is to the
 03:04 **11** culture.
 03:04 **12** **Q.** Okay. And you said you reviewed
 03:04 **13** Jessica Lally's TCP report that generally
 03:04 **14** summarizes --
 03:04 **15** **A.** Yes.
 03:04 **16** **Q.** -- the project's impact to TCPs?
 03:04 **17** **A.** Yes.
 03:04 **18** **Q.** So based upon your review of that,
 03:04 **19** is it fair to say that there isn't anything in
 03:05 **20** Exhibit 1 that contains commitments by Scout to
 03:05 **21** mitigate impacts to Yakima Nation's traditional
 03:05 **22** cultural properties that have been identified
 03:05 **23** by Jessica Lally?
 03:05 **24** **MS. PERLMUTTER:** Objection to form.
 03:05 **25** You can answer, if you can.
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03:05 **1** **THE WITNESS:** Well, my understanding
 03:05 **2** is the mitigation is no wind turbines on
 03:05 **3** Horse Heaven Hill. So I can't work with
 03:05 **4** that. So the site has to be permitted in
 03:05 **5** accordance with EFSEC and, you know, we're
 03:05 **6** asking for the current infrastructure
 03:05 **7** that's in the application.
 03:05 **8** **BY MS. VOELCKERS:**
 03:05 **9** **Q.** You mentioned the discussion between
 03:05 **10** Scout and Yakima Nation about any -- about
 03:06 **11** alterations to the project design --
 03:06 **12** **A.** Yes.
 03:06 **13** **Q.** -- that were proposed.
 03:06 **14** Have you discussed any alterations
 03:06 **15** to the project design contained in Exhibit 1
 03:06 **16** with anyone else outside Scout and your legal
 03:06 **17** counsel?
 03:06 **18** **MS. PERLMUTTER:** Objection. Form
 03:06 **19** and foundation. You can answer.
 03:06 **20** **THE WITNESS:** We are negotiating a
 03:06 **21** settlement with counsel for the
 03:06 **22** environment.
 03:06 **23** **BY MS. VOELCKERS:**
 03:06 **24** **Q.** And is any of that discussion
 03:06 **25** reflected within Exhibit 1?
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03:06 **1** **A.** No.
 03:06 **2** **Q.** Is any of that discussion reflected
 03:06 **3** in any materials available to EFSEC right now?
 03:06 **4** **A.** The settlement negotiations, we're
 03:06 **5** intending to keep them confidential until it's
 03:06 **6** executed. We have provided our version of that
 03:06 **7** to the AG and it's under review.
 03:06 **8** **Q.** Which is consistent with how some
 03:07 **9** negotiations work. I'm not trying to suggest
 03:07 **10** it's wrong.
 03:07 **11** But I'm just trying to confirm that
 03:07 **12** there's isn't anything that EFSEC has to review
 03:07 **13** to incorporate any project design changes in
 03:07 **14** their review of the application today?
 03:07 **15** **MS. PERLMUTTER:** Objection. Form
 03:07 **16** and foundation. You can answer.
 03:07 **17** **THE WITNESS:** In recent discussions
 03:07 **18** with EFSEC we've told them we are preparing
 03:07 **19** the results of the current status of
 03:07 **20** project changes, of infrastructure changes,
 03:07 **21** and that will be forthcoming.
 03:07 **22** **BY MS. VOELCKERS:**
 03:07 **23** **Q.** Okay. So they're aware that it's
 03:07 **24** coming?
 03:07 **25** **A.** Yes.
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03:07 **1** **Q.** And do those project changes include
 03:07 **2** anything besides what you've been discussing
 03:07 **3** with counsel for the environment?
 03:07 **4** **A.** We have not discussed any of the
 03:07 **5** negotiations or proposals with the Yakima
 03:07 **6** Nation with any other parties. That was
 03:07 **7** confidential with Yakima Nation.
 03:07 **8** **Q.** Okay. But the project designs that
 03:08 **9** you -- putting that aside, right, we'll move on
 03:08 **10** from that.
 03:08 **11** **A.** Okay.
 03:08 **12** **Q.** Is there any other project design
 03:08 **13** that you are currently contemplating aside from
 03:08 **14** what has been proposed in confidential
 03:08 **15** conversations with Ms. Reyneveld?
 03:08 **16** **A.** Yes.
 03:08 **17** **Q.** And what are those other design
 03:08 **18** alterations?
 03:08 **19** MS. PERLMUTTER: Objection. Form.
 03:08 **20** You can answer, if you can.
 03:08 **21** THE WITNESS: Until we submit them
 03:08 **22** to EFSEC, they're still a work in progress.
 03:08 **23** BY MS. VOELCKERS:
 03:08 **24** **Q.** Have they been shared externally
 03:08 **25** outside of Scout?
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03:08 **1** **A.** Just with our team, just with our
 03:08 **2** legal and technical consultants.
 03:08 **3** **Q.** Okay. So you've discussed different
 03:08 **4** design alterations than what's in Exhibit 1,
 03:08 **5** but they've not been shared external to Scout
 03:08 **6** and legal counsel?
 03:08 **7** **A.** Correct. We're waiting for all the
 03:09 **8** parties, all things to progress as they should
 03:09 **9** until the time we're ready to identify them.
 03:09 **10** **Q.** Okay. So EFSEC staff does not have
 03:09 **11** them?
 03:09 **12** **A.** No, they do not.
 03:09 **13** **Q.** And EFSEC's counsel does not have
 03:09 **14** them?
 03:09 **15** MS. PERLMUTTER: Objection as to
 03:09 **16** form. You mean council or counsel?
 03:09 **17** MS. VOELCKERS: Thank you. We'll
 03:09 **18** take both in turn.
 03:09 **19** BY MS. VOELCKERS:
 03:09 **20** **Q.** EFSEC's legal counsel doesn't have
 03:09 **21** them?
 03:09 **22** **A.** To my knowledge, that's correct.
 03:09 **23** **Q.** And the council that will decide and
 03:09 **24** make a recommendation to the governor, the
 03:09 **25** EFSEC council, not legal counsel, they don't
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03:09 **1** have a copy of any of the project designs that
 03:09 **2** are being discussed?
 03:09 **3** **A.** Yeah. Just to be clear, we don't
 03:09 **4** interface with the council, only through the
 03:09 **5** monthly meetings or if they do a tour of the
 03:09 **6** site. That's the only interface we have with
 03:09 **7** council members.
 03:09 **8** **Q.** Okay. I appreciate the
 03:09 **9** clarification.
 03:09 **10** So then to be clear, as we go into
 03:09 **11** an adjudication hearing, the material that they
 03:10 **12** have in front of them is Exhibit 1?
 03:10 **13** **A.** Correct.
 03:10 **14** **Q.** Without alterations to the design?
 03:10 **15** MS. PERLMUTTER: I'm going to object
 03:10 **16** as to form when you say that they have in
 03:10 **17** front of them. We've just been talking
 03:10 **18** about at least two entities. So if you
 03:10 **19** could clarify that, that would be good.
 03:10 **20** BY MS. VOELCKERS:
 03:10 **21** **Q.** Well, I'm going to take it as whole
 03:10 **22** entity. EFSEC as an entity, staff, legal
 03:10 **23** counsel, everyone.
 03:10 **24** As we sit here today, they only have
 03:10 **25** the project design contained in Exhibit 1 in
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03:10 **1** front of you?
 03:10 **2** **A.** That's correct.
 03:10 **3** **Q.** When do you anticipate giving them
 03:10 **4** the proposed design alterations?
 03:10 **5** MS. PERLMUTTER: Objection to form
 03:10 **6** and foundation. You can answer.
 03:10 **7** THE WITNESS: I have to defer to
 03:10 **8** legal counsel on that as to how that's
 03:10 **9** going to be unveiled in the EFSEC
 03:10 **10** adjudication.
 03:10 **11** BY MS. VOELCKERS:
 03:10 **12** **Q.** Okay. So it's a legal strategy on
 03:10 **13** when that information is available?
 03:10 **14** **A.** Yes, yes.
 03:10 **15** **Q.** I'm not going to get into a whole
 03:11 **16** back-and-forth on the lack of alternatives
 03:11 **17** because I think that was covered a lot, but I
 03:11 **18** do want to just understand kind of can versus
 03:11 **19** can't in terms of what could be possible.
 03:11 **20** So -- and I understand there's a lot
 03:11 **21** of, you know, economic interest, business
 03:11 **22** interest. That's your job, not mine.
 03:11 **23** But can the project move forward
 03:11 **24** without the solar field?
 03:11 **25** MS. PERLMUTTER: Objection to form.
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03:11 1 THE WITNESS: It's possible. Is it
 03:11 2 optimal? No.
 03:11 3 BY MS. VOELCKERS:
 03:11 4 Q. Can the project move forward without
 03:11 5 the northwest solar field, same answer?
 03:11 6 MS. PERLMUTTER: Objection. Form
 03:11 7 and foundation. You can answer.
 03:11 8 THE WITNESS: Same answer.
 03:11 9 BY MS. VOELCKERS:
 03:11 10 Q. Can the project move forward without
 03:11 11 the southwest solar field?
 03:11 12 MS. PERLMUTTER: Objection. Form
 03:11 13 and foundation.
 03:11 14 THE WITNESS: Same answer, yeah.
 03:11 15 BY MS. VOELCKERS:
 03:12 16 Q. Can the project move forward without
 03:12 17 any solar fields?
 03:12 18 MS. PERLMUTTER: Same objection.
 03:12 19 Form and foundation.
 03:12 20 THE WITNESS: Same answer, yes.
 03:12 21 BY MS. VOELCKERS:
 03:12 22 Q. So is it fair to say that the solar
 03:12 23 portion of the project is what moves it towards
 03:12 24 optimal, but the solar fields themselves are
 03:12 25 not necessary for the project?
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03:12 1 MS. PERLMUTTER: Objection. Form.
 03:12 2 THE WITNESS: It's in the eye of the
 03:12 3 beholder as far as the offtake potential.
 03:12 4 If they say they want 100 megawatts solar
 03:12 5 overbuild on the east side, we're going to
 03:12 6 try and make it work.
 03:12 7 And so, you know, we have a market
 03:12 8 we intend to meet. And we want to optimize
 03:12 9 and make this as big as we can, of course,
 03:12 10 we're within the constraints of what's in
 03:12 11 the application. But that's our business
 03:12 12 is bringing the market what they need.
 03:12 13 BY MS. VOELCKERS:
 03:12 14 Q. Could you market the project without
 03:13 15 the solar fields?
 03:13 16 A. It's possible, but not optimal.
 03:13 17 Q. Understood. Okay. We can move on
 03:13 18 from that part.
 03:13 19 A. Yeah.
 03:13 20 Q. I heard a couple of times from you
 03:13 21 today that Scout has ongoing discussions with
 03:13 22 potential offtakers, correct?
 03:13 23 A. That's correct.
 03:13 24 Q. Offtaker is the right word?
 03:13 25 A. Yes.
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03:13 1 Q. Okay. And it sounded like, but
 03:13 2 correct me if I'm wrong, those discussions have
 03:13 3 gone so far as to have potential offtakers make
 03:13 4 requests about the project design; is that
 03:13 5 correct?
 03:13 6 A. That's correct. The offtakers
 03:13 7 identify what's desired to meet their needs,
 03:13 8 and then we attempt, where possible, to
 03:13 9 structure the project if we want to meet their
 03:14 10 need.
 03:14 11 There's -- I mean, there's a whole
 03:14 12 spectrum, there's a whole smorgasbord of things
 03:14 13 that you can do to optimize and. The first one
 03:14 14 that has the best deal relative to our bids,
 03:14 15 we'll be happy with.
 03:14 16 Q. So is it fair to say than an
 03:14 17 offtaker could make a suggestion or request
 03:14 18 that's kind of further out from what others are
 03:14 19 asking, so you might not honor that request?
 03:14 20 MS. PERLMUTTER: Objection as to
 03:14 21 form. You can answer.
 03:14 22 THE WITNESS: We might not be able
 03:14 23 to honor that request. So we would say,
 03:14 24 this is what we can do and this is what
 03:14 25 it'll cost.
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03:14 1 BY MS. VOELCKERS:
 03:14 2 Q. Because you're getting input from
 03:14 3 multiple offtakers, so you can balance that
 03:14 4 input?
 03:14 5 A. Sure, sure. I mean it's no secret,
 03:14 6 you know, Atlas Agro is trying to build a
 03:15 7 fertilizer plant in Richland. They're going to
 03:15 8 need power. They have to have clean energy.
 03:15 9 And there's very unique needs that they have
 03:15 10 given where they are, where they're
 03:15 11 interconnecting, and the demand that they need
 03:15 12 to provide for that facility.
 03:15 13 And so they're likely to engage with
 03:15 14 us and say, we want you to do this, and if you
 03:15 15 do it, then we will sign an agreement.
 03:15 16 Q. How many potential offtakers, you
 03:15 17 don't have to be exact here, but, in general,
 03:15 18 how many potential offtakers have provided
 03:15 19 input on the project design contained in
 03:15 20 Exhibit 1?
 03:15 21 MS. PERLMUTTER: Objection to form.
 03:15 22 You can answer.
 03:15 23 THE WITNESS: I'm going to say, to
 03:15 24 the best of my knowledge, none. Because
 03:15 25 our application was created in our concept
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03:15 **1** of what the market's going to desire.
03:16 **2** And we pushed the bubble out to get
03:16 **3** the maximum flexibility. And then our
03:16 **4** intent is to remain as nimble as possible
03:16 **5** to be able to optimize to eventually sell
03:16 **6** the maximum extent of the energy from this
03:16 **7** project that we can.
03:16 **8** BY MS. VOELCKERS:
03:16 **9** **Q.** Have you made enough progress with a
03:16 **10** potential offtaker to have any sort of
03:16 **11** agreement that's contingent on the project
03:16 **12** being permitted?
03:16 **13** MS. PERLMUTTER: Objection as to
03:16 **14** form. You can answer.
03:16 **15** THE WITNESS: No. They will not --
03:16 **16** they have indicated they -- no one wants to
03:16 **17** agree to procure something without a
03:16 **18** permit. They have to have certainty. They
03:16 **19** have to have line of sight certainty on
03:16 **20** that permit.
03:16 **21** BY MS. VOELCKERS:
03:16 **22** **Q.** Right. But earlier, you discussed
03:16 **23** an exclusivity agreement with a turbine
03:17 **24** provider. Do you have any agreement with a
03:17 **25** potential offtaker --
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03:17 **1** (The Court Reporter requested
03:17 **2** clarification.)
03:17 **3** BY MS. VOELCKERS:
03:17 **4** **Q.** Do you have any tentative agreements
03:17 **5** with potential offtaker or offtakers that
03:17 **6** commits them to purchasing the project once it
03:17 **7** is permitted?
03:17 **8** **A.** No.
03:17 **9** **Q.** And you talked now and earlier about
03:17 **10** optimal project.
03:17 **11** **A.** Yes.
03:17 **12** **Q.** And I just want to be clear, when
03:17 **13** you're using "optimal" today, you mean optimal
03:17 **14** economically?
03:17 **15** **A.** That's correct. Well, I need
03:17 **16** embellish that a little bit. Optimization also
03:17 **17** includes lowest environmental impact, most
03:17 **18** efficient and reliable interconnection to the
03:18 **19** grid. All of that figures into the
03:18 **20** optimization. You know, it has to be minimized
03:18 **21** to the extent practical related to the SEPA
03:18 **22** criteria.
03:18 **23** **Q.** As you sit here today, is it your
03:18 **24** testimony that the project is designed to have
03:18 **25** the lowest environmental impact?
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03:18 **1** **A.** We specifically chose this site for
03:18 **2** its low relative environmental impact. And
03:18 **3** we've done everything practical to design the
03:18 **4** site to minimize that impact, avoid where
03:18 **5** necessary, and, in fact, provide mitigation for
03:18 **6** where it can't be avoided.
03:18 **7** **Q.** And when you say that you are
03:18 **8** providing mitigation where something can't be
03:18 **9** avoided, you're referring to environmental
03:19 **10** impacts, correct?
03:19 **11** **A.** Correct.
03:19 **12** **Q.** And if you're saying that
03:19 **13** something -- environmental impact can't be
03:19 **14** avoided, is that, it can't be avoided and the
03:19 **15** project still exists, or it can't be avoided
03:19 **16** for the optimal project?
03:19 **17** **A.** It can't be avoided as a project
03:19 **18** exists. For example, we're going to have
03:19 **19** one acre of permanent impact to shrub step. We
03:19 **20** can't avoid it.
03:19 **21** (The Court Reporter requested
03:19 **22** clarification.)
03:19 **23** THE WITNESS: To shrub step habitat,
03:19 **24** and we can't avoid it. So I've got to
03:19 **25** mitigate for that one acre of permanent
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03:19 **1** impact.
03:19 **2** BY MS. VOELCKERS:
03:19 **3** **Q.** Why can't you avoid it?
03:19 **4** **A.** It would be economically infeasible
03:19 **5** to, you know, for example, route a conductor --
03:19 **6** a whole series of conductors several miles
03:20 **7** around a one-acre shrub step impact.
03:20 **8** So we believe that we can mitigate,
03:20 **9** onsite is preferred, and we do have a site
03:20 **10** identified in our habitation mitigation plan,
03:20 **11** but that's a case where it would just be
03:20 **12** unreasonable to avoid that one acre. And, you
03:20 **13** know, we feel that's acceptable.
03:20 **14** **Q.** Unreasonable, but not impossible?
03:20 **15** **A.** Right.
03:20 **16** **Q.** So is it fair to say that when the
03:20 **17** Exhibit 1 discusses avoidance of environmental
03:20 **18** impacts and says that something cannot be
03:20 **19** avoided, does that really mean that it's
03:20 **20** unreasonable from a business perspective to
03:20 **21** avoid that impact?
03:20 **22** **A.** That's what it means, yes.
03:21 **23** **Q.** Okay. Thank you.
03:21 **24** You talked about the benefit of
03:21 **25** going to EFSEC, and I think you used the term
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03:21 1 "one stop shop"?

03:21 2 A. Correct.

03:21 3 Q. I would certainly agree that by

03:21 4 going to EFSEC you're saving administrative

03:21 5 burden by applying to them rather than multiple

03:21 6 regulators.

03:21 7 My question, though, is about your

03:21 8 understanding. Is it your understanding that

03:21 9 EFSEC can override all other permitting

03:21 10 entities with oversight of the project?

03:21 11 MS. PERLMUTTER: Objection. Calls

03:21 12 for a legal conclusion. And irrelevant.

03:21 13 You can answer.

03:21 14 THE WITNESS: EFSEC has preemptive

03:21 15 authority.

03:21 16 BY MS. VOELCKERS:

03:21 17 Q. Even over permits required under

03:21 18 federal law?

03:21 19 A. No, they cannot preempt federal.

03:21 20 Q. And what about permits required

03:21 21 under state law, apart from Benton County's own

03:21 22 regulations?

03:21 23 MS. PERLMUTTER: I'm going to object

03:21 24 on foundation grounds. Calls for legal

03:21 25 conclusion. And it is also specifically
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03:22 1 one of the issues that have been excluded

03:22 2 from the adjudication by Judge Torem.

03:22 3 (The Court Reporter requested

03:22 4 clarification.)

03:22 5 MS. PERLMUTTER: By Judge Torem,

03:22 6 T-o-r-e-m.

03:22 7 MS. VOELCKERS: State law permitting

03:22 8 has been excluded?

03:22 9 MS. PERLMUTTER: Preemption of

03:22 10 local -- preemption of local land use plans

03:22 11 or ordinances.

03:22 12 BY MS. VOELCKERS:

03:22 13 Q. So is it your understanding that

03:22 14 EFSEC can override or preempt state law

03:22 15 requirements outside of those local-induced

03:22 16 regulations?

03:22 17 MS. PERLMUTTER: Same objection.

03:22 18 THE WITNESS: I believe they could

03:22 19 go through the process it would take to do

03:22 20 that. I don't think they would, but that's

03:22 21 personal opinion.

03:22 22 For example, the new lighting

03:22 23 reduction, we are going to comply with that

03:22 24 fully. And we would desire EFSEC to agree

03:23 25 with us with that.
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03:23 1 BY MS. VOELCKERS:

03:23 2 Q. You said you've been working on the

03:23 3 water supply for the project for a couple of

03:23 4 years now.

03:23 5 A. Yeah.

03:23 6 Q. Is it fair to say it's been hard to

03:23 7 find water in this area?

03:23 8 MS. PERLMUTTER: Objection. Form.

03:23 9 You can answer it.

03:23 10 THE WITNESS: No, it's not hard.

03:23 11 BY MS. VOELCKERS:

03:23 12 Q. It's not hard to find extra water?

03:23 13 MS. PERLMUTTER: Objection. Asked

03:23 14 and answered. You can answer it. And to

03:23 15 form.

03:23 16 THE WITNESS: There are water

03:23 17 sources available. I'll give you an

03:23 18 example. The Welch's grape juice plant in

03:23 19 Kennewick, they've got a tremendous well

03:23 20 there. And it's not under contract.

03:23 21 Somebody owns it. It's not available to

03:23 22 us.

03:23 23 BY MS. VOELCKERS:

03:23 24 Q. Is it fair to say that you have to

03:24 25 find water to purchase for the project?
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03:24 1 A. Anything other than drilling your

03:24 2 own hole, you have to purchase, yeah.

03:24 3 Q. And drilling your own hole is not

03:24 4 necessarily an option?

03:24 5 MS. PERLMUTTER: Objection. Form.

03:24 6 You can answer.

03:24 7 THE WITNESS: It's too risky to

03:24 8 drill wells up on the site. If you look

03:24 9 over the landscape, you'll see farmers that

03:24 10 have green trees and you'll see farmers

03:24 11 that don't. The ones with green trees have

03:24 12 wells. The others don't.

03:24 13 BY MS. VOELCKERS:

03:24 14 Q. I guess what I'm getting at is that

03:24 15 it's not easy to find new water sources that

03:24 16 have not already been appropriated by someone

03:24 17 else?

03:24 18 MS. PERLMUTTER: Objection as to

03:24 19 form. Asked and answered. You can answer.

03:24 20 THE WITNESS: Well, anybody that has

03:24 21 substantial water resource is in the

03:24 22 business of making revenue from it.

03:25 23 BY MS. VOELCKERS:

03:25 24 Q. By selling it?

03:25 25 A. By selling it, yeah.
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03:25 1 Q. To folks that need it for new
 03:25 2 development?
 03:25 3 MS. PERLMUTTER: Objection.
 03:25 4 Foundation and form. You can answer.
 03:25 5 THE WITNESS: Irrigators. There's
 03:25 6 lots of wells up there for irrigators.
 03:25 7 BY MS. VOELCKERS:
 03:25 8 Q. Are you aware that new commercial
 03:25 9 development cannot be permitted until an
 03:25 10 applicant has demonstrated available water to
 03:25 11 support the development?
 03:25 12 MS. PERLMUTTER: Objection.
 03:25 13 Relevance. You can answer.
 03:25 14 THE WITNESS: Well, it sounds
 03:25 15 reasonable.
 03:25 16 BY MS. VOELCKERS:
 03:25 17 Q. Both for construction and operation
 03:25 18 of the development, right?
 03:25 19 A. Yeah, sounds reasonable.
 03:25 20 Q. And you know that under EFSEC's own
 03:25 21 regulations, projects are required to
 03:25 22 demonstrate legally available water in support
 03:26 23 of their applications?
 03:26 24 MS. PERLMUTTER: Objection. Calls
 03:26 25 for a legal conclusion. You can answer, if
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03:26 1 you can.
 03:26 2 THE WITNESS: As part of our
 03:26 3 application process, yes, we have to answer
 03:26 4 the questions, where is your water coming
 03:26 5 from?
 03:26 6 BY MS. VOELCKERS:
 03:26 7 Q. Is it fair to say that you
 03:26 8 understand that you would have to answer that
 03:26 9 question whether you were going through the
 03:26 10 county permitting process or EFSEC?
 03:26 11 A. I believe that would be true, yeah.
 03:26 12 Q. Prior to obtaining a permit?
 03:26 13 MS. PERLMUTTER: Objection. Form.
 03:26 14 You can answer.
 03:26 15 THE WITNESS: Identifying the source
 03:26 16 prior to obtaining your permit, yeah.
 03:26 17 BY MS. VOELCKERS:
 03:26 18 Q. Yeah. And to be clear, I'm not
 03:26 19 talking about any contracts. I'm just talking
 03:26 20 about demonstrating available water.
 03:26 21 You understand that you have to
 03:26 22 demonstrate that there's water available for
 03:26 23 the project?
 03:26 24 MS. PERLMUTTER: Objection. Calls
 03:26 25 for a legal conclusion. You can answer it.
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03:26 1 THE WITNESS: We would not get to
 03:27 2 this stage in our development without
 03:27 3 having a line of sight on water supply.
 03:27 4 Not only one, but multiple, so we have
 03:27 5 contingencies. And we're going to continue
 03:27 6 to go after the cheapest one that's most
 03:27 7 convenient to the site.
 03:27 8 BY MS. VOELCKERS:
 03:27 9 Q. Was that a "yes" to my question,
 03:27 10 though?
 03:27 11 A. I think it was.
 03:27 12 Q. If we could turn to page 2-87 of
 03:27 13 Exhibit 1.
 03:27 14 A. Okay.
 03:27 15 Q. Sorry, I lost my page here. Just
 03:27 16 take a sec.
 03:28 17 So the bottom of page 2-87 talks
 03:28 18 about construction water supply, and then it
 03:28 19 continues on page 2-88. So if we could turn
 03:28 20 there. Middle of third line down, it says --
 03:28 21 are you there?
 03:28 22 A. Yes.
 03:28 23 Q. It says:
 03:28 24 As an alternative to the City of
 03:28 25 Kennewick, the project may source water from
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03:28 1 either another local off-site public utility,
 03:28 2 private irrigator, or wells. As an example,
 03:28 3 refer to the Port Walla Walla availability of
 03:28 4 water for hire letter in Appendix J.
 03:28 5 A. Yes.
 03:28 6 Q. So that refers to Appendix J as an
 03:28 7 example.
 03:28 8 A. Yes.
 03:28 9 Q. Do you have any other letters from
 03:28 10 other potential water sources that would
 03:28 11 demonstrate legally available water for the
 03:28 12 project?
 03:28 13 MS. PERLMUTTER: Objection. Calls
 03:28 14 for a legal conclusion. But you can
 03:28 15 answer.
 03:28 16 THE WITNESS: We are in negotiations
 03:29 17 with other parties. Do I have a signed
 03:29 18 agreement? No.
 03:29 19 BY MS. VOELCKERS:
 03:29 20 Q. And there isn't any other documents
 03:29 21 to share at this time that demonstrate
 03:29 22 available water for the project?
 03:29 23 MS. PERLMUTTER: Objection. Form.
 03:29 24 And I think asked and answered. You can
 03:29 25 answer.
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03:29 1 THE WITNESS: I'm sorry, could you
03:29 2 ask it again?
03:29 3 BY MS. VOELCKERS:
03:29 4 Q. There aren't any other documents
03:29 5 that could be shared at this time that would
03:29 6 show additional available water for the
03:29 7 project?
03:29 8 MS. PERLMUTTER: Repeat the
03:29 9 objection. You can answer.
03:29 10 THE WITNESS: We have a land use
03:29 11 license with Department of Natural
03:30 12 Resources for an existing well site.
03:30 13 That's a public record.
03:30 14 BY MS. VOELCKERS:
03:30 15 Q. Where would I find that publicly?
03:30 16 A. I'm sure it's available by request
03:30 17 from Department of Natural Resources. I mean,
03:30 18 I can provide it to you.
03:30 19 Q. You can provide it?
03:30 20 A. Yeah, yeah.
03:30 21 Q. Okay. Any other documents?
03:30 22 MS. PERLMUTTER: Objection. Form.
03:30 23 You can respond.
03:30 24 THE WITNESS: No.
03:30 25

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03:30 1 BY MS. VOELCKERS:
03:30 2 Q. Does the land use license agreement
03:30 3 with DNR cover construction water or operation
03:30 4 water?
03:30 5 A. The land use license is to use that
03:30 6 portion of state land. And the intended
03:31 7 purpose is to reactivate a well that exists
03:31 8 there, but we have to negotiate the terms, and
03:31 9 that is a work in progress.
03:31 10 Q. So the well is not currently being
03:31 11 used to exercise a water right?
03:31 12 A. Not current, no.
03:31 13 Q. So is it possible you might need to
03:31 14 go to ecology to resolve any -- to use that
03:31 15 well, to determine if it has a valid water
03:31 16 right?
03:31 17 MS. PERLMUTTER: Objection. Form.
03:31 18 And calls for speculation. But you can
03:31 19 answer, if you can.
03:31 20 THE WITNESS: Department of Natural
03:31 21 Resources has assured us they have water
03:31 22 rights that can be transferred to
03:31 23 reactivate that well.
03:31 24 BY MS. VOELCKERS:
03:31 25 Q. That's what I was going to ask.

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03:31 1 Thank you.
03:31 2 A. Okay. We have water solved. I
03:32 3 shouldn't have --
03:32 4 Q. Is it solved or are you working on
03:32 5 it?
03:32 6 A. We're working on it. We believe --
03:32 7 well, Port of Walla Walla in a pinch, yeah.
03:32 8 They have ample water.
03:32 9 Q. I'm not disagreeing with your use of
03:32 10 the word "solved." I'm just trying to
03:32 11 understand what is held within your knowledge
03:32 12 at Scout and what is available to the rest us
03:32 13 to understand in terms of the source of the
03:32 14 water for the project.
03:32 15 A. I'm speaking to publicly available
03:32 16 documents. We have the agreement with the
03:32 17 Port of Walla Walla and we have a land use
03:32 18 license with Department of Natural Resources.
03:32 19 Q. And you understand that to cover all
03:32 20 water needs for the project?
03:32 21 A. It is --
03:32 22 MS. PERLMUTTER: Objection. Form.
03:32 23 Go ahead.
03:32 24 THE WITNESS: Yeah. Construction
03:32 25 and operational needs, yeah, for the life

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03:32 1 of the project.
03:32 2 BY MS. VOELCKERS:
03:33 3 Q. Have you had any conversations with
03:33 4 EFSEC staff in this back-and-forth on the FEIS
03:33 5 about how to provide that information so they
03:33 6 can analyze the impacts of the project on water
03:33 7 resources?
03:33 8 THE WITNESS: Yes. I've had
03:33 9 conversations with them about what we have
03:33 10 provided in the ASC redline as believing
03:34 11 that satisfies the requirements for a
03:34 12 permit application for water supply for the
03:34 13 full term of the project.
03:34 14 BY MS. VOELCKERS:
03:34 15 Q. EFSEC staff have not requested
03:34 16 additional information from you regarding the
03:34 17 water supply for the project at this time?
03:34 18 MS. PERLMUTTER: Objection. Form.
03:34 19 You can answer.
03:34 20 THE WITNESS: Correct. They have
03:34 21 not. They feel they have enough. They've
03:34 22 said to me they have what they need.
03:34 23 BY MS. VOELCKERS:
03:34 24 Q. Based upon Appendix J?
03:34 25 MS. PERLMUTTER: Objection. Form

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03:34 **1** and foundation.

03:34 **2** THE WITNESS: That's correct. I'm

03:34 **3** not going to give EFSEC the land use

03:34 **4** license for DNR because it's not an

03:34 **5** agreement to lease the well. So I have to

03:35 **6** get that done before I can notify EFSEC.

03:35 **7** BY MS. VOELCKERS:

03:35 **8** **Q.** And to be clear, Appendix J isn't a

03:35 **9** water use agreement, correct?

03:35 **10** **A.** Yes, it is a water use agreement.

03:35 **11** **Q.** It's an agreement, a commitment to a

03:35 **12** certain amount of water?

03:35 **13** **A.** Yes, it is.

03:35 **14** MS. PERLMUTTER: Objection. Form.

03:35 **15** And argumentative.

03:35 **16** THE WITNESS: It is an agreement.

03:35 **17** Now, we'll have to negotiate what upgrades

03:35 **18** are necessary in order to do that and who

03:35 **19** pays for it.

03:35 **20** But they've -- that letter is a

03:35 **21** statement of capability to provide what

03:35 **22** we've identified as our need for the life

03:35 **23** of the project.

03:35 **24** BY MS. VOELCKERS:

03:35 **25** **Q.** A statement of capability, right?

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03:35 **1** **A.** Yeah, yeah. That's what's required.

03:35 **2** **Q.** But not a water use agreement in

03:35 **3** term of the specifics of what Scout will be

03:35 **4** paying for or what improvements Scout will be

03:35 **5** making in exchange for a specific amount of

03:35 **6** water?

03:35 **7** MS. PERLMUTTER: Objection. Form.

03:35 **8** And argumentative. You can answer.

03:35 **9** THE WITNESS: That's correct. We

03:36 **10** have not inked out that final agreement for

03:36 **11** all of the terms necessary to be able to

03:36 **12** access that water.

03:36 **13** BY MS. VOELCKERS:

03:36 **14** **Q.** Appendix J only references water for

03:36 **15** construction activities. Have you had

03:36 **16** additional conversations with the Port of

03:36 **17** Walla Walla about their ability to provide

03:36 **18** water for operations?

03:36 **19** **A.** It's part and parcel, all the same,

03:36 **20** yeah.

03:36 **21** **Q.** Was that just an accidental omission

03:36 **22** from the letter in Appendix J?

03:36 **23** MS. PERLMUTTER: Objection.

03:36 **24** Foundation. You can answer.

03:36 **25** THE WITNESS: Well, the letter was

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03:36 **1** their words. We say in our application

03:36 **2** that it applies to water for construction

03:36 **3** and operations.

03:36 **4** BY MS. VOELCKERS:

03:36 **5** **Q.** And I think the letter speaks for

03:36 **6** itself, to be fair. So I'm not going to ask

03:36 **7** you again to guess. And I think the ASC speaks

03:37 **8** for itself in terms of your position.

03:37 **9** But has there been a discussion

03:37 **10** between Scout and Port of Walla Walla about

03:37 **11** whether or not they have sufficient water for

03:37 **12** full operation of the project?

03:37 **13** **A.** Yes. I had personal discussions

03:37 **14** with them myself. The operational needs for

03:37 **15** water are very small. In fact, in order to

03:37 **16** have the most impactful case in the ASC we said

03:37 **17** we might need three panel washes a year. Well,

03:37 **18** we might need zero.

03:37 **19** MS. VOELCKERS: I have an exhibit.

03:37 **20** (Exhibit 2 was identified.)

03:38 **21** MS. VOELCKERS: I'm going to have to

03:38 **22** apologize for those on the Zoom. If you'd

03:38 **23** like, I can email this to you. It was also

03:38 **24** provided for Mr. Ritter's deposition. It

03:38 **25** is a letter from Mr. Ritter to EFSEC dated

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03:38 **1** January 31st, 2022.

03:38 **2** Do folks need me to email a copy of

03:38 **3** that? Okay. Not hearing anything on the

03:38 **4** Zoom.

03:38 **5** BY MS. VOELCKERS:

03:38 **6** **Q.** Mr. Kobus, I'm going to direct your

03:38 **7** attention to the second page.

03:38 **8** **A.** Okay.

03:38 **9** **Q.** And I know you've been in a lot of

03:39 **10** conversations with WDFW over the years.

03:39 **11** But look at that last statement

03:39 **12** before the map.

03:39 **13** **A.** Okay.

03:39 **14** **Q.** It refers to a meeting in February

03:39 **15** of 2022 between WDFW, EFSEC, and the applicant.

03:39 **16** Do you recall if you were at that

03:39 **17** meeting?

03:39 **18** **A.** Yes, I was.

03:39 **19** **Q.** Do you recall being provided a copy

03:39 **20** of this figure in front of you?

03:39 **21** **A.** Yes, I was.

03:39 **22** **Q.** Did Scout make any alterations to

03:39 **23** the project design in response to the February

03:39 **24** 2022 meeting?

03:39 **25** **A.** Yes, we have committed to

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03:40 **1** alterations in the design relative to
 03:40 **2** discussions in this meeting. We have not
 03:40 **3** literally agreed to avoid the red circles
 03:41 **4** entirely.
 03:41 **5** **Q.** What alterations were made?
 03:41 **6** **A.** We've changed the routing of
 03:41 **7** overhead cables that -- to not go across
 03:41 **8** canyons, to go around. We've moved turbines
 03:41 **9** back from some of the canyons that were of
 03:41 **10** interest to WDFW for, you know, raptor use
 03:41 **11** areas or ferruginous hawk areas.
 03:41 **12** I mean, ultimately, we're in
 03:41 **13** settlement negotiations to reduce even further
 03:41 **14** with the CFE. But, you know, what we've
 03:41 **15** indicated to WDFW is that their recommendations
 03:42 **16** related to ferruginous hawk are premature.
 03:42 **17** They're not relative to publish peer-reviewed
 03:42 **18** documents and not part of the guidelines --
 03:42 **19** existing guidelines related to ferruginous hawk
 03:42 **20** mitigation -- avoidance and mitigation.
 03:42 **21** **Q.** And by -- yes?
 03:42 **22** MS. PERLMUTTER: Go ahead. I'm just
 03:42 **23** warning him I'm about to object.
 03:42 **24** BY MS. VOELCKERS:
 03:42 **25** **Q.** And by guidelines, are you referring
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03:43 **1** recreation or recreational land use,
 03:43 **2** transportation, and road safety issues with
 03:43 **3** the county who's the lead party on those
 03:43 **4** issues.
 03:43 **5** As I say, I'm not going to instruct
 03:43 **6** him not to answer, but I do object to this
 03:43 **7** entire line.
 03:43 **8** MS. VOELCKERS: And to be clear, the
 03:43 **9** objection is that questions about the
 03:43 **10** ferruginous hawk impacts are inconsistent
 03:43 **11** with what you just read?
 03:43 **12** MS. PERLMUTTER: That's correct.
 03:43 **13** BY MS. VOELCKERS:
 03:43 **14** **Q.** You referenced guidelines. Were you
 03:43 **15** referring to the 2009 wind turbine guidelines?
 03:44 **16** **A.** That's correct. That's the latest
 03:44 **17** available.
 03:44 **18** **Q.** Guidance?
 03:44 **19** **A.** WDFW -- well, wind power guidelines,
 03:44 **20** that is the latest version, official version.
 03:44 **21** **Q.** And when you referred to
 03:44 **22** peer-reviewed articles, what did you mean by
 03:44 **23** that?
 03:44 **24** **A.** All of this information was
 03:44 **25** predicated on information Jim Watson had
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03:42 **1** to the 2009 wind turbine guidelines?
 03:42 **2** MS. PERLMUTTER: I'm going to make a
 03:42 **3** standing objection that this really is
 03:42 **4** outside the scope of the Yakima Nation's
 03:42 **5** participation. I'm not going to instruct
 03:42 **6** him not to answer. We don't need to get a
 03:42 **7** ruling. But your questions are now subject
 03:42 **8** to an ongoing objection.
 03:42 **9** MS. VOELCKERS: I'm going to clarify
 03:42 **10** the objection. Your objection is that the
 03:42 **11** impacts of ferruginous hawks are not
 03:42 **12** relative to the Yakima Nation's concerns?
 03:42 **13** MS. PERLMUTTER: I am -- per the
 03:43 **14** second prehearing order by Judge Torem, it
 03:43 **15** says:
 03:43 **16** Except as it directly pertains to
 03:43 **17** Yakima Nation's legendary, monumental, or
 03:43 **18** burial sites per the WACs, Yakima Nation
 03:43 **19** shall limit its participation and
 03:43 **20** coordinate its presentation of evidence
 03:43 **21** relating to visual impacts, light and glare
 03:43 **22** with the county, and counsel for the
 03:43 **23** environment, who shall jointly take lead
 03:43 **24** party status for that issue, and coordinate
 03:43 **25** presentation of evidence regarding
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03:44 **1** provided, which was not in peer-reviewed
 03:44 **2** documents. To my knowledge, still is not.
 03:44 **3** **Q.** So is it -- is it fair to say that
 03:44 **4** the majority of the turbines identified in this
 03:44 **5** figure are still sighted within the red-circled
 03:45 **6** port use areas?
 03:45 **7** MS. PERLMUTTER: Objection. Form.
 03:45 **8** You can answer.
 03:45 **9** THE WITNESS: They're consistent
 03:45 **10** with what's in our updated redline
 03:45 **11** application, yes.
 03:45 **12** BY MS. VOELCKERS:
 03:45 **13** **Q.** So Scout has not removed any portion
 03:45 **14** of the corridor siting areas in response to the
 03:45 **15** February 2022 meeting?
 03:45 **16** **A.** Well, I'm trying to be very clear.
 03:45 **17** As we talked about various concepts and we were
 03:45 **18** working towards resolving issuing related to
 03:45 **19** ferruginous hawk and related to raptor use
 03:45 **20** areas, with respect to what WDFW has provided,
 03:45 **21** we have provided comments to the DEIS that, you
 03:46 **22** know, are very clear that, you know, if
 03:46 **23** ferruginous hawks occupy a nest site, we will
 03:46 **24** be responsive to that occurring. We're not
 03:46 **25** going to take turbines away for a
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03:46 **1** 20-year-year-old nest site that doesn't even
 03:46 **2** exhibit any of twigs remaining that were part
 03:46 **3** of that nest.
 03:46 **4** **Q.** And why not?
 03:46 **5** **A.** Because the hawks aren't using the
 03:46 **6** nest. You know, if -- well, as you can see,
 03:46 **7** you know, there are more nest sites out here
 03:46 **8** than they've identified in these three core
 03:46 **9** areas. So they're not even saying avoid.
 03:47 **10** They're also drawing perfect circles
 03:47 **11** around agricultural fields which, you know, we
 03:47 **12** all know the ferruginous hawks aren't foraging
 03:47 **13** in the middle of the wheat fields.
 03:47 **14** And it's just an impractical,
 03:47 **15** idealistic extent. We're not going to respond
 03:47 **16** to that kind of conjecture and that kind of
 03:47 **17** scenario where they say that you can't use half
 03:47 **18** of the project site because one time many years
 03:47 **19** ago there might have been a nest there.
 03:47 **20** We do our own surveys. There has
 03:47 **21** been no ferruginous hawk occupied nests for the
 03:47 **22** last two years anywhere near here.
 03:47 **23** **Q.** And when you say impracticable -- or
 03:48 **24** impractical, you're talking about from a
 03:48 **25** business perspective, right?

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03:48 **1** **A.** Yeah. That's -- we don't have to
 03:48 **2** recover the species. We just have to build the
 03:48 **3** best project with reasonable mitigation.
 03:48 **4** **Q.** It's not your job to recover the
 03:48 **5** species?
 03:48 **6** **A.** It's no one's job to recover the
 03:48 **7** species --
 03:48 **8** **Q.** It's not WDFW's --
 03:48 **9** (Parties speaking simultaneously.)
 03:48 **10** BY MS. VOELCKERS:
 03:48 **11** **Q.** It's not WDFW's job?
 03:48 **12** MS. PERLMUTTER: Objection.
 03:48 **13** Argumentative. Lack of foundation. Calls
 03:48 **14** for speculation. If you can answer, you
 03:48 **15** can.
 03:48 **16** THE WITNESS: Oh, I believe WDFW is
 03:48 **17** very interested in recovering the species.
 03:48 **18** That's why they designate it as endangered.
 03:48 **19** But you cannot recover the species
 03:48 **20** on the back of the next project that comes
 03:48 **21** along. It's unreasonable.
 03:48 **22** BY MS. VOELCKERS:
 03:48 **23** **Q.** And so just so I'm clear, because
 03:48 **24** you did talk about some things that were done
 03:48 **25** in response.

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03:48 **1** There are no turbines moved outside
 03:49 **2** of these red exclusionary areas in response to
 03:49 **3** WDFW's recommendations in February of 2020?
 03:49 **4** MS. PERLMUTTER: Objection. Form.
 03:49 **5** And asked and answered. You can answer it.
 03:49 **6** THE WITNESS: Remains to be seen.
 03:49 **7** We're still in the process of optimizing
 03:49 **8** the project site. And there may be
 03:49 **9** turbines that we decide not to construct in
 03:49 **10** the first buildout of the project that are
 03:49 **11** in those red circles. But as I say, it's a
 03:49 **12** work in progress.
 03:49 **13** BY MS. VOELCKERS:
 03:49 **14** **Q.** So, then, is it fair to say that the
 03:49 **15** work in progress may mean that there is
 03:49 **16** additional avoidance of impacts to ferruginous
 03:49 **17** hawks based upon development of the project
 03:49 **18** after the permit is issued?
 03:49 **19** MS. PERLMUTTER: Objection. Form.
 03:49 **20** Asked and answered. You can answer.
 03:49 **21** THE WITNESS: That is my intention,
 03:49 **22** yes.
 03:49 **23** BY MS. VOELCKERS:
 03:49 **24** **Q.** Based upon business goals to
 03:50 **25** optimize the project?

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03:50 **1** MS. PERLMUTTER: I'm sorry?
 03:50 **2** BY MS. VOELCKERS:
 03:50 **3** **Q.** Based upon business goals to
 03:50 **4** optimize the project?
 03:50 **5** **A.** We are continuing to evaluate the
 03:50 **6** layout. And there are likely to be cases where
 03:50 **7** deciding not to build a particular turbine site
 03:50 **8** has various benefits, visual benefits, wildlife
 03:50 **9** benefits, and other benefits that would make us
 03:50 **10** decide not to build a particular turbine. But
 03:50 **11** I can't, at this stage, identify what those
 03:50 **12** are. And based on legal counsel, wait for the
 03:50 **13** right time.
 03:51 **14** THE COURT REPORTER: Is there a good
 03:51 **15** time for a break?
 03:51 **16** MS. VOELCKERS: Yeah. I only have a
 03:51 **17** few questions, but I'm happy to take a
 03:51 **18** break.
 03:51 **19** THE COURT REPORTER: No, go ahead.
 03:51 **20** MS. VOELCKERS: I just want to make
 03:51 **21** a few statements for the record.
 03:51 **22** BY MS. VOELCKERS:
 03:51 **23** **Q.** As we sit here today, do you have
 03:51 **24** any reason to dispute a statement that the
 03:56 **25** ferruginous hawk --

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03:56 **1** (A recess was taken.)
2 BY MS. VOELCKERS:
04:01 **3** **Q.** Just a few more questions for me.
04:01 **4** If I were to represent to you today,
04:01 **5** which I am, that the ferruginous hawk is a
04:01 **6** treaty reserved resource of the Yakima Nation,
04:01 **7** would you have any basis on which to dispute my
04:01 **8** statement?
04:01 **9** **A.** No, I wouldn't have any.
04:01 **10** **Q.** If I were to represent to you today
04:01 **11** that the ferruginous hawk is an integral
04:01 **12** element of at least one traditional cultural
04:01 **13** property identified within Jessica Lally's TCP
04:01 **14** report, would you have any basis on which to
04:01 **15** dispute me?
04:01 **16** MS. PERLMUTTER: Objection. Form
04:01 **17** and foundation. You can answer it, if you
04:01 **18** can.
04:01 **19** THE WITNESS: I mean, I can't recall
04:02 **20** exactly what was said about it, but I can
04:02 **21** tell you that we have the best available
04:02 **22** science on the ferruginous hawk. We do
04:02 **23** surveys. We've committed to do them
04:02 **24** annually.
04:02 **25** We know that there are no occupied
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04:02 **1** nests within the last two years on the
04:02 **2** site. And beyond that, I can't recall
04:02 **3** precisely what was said about it in her
04:02 **4** exhibit.
04:02 **5** BY MS. VOELCKERS:
04:02 **6** **Q.** So as we sit here today, you have no
04:02 **7** reason to dispute the statement that I'm making
04:02 **8** on the record, which is that the ferruginous
04:02 **9** hawk is an integral element of at least one
04:02 **10** traditional cultural property of the Yakima
04:03 **11** Nation?
04:03 **12** MS. PERLMUTTER: Objection. Form
04:03 **13** and foundation. If you can answer it, you
04:03 **14** can.
04:03 **15** THE WITNESS: I have no reason to
04:03 **16** dispute it.
04:03 **17** BY MS. VOELCKERS:
04:03 **18** **Q.** I'd like to turn back to the
04:03 **19** Exhibit 1, page 2-8.
04:03 **20** **A.** Okay.
04:03 **21** **Q.** And it's actually the next page, but
04:03 **22** it doesn't have a page number.
04:03 **23** My understanding is that these are
04:03 **24** the DNR parcels in the vicinity of the project?
04:03 **25** (The Court Reporter requested
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1 clarification.)
2 BY MS. VOELCKERS:
04:03 **3** **Q.** In the vicinity of the project; is
04:03 **4** that correct?
04:03 **5** MS. PERLMUTTER: Objection. Form
04:04 **6** and foundation.
04:04 **7** THE WITNESS: But I can answer?
04:04 **8** MS. PERLMUTTER: Yeah, sorry.
04:04 **9** THE WITNESS: Yeah, that's how we
04:04 **10** designate the DNR state trust lands, with
04:04 **11** the blue.
04:04 **12** BY MS. VOELCKERS:
04:04 **13** **Q.** You referenced earlier land use
04:04 **14** agreement with DNR for one of the wells that
04:04 **15** they have on a parcel.
04:04 **16** **A.** Yes.
04:04 **17** **Q.** Is that parcel included on this
04:04 **18** page?
04:04 **19** **A.** No.
04:04 **20** **Q.** How far away from the project site
04:04 **21** is the parcel that's the subject of the land
04:04 **22** use agreement with DNR?
04:04 **23** MS. PERLMUTTER: Objection. Form.
04:04 **24** You can answer. Sorry.
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04:04 **1** BY MS. VOELCKERS:
04:04 **2** **Q.** The land use agreement that you
04:04 **3** referenced earlier today?
04:04 **4** MS. PERLMUTTER: Repeat the
04:04 **5** objection. You can answer.
04:04 **6** THE WITNESS: It is this blue you
04:05 **7** see just off the very edge.
04:05 **8** BY MS. VOELCKERS:
04:05 **9** **Q.** This one?
04:05 **10** **A.** Right here.
04:05 **11** **Q.** Right here?
04:05 **12** **A.** Yeah.
04:05 **13** **Q.** So west of the project?
04:05 **14** **A.** West of the project.
04:05 **15** **Q.** Okay. Thanks. Okay.
04:05 **16** **A.** It's two miles west of Highway 221
04:05 **17** on Sellards Road.
04:05 **18** MR. ARAMBURU: Could I ask, on our
04:05 **19** official exhibit, that you put a little red
04:05 **20** dot or little arrow next to that for us?
04:05 **21** Would that be possible?
04:05 **22** THE WITNESS: Sure.
04:05 **23** MR. ARAMBURU: I don't mean to
04:05 **24** interrupt here, but...
04:05 **25** THE WITNESS: Do you have --
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04:05 **1** MS. PERLMUTTER: Actually, no. It's
 04:05 **2** a fountain pen.
 04:05 **3** THE WITNESS: (Witness complied.)
 04:06 **4** I'll put an asterisk by it right there.
 04:06 **5** How's that? You can see it?
 04:06 **6** BY MS. VOELCKERS:
 04:06 **7** **Q.** Yes.
 04:06 **8** **A.** It's called Gould well, G-o-u-l-d.
 04:06 **9** I'm hesitant to talk about it because we don't
 04:06 **10** have an agreement and it's not in the ASC and
 04:06 **11** it's not within our site control. It's going
 04:06 **12** to be part of our amendment process
 04:06 **13** post-adjudication.
 04:06 **14** **Q.** And I think I heard earlier that it
 04:06 **15** is an ongoing process in terms of the water?
 04:06 **16** **A.** Yes.
 04:06 **17** **Q.** But you can provide that land use
 04:06 **18** license?
 04:06 **19** **A.** I can provide the land use license.
 04:06 **20** **Q.** And you plan to amend the ASC again?
 04:07 **21** **A.** As negotiations progress -- well,
 04:07 **22** first of all, we do have to amend the ASC
 04:07 **23** post-adjudication, okay. And we may have
 04:07 **24** subsequent amendments to it after that. So at
 04:07 **25** the appropriate time, when negotiations come to
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04:07 **1** fruition and lease agreements are executed with
 04:07 **2** DNR, then the intention would be to certainly
 04:07 **3** include that within the impacted area for the
 04:07 **4** project.
 04:07 **5** **Q.** And when you say we have to amend it
 04:07 **6** after the adjudication, it being the ASC --
 04:07 **7** **A.** Yeah.
 04:07 **8** **Q.** -- do you mean after the
 04:07 **9** recommendation of the council, between when the
 04:07 **10** adjudication ends and the recommendation is --
 04:08 **11** can you be more specific about your
 04:08 **12** understanding of the timeline for additional
 04:08 **13** updates to the ASC?
 04:08 **14** MS. PERLMUTTER: Objection as to
 04:08 **15** form and foundation. But you can answer.
 04:08 **16** THE WITNESS: My understanding is
 04:08 **17** EFSEC deliberations require the results of
 04:08 **18** adjudication and the corresponding redline
 04:08 **19** of the application for commitments that
 04:08 **20** were made during the adjudication process.
 04:08 **21** So the council, when they do their
 04:08 **22** deliberations, they have to have that
 04:08 **23** available to them.
 04:08 **24** BY MS. VOELCKERS:
 04:08 **25** **Q.** So those updates would be made
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04:08 **1** before the council is finished deliberating so
 04:08 **2** they would have that information?
 04:08 **3** MS. PERLMUTTER: Objection. Form.
 04:08 **4** Foundation. And asked and answered. You
 04:08 **5** can answer.
 04:08 **6** THE WITNESS: I'm going to have to
 04:08 **7** change my answer because DNR keeps
 04:09 **8** insisting that they will not execute
 04:09 **9** agreements until the final EIS is available
 04:09 **10** because they will point to the final EIS as
 04:09 **11** their SEPA process for land use decisions.
 04:09 **12** And so I can say for certainty that
 04:09 **13** that has to occur first. So the final EIS
 04:09 **14** is going to have to come out before we can
 04:09 **15** amend it to include this.
 04:09 **16** BY MS. VOELCKERS:
 04:09 **17** **Q.** Okay. And this is my first time in
 04:09 **18** an EFSEC proceeding, so my knowledge is based
 04:09 **19** upon how SEPA normally works at the county
 04:09 **20** level.
 04:09 **21** How will the information about the
 04:09 **22** water source of the project be incorporated in
 04:09 **23** the FEIS if the ASC is not updated before the
 04:09 **24** FEIS is issued?
 04:09 **25** **A.** They're going to have to deliberate
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04:09 **1** on what's in there now. They can't deliberate
 04:09 **2** on promises. They're going to have to
 04:09 **3** deliberate on what's in the application at the
 04:10 **4** time they review it.
 04:10 **5** MS. VOELCKERS: I might have
 04:10 **6** questions depending on what else is asked
 04:10 **7** today, but I don't at this time.
 04:10 **8** MS. FOSTER: This is Ms. Beyer.
 04:10 **9** EXAMINATION
 04:10 **10** BY MS. FOSTER:
 04:10 **11** **Q.** Good afternoon, Ms. Kobus. My name
 04:10 **12** is Z Foster. I'm an attorney for Benton
 04:10 **13** County. Hope to make this a little bit shorter
 04:10 **14** for you, but all the same rules apply. You're
 04:10 **15** still under oath. Let's not try to talk over
 04:10 **16** each other.
 04:10 **17** **A.** I understand.
 04:10 **18** **Q.** Perfect.
 04:10 **19** So you said earlier that you have an
 04:10 **20** agreement with the Department of Defense; is
 04:10 **21** that correct?
 04:10 **22** **A.** Yes.
 04:10 **23** **Q.** And in that agreement, you had to
 04:10 **24** specify via GPS coordinates as to the location
 04:10 **25** of each turbine, correct?
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04:10 1 A. That's correct. Those are
 04:10 2 consistent with our filings with FAA for
 04:10 3 determinations.
 04:10 4 Q. Okay. So you, throughout the course
 04:10 5 of the deposition today, you mentioned, you
 04:11 6 know, the project layout may change or you may
 04:11 7 change the layout. What do you mean when you
 04:11 8 say that?
 04:11 9 A. Change the micrositing.
 04:11 10 Q. What do you mean when you say
 04:11 11 "change the micrositing"?
 04:11 12 A. Well, when we prepared the
 04:11 13 application, we didn't know precisely where we
 04:11 14 would end up pinpointing where the turbines
 04:11 15 would be because there's a lot of things that
 04:11 16 can influence their precise placement.
 04:11 17 So what we did is everywhere there
 04:11 18 was a turbine, we expanded the micrositing to
 04:11 19 include a 500-foot area, wherever there was
 04:11 20 infrastructure, we expanded it to 200 feet, so
 04:11 21 that we would have flexibility within those
 04:11 22 micrositing corridors.
 04:11 23 So the application is very
 04:11 24 conservative in that it includes those entire
 04:12 25 micrositing corridors even though there's

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04:12 1 only -- could be just one wire underground in a
 04:12 2 200-foot wide area for the length of that
 04:12 3 conductor placement.
 04:12 4 Q. Okay. So to clarify, then, when
 04:12 5 you're talking about changing the layout,
 04:12 6 you're not talking about changing the placement
 04:12 7 of the turbines?
 04:12 8 MS. PERLMUTTER: Objection as to
 04:12 9 form. But you can answer.
 04:12 10 THE WITNESS: It could include the
 04:12 11 turbines, but the intent is to not move the
 04:12 12 turbines outside of the micrositing
 04:12 13 corridor because then we have to change the
 04:12 14 micrositing corridor, which is an increase
 04:12 15 in impact.
 04:12 16 BY MS. FOSTER:
 04:12 17 Q. Right. I understand that.
 04:12 18 What I'm trying to get at, though,
 04:12 19 is if you change the coordinates of the
 04:12 20 turbines, do you have to go back and get an
 04:12 21 amended agreement with the DOD?
 04:12 22 A. You do have some degree of freedom
 04:12 23 that you can move the turbines. With DOD, it
 04:12 24 was 190 feet of flexibility. With FAA, it's
 04:13 25 one arc second.

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04:13 1 Q. So let's go just based off the
 04:13 2 assumption that the turbines are going to be
 04:13 3 located in the general vicinity of your last
 04:13 4 DOD agreement. Actually, I'm going to pause on
 04:13 5 that one.
 04:13 6 How many property owners do you
 04:13 7 currently have lease agreements with?
 04:13 8 A. I believe the number's around 40.
 04:13 9 Q. Do you have lease agreements with
 04:13 10 property owners that won't host a turbine or
 04:13 11 the supporting infrastructure?
 04:13 12 MS. PERLMUTTER: Objection to form.
 04:13 13 You can answer.
 04:13 14 THE WITNESS: We have one lease
 04:13 15 agreement where we added a section and a
 04:13 16 half of property that they did not want
 04:13 17 turbines on. So we agreed to add the
 04:13 18 property, but added the condition that
 04:13 19 turbines could not be on that one and a
 04:14 20 half section.
 04:14 21 BY MS. FOSTER:
 04:14 22 Q. But, otherwise, if you have a lease
 04:14 23 agreement with a property owner, some portion
 04:14 24 of the Horse Heaven Wind Farm, be it a turbine,
 04:14 25 a battery, a solar array, or supporting

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04:14 1 infrastructure, will be going through that
 04:14 2 property?
 04:14 3 A. There are some leases we have that,
 04:14 4 no, we may not, and we'll likely give up those
 04:14 5 leases. So we have more leases than
 04:14 6 infrastructure.
 04:14 7 Q. It just depends on the ultimate
 04:14 8 layout?
 04:14 9 A. It depends on the ultimate layout,
 04:14 10 yes.
 04:14 11 Q. Do you know -- and this is where
 04:14 12 we're going back to based upon the most recent
 04:14 13 application to the DOD where you specified the
 04:14 14 turbine layout.
 04:14 15 A. Yes.
 04:14 16 Q. Do you know about how many parcels
 04:14 17 will house turbines?
 04:14 18 MS. PERLMUTTER: Objection as to
 04:14 19 form. You can answer.
 04:14 20 THE WITNESS: I don't know the
 04:14 21 parcel count. I mean, we've got some
 04:15 22 landowners that have 7,000 acres, we've got
 04:15 23 others that have 700 under lease. I mean,
 04:15 24 I -- and a section of land could have
 04:15 25 several parcels on it, so...

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04:15 **1** BY MS. FOSTER:
 04:15 **2** **Q.** Exactly. That's what I'm getting
 04:15 **3** at.
 04:15 **4** You don't know how many turbines are
 04:15 **5** going to be per parcel?
 04:15 **6** **A.** I know per siting restrictions you
 04:15 **7** generally can't get more than four turbines on
 04:15 **8** a full section of land. But parcel-wise,
 04:15 **9** parcels can be subdivided. And, I guess,
 04:15 **10** it's using the parcel term is what's difficult
 04:15 **11** to answer. Because in our ASC, we have every
 04:15 **12** single parcel identified. Every single legal
 04:15 **13** parcel.
 04:15 **14** **Q.** Right.
 04:15 **15** **A.** Yeah.
 04:15 **16** **Q.** In your conception, how many acres
 04:15 **17** is a section of land?
 04:16 **18** MS. PERLMUTTER: Objection.
 04:16 **19** THE WITNESS: 640 acres. A section
 04:16 **20** of land is 640 acres.
 04:16 **21** BY MS. FOSTER:
 04:16 **22** **Q.** So it's possible that one parcel,
 04:16 **23** talking boundaries here, one parcel can
 04:16 **24** encapsulate more than 640 acres?
 04:16 **25** MS. PERLMUTTER: Objection.
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04:16 **1** Foundation.
 04:16 **2** THE WITNESS: No. County -- the way
 04:16 **3** the counties identify parcels, it's section
 04:16 **4** by section, and some sections can be
 04:16 **5** subdivided.
 04:16 **6** MS. FOSTER: Just, Ms. Perlmutter, I
 04:16 **7** would appreciate it if you just leave your
 04:16 **8** objections to the form of my question.
 04:16 **9** BY MS. FOSTER:
 04:16 **10** **Q.** So going back to you.
 04:16 **11** So your testimony, then, is that you
 04:16 **12** cannot have a parcel larger than 640 acres?
 04:16 **13** **A.** That's how the parcels are
 04:16 **14** identified legally, yes.
 04:16 **15** **Q.** Okay. So, then, I'm trying to just
 04:16 **16** get a firm count here.
 04:16 **17** So your testimony would be that at
 04:17 **18** max for one parcel could maximum have four
 04:17 **19** turbines on it?
 04:17 **20** **A.** A section of land.
 04:17 **21** **Q.** Right. But --
 04:17 **22** **A.** Not a parcel. It doesn't make sense
 04:17 **23** to talk about parcels because a parcel can be
 04:17 **24** five acres on a section of land. And then, of
 04:17 **25** course, there's other parcels that make up the
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04:17 **1** full 640.
 04:17 **2** But generally by the restrictions of
 04:17 **3** turbine placement, you can only squeeze four
 04:17 **4** turbines on a section of land which could be a
 04:17 **5** single parcel.
 04:17 **6** **Q.** Is it your understanding that the
 04:17 **7** Horse Heaven Wind Farm project will need to
 04:17 **8** comply with Benton County's conditional use
 04:17 **9** permit criteria?
 04:17 **10** MS. PERLMUTTER: Objection. Calls
 04:17 **11** for a legal conclusion. And relevancy.
 04:17 **12** You can answer.
 04:17 **13** THE WITNESS: We already have a
 04:17 **14** ruling.
 04:17 **15** BY MS. FOSTER:
 04:17 **16** **Q.** What's your --
 04:17 **17** **A.** That we are in compliance with land
 04:17 **18** use requirements.
 04:17 **19** **Q.** Are you referring to council order
 04:18 **20** number 883?
 04:18 **21** **A.** Yes.
 04:18 **22** **Q.** So it's your understanding that that
 04:18 **23** order stands for the proposition that you
 04:18 **24** comply with Benton County's conditional use
 04:18 **25** permit criteria?
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04:18 **1** MS. PERLMUTTER: Objection.
 04:18 **2** Relevance. And calls for a legal
 04:18 **3** conclusion.
 04:18 **4** MS. FOSTER: Once again,
 04:18 **5** Ms. Perlmutter, I'm going to ask you that
 04:18 **6** limit the speaking objections. You may
 04:18 **7** object to the form of my question.
 04:18 **8** MS. PERLMUTTER: I'll make my
 04:18 **9** objections.
 04:18 **10** THE WITNESS: The land use
 04:18 **11** consistency states that we are consistent
 04:18 **12** with the process the county utilizes for
 04:18 **13** conditional use permits.
 04:18 **14** We identified our compliance in the
 04:18 **15** ASC to every single one of those CUP
 04:18 **16** criteria in existence when we filed our
 04:18 **17** application.
 04:18 **18** BY MS. FOSTER:
 04:18 **19** **Q.** So it's your understanding that
 04:18 **20** EFSEC has already ruled that Scout is in
 04:18 **21** compliance with Benton County's conditional use
 04:19 **22** permit criteria?
 04:19 **23** MS. PERLMUTTER: Objection. Asked
 04:19 **24** and answered. You can answer.
 04:19 **25** THE WITNESS: No, I disagree. We
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04:19 1 are consistent. We have a ruling that says
 04:19 2 we are consistent. But EFSEC can preempt
 04:19 3 county requirements.
 04:19 4 BY MS. FOSTER:
 04:19 5 Q. I think we may be talking over each
 04:19 6 other here. I agree that -- with you that the
 04:19 7 order says that you're consistent.
 04:19 8 However, doesn't the order also
 04:19 9 state that one of -- or I should say,
 04:19 10 doesn't -- isn't one of the issues for this
 04:19 11 adjudication whether or not the project
 04:19 12 complies with Benton County's conditional use
 04:19 13 permit criteria?
 04:19 14 MS. PERLMUTTER: Objection.
 04:19 15 Argumentative. And calls for a legal
 04:19 16 conclusion. You can answer.
 04:19 17 THE WITNESS: One of the issues
 04:19 18 is -- yes, that is one of the issues. And
 04:19 19 we would anticipate if the County has
 04:19 20 conditions to place on the project, they
 04:19 21 will work through EFSEC to make those
 04:19 22 known.
 04:19 23 BY MS. FOSTER:
 04:19 24 Q. So it's your understanding of how a
 04:19 25 conditional use -- how this process works that
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04:19 1 the only steps left are to condition the
 04:20 2 project?
 04:20 3 A. That's correct.
 04:20 4 Q. So you do not believe that there can
 04:20 5 be a finding that the project does not comply
 04:20 6 with the conditional use permit criteria?
 04:20 7 A. That is my belief, yes.
 04:20 8 Q. Are you -- are you familiar with the
 04:20 9 conditional use permit criteria?
 04:20 10 A. Oh, yes.
 04:20 11 Q. So if I said to you that one of the
 04:20 12 criteria if we sum it up is essentially
 04:20 13 compatibility with permitted uses, you would
 04:20 14 agree with me on that?
 04:20 15 A. Yes.
 04:20 16 Q. This is where I think the parcel
 04:20 17 question -- why we're talking about parcels.
 04:20 18 Because as we've been discussing,
 04:20 19 like you said, there can be smaller parcels
 04:20 20 than 640 acres, correct?
 04:20 21 A. Correct.
 04:20 22 Q. Are you aware of the average parcel
 04:20 23 size for the land that you hold leases with for
 04:20 24 the -- of the landowners that you hold leases
 04:20 25 with?
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04:20 1 A. Never tried to calculate it.
 04:20 2 Q. Okay.
 04:21 3 A. It's immaterial.
 04:21 4 Q. Why is it immaterial?
 04:21 5 A. Because you follow the legal
 04:21 6 description for the property, and it is what it
 04:21 7 is. I mean, it's -- if a parcel size is
 04:21 8 smaller and a different owner, it could have
 04:21 9 different restrictions on it or different
 04:21 10 setback applications to it. But we deal with
 04:21 11 legal property descriptions.
 04:21 12 Q. Don't you think the parcel size is
 04:21 13 important to determine how many turbines you're
 04:21 14 putting on one parcel?
 04:21 15 MS. PERLMUTTER: Objection.
 04:21 16 Argumentative. You can answer if you can.
 04:21 17 THE WITNESS: It's immaterial. You
 04:21 18 determine what your buildable area is to
 04:21 19 place turbines, and then you put them in
 04:21 20 desired places relative to all of the
 04:21 21 criteria you're trying to meet relative to
 04:21 22 placing those turbines, and it falls out
 04:22 23 where it falls out.
 04:22 24 It's immaterial what parcel it's on.
 04:22 25 You follow the criteria for desired
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04:22 1 setbacks associated with the parcel.
 04:22 2 When we filed this application, we
 04:22 3 believe we were in compliance with the
 04:22 4 conditional use criteria. And we actually
 04:22 5 stated everywhere we were in compliance and
 04:22 6 how we were in compliance.
 04:22 7 And that's still the case. We're
 04:22 8 maintaining that. We have not asked EFSEC
 04:22 9 for preemption of what the CUP criteria
 04:22 10 were at the time we filed our application.
 04:22 11 BY MS. FOSTER:
 04:22 12 Q. So are you aware of the use --
 04:22 13 vaguely aware of the just outright permitted
 04:22 14 uses -- I'm going to take a step back here.
 04:22 15 Do you know the zoning designation
 04:22 16 for the land upon which the Horse Heaven Wind
 04:22 17 Farm is located?
 04:23 18 A. Sure, GMA Ag.
 04:23 19 Q. And are you just vaguely aware of
 04:23 20 the outright permitted uses in the GMA Ag land?
 04:23 21 MS. PERLMUTTER: Objection. Form
 04:23 22 and foundation. I'm sorry, form --
 04:23 23 objection as to form.
 04:23 24 THE WITNESS: Very aware, yes.
 04:23 25
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04:23 1 BY MS. FOSTER:
 04:23 2 Q. So if I represented to you that, in
 04:23 3 general, most uses within the GMA Ag lands have
 04:23 4 about one to three structures per parcel, would
 04:23 5 you have any reason to dispute me on that?
 04:23 6 A. No, I wouldn't.
 04:23 7 Q. Okay. So if we're comparing -- so
 04:23 8 if we're looking at compatibility, right, which
 04:23 9 is size and scope, in effect, doesn't it then
 04:23 10 become very important what the parcel size is
 04:23 11 because we want to compare how many structures
 04:23 12 the Horse Heaven Wind Farm is putting on a
 04:23 13 parcel versus how many structures are in a
 04:23 14 traditional permitted use?
 04:23 15 MS. PERLMUTTER: Objection. Calls
 04:23 16 for a legal conclusion. Also, irrelevant.
 04:23 17 But you can answer.
 04:23 18 THE WITNESS: It's immaterial. I
 04:23 19 mean, as identified with the Nine Canyon
 04:24 20 project, the assessors determined that the
 04:24 21 space the turbines occupy has no effect on
 04:24 22 zoning at all.
 04:24 23 BY MS. FOSTER:
 04:24 24 Q. We're not talking about zoning,
 04:24 25 Mr. Kobus. I'm talking about number of
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04:24 1 structures per parcel.
 04:24 2 A. There is no criteria for number of
 04:24 3 structures per parcel.
 04:24 4 Q. So you think that has no relevancy
 04:24 5 to a compatibility determination?
 04:24 6 MS. PERLMUTTER: Objection.
 04:24 7 Argumentative. You can answer.
 04:24 8 THE WITNESS: I don't believe it
 04:24 9 does.
 04:24 10 BY MS. FOSTER:
 04:24 11 Q. What is your conception of a
 04:24 12 compatibility determination?
 04:24 13 MS. PERLMUTTER: Objection.
 04:24 14 Relevancy. You can answer.
 04:24 15 THE WITNESS: Wind projects were a
 04:24 16 permitted use when we filed our application
 04:24 17 on GMA Ag lands. In fact, GMA Ag lands are
 04:24 18 a priority for placement of wind turbines
 04:24 19 because they've already despoiled the land
 04:24 20 to the maximum extent. All that can grow
 04:24 21 there is what they plant. It's the perfect
 04:24 22 place to put wind turbines.
 04:25 23 BY MS. FOSTER:
 04:25 24 Q. Wind turbines were permitted use?
 04:25 25 A. Absolutely.
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04:25 1 Q. Don't you mean they were a
 04:25 2 conditional use?
 04:25 3 A. Absolutely.
 04:25 4 Q. Is it your conception that a
 04:25 5 permitted use is the same thing as a
 04:25 6 conditional use?
 04:25 7 MS. PERLMUTTER: Objection.
 04:25 8 Relevance.
 04:25 9 THE WITNESS: No, they're different.
 04:25 10 BY MS. FOSTER:
 04:25 11 Q. Then why did you did say wind
 04:25 12 turbines were a permitted use?
 04:25 13 MS. PERLMUTTER: Objection.
 04:25 14 Argumentative. You can answer the
 04:25 15 question.
 04:25 16 THE WITNESS: I think it's a silly
 04:25 17 distinction you're trying to make. Sorry.
 04:25 18 BY MS. FOSTER:
 04:25 19 Q. That's -- no, that's fair.
 04:25 20 Is the conditional use has to
 04:25 21 satisfy conditions, right?
 04:25 22 A. That's right. That's what it means,
 04:25 23 conditional use.
 04:25 24 Q. And a permitted use is just allowed
 04:25 25 outright?
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04:25 1 A. Outright. You can do it --
 04:25 2 Q. So you --
 04:25 3 (Parties speaking simultaneously.)
 04:25 4 (The Court Reporter requested
 04:25 5 clarification.)
 04:25 6 THE WITNESS: I understand what an
 04:25 7 outright permitted use is. Like minor
 04:25 8 solar is an example of an outright
 04:25 9 permitted use on GMA Ag lands.
 04:25 10 BY MS. FOSTER:
 04:25 11 Q. And to you, a use that is allowed
 04:25 12 with conditions and use that is allowed --
 04:26 13 permitted outright, that's a minor distinction?
 04:26 14 A. No, I didn't say that. I said --
 04:26 15 MS. PERLMUTTER: Objection.
 04:26 16 (The Court Reporter requested
 04:26 17 clarification.)
 04:26 18 MS. PERLMUTTER: Argumentative. You
 04:26 19 can answer.
 04:26 20 THE WITNESS: Permitted use is
 04:26 21 permitted use. If then you want to talk
 04:26 22 about the distinction between outright
 04:26 23 permitted and conditional, I fully
 04:26 24 understand what that means.
 04:26 25 But, in general, when I say wind
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04:26 1 turbines were a permitted use, that's a
04:26 2 true statement. So, I guess, I don't
04:26 3 understand what you're trying to get at.
04:26 4 So maybe if you could rephrase.
04:26 5 BY MS. FOSTER:
04:26 6 Q. Well, you said that wind -- I mean,
04:26 7 I don't want to be testifying here, but I could
04:26 8 submit to you that if you look at the Benton
04:26 9 County code in effect at the time at which you
04:26 10 submitted your application, if you looked under
04:26 11 the permitted uses, would you have found a wind
04:26 12 turbines farm?
04:26 13 A. Not a farm, no. Individual -- I
04:26 14 think it was up to two turbines at the time.
04:27 15 But more than that, in essence, a wind farm
04:27 16 required a conditional use permit. No question
04:27 17 about it.
04:27 18 Q. Okay. I think we've gone to a good
04:27 19 understanding on that. So I don't mean to
04:27 20 repeat myself, but I just want to make sure
04:27 21 that we're clear.
04:27 22 When looking at the project as a
04:27 23 whole, you could not tell me a general idea of
04:27 24 wind turbines per parcels?
04:27 25 A. No. As I said, my thumb rule is you
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04:27 1 can generally put four wind turbines on a
04:27 2 section of land, which is 640 acres.
04:27 3 Q. And is -- okay.
04:27 4 Is the Horse Heaven Wind Farm, in
04:27 5 general, following your rule of, will there be
04:27 6 four wind turbines per section?
04:27 7 MS. PERLMUTTER: I'm going to
04:27 8 object. Mischaracterizes testimony. But
04:27 9 answer as best you can.
04:27 10 THE WITNESS: I don't know of any
04:28 11 that have more than four. I know of a lot
04:28 12 of sections that have four. And there's a
04:28 13 lot that have less. And I don't -- I don't
04:28 14 understand the distinction.
04:28 15 BY MS. FOSTER:
04:28 16 Q. Well, in general, could you tell me
04:28 17 the average wind turbines per section?
04:28 18 MS. PERLMUTTER: Objection. Asked
04:28 19 and answered.
04:28 20 THE WITNESS: I can't.
04:28 21 BY MS. FOSTER:
04:28 22 Q. You can't. Okay.
04:28 23 MS. FOSTER: I think that is all the
04:28 24 questions I have for you today, Mr. Kobus.
04:28 25 Thank you.
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EXAMINATION

04:28 1
2 BY MR. ARAMBURU:
04:28 3 Q. Just a couple of follow-up
04:28 4 questions. Would you turn to page --
04:28 5 THE COURT REPORTER: Can you come
04:28 6 down here?
04:28 7 MR. ARAMBURU: I'm sorry.
04:29 8 THE WITNESS: 2-18, right?
04:29 9 BY MR. ARAMBURU:
04:29 10 Q. Yes. Excuse me. 2-156 -- excuse
04:29 11 me, 158.
04:29 12 A. I'm there.
04:29 13 Q. The number two criteria for
04:29 14 conditional use permits in Benton County is set
04:29 15 forth at the bottom of page 2-158, you see
04:29 16 that?
04:29 17 A. Yes.
04:29 18 Q. Do you believe that a six-acre,
04:30 19 150-megawatt lithium-ion battery installation
04:30 20 would endanger the health, safety, and welfare
04:30 21 of the surrounding community to an extent
04:30 22 greater than that associated with other
04:30 23 permitted uses?
04:30 24 A. I absolutely believe that's the
04:30 25 case, it will not.
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04:30 1 Q. And that's despite the fact that
04:30 2 you've indicated that lithium-ion batteries are
04:30 3 subject to fires and --
04:30 4 A. Everything is subject to fire. It's
04:30 5 a reasonable risk for the technology.
04:30 6 Q. But have you considered whether --
04:31 7 A. They built these batteries at City
04:31 8 of Richland sites just recently. These are
04:31 9 commercially available technology, and they are
04:31 10 safe. They are not unreasonable danger to the
04:31 11 health and safety of the public.
04:31 12 Q. Has the National Fire Protection
04:31 13 Association adopted new guidelines for
04:31 14 lithium-ion fires?
04:31 15 MS. PERLMUTTER: Objection.
04:31 16 Foundation. You can answer, if you can.
04:31 17 THE WITNESS: I understand there's
04:31 18 evolution of the NFPA requirements, but
04:31 19 we're not obligated to follow every new
04:31 20 requirement that evolved since our permit
04:31 21 application.
04:31 22 We identify the standards that were
04:31 23 available at the time of our application,
04:31 24 and that's what we follow.
25
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04:31 **1** BY MR. ARAMBURU:
04:31 **2** **Q.** And up in this area, the GMAA area,
04:32 **3** right, generally allows agricultural?
04:32 **4** **A.** Correct.
04:32 **5** **Q.** Generally allows farmhouses?
04:32 **6** **A.** Correct.
04:32 **7** **Q.** Agricultural sales of products?
04:32 **8** **A.** True.
04:32 **9** **Q.** All those things?
04:32 **10** **A.** (Witness nodded head up and down.)
04:32 **11** **Q.** Is this more or -- is six-acre
04:32 **12** lithium-ion battery going to endanger the
04:32 **13** health and safety of the people up there more
04:32 **14** or less than those uses?
04:32 **15** **A.** This will not be accessible to the
04:32 **16** general public. So, no, it won't endanger
04:32 **17** them.
04:32 **18** **Q.** And if there's a runaway fire that
04:32 **19** starts a fire in crop land up there, will that
04:32 **20** be a greater impact on the people than the uses
04:32 **21** that are there now?
04:32 **22** MS. PERLMUTTER: Objection to
04:33 **23** foundation. You can answer, if you can.
04:33 **24** THE WITNESS: I can't speculate on
04:33 **25** how big a fire's going to be.
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04:33 **1** BY MR. ARAMBURU:
04:33 **2** **Q.** But --
04:33 **3** **A.** Nobody can. These are
04:33 **4** self-contained units that have structural steel
04:33 **5** that contains these batteries. And, I mean,
04:33 **6** yeah, things can melt, but it's not common.
04:33 **7** It's a rare event. So I have no qualms about
04:33 **8** that we will not materially endanger.
04:33 **9** **Q.** Have you seen the videos of the
04:33 **10** fire -- the lithium-ion fire that lasted for
04:33 **11** four days down in Glendale, California?
04:33 **12** **A.** I can neither confirm nor deny that
04:33 **13** I've seen that video.
04:33 **14** **Q.** Are you aware that there was water
04:33 **15** on that fire for four continuous days and
04:34 **16** didn't put it out?
04:34 **17** MS. PERLMUTTER: Objection.
04:34 **18** Foundation. Answer if you can.
04:34 **19** THE WITNESS: I'll believe you, if
04:34 **20** that's what you say. I don't know.
04:34 **21** BY MR. ARAMBURU:
04:34 **22** **Q.** Well, have you made an investigation
04:34 **23** to determine whether or not this six acres of
04:34 **24** lithium-ion batteries poses a greater threat to
04:34 **25** people in the community than the
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04:34 **1** agricultural --
04:34 **2** **A.** We've gone on record saying we
04:34 **3** comply. That's what this document is telling
04:34 **4** you.
04:34 **5** **Q.** Yeah, I understand what you said.
04:34 **6** **A.** Okay. We were on record saying we
04:34 **7** comply. And I'm personally affirming that I
04:34 **8** believe it, so...
04:34 **9** MR. ARAMBURU: Okay. Thank you.
04:34 **10** MS. PERLMUTTER: I have no
04:34 **11** questions.
04:34 **12** MS. FOSTER: I have no questions.
04:34 **13** MS. VOELCKERS: I have no further
04:34 **14** questions.
04:34 **15** MR. ARAMBURU: Just one more thing,
04:34 **16** which is not a question.
04:35 **17** There was mention during -- I think
04:35 **18** it was your question, Shona, concerning the
04:35 **19** land use permit for the DNR property.
04:35 **20** THE WITNESS: Yeah, yeah.
04:35 **21** MR. ARAMBURU: Counsel, could you
04:35 **22** distribute that to the parties so we have
04:35 **23** it and we not let it go?
04:35 **24** MS. PERLMUTTER: I certainly can't
04:35 **25** do it now.
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04:35 **1** MR. ARAMBURU: Oh, no. I'm not
04:35 **2** asking now. But within a few days.
04:35 **3** MS. PERLMUTTER: We've received the
04:35 **4** request. I don't anticipate a problem, but
04:35 **5** that's not my call. We'll take it under
04:35 **6** advisement. I don't expect a problem.
04:35 **7** MR. ARAMBURU: And a few days is
04:35 **8** just fine. Thank you.
04:35 **9** (THEREUPON, the deposition of DAVID
04:35 **10** KOBUS concluded at 4:35 p.m.)
04:35 **11** (SIGNATURE RESERVED)
04:35 **12**
04:35 **13**
04:35 **14**
04:35 **15**
04:35 **16**
04:35 **17**
04:35 **18**
04:35 **19**
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04:35 **23**
04:35 **24**
04:35 **25**
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1 ERRATA SHEET
2

3 CHANGES IN FORM AND SUBSTANCE REQUESTED BE MADE IN
4 THE FOREGOING ORAL EXAMINATION TRANSCRIPT:
(NOTE: If no changes are desired, please sign and
date where indicated below.)

5 CORRECTIONS:

6 Pg. Ln.	Now Reads	Should Read	Reason
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____

19 I, DAVID KOBUS, hereby declare under penalty of
perjury that I have read the foregoing deposition and
that the testimony contained therein is a true and
correct transcript of my testimony, noting the
corrections above.

22 _____
DAVID KOBUS

23 SUBSCRIBED AND SWORN BEFORE ME
THIS _____ DAY OF _____, 2023.

25 _____
(Notary Public) MY COMMISSION EXPIRES: _____

1 C E R T I F I C A T E

2 I, MONNA J. NICKESON, CCR, CSR, CLR, RPR,
3 CRR, the undersigned Certified Court Reporter,
4 authorized to administer oaths and affirmations in
5 and for the states of Washington (3322), Oregon
6 (16-0441), Idaho (1045), and California (14430), do
7 hereby certify:

8 That the sworn testimony and/or
9 proceedings, a transcript of which is attached, was
10 given before me at the time and place stated therein;
11 that the witness was duly sworn or affirmed to
12 testify to the truth; that the testimony and/or
13 proceedings were stenographically recorded by me and
14 transcribed under my supervision. That the foregoing
15 transcript contains a full, true, and accurate record
16 of all the testimony and/or proceedings occurring at
17 the time and place stated in the transcript.

18 That I am in no way related to any party to
19 the matter, nor to any counsel, nor do I have any
20 financial interest in the event of the cause.
21 IN WITNESS WHEREOF I have set my hand on
22 July 26, 2023.

24 _____
MONNA J. NICKESON, CCR, CSR, CLR, RPR, CRR

25

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