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Transcript of Proceedings

August 16, 2023

Horse Heaven Wind Farm v.

EF-210011

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Horse Heaven Wind Farm
Verbatim Record of Proceedings, Adjudicative Hearing - August 16, 2023

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

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

ADJUDICATIVE HEARING
VERBATIM RECORD OF PROCEEDINGS

VOLUME 3

August 16, 2023

Lacey, Washington

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22 person in Lacey, Washington, with the Court
23 Reporter. All other participants are
24 appearing remotely via Microsoft Teams.
25

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1 BE IT REMEMBERED that on Wednesday,
2 August 16, 2023, at 621 Woodland Square Loop Southeast,
3 Lacey, Washington, at 8:40 a.m., before the Washington
4 Energy Facility Site Evaluation Council; Kathleen Drew,
5 Chair; and Adam E. Torem, Administrative Law Judge, the
6 following proceedings were continued, to wit:

7
8 <<<<< >>>>>

9
10 JUDGE TOREM: All right. Good
11 morning, everyone. Apologize for the ten-minute delay.
12 Just trying to catch up on the last of the homework
13 assigned yesterday. So thank you for your patience on
14 that.

15 You've seen at least one order come out so far,
16 and there'll be a second one to follow. We'll have a
17 discussion about the other motions to strike rebuttal
18 testimony and also the motion for reconsideration.

19 The agenda, I think, for today is really just to
20 talk about the schedule remaining for today and for
21 next week.

22 Let me see if anybody's actually on and listening
23 to me. I don't see any happy, smiling faces on the
24 screen.

25 There's Mr. McMahan. Good morning.

1 Do we have Mr. Harper?

2 All right. Mr. Harper's there. Ms. Reyneveld I
3 can see now. And I saw Mr. Aramburu. And I see
4 Ms. Voelckers.

5 What do we know about scheduling today and other
6 than Mr. Shook?

7 MR. McMAHAN: Okay. There we go.

8 MS. STAVITSKY: Hi, Your Honor. I
9 can speak for applicant. So the parties had some
10 discussions last night, and we -- the latest that we've
11 heard from Ms. Perlmutter is that she's continuing to
12 progress and feel better, so I think we are in good
13 footing for next week.

14 I -- and so Ms. Voelckers distributed a proposed
15 schedule yesterday.

16 And, Ms. Voelckers, please chime in if I get
17 anything wrong, but I'm going to do my best to
18 summarize that, and we can have a discussion about it.

19 So as Your Honor noted, I think -- so I should
20 say, for today, I think we're all set to go with
21 Mr. Shook. He's lined up to provide testimony at 9:00.

22 And then Monday, it seems like we're all set with
23 the existing schedule to cover cultural, historic, and
24 archeological resource impacts.

25 And then for Tuesday, as you noted, Judge Torem, I

1 think we can probably make up some time in that morning
2 session, probably at least an hour, hour and a half.

3 And then we -- and so Ms. Voelckers proposed that
4 applicant's wildlife witnesses, Mr. Jansen and
5 Mr. Rahmig, would go in the afternoon on Tuesday. And
6 so that's -- currently looks fine for us.

7 I think the schedule that we had circulated
8 internally yesterday may have had a little bit of a
9 compressed time frame. But in terms of the sequencing
10 of the witnesses, that should work for us.

11 So just to reiterate, so for Tuesday, applicant
12 could be prepared to have the initial sort of swearing
13 in of uncalled societal and economic impacts witnesses
14 in the morning from around 9 to 10:30, say. And then
15 we could have Mr. Jansen go with his testimony, which
16 is currently estimated to take about two and a half
17 hours, between two and a half and three hours, possibly
18 more with breaks, and then we could have Mr. Rahmig go
19 after that.

20 And so I think the way I see it is we may not be
21 able to finish Mr. Rahmig on that day. But, you know,
22 to the extent that there's carryover, we could go into
23 the next day or reschedule that for later in the week
24 as well.

25 So I'll stop there. I don't know.

1 Ms. Voelckers, do you want to provide a response,
2 or...?

3 MS. VOELCKERS: Good morning, Your
4 Honor. Yeah, I did circulate a proposed schedule that
5 flagged that same -- same issue about whether or not we
6 needed all morning on Tuesday to swear in witnesses
7 adopting testimony and had a helpful e-mail engagement
8 with Stoel, but the other parties haven't weighed in
9 yet, so I don't know and haven't heard from, you know,
10 for example, Mr. Aramburu on whether TCC thinks that
11 that is the best plan.

12 But that is what we propose, is that we
13 essentially have likely the majority of Tuesday to --
14 for Mr. Rahmig and Mr. Jansen's testimony.

15 JUDGE TOREM: Question for the
16 afternoon for Mr. Dunn and Mr. Krupin: Would they be
17 shifted to another day, it looks like? Perhaps using
18 some of the time on the following day, on Wednesday,
19 when Ms. Campbell and Mr. Click should be able to get
20 on and off fairly quickly unless the Council has
21 questions. It's entirely possible that they'll have
22 questions for Mr. Click about the fire suppression
23 issue at the BESS facility, so I don't know how quickly
24 Mr. Click might go, but Ms. Campbell might be pretty
25 fast.

1 MR. ARAMBURU: Mr. Torem, with
2 regard to Mr. Click, we -- we've heard now that he's
3 not available on the Wednesday but would be available
4 Monday or Tuesday and prefers Tuesday. So that's just
5 some recent news we've gotten.

6 JUDGE TOREM: Okay. That's helpful.
7 So it's possible we could put him in the morning
8 on Tuesday?

9 MR. ARAMBURU: That would be best
10 from our side. Thank you.

11 JUDGE TOREM: All right. Well,
12 let's see if we can circulate at some point later
13 today, after the Council meeting, an updated schedule
14 for next week.

15 And, Mr. Aramburu, did you have any concerns about
16 moving of the witnesses that we had Jansen and Rahmig
17 from next week over to next Tuesday, it sounds like,
18 starting mid-morning and running into the afternoon?

19 MR. ARAMBURU: No, we -- we don't
20 have concerns regarding those witnesses. Those are
21 principally the witnesses for -- for the Yakamas.

22 JUDGE TOREM: Correct.

23 MS. VOELCKERS: Your Honor.

24 JUDGE TOREM: I just wanted to make
25 sure that you would be ready with your cross or

1 friendly redirect, whatever we want to call it, for
2 that -- those witnesses at the new date and time.

3 Okay. Ms. Voelckers.

4 MR. ARAMBURU: I will be.

5 JUDGE TOREM: Thank you,
6 Mr. Aramburu.

7 Ms. Voelckers.

8 MS. VOELCKERS: Thank you, Your
9 Honor. And sorry to interrupt. It was unintentional.

10 I do have the updated proposed schedule, so I can
11 circulate that. And I can just respond to -- to your
12 latest e-mail to the group and provide that draft
13 updated schedule.

14 JUDGE TOREM: All right. Well, just
15 to recap, then. Today ought to be pretty manageable,
16 just Mr. Shook's testimony. And from there, if we pick
17 up on Monday with as scheduled and then we start
18 Tuesday with the tweaks that we had adding in Mr. Click
19 Tuesday morning, it's possible we'll get done with
20 Mr. Jansen and Rahmig, both, if we move the Dunn and
21 Krupin testimony over to Wednesday.

22 I already see that Mr. Krupin would have carried
23 over, so that may work out well. And I think given the
24 additional flexibility we have on Wednesday prior to
25 the public comment hearing, I'll talk with the Council

1 members and see one of two things: One, can we run a
2 little bit late on Tuesday, if necessary, to finish the
3 Jansen Rahmig; and Wednesday, can we take a late lunch
4 so we can actually get through everything on Wednesday.

5 On Thursday, are there any changes, or on Friday?

6 MS. VOELCKERS: Your Honor, I did
7 include in that proposed schedule I circulated to the
8 parties Mr. McIvor's testimony now happening on Friday.
9 So I can -- I can just circulate the whole schedule, or
10 if you want, I could talk through the -- the time
11 adjustments. And my math wasn't perfect the first time
12 around, so I'm not sure that I have the exact time
13 adjustments, but by my math --

14 JUDGE TOREM: Don't do public math.
15 We're all lawyers. We're not going to do that.

16 What I've asked is what the estimate timing for
17 finishing on Friday looks like now.

18 MS. VOELCKERS: Your Honor, and,
19 yeah, so by my estimate, that the -- the timing to
20 finish on Friday would be an early lunch, returning for
21 testimony, ending around 1:30, except that that does
22 not still account for Mr. Kobus's potential
23 questioning, but that still does leave time, of course,
24 if we -- again, the sum of my math is that we still are
25 ending, right now, at 1:30 with all of the other

1 witnesses.

2 JUDGE TOREM: All right. And I'll
3 give you some insight on the pending order that may
4 come out even before we start at 9:00. I've got one or
5 two more tweaks to it just to proof it.

6 But, Mr. Aramburu, I am going to grant the
7 applicant's motion to allow the supplemental testimony.
8 It's all of one page and the two- -- two-page
9 attachment regarding BESS. And I'm going to limit
10 cross-examination to just the supplemental testimony,
11 not a re-examination of what's in the deposition,
12 unless the Council members want to go there.

13 So it should be pretty short in scope for any
14 Kobus cross. And I'm not going to allow the applicant
15 to, you know, supplement further with trying to get in
16 direct testimony by doing a redirect and expanding. So
17 for any of the parties wishing to cross-examine
18 Mr. Kobus, it will be limited to that one-page
19 supplemental testimony and its two-page attachment.

20 And if you're limited, that will further limit
21 what the applicant can say in response. So there may
22 be no questions from you for Mr. Kobus unless there's
23 something between Mr. Click and Mr. Kobus that you want
24 to explore the -- the differences. That's what I'm
25 anticipating. But I'll get you the written order on

1 that, and it'll essentially say what I've just told
2 you, that it's a limitation.

3 Anything else on the schedule?

4 Go ahead, Mr. Aramburu.

5 MR. ARAMBURU: I don't know if I'm
6 working with the most current schedule, but do we have
7 a time potentially for Mr. -- Mr. Kobus to testify? I
8 don't see one here.

9 JUDGE TOREM: No. It sounded like
10 it might be inserted on Friday, but there was kind of a
11 hold pattern from what Ms. Voelckers is saying. And I
12 see Ms. Reyneveld nodding her head as well. So until
13 you had my decision, there was no way to slot him in or
14 know. Now you know. If it's going to be a couple
15 minutes, maybe he could follow somebody on another day.
16 But if he needs to be on Friday, the applicant's made
17 it clear he'll be available any day.

18 MR. ARAMBURU: Okay. And Mr. Dunn,
19 scheduled for Tuesday, I've got a communication from
20 him. He has a Benton County commissioners' PUD
21 commission meeting at 9, so he would not be available
22 earlier than 10:30 on the Tuesday, but he would be
23 available in the afternoon.

24 JUDGE TOREM: Okay. And as far as
25 Mr. Dunn, Mr. Krupin, Mr. Simon, and Mr. Sharp, I'm

1 still working through the details of what's in the
2 rebuttal and reply testimony, Mr. Aramburu. That was
3 something, if you saw we sent one order regarding
4 counsel for the environment after midnight, and I got
5 it to Ms. Owens maybe at 11:30. So it's been late
6 nights, and I didn't want to rush a decision on the
7 rebuttal and reply testimony and be broad-brush. I
8 want to go into it in more detail.

9 I will do that today and tomorrow and get it to
10 you as quickly as possible. I do have another hearing
11 in Moses Lake tomorrow morning, but I think Friday,
12 after doing some name changes and maybe small claims
13 court, will be the soonest I would get it to you. So
14 those are some other things I'm carrying around. But
15 depending what time I get back to Ellensburg tonight, I
16 may be able to get that turned around to staff before
17 departing for Moses Lake in the morning.

18 So just to be transparent with what the time
19 constraints might be, and there's only so much I can go
20 on four to five hours a night of sleep. I'm sure you
21 guys feel the same way.

22 MR. ARAMBURU: I do have a question.
23 Because the -- our motion for reconsideration is still
24 pending. Exhibit 5303 is an exhibit from Mr. Krupin.
25 And he -- and that is his exhibit that attaches some

1 correspondence supportive of TCC from interests in
2 Benton County, including the Realtors, the tourism,
3 chamber of commerce.

4 I am intending to use those letters this morning
5 in the examination of Mr. Shook. And I just want to
6 alert everybody. I don't know that -- if that creates
7 a problem or not. I understand that exhibit is -- is
8 kind of in the state of ambiguity at this point, but
9 that's what I would like to do. And I -- I would
10 intend to -- to address those letters or the content of
11 those letters to Mr. Shook.

12 JUDGE TOREM: Well, Mr. Aramburu,
13 unless Mr. McMahan wants to or Ms. Stavitsky wants to
14 pop up and give their input, my thoughts from an
15 evidentiary perspective are that, on cross-examination,
16 that exhibit could be used, regardless whether it's
17 admitted under Mr. Krupin's prefiled or rebuttal
18 testimony. It's a cross-exam exhibit and what you're
19 trying to use it for today and not proffered as
20 Mr. Krupin's testimony, which is still in limbo.

21 Mr. McMahan, Ms. Stavitsky, any advance argument
22 on my evidentiary thoughts?

23 MS. STAVITSKY: Yes, that makes
24 sense to us, Your Honor. We would ask that it be
25 resubmitted formally as a cross-examination exhibit as

1 quickly as possible since we need to provide that and
2 get the stamping for our labeling done.

3 And, of course, I mean, we will likely object to
4 its use, given on the same grounds that we -- that are
5 in our motion to strike, given that that testimon- -- I
6 would have -- I need to have a little bit of time to
7 review the specific grounds again but will reserve the
8 chance to do that during the examination.

9 JUDGE TOREM: And you may do that.
10 I hope it will be different grounds than you would have
11 given for Mr. Krupin to attach it at his testimony and
12 find some way to give me something new to chew on than
13 what I've already said regarding the rather permissive
14 use of exhibits during cross-exam. So I'm giving you a
15 full telescope and great view of what I'm intending to
16 do, so be persuasive if you think the objection might
17 be sustained.

18 So, Mr. Aramburu, I think you have what you need
19 there.

20 MR. ARAMBURU: Would you like me to
21 provide another exhibit number to that Krupin exhibit?
22 Seems duplicative, but we can do it, if you like.

23 JUDGE TOREM: Yeah, I think -- I
24 think just because, in sequence today, it makes sense,
25 what Ms. Stavitsky said, that it's not yet admitted as

1 5303, whatever underscore letter it is. And it would
2 be easier, and at some point -- you don't have to do it
3 today. If it's going to be shown on the screen as 5303
4 in its current state, you can just indicate on the
5 record this will be remarked as a cross exhibit. Just
6 in case the other one's excluded, that will take care
7 of things for housekeeping. And don't worry about --

8 MR. ARAMBURU: Okay.

9 JUDGE TOREM: -- the timing -- don't
10 worry about the timing on that. We can get that done
11 after today's session.

12 Okay. I appreciate the --

13 MS. STAVITSKY: Your Honor, I'm
14 sorry. I --

15 JUDGE TOREM: Ms. Stavitsky.

16 MS. STAVITSKY: -- have one more --
17 I have one more --

18 JUDGE TOREM: Go ahead.

19 MS. STAVITSKY: -- note about the
20 schedule I just wanted to flag.

21 Discussing -- so Mr. Krupin, Mr. Sharp, and
22 Mr. Dunn's testimony -- and apologies, Ms. Voelckers,
23 just a side note. I think we had accidentally
24 omitted -- or the parties have omitted Mr. Dunn from
25 the proposed schedule that we were circulating last

1 night, so we will need to add him back in.

2 And currently the proposed schedule doesn't have
3 any time reserved for Scout, because we were operating
4 under the assumption that those witnesses would not be
5 providing live testimony, given the motion to strike.
6 But if that motion is ultimately denied, then Scout
7 will be reserving time to cross-examine those
8 witnesses.

9 JUDGE TOREM: Okay. Understood.
10 And I appreciate the ongoing flexibility and working
11 together on this.

12 Why don't you work on the assumption that they'll
13 have some ability to testify. Again, I did say I
14 haven't made a decision yet, and you'll get it as soon
15 as possible, but I did say I'd be fairly liberal on
16 what I would allow for rebuttal and reply.

17 And, as I said, I'm trying to be more precise on
18 exactly what might still need to be stricken and what
19 definitely, if it's relevant, could come in so that
20 Mr. Aramburu and TCC are permitted to make their case,
21 particularly with the community interests, and we'll --
22 I know we'll be hearing a lot more of that next
23 Wednesday evening.

24 But some of that, because of what I said in the
25 second prehearing conference order, needs to come in as

1 evidence. I just need to figure out exactly what's
2 within the bounds. I was pretty careful, I thought, on
3 the first order. That took quite a bit of time. So I
4 want to put in the same level of detail if you agree
5 with it or not. But from my perspective, I want to be
6 able to sign that order and think it's -- everything is
7 as it should be, as at least this judge thinks.

8 All right. We might as well stay on the line and
9 begin at 9:00. I think, again, the agenda for today is
10 I'm going to ask Council members about any ex parte
11 communications they might have had since Monday. And
12 I'm not expecting to hear any, but you never know.

13 And then we'll go over and swear in Mr. Shook when
14 he appears, and we'll get rolling for the day.

15 All right. Good morning, everyone. We're now
16 done with the housekeeping session for Day 3. It's
17 August 16th, 2023. It's now 9 a.m. We're going to
18 have, again, our third day of the adjudicative hearing
19 in the Horse Heaven wind farm proposed project matter.

20 I'm going to ask that we call the roll of the
21 Council members. Hopefully we have the Chair plus
22 seven today. And, again, any Council member that
23 misses part of the testimony can go back and review the
24 video and/or look at the transcript when that is
25 posted.

1 Can we call the roll of the Council, please.

2 MS. OWENS: Yes.

3 EFSEC Chair.

4 COUNCIL CHAIR DREW: Kathleen Drew,
5 present.

6 MS. OWENS: Department of Commerce.
7 Department of Ecology.

8 COUNCIL MEMBER LEVITT: Eli Levitt,
9 present.

10 MS. OWENS: Department of Fish and
11 Wildlife.

12 COUNCIL MEMBER LIVINGSTON: Mike
13 Livingston, present.

14 MS. OWENS: Department of Natural
15 Resources.

16 COUNCIL MEMBER YOUNG: Lenny Young,
17 present.

18 MS. OWENS: Utilities &
19 Transportation Commission.

20 COUNCIL MEMBER BREWSTER: Stacey
21 Brewster, present.

22 MS. OWENS: For the Horse Heaven
23 project: Department of Agriculture.

24 And Benton County.

25 Assistant attorney general.

1 MR. THOMPSON: Jon Thompson,
2 present.

3 JUDGE TOREM: All right. Let me
4 make sure all parties are on the line. I was able to
5 connect with all of you previously during the
6 housekeeping session.

7 For the applicant?

8 MR. MCMAHAN: Thank you, Your Honor.
9 Tim McMahan here on behalf of applicant, Scout -- Scout
10 Clean Energy, along with Ms. Stavitsky and Emily
11 Schimelpfenig. And Ms. Schimelpfenig will actually
12 handle the Morgan testimony this morning. Thank you.

13 JUDGE TOREM: All right. Thank you.
14 Mr. Harper. Anybody else on for Benton County?

15 MR. HARPER: Ken Harper and Z.
16 Foster. Thank you, Your Honor.

17 JUDGE TOREM: All right.
18 Ms. Reyneveld, I see you there as counsel for the
19 environment.

20 Do we also have a roll call of folks for the
21 Yakama Nation today?

22 MS. VOELCKERS: Good morning. Thank
23 you, Your Honor. Shona Voelckers for the Yakama
24 Nation, also joined by Ethan Jones and Jessica Houston.

25 JUDGE TOREM: Thank you.

1 And, Mr. Aramburu, I see you there for TCC.

2 All right. Good morning, everyone.

3 Council members, before we get started, I know on
4 Monday, I asked you about any ex parte communications
5 you may have had. And I think we discussed that a
6 little bit in our session after Monday's hearing just
7 to go over procedural matters and how to handle things
8 going forward and finding documents and the rest.

9 I didn't ask yesterday. I didn't think there'd be
10 anything overnight given our discussions on Monday, but
11 I think it's appropriate before we break until next
12 Monday for the adjudicative hearing to remind you of
13 the rules for ex parte. You have the written guide
14 about it.

15 And I'll just ask now if anybody has something to
16 disclose before we start today's proceeding. Just put
17 an electronic hand up if you do.

18 All right. I'm not seeing any.

19 Again, I know that there are articles coming out
20 of newspapers. The Tri-City Herald had a nice article
21 about our public comment hearing for next Wednesday
22 night. And we're getting phone calls based on that
23 article that Lisa Masengale is working hard to create
24 the sign-up list and confirm all of the statutory
25 requirements for commenters.

1 So, parties, we're going to be working, I think,
2 on that public comment hearing with the County.
3 Mr. Wendt has indicated many of the locals that are
4 going to want to comment will be gathered in one space,
5 so we're working on that and hoping the technology goes
6 well.

7 For today, Council, we're going to be calling and
8 hearing the testimony of Morgan Shook. As we talked
9 about yesterday, the exhibits to have up for testimony
10 are going to be 1008, Sub T, revised; and then there
11 are a sequence of other exhibits: 1009, 1010, -11,
12 -12, -13, -14, -15, -16, -17, -18, -19, and -20. And I
13 think I might be leaving out one other one.

14 Mr. McMahan, Ms. Schimelpfenig, is there any
15 others after 1020?

16 MS. SCHIMELPFENIG: Yes, Your Honor.
17 It's 1051_R, which is --

18 JUDGE TOREM: All right. Thank you.

19 MS. SCHIMELPFENIG: -- the reply
20 testimony.

21 JUDGE TOREM: Excellent. I knew
22 there was one more. All right. Thank you.

23 Chair Drew, you have your hand up.

24 COUNCIL CHAIR DREW: Yes, Your
25 Honor. Given the conversation over the past couple of

1 days, particularly the interest of the Council in
2 understanding more about the dryland wheat
3 agricultural, I'd like to ask if we can recall a
4 witness.

5 JUDGE TOREM: All right. So --

6 COUNCIL CHAIR DREW: Christo -- go
7 ahead.

8 JUDGE TOREM: Which witness would it
9 be?

10 COUNCIL CHAIR DREW: Christopher
11 Wiley, Exhibit 1035_R.

12 And I have specifics in that testimony that I
13 think are especially pertinent: Page 5, Lines 3
14 through 18. Page 8, Line 8, to Page 10, Line 25.

15 JUDGE TOREM: All right. If I
16 recall, parties, we adopted, without any cross-exam
17 from the parties, Mr. Wiley's testimony first thing
18 Monday morning according to the schedule and my
19 recollection, and there were no questions at that time
20 posed by the Council members.

21 Chair Drew, what -- so what came up -- other than
22 the specific pages and lines you just cited, if you
23 have a general, what caused you to think that we needed
24 some questions?

25 COUNCIL CHAIR DREW: There was not

1 sufficient information, in my view, from the Benton
2 County witnesses about the use of that property and its
3 relationship to the project and how that might be
4 coordinated from the perspective of a landowner.

5 JUDGE TOREM: Okay. And if I'm
6 understanding correctly, then, when you heard more
7 testimony about that, now you have questions for that
8 witness; is that right?

9 COUNCIL CHAIR DREW: Yes. That's
10 right.

11 JUDGE TOREM: Got it.

12 So, parties, it sounds to me like Ms. Cooke's
13 testimony, which was very informative yesterday on all
14 of these aspects that Chair Drew just mentioned, raised
15 some questions.

16 Let me ask the applicant first.

17 Ms. Schimelpfenig, I don't know if you can speak to
18 that, but would it be acceptable for the applicant to
19 reach out to Mr. Wiley and see if there's a day next
20 week we could fit him into that proposed schedule that
21 everybody's working on?

22 Council members, we had an extensive discussion
23 about how the schedule will shake out next week, so I
24 think we'll be able to work this in. I may ask you for
25 some flexibility on running a little late on Tuesday to

1 make sure we stay on target, and we may have a little
2 bit of dancing around to do on Wednesday afternoon
3 before our public comment hearing, but I still want a
4 solid break in there.

5 So, Council members, if we're going to recall a
6 witness -- and hopefully there won't be a lot more of
7 that. We'll see as the evidence develops.

8 But, Ms. Schimelpfenig, with that long preamble,
9 do you think we could find a spot for Mr. Wiley?

10 MS. SCHIMELPFENIG: Yes, Your Honor.
11 We are reaching out to Mr. Wiley right now to see when
12 he would be available next week.

13 JUDGE TOREM: Parties, I'd love to
14 give great latitude to the Council on this. I know
15 you've had your opportunities and didn't have questions
16 for Mr. Wiley.

17 Does anybody have a concern about recalling a
18 witness for this limited purpose?

19 MR. HARPER: Well, I do, Your Honor.
20 Ken Harper for Benton County.

21 It strikes me as, I guess, somewhat irregular for
22 one of the members of the Council to essentially ask
23 one of the parties to develop the case further. The
24 parties are litigating the case. Mr. Wiley's
25 testimony, his prefiled testimony, was what he and

1 Scout chose it to be. We built our response testimony
2 in relationship to that. If Mr. Wiley is recalled,
3 we'd like an opportunity to provide rebuttal testimony.
4 But that seems like that's a fairly inefficient issue.

5 I understand your point, Your Honor, the Council
6 should have information. On the other hand, you know,
7 we also are working within a judicial context here. So
8 I -- if we go on this route, we would like an
9 opportunity to provide rebuttal.

10 JUDGE TOREM: Understood,
11 Mr. Harper. Is there -- I mean, you said it was
12 irregular. Is there anything in the Administrative
13 Procedure Act or some other rule of the Council you
14 could point to about rebuttal testimony?

15 I obviously am hearing this now. I haven't looked
16 at the Council rules. But my normal administrative
17 procedure is to limit rebuttal testimony. But here, I
18 think the sequencing of things may have, if I
19 understand Chair Drew correctly, raised questions
20 yesterday that just weren't in her mind on Monday.

21 MR. HARPER: Well, Your Honor, I
22 guess I can't speak to the APA. I'd have to research
23 it. But in ordinary trial practice, I think it would
24 be reasonable to say that, at least on this topic,
25 Scout rested its case with respect to the testimony

1 offered on land-use compatibility and consistency. We
2 supplied our response. Scout didn't seek to rebut. So
3 that -- that should be closed.

4 But, you know, I realize also we don't want to be
5 that rigid. So I get it. And, again, Your Honor, if
6 the ALJ, if you wish to accommodate Council Member
7 Drew's request, which, again, I totally understand,
8 we'd just like an opportunity to rebut.

9 JUDGE TOREM: I think that sounds
10 fair, Mr. Harper. Let's wait and see what develops.

11 I do think it's best, and not because it's Chair
12 Drew, but also because it's a Council member that's
13 interested. Yesterday afternoon's questioning from
14 Council members, I thought, shows you a lot where
15 things are going, and I think it benefits not only the
16 Council to get the best information, but for purposes
17 of post-hearing briefs, the questions probably
18 telegraph the issues that the Council wants to know
19 more about. And I'd rather have both of those points
20 well serviced by recalling Mr. Wiley.

21 It doesn't sound like Chair Drew has an expansive
22 part of this testimony to delve into. And if Chair
23 Drew, if you didn't write it before, why don't you
24 recite those -- I appreciate you being specific as to
25 what you want to look into. This will address, I hope,

1 Mr. Harper's concerns, and maybe Ms. Cooke can be
2 available to listen. And if there's any rebuttal
3 testimony from her or Mr. Wendt, we can again try to
4 funnel things down.

5 COUNCIL CHAIR DREW: This is
6 specifically about how Mr. Wiley would use the
7 additional lease payments, which were answered very
8 differently by Ms. Cooke, that -- so I -- that's why I
9 would like to bring him into -- to recall his
10 testimony. And it's Page 5, Lines 3 through 18;
11 Page 8, Line 8, to Page 10, Line 25.

12 Ms. Cooke said she didn't know, and this testimony
13 is specifically about that issue.

14 MS. STAVITSKY: Your Honor, if I may
15 provide a response.

16 JUDGE TOREM: If you need to.

17 MS. STAVITSKY: Just to offer one
18 other thought. Hi, everyone. This is Ariel Stavitsky.
19 I'm sorry. We're shifting around here to try to
20 minimize echo.

21 The way that we interpret the -- the rules, the
22 applicable rules here under the APA and under the EFSEC
23 adjudication rules is that, you know, all along we've
24 reserved the right to provide rebuttal witnesses in
25 response to live testimony that we heard today.

1 So to the extent that Chair Drew would like
2 clarification on content that came out of Ms. Cooke's
3 testimony, you know, another way to think about this is
4 that Mr. Wiley is Scout's rebuttal witness in this
5 back-and-forth, and that's the way that this would be
6 handled typically under the EFSEC adjudication rules.

7 MR. HARPER: Well, Your Honor,
8 that's --

9 JUDGE TOREM: Hold on, Mr. Harper.

10 Ms. Schimelpfenig, you're referring to the rules
11 in general. Do you have a specific one, or is this
12 just sort of a, "We think that's how it runs in EFSEC"?

13 Because, as Mr. Harper said, in ordinary
14 litigation might be one thing. I don't know that any
15 of five parties in front of a large Council is possibly
16 labeled as ordinary litigation.

17 MS. STAVITSKY: Agreed. I can
18 provide that citation to you. I'd need to look it up,
19 but I can follow up with that, Your Honor.

20 JUDGE TOREM: Okay. If it exists,
21 I'll be happy to get it. And I think you can circulate
22 that in an e-mail directly to me with the parties.
23 Thank you.

24 Mr. Harper.

25 MR. HARPER: I was just going to

1 say, Your Honor, if Mr. Wiley was intended as a
2 rebuttal witness, he could have been designated as
3 such. But nevertheless, I'm happy to, again, to
4 accommodate and just ask that we be allowed an
5 opportunity to provide surrebuttal.

6 JUDGE TOREM: All right. I --

7 MR. ARAMBURU: May I be heard?

8 JUDGE TOREM: -- don't want to --
9 yes, I will get to you just in a moment, Mr. Aramburu.

10 I don't want to have the reserved right to present
11 rebuttal testimony beyond what was submitted in that
12 third round of prefiled testimony to go too far.

13 But, again, for the parties, you've all had the
14 three rounds of prefiled testimony. We've been working
15 on the schedule for that since March, April, and May,
16 when it was decided at the third prehearing what the
17 exact filing schedule would be.

18 The Council, of course, is getting those on the
19 fly as they come in and really preparing in the last
20 couple of weeks, so I want to give deference to the
21 ultimate fact finders here who would be making the
22 recommendation to the governor.

23 And I appreciate what, Mr. Harper, what you've
24 said about, well, he could have been designated
25 rebuttal; he's not. He was the first-round prefiled

1 testimony. This is a limited recall of that
2 first-round testimony of what I'm granting. So I just
3 want to be clear with the parties what accommodations
4 I'm saying yes.

5 Yes, Chair Drew, this is good. It was the --
6 frankly, it was the first day of the hearing as well.
7 And this is a new Council. This is a new question of
8 what's our role and how do we ask questions. And after
9 yesterday, I think they're warmed up. So this may be
10 just another thought of, "Oh, I wish I had," and this
11 time I can be the genie in the lamp and grant the wish,
12 but there's only two left in the lamp.

13 Mr. Aramburu.

14 MR. ARAMBURU: With all due
15 deference and respect to the Chair, I'm not sure -- I
16 think I will object to the testimony about what an
17 individual person might do with individual monies that
18 they receive.

19 You've been very strict with us to talk about
20 economic feasibility of the project, and this is what a
21 private owner would do with his money. I'm not sure
22 how relevant that is to any individual person, and
23 persons may decide to use the money to buy farm
24 equipment. Others may buy a new RV. Others may take
25 vacation. And I don't know that that's -- that's

1 necessarily relevant to the proceedings.

2 But I will also note that if we're going to start
3 to talk about what individuals are going to do with
4 their money, I just want to alert everyone that I'm
5 going to be asking him about how much money he's
6 getting. I'm going to ask him about what he knows
7 about the project. I'm going to ask him a bunch of
8 those questions. So I think those are fair questions
9 to ask. But I just want to alert everyone, if -- if
10 this individual's going to come up, I'm going to ask
11 those kind of questions.

12 But I do believe that the -- the testimony of an
13 individual as to what they will do with their money is
14 not relevant.

15 JUDGE TOREM: I'll only say,
16 Mr. Aramburu, that Ms. Cooke went into quite a bunch of
17 detail of what she thought individual family members
18 might do. That's my recollection of yesterday's
19 testimony, as much as she didn't talk about individual
20 dollar amounts. I'll have to think about that, but it
21 could be quite relevant just to take a look at things.

22 But the testimony yesterday, as I remember it, has
23 a lot to do with whether restoration could occur. I
24 asked specifically about the costs that might be
25 involved in a more governmental-body trust fund about

1 that.

2 So there's -- yeah, financials may very well be
3 relevant, Mr. Aramburu, depending on the questions that
4 Chair Drew asks. So let's -- we'll definitely see if
5 it raises any additional questions for the parties.
6 That's a fair preview of, again, where TCC stands on
7 this. I appreciate it.

8 All right. Chair Drew, we will recall Mr. Wiley.
9 We'll find out what day. The parties are actually
10 working on an update to next week's schedule. And once
11 it's circulated to me and I take a look at it, we'll
12 have Ms. Masengale post it on the Council's version of
13 the SharePoint website so you can take a look and see
14 what, if any, changes.

15 I can tell you that Monday, while you're preparing
16 for that over the weekend, won't change. So Monday's
17 schedule is -- is kind of locked in from what was
18 already on the website, and we'll go from there.

19 Chair Drew, anything else on the -- on the Wiley
20 recall as you can see how the procedural discussion
21 that followed?

22 COUNCIL CHAIR DREW: No. Thank you,
23 Judge.

24 JUDGE TOREM: All right. Well,
25 we'll see when Mr. Wiley is available. Thank you,

1 Ms. Schimelpfenig and Ms. Stavitsky, for looking into
2 that. And, again, for the parties, less latitude on
3 the reserves, rebuttal witnesses, or any concept the
4 applicant has of their reservations. We've got
5 prefiled testimony. This is a limited -- a limited
6 recall.

7 Council members, this is your reminder to ask your
8 questions as soon as possible. So as things develop,
9 we'll see how things go. But try to ask the questions
10 you have up front, and we'll definitely finish on time
11 next Friday. That's the projection.

12 All right. I think now at 9:19 a.m., we are ready
13 to call Morgan Shook. And I'll see if Mr. Shook can
14 appear on one of my screens so I know who I'm swearing
15 in.

16 (Witness Morgan Shook
17 appearing remotely.)
18

19 JUDGE TOREM: Good morning,
20 Mr. Shook. Now I can see you.

21 **THE WITNESS: Good morning, Your**
22 **Honor.**

23 JUDGE TOREM: Can you hear me all
24 right?

25 **THE WITNESS: I can hear you. And I**

1 take it you can hear me as well?

2 JUDGE TOREM: I can.

3 THE WITNESS: Excellent.

4 JUDGE TOREM: The court reporter's
5 going to appreciate both of us if we don't speak over
6 each other, and particularly if Mr. McMahan gets
7 involved, if he doesn't speak over you. So we'll see
8 how Ms. Schimelpfenig's training is at Stoel and yours
9 as well.

10 The other parties are going to be starting with
11 questions. If I look at what's expected today from
12 what was lopped off from the original Tuesday schedule,
13 it looks as though -- it looks as though, Mr. Aramburu,
14 I think you're going to start the cross-exam. Is that
15 correct?

16 MR. ARAMBURU: I think that's what
17 the schedule says. Yes.

18 JUDGE TOREM: Yeah, I'm just trying
19 to read it. It's in a slightly different order. But
20 because this is Scout Clean Energy's witness, you would
21 do that.

22 And then, Mr. Shook, you can expect that I'll ask
23 the other parties if that raises any cross-exam for
24 them. And then we'll come back for Ms. Schimelpfenig
25 and eventually at some point go to the Council members,

1 as I've encouraged if they have questions, they may
2 have some things for you as well.

3 The -- Ms. Schimelpfenig, I'm going to ask you to
4 go through that list of documents and exhibits and ask
5 Mr. Shook if those are the ones he adopts. It's a
6 little bit long for me to do. But I'll swear him in
7 and let you do the adoption.

8 Mr. Shook, if you raise your right hand.

9
10 MORGAN SHOOK, appearing remotely, was duly
11 sworn by the Administrative
12 Law Judge as follows:

13
14 JUDGE TOREM: Do you, Morgan Shook,
15 solemnly swear or affirm that all the testimony you'll
16 adopt in the course of today's proceeding, as well as
17 your answers to any other questions, will be the truth,
18 the whole truth, and nothing but the truth?

19 **THE WITNESS: I do.**

20 JUDGE TOREM: All right. Thank you.

21 Ms. Schimelpfenig's going to give you a list of
22 the documents that have been presubmitted, include your
23 rebuttal or reply testimony, and have you adopt those,
24 and then they will be admitted to the record.

25 Ms. Schimelpfenig.

1 DIRECT EXAMINATION

2 BY MS. SCHIMELPFENIG:

3 Q Good morning, Mr. Shook. Do you adopt Exhibit 1008_T,
4 1009 to 1020, and -- it's way easier to do "1051"; I'm
5 sorry -- 1051_R? Those are the three.

6 A I adopt those.

7 MS. SCHIMELPFENIG: Thank you.

8 JUDGE TOREM: All right. We'll make
9 those part of the record.

10 (Exhibit Nos. 1008_T_Revised,
11 1009, 1010, 1011, 1012,
12 1013, 1014, 1015, 1016,
13 1017, 1018, 1019, 1020, and
14 1051_R admitted.)

15
16 JUDGE TOREM: And there may be also
17 some cross-examination exhibits for you, Mr. Shook.
18 One of them may have a number on it that was previously
19 designated, and so Mr. Aramburu might refer to it as
20 that, but we'll be assigning a new cross-exam exhibit
21 as needed.

22 All right. Are we ready for Mr. Aramburu's
23 questions?

24 MR. ARAMBURU: I'm ready.

25 JUDGE TOREM: I'll go mute on this

1 end and, Mr. Aramburu, defer to you.

2 Ms. Schimelpfenig, if there's an objection, please
3 unmute on your end, and Mr. Aramburu will listen to
4 what you have. And then I'll go back to him for any
5 response before I make a ruling.

6 Mr. Shook, if you hear an objection, please stop.
7 Mercy on the court reporter. And we'll go from there.

8

9 CROSS-EXAMINATION

10 BY MR. ARAMBURU:

11 Q Good morning, Mr. Shook. I'm Rick Aramburu. I
12 represent the local citizens organization Tri-City
13 C.A.R.E.S. in this proceeding. And Tri-City C.A.R.E.S.
14 is an intervenor.

15 I have a number of questions to you about your
16 testimony, background, experience, and those kinds of
17 things.

18 And, Mr. Shook, if you don't understand my
19 question, please do not hesitate to ask me to rephrase
20 it. And as Judge Torem has indicated, let's try,
21 whenever possible, not to talk over one another, even
22 though you may anticipate my question, and I won't
23 anticipate your answer as well.

24 Are those good ground rules, Mr. Shook?

25 **A Sounds great.**

1 Q And have you testified previously in trials or
2 administrative proceedings?

3 **A I have.**

4 Q Over ten times?

5 **A No.**

6 Q Okay. So I want to talk a little bit here about your
7 background to begin with. And I have your testimony
8 and references to the kinds of work you do.

9 And it's indicated you're a research and policy
10 consultant with ECONorthwest.

11 Is that -- is that correct?

12 **A That's correct.**

13 Q Okay. And would you consider yourself to be an
14 appraiser?

15 **A I am not an appraiser.**

16 Q And so the testimony you're giving today is not based
17 upon appraisals of property; is that correct?

18 **A I'm not sure I understand.**

19 **Appraisal. What property?**

20 Q Of the properties that you're discussing down in the
21 Tri-Cities.

22 **A I'm not aware of any appraisal, specific property
23 appraisals in the Tri-Cities that I've reviewed.**

24 Q Okay. And I've looked over your list of projects
25 you've worked on, and they're very -- a very extensive

1 list, even a couple that I've been involved in on the
2 periphery.

3 I am gathering that the principal amount of your
4 work is to work for project proponents as opposed to
5 project opponents.

6 Do I have that right?

7 **A I'm not sure I understand that. If I had to clarify,**
8 **my work is, I would say, on a range of different**
9 **issues. If we're talking about specific administrative**
10 **projects, I think it's been fairly balanced in --**
11 **particularly in the SEPA environment in the state for**
12 **working for both oppo- -- for both pro- -- sorry --**
13 **applicants and opponents of those applications.**

14 **Q Okay. And can you just name a couple of opponent**
15 **projects where you've represented opponents?**

16 **A Yeah. So I've represented a -- the client is the**
17 **Seattle Mobility Coalition that is opposing a set of**
18 **comprehensive plan amendments to impose impact fees in**
19 **the city of Seattle in 2018 and also again here in**
20 **2023.**

21 **Q Any others?**

22 **A That's the only two that come to mind.**

23 **Q Okay. Okay, Mr. Shook.**

24 And I want to talk about your experience over in
25 the Tri-Cities.

1 When was the last time you were in the Tri-Cities?

2 **A I was there about a month ago.**

3 Q Okay. And what was the purpose of your trip?

4 **A We were working for my company, and a project I'm**
5 **engaged with is working for the City of Pasco on its**
6 **housing action plan.**

7 Q Okay. And when were you in the Tri-Cities before your
8 assignment with Pasco?

9 **A I don't recall specific dates, but probably a few**
10 **months before. I'd been there for a couple times as**
11 **part of that project and then was also there as part of**
12 **another project, working for the City on its downtown**
13 **revitalization plan.**

14 Q City of Pasco?

15 **A City of Pasco.**

16 Q Okay. Okay. Have you ever been to the Tri-Cities to
17 look at the site for the project under question here?

18 **A When I was there about a month ago, I did make a point**
19 **to sort of look at the site, or at least where I**
20 **thought the site was, based on my sort of recollection**
21 **of the maps, while I was in Pasco.**

22 Q And did you have a map in front of you to tour the
23 site, that kind of investigation?

24 **A No. It was simply, simply driving in.**

25 Q Okay. And did you attend or look at any of the views

1 that might be available of the Horse Heaven Hills from
2 residences or businesses in the Tri-Cities?

3 **A Yeah, I mean, I would say I -- specifically as I drove**
4 **in, kind of contemplated the views of the site from --**
5 **from the -- from my -- from my perspective.**

6 Q Driving along I-82?

7 **A Yeah.**

8 Q Okay. Okay.

9 Tell me about what your understanding of the
10 project is.

11 **A My understanding of the project is an application to**
12 **site a wind energy facility as well as potentially a**
13 **solar facility on those -- on that property.**

14 Q And could you tell me how big it is?

15 **A I don't have the details right off the top of my head.**

16 Q So you don't know how many turbines are in the project?

17 **A Not specifically. But I know it's a -- it's a large**
18 **number.**

19 Q And do you know what the length of the turbine rows are
20 along the landscape in Benton County?

21 **A The length of the turbines?**

22 Q Yeah. The turbine rows.

23 There's rows of turbines in this project; isn't
24 that right? Is that what your understanding is?

25 **A That's my understanding.**

1 Q Okay. And can you tell me how long those turbine rows
2 are in a linear sense?

3 **A I don't have the --**

4 MS. SCHIMELPFENIG: Objection, Your
5 Honor, on relevance grounds.

6 Mr. Shook's work is not site-specific. His
7 testimony is about the scholarship generally related to
8 property values. We submitted testimony from Mr. Lines
9 that provides a site-specific analysis and would
10 recommend questioning him on site-specific questions.

11 JUDGE TOREM: It sounds to me,
12 though -- Mr. Aramburu, hold on.

13 Ms. Schimelpfenig, it sounds to me that
14 Mr. Aramburu is asking not about specific sites but the
15 overall project and the roads. So this might be
16 project-specific, but that's what's in front of the
17 Council.

18 Mr. Aramburu, is that where you were going with
19 this witness, a more general question about the roads?

20 MR. ARAMBURU: About the roads and
21 the project, yes.

22 JUDGE TOREM: So, Ms. Schimelpfenig,
23 the objection is overruled. If Mr. Shook does not know
24 the answer, it's not within his personal knowledge,
25 that would be an appropriate response.

1 But, Mr. Aramburu, if you want to re-ask the
2 question in the context of the objection and my ruling.

3 Q (By Mr. Aramburu) So with regard to your -- your
4 knowledge of the project, do you know how -- how long
5 the turbine strings, the turbine lines are in the
6 project?

7 A **No. So I reviewed the project description, but I don't**
8 **have that committed to memory. So I can't tell you**
9 **specifically what it is. And most of my -- my focus on**
10 **this was really looking at the academic literature**
11 **related to the analysis that was done as part of the**
12 **application.**

13 Q Okay. So you can't tell me right now how many miles of
14 turbines there are?

15 A **I can't tell you that right now.**

16 Q And I was looking at the pages of the app- -- of the
17 updated application for site certification. And -- and
18 you've indicated you've read those pages?

19 A **Which -- which document are you referring to?**

20 Q In your testimony, you indicated that you had reviewed
21 section 4.4 of the site certification application.
22 That's on Page 3, Lines 13 to 15, of your testimony.

23 Is that correct?

24 A **Can you -- can you recite which part of my testimony**
25 **you're referring to again?**

1 Q Okay. So I'm looking at your direct testimony and
2 looking at question and answer on Page 3, Lines 10 to
3 15.

4 JUDGE TOREM: And for the Council
5 members, I think this is Exhibit 1008 --

6 MS. OWENS: You're unmuted.

7 JUDGE TOREM: Sorry.

8 For the Council members, this was Exhibit 1008_T;
9 is that correct, Mr. Aramburu?

10 MS. SCHIMELPFENIG: Morgan, do you
11 have --

12 MR. ARAMBURU: That's correct.

13 JUDGE TOREM: Yeah.

14 MS. SCHIMELPFENIG: My apologies.
15 Mr. Shook, do you have Exhibit 1008 up, or would you
16 like us to pull it up for you?

17 **THE WITNESS: I have it up.**

18 MS. SCHIMELPFENIG: Okay.

19 **THE WITNESS: And I'm looking at**
20 **Page 3 of 15.**

21 Q (By Mr. Aramburu) So in any case there that you're
22 sponsoring portions of Section 5.5 of the updated
23 application for site certification; is that correct?

24 **A I'm sorry. I still don't quite understand your**
25 **question. What --**

1 MR. ARAMBURU: Perhaps we -- so we
2 don't have confusion here, may I ask that this portion
3 of the testimony be brought up on the screen?

4 JUDGE TOREM: Ms. Masengale, are you
5 available to do that today?

6 It looks like she is.

7 MR. ARAMBURU: Ms. Masengale,
8 Page 3, Lines 10 to 15.

9 I'm sorry. That's not the same pages that I have.
10 Can you move further into the testimony, please?

11 Okay. There we go. I guess it's Page 6 here. I
12 have the wrong version.

13 Q (By Mr. Aramburu) Okay. Up at the top of the vision
14 on the screen is Page 6 of your direct testimony.

15 Pages -- Lines 10 to 15 indicate that you are
16 sponsoring aspects of Section 4.4 of the site
17 certificate application; is that right?

18 A **Yes. So on Line 13, yes, sponsoring aspects of the**
19 **4.4, specifically discussions of property value impacts**
20 **and information supporting that discussion.**

21 Q And on those pages, you cite to the -- to various
22 studies that were included in the testimony, but you
23 did not write any of that yourself, did you?

24 A **That is correct. That's not my work.**

25 Q And Pages 4-235 to 2-228, there's a citation to a

1 number of studies that -- principally ones done by
2 Mr. Ben Hoenig.

3 Do you recall that?

4 **A I don't recall specifically all those studies in that**
5 **section, but it does -- I do recall they're referring**
6 **to a variety of different academic research.**

7 Q And in that academic research that's cited in the site
8 certificate application that you're sponsoring, did you
9 compare the current project with the projects that are
10 discussed in -- on those pages of the site certificate
11 application?

12 **A No. There's -- I have no formal comparison. As part**
13 **of that work, I was asked to review that section,**
14 **review the studies that were the basis of those**
15 **considerations, and provide my best professional**
16 **judgment on sort of the adequacy and veracity of that**
17 **for decision-makers.**

18 Q Okay. And have you done any investigation as to the
19 preferences of residences in the Tri-Cities with
20 respect to preferred views and preferred vistas?

21 **A I've done no such research.**

22 Q Okay. Have you spoken at all with the Benton County
23 prosecutor -- excuse me -- Benton County assessor
24 regarding aspects of residential value related to views
25 and vistas?

1 **A I have not.**

2 Q Okay. You'd be surprised to learn that -- let me
3 strike that question.

4 In your review, have you examined the -- the
5 differing views that might be available to residences
6 in the Tri-Cities area of the Horse Heaven Hills
7 compared to other properties?

8 **A I'm not sure I follow that question. Can you --**

9 Q Have you seen the Horse Heaven Hills?

10 **A I mean, as I -- as I testified earlier, yes, as part of**
11 **a drive in, I've -- I've looked at what I think the**
12 **site is based on my recollection of those maps.**

13 Q Do you have an opinion as to whether or not residents
14 of the Tri-Cities area would prefer to have a view of
15 the Horse Heaven Hills as opposed to the other vistas?

16 **A I don't have an opinion on that matter. I've conducted**
17 **no original research on this, on that specific**
18 **question.**

19 Q Have you at any time in your work -- well, let me ask
20 this question first.

21 How many other wind turbine projects have you
22 worked on?

23 **A This is the only project specifically looking at wind**
24 **turbines.**

25 Q Okay. Have you worked on any solar array projects?

1 **A I have not worked on any solar array projects.**

2 Q So this is your first wind turbine project, correct?

3 **A This is the first time I've been asked to look at this**
4 **issue related to wind turbines, yes.**

5 Q Thank you.

6 Are you familiar with the concept of place
7 attachment in valuation of properties?

8 **A I -- probably -- maybe you should explain what place**
9 **attachment is.**

10 Q My understanding of place attachment from my reading
11 indicates that in certain circumstances there's a bond
12 between residences and familiar locations and
13 topography.

14 Are you familiar with that concept?

15 **A I would say it's -- doesn't seem like a foreign --**
16 **foreign idea, yeah, that people would be attached to**
17 **the places they live, yeah.**

18 Q Is it a subject matter that you've ever investigated?

19 **A I've done no original research on place attachment**
20 **specifically.**

21 Q Are you aware that it's a -- that it's a subject matter
22 in research concerning property values?

23 **A I would assume that that issue potentially could be,**
24 **yes.**

25 Q Okay. But you haven't studied it in relation to this

1 project?

2 **A No, I have not.**

3 Q Would you consider that -- that many residents of the
4 Tri-Cities could consider the Horse -- Horse Heaven
5 Hills as an iconic feature of the landscape?

6 **A I wouldn't doubt that some people do, no. That seems
7 like a reasonable position to have.**

8 Q Okay. Have you consulted with any interest groups in
9 the Tri-Cities area to try to ascertain their concerns
10 with respect to property values?

11 **A No. That was not part of my engagement here.**

12 MR. ARAMBURU: Okay. Ms. Masengale,
13 could you put up Exhibit 5303, the last several pages,
14 please.

15 Okay. Let's -- and this is fine. Thanks,
16 Ms. Masengale.

17 Q (By Mr. Aramburu) I'm putting up the -- I think it's
18 the last page of 5303. And that -- that exhibit, per
19 our prior instructions, has been -- will be remarked as
20 a cross-examination exhibit. And what has been put up
21 here is a letter dated June 7, 2023, and written on
22 behalf of the Tri-City Association of Realtors.

23 Have you consulted the Realtors with regard to
24 their opinions regarding the impact of this project on
25 property values?

1 **A No. Like I said, that's not part of the scope of my --**
2 **my engagement here.**

3 Q Okay. Would you just take a moment to read the letter?
4 Can you read it on your screen?

5 **A Can you make it a little bigger, please?**

6 Q There we go.

7 **A One more for me. I'm on a small laptop.**

8 **Thank you.**

9 MS. SCHIMELPFENIG: Objection, Your
10 Honor. This is --

11 JUDGE TOREM: To and what grounds?

12 MS. OWENS: Now you're off "mute."

13 JUDGE TOREM: On what grounds?

14 MS. SCHIMELPFENIG: This is -- yeah.

15 Thank you. This is not -- the witness has already
16 stated this is not within the scope of their review.

17 JUDGE TOREM: Overruled. He can --
18 he can read it, and then we'll determine what his scope
19 of knowledge might be or whether he's in a position to
20 offer his opinion.

21 So I'll ask Ms. Masengale to continue to work --

22 MS. SCHIMELPFENIG: Thank you.

23 JUDGE TOREM: -- her magic as she
24 scrolls through this.

25 Once you're done with the last paragraph on the

1 page, Mr. Shook, if you'll let her know, she'll scroll
2 down so you can complete it, and we'll go forward in
3 that manner.

4 **THE WITNESS: Can you scroll down?**

5 **Can you scroll down one more?**

6 **Thank you.**

7 Q (By Mr. Aramburu) Okay. Have you had an opportunity
8 to read that letter?

9 **A I -- I have.**

10 Q Do you consider it important in assessing property
11 values and impacts of projects on property values to
12 consult with and seek the views of the realty community
13 in a -- in a location?

14 **A Yeah, I'll read -- so, in general, I would say, yeah,**
15 **it's important to have a good sense of the issues, and**
16 **you get a good sense of those issues by talking to a**
17 **lot of stakeholders and other sort of professionals.**

18 **And then I think we always want to then try to**
19 **marshal the evidence as best we can, because these are**
20 **complicated systems we're talking about, and so what**
21 **can we else look at with respect to rigorous**
22 **examination of the issues to sort of determine what we**
23 **think the direction and size of effects are.**

24 Q But it would be fair to say that the -- the realty
25 community in Tri-Cities has expressed great concerns

1 about the impacts of this project; is that correct?

2 **A According to this letter, they have.**

3 MR. ARAMBURU: Okay. And,
4 Ms. Masengale, would you roll up just to the prior
5 page? I think this is the last page of the exhibit.

6 Let's go up a bit farther, past the -- past that
7 letter to the next letter.

8 Q (By Mr. Aramburu) Okay. I'm putting up on the screen
9 another letter from Exhibit 5303, which is the letter
10 from the Tri-City Regional Chamber of Commerce.

11 Do you see that letter on your screen?

12 **A I can see it.**

13 Q And have you worked in the past, in your economic
14 development projects, for chambers of commerce?

15 **A I have.**

16 Q And what, in general, do chambers of commerce, what are
17 their interests in a community?

18 **A They vary, depending on their charter and mandate, but**
19 **generally I would say a specialized economic**
20 **development.**

21 Q Okay. And would their views of a project be of
22 importance in assessing the impact of the project on a
23 community?

24 **A Their view would be one of many important perspectives**
25 **to be incorporated.**

1 Q Okay. And do you know what the position of the
2 Tri-City Regional Chamber of Commerce is on this
3 project?

4 **A I do not.**

5 Q Okay. I'd ask -- this is a little shorter letter,
6 Mr. Shook, and I regret having to have you read this
7 all the way through.

8 MR. ARAMBURU: But if you --
9 Ms. Masengale, if you can allow Mr. Shook to read the
10 letter.

11 **THE WITNESS: You can scroll to the**
12 **next paragraph.**

13 **All right. Scroll down.**

14 **Okay.**

15 Q (By Mr. Aramburu) In your economic development
16 projects, do you consider it important to consider what
17 the local chambers of commerce have to say about that
18 project?

19 **A It's pretty wide. I would say, in some cases, yes;**
20 **some cases, no. Depending on the issues.**

21 MR. ARAMBURU: Okay. And let's see.
22 Roll up one more, if you would, Ms. Masengale. Thank
23 you for your assistance.

24 Q (By Mr. Aramburu) In economic development projects
25 you've worked on, do you consult with local governments

1 from time to time?

2 **A We do.**

3 Q And do you work for local governments?

4 **A I do.**

5 Q And are you working for the City of Pasco currently?

6 **A I think currently that contract is finished, so I do**
7 **not currently have an engagement.**

8 Q But you recently worked for the City of Pasco, did you
9 not?

10 **A Correct.**

11 Q Okay. And so in terms of assessing impacts of a
12 project, would you consult with local governments?

13 **A It would depend on what we were assessing. But in many**
14 **cases they are a important stakeholder because of their**
15 **role in land-use regulation.**

16 Q Are you familiar with the city of Richland?

17 **A I -- yes, I'm familiar with it.**

18 Q I'm sorry. Say that again, please.

19 **A Yeah, I'm familiar. I've done work for the City in the**
20 **past, yes.**

21 Q You have. Okay.

22 And is the city of Richland nearby this project?

23 **A I understand that it is.**

24 Q Do you know that as a matter of fact?

25 **A Yes.**

1 MR. ARAMBURU: Okay. Okay. Let's
2 move up to the next exhibit, please, if we can.

3 Ms. Masengale, you've been very helpful to us
4 here.

5 Q (By Mr. Aramburu) Okay. We're, again, looking at
6 Exhibit 5303.

7 And, Mr. Shook, have you ever worked for a
8 organization that promotes tourism in the communities?

9 A I'm trying to think. We've worked with the state RCO
10 office, which does some tourism promotion. We've
11 worked with many cities that also take hotel tax
12 funding to do economic development, tourism funding.
13 So -- but, you know, so various ones in that capacity.

14 Q And what's "RCO"?

15 A Sorry. The recreation/conservation office for the
16 state of Washington.

17 Q Okay. But it's a State agency, correct?

18 A Correct.

19 Q All right. And assessing the economic impact of a
20 project on the community, would it be important to you
21 to consider what the impacts would be on tourism in
22 that community?

23 A Can you repeat that question again?

24 Q I said, in assessing economic development and impacts
25 of a project --

1 **A Mm-hmm.**

2 **Q -- would you consider it to be important to -- to**
3 **consult with representatives of the tourism community**
4 **in that vicinity?**

5 **A I said it -- it would depend on the issues, but, yeah,**
6 **tourism is an important sector within our state**
7 **economy, and typically depending on what the issue is,**
8 **we more or less consult with those -- those agencies.**

9 **Q Okay. And did you consult with those agencies with**
10 **regard to your review of this project?**

11 **A Again, the review of my project is limited to the**
12 **impact on property values and the academic studies.**
13 **I've done no further analysis or consultation with any**
14 **of these groups, including Tri-City -- Visit**
15 **Tri-Cities, Washington.**

16 **MR. ARAMBURU: Okay. And,**
17 **Ms. Masengale, if you'd just roll up this exhibit,**
18 **please, for me and allow the witness to read it.**

19 **This will be the last reading exercise, Mr. Shook.**

20 **THE WITNESS: Hopefully I'm passing**
21 **here.**

22 **Okay. You can scroll to the next paragraph.**

23 **All right.**

24 **Q (By Mr. Aramburu) So the Tri-City tourism organization**
25 **supports the work of my client.**

1 Do you see that from the letter?

2 **A I -- I do see that.**

3 Q Okay. And do you know what Tri-Cities C.A.R.E.S.'
4 position is in this litigation, or in this
5 adjudication?

6 **A I don't know specifically its main points, no.**

7 Q Okay. Now, let me just get back to your -- your
8 testimony a bit here.

9 And I understand that your testimony is
10 essentially supportive of the work that was done by
11 others in the site certificate application; is that
12 right?

13 **A Yeah. My -- the -- my engagement was I was asked to**
14 **review that section of -- of -- of the application as**
15 **well as the number of exhibits of academic studies and**
16 **make an opinion on whether that information reflected**
17 **the best available science and information on the**
18 **question of property value impacts.**

19 Q And you reached some conclusions on that point,
20 correct?

21 **A I have.**

22 Q Okay. I notice a lot of your testimony and some of the
23 excerpts from the site certificate application deal
24 with work by Mr. Ben Hoenig -- I hope I'm pronouncing
25 his name right -- H-o-e-n. H-o-e-n.

1 Is that correct?

2 **A Yes, he is.**

3 Q Okay?

4 **A His work is featured prominently, given his expertise**
5 **in this.**

6 Q Okay. Do you know Mr. Hoenig?

7 **A I do not.**

8 Q Okay. Did you consult with him on this project?

9 **A I did not.**

10 Q So you've simply read his academic papers; is that
11 correct?

12 **A That's correct.**

13 Q Did you read all his papers?

14 **A I read all the ones that are part of the exhibits.**

15 MR. ARAMBURU: And I may have the
16 wrong page numbers on my exhibit. But, Ms. --
17 Ms. Masengale, if you could go over to the exhibit --
18 the testimony exhibit, which is -008_T [sic].

19 Okay. If you'd go down a bit, please.

20 Farther, please.

21 Keep going down, if you would, please.

22 Let's stop there for a moment.

23 Q (By Mr. Aramburu) This is -- on this page -- I don't
24 have the page number here -- Page 9 on the PDF, Page --
25 yes, Page 9 of the application --

1 MR. ARAMBURU: If you'll scroll back
2 up, please.

3 Q (Continuing by Mr. Aramburu) -- you indicated a
4 reference to the Lawrence Berkeley National Laboratory,
5 Page -- or Line -- Line 9 through 14 on Page 9; is that
6 correct?

7 **A Yes, I do reference that.**

8 Q And have you consulted -- have you worked with the
9 Berkeley National Laboratory before?

10 **A I have never worked with them.**

11 Q Do you know who they are?

12 **A I -- outside of their -- reading about them on their**
13 **"about" -- "about" page, that's it.**

14 Q Okay. Okay. Thank you.

15 MR. ARAMBURU: Now, if we scroll
16 down just a bit more, please.

17 Keep going, please.

18 **A bit more, please.**

19 **And a bit more.**

20 **Okay. We'll stop here.**

21 Q (By Mr. Aramburu) Bottom of Page 10 of Exhibit 1008,
22 you indicate that you've read the studies from the
23 Berkeley National Laboratory.

24 And then you say you have not conducted an
25 exhaustive and comprehensive literature search of --

1 literature review of research involving impacts of wind
2 turbines; is that right?

3 **A That's correct.**

4 Q Have -- have you read anything about the impacts on
5 property values of the siting of wind turbines other
6 than what you've talked about here?

7 **A Just what I have here.**

8 Q Okay. And did you attempt to search out whether or not
9 there are studies that indicate an opposing view to
10 what -- to the studies mentioned in your report?

11 **A I did not. But all those studies reference a mix of --**
12 **some mix of findings related to the issue of property**
13 **value impacts. So -- so I was aware of the fact that**
14 **not all studies find there's no long-term or consistent**
15 **impact on property values.**

16 MR. ARAMBURU: Now, Ms. Masengale,
17 could you roll up just a few lines for me so we can
18 look at the next page?

19 I want between -- can you roll up just a little
20 bit more for me so I get -- so we get the two pages
21 together?

22 Just a tiny bit more.

23 Q (By Mr. Aramburu) Okay. So I want to look at the top
24 of Page 11 here. And on the preceding page, you say,
25 "I am not aware" --

1 MR. ARAMBURU: There we go.

2 Wonderful. Thank you, Ms. Masengale.

3 Q (By Mr. Aramburu) Page 10 and 11, there's a sentence
4 there. Says, "Based upon my general knowledge of
5 disamenity research, I am not aware of other studies
6 with conclusions that conflict with the conclusions of
7 the Berkeley National Laboratory studies."

8 Is that -- is that what you said?

9 A Yeah, that's what it says.

10 Q I think your testimony just now said that there is --
11 there are conflicting views, aren't there?

12 A So the way I -- we look at this stuff from an economic
13 research perspective is trying to weigh the totality of
14 the evidence. And in reading the research, it's been
15 very clear that there are small studies that indicate
16 that there are potentially some different findings
17 which all then warrants more robust and thorough
18 examination of the issues.

19 And so that was really the undertaking, as I
20 understand it, of the Berkeley National Laboratory
21 study just to say, Well, we see some different effects
22 here, and these -- in some places, but we don't see
23 them in these other places.

24 The -- the sort of consensus of that information
25 seems to suggest that there are no effects, and so

1 let's take a look at that in -- with much more sort of
2 statistical power and rigor.

3 And so that analysis, I would say, of the -- of
4 the level of quality and comprehensiveness of the
5 Berkeley report, there's no sort of study at that
6 level -- right? -- that has a conflicting sort of
7 viewpoint conclusion on -- on the -- on the property
8 value impacts of a potential disamenity. Does that
9 make sense?

10 So think of it as basically they're -- there are
11 different studies at different powers, right? And from
12 a research perspective, you're trying to evaluate, you
13 know, did this one have enough power to be strongly
14 suggestive and then -- and build upon that? And so
15 what the Berkeley analysis is trying to do is take that
16 information and say, Well, we've seen some potential
17 sort of conflicts here, but like when we examine it
18 much more robustly, we can't find any of those effects.

19 Q Well, that's all fine, Mr. Shook. But your -- your
20 testimony here is pretty unequivocal. "I am not aware
21 of any other studies with conclusions that conflict
22 with the conclusions of the Berkeley...studies."

23 That testimony isn't correct, then, is it?

24 MS. SCHIMELPFENIG: Objection, Your
25 Honor.

1 MS. STAVITSKY: He just clarified.

2 MS. SCHIMELPFENIG: Mr. Shook just
3 clarified and explained his statement made here.

4 MR. ARAMBURU: Judge Torem, we're
5 asking him on cross-examination of statements that he
6 made, and I want to clarify what's in his -- his direct
7 testimony. I think it's a fair question.

8 JUDGE TOREM: As do I.

9 Ms. Schimelpfenig, we need an evidentiary basis as
10 to when you make an objection. This is
11 cross-examination, and I think the point being made by
12 Mr. Aramburu is what's in Pages 10 to 11 and what his
13 subsequent testimony has been. If you think that needs
14 to be rehabilitated on direct exam to give fuller
15 context, you're more than free to do so. But the
16 objection's overruled. We'll take this testimony.

17 **THE WITNESS: I appreciate the**
18 **chance to clarify this. Because from the reading of**
19 **all those reports, it's very clear within the academic**
20 **literature that there are other studies that find some**
21 **level of property value impact, which is why the**
22 **Berkeley Laboratory undertook a study of this nature**
23 **and comprehensiveness and robustness to try to settle**
24 **this issue.**

25 **And so when we weigh those levels of evidence,**

1 what I'm trying to say in this statement is there's
2 nothing at that level of quality that would, from my
3 knowledge, that would conflict with that conclusion,
4 right?

5 So -- so that -- I guess what I'm trying to say,
6 at that par of -- of analysis, there's no sort of
7 similar analysis that was done that shows that there's
8 impacts. But it's very clear in all those research --
9 with even within the Hoenig report -- right? -- of
10 saying, like, Look, there's this study, this study,
11 this study. This is why we're doing this big study to
12 try to help settle what we think the actual effects
13 are.

14 Q (By Mr. Aramburu) Okay. But there -- but there are
15 some other studies out there that disagree with what
16 Berkeley filed, correct?

17 A From my recollection of that study -- right? -- they're
18 very clear in saying the preponderance of the evidence
19 they've seen is that there's no effects, but there are
20 other studies that have shown some effects. So, thus,
21 let's look at this issue more robustly and more
22 comprehensively.

23 JUDGE TOREM: Mr. Shook, I don't
24 think you're answering the attorney's question.

25 THE WITNESS: Okay.

1 JUDGE TOREM: Are there any other
2 studies -- yes or no? -- that disagree --

3 THE WITNESS: Yes.

4 JUDGE TOREM: -- with Berkeley?

5 THE WITNESS: Yes. And that's --
6 and that's clear within the -- within Hoenig's own
7 research, in those papers.

8 JUDGE TOREM: Okay.

9 THE WITNESS: Yeah.

10 JUDGE TOREM: Mr. Aramburu, I think
11 you got your answer there.

12 THE WITNESS: Yeah.

13 Q (By Mr. Aramburu) So essentially what Berkeley says is
14 that, We're smarter than these other guys, and we know
15 better, and don't pay attention to those reports.

16 Is that the -- what you're saying?

17 A I don't think they said that anywhere in their report.

18 Q To the import of your testimony, Mr. Shook.

19 A If I had to try to characterize in the best available
20 light of doing this kind of science is that it's
21 difficult, it's challenging, is these -- these effects
22 are complicated. But we do have tools that are at our
23 disposal to try to understand them more deeply.

24 And so what the researchers at Berkeley are trying
25 to do is say, Look, there's some -- there's a small

1 study over here. There was a small study over here.
2 Nobody's really looked at it in totality with large
3 data sets in lots of different jurisdictions, lots of
4 different settings, and tried to understand that effect
5 size.

6 So what they're trying to say is, like, Can we do
7 this slightly better and provide more insight to this
8 important issue?

9 Q And, Mr. Shook, did you attempt to identify what --
10 those reports that disagree with Berkeley's conclusions
11 and review them in preparation of your testimony?

12 A I did not review them in preparation of my testimony.

13 Q So you don't know how comprehensive or not they are, do
14 you?

15 A No, I've not reviewed those, so I can't make that
16 determination.

17 MR. ARAMBURU: Okay. Thank you.

18 I just submitted cross-examination -- I
19 apologize -- late this -- this morning. And I think we
20 marked it as 5903. And I apologize for that coming in
21 late, but my examination of this witness was moved up a
22 week.

23 So do we have that document, Ms. Masengale? It
24 was just this morning.

25 Q (By Mr. Aramburu) Okay. And I realize this has come

1 in a bit late, Mr. Shook. But have you had a chance
2 through your counsel to look at this document?

3 **A I had a chance briefly this morning to take -- to take**
4 **a look at it.**

5 Q Okay. And I wanted to ask you. These are excerpts
6 from a larger report. And I wanted to -- to sort of
7 hone in, not upon here, but about the work of
8 Mr. Hoenig.

9 So this is -- this is a report done by Mr. Hoenig
10 in 2017.

11 Do you recognize that?

12 **A I don't see the date on this.**

13 Q Well, take it from me. It's at the very bottom of the
14 page.

15 **A Okay.**

16 MR. ARAMBURU: Okay. If you go over
17 to the next page, please, in the exhibit.

18 Q (By Mr. Aramburu) And I brought up Pages -- I think
19 this is Page -- it's Page 2 of the PDF, but I think
20 it's Page 12 of the document.

21 And Mr. Hoenig discusses positive economic impacts
22 of wind energy.

23 Do you see that?

24 **A I can see that.**

25 Q Okay. And then if we scroll down the page a bit, under

1 5.1.2, he talks about negative economic impacts.

2 Do you see that?

3 **A I can see that.**

4 Q And he talks about a number of studies actually that
5 Mr. Hoenig did in that paragraph at the bottom of
6 Page 12.

7 Do you see that?

8 **A Which -- which -- which -- which part are you referring**
9 **to specifically?**

10 Q Under "Negative Economic Impacts."

11 I see that Mr. Hoenig seems to be citing himself
12 in a number of these -- of these references; is that
13 right?

14 **A I see that. It's "Hoen" -- "Hoen," or not "Hoenig."**

15 Q I don't know how he pronounces his name.

16 **A Okay. All right.**

17 Q Okay. At the very bottom of the page, Mr. Hoenig,
18 who's the author of this document, says there is
19 evidence that home value effects might exist in the
20 United States and in Canada, in Canadian context, cites
21 reports.

22 Do you see those?

23 **A I can see that.**

24 Q Have you read those reports?

25 **A I have not.**

1 Q Okay. Then he says there's growing evidence that
2 effects -- that is, negative economic impacts from wind
3 turbines -- exist in the European context.

4 Do you see that?

5 **A I can see that.**

6 Q And if we scroll down a little bit --

7 MR. ARAMBURU: Thank you.

8 Q (Continuing by Mr. Aramburu) -- he's got research by a
9 number of persons regarding the economic about the
10 European context.

11 Do you see that?

12 **A I can see that.**

13 Q Okay. Have you read those documents?

14 **A I have not.**

15 Q Okay. Then Mr. Hoenig -- this is his -- this is his
16 paper -- says more research in the area could not only
17 untangle conflicting results but increase
18 understandings about how perceptions of property value
19 impact, influence acceptance.

20 You see that?

21 **A I can see that.**

22 Q Okay. So he's suggesting more work be done and that
23 things aren't resolved, right?

24 Take that from that sentence?

25 **A I don't know about the resolution part, but he is**

1 **talking about more research --**

2 Q Okay.

3 **A -- how it could untangle conflicting results.**

4 MR. ARAMBURU: Okay. Now, let's --
5 if we turn now, please, to the next page, where we
6 have -- keep going, Ms. Masengale.

7 Appreciate your help here very much. Thank you.

8 Q (By Mr. Aramburu) Let's go down here. And so this is
9 Table 1, summary of economic impacts on [sic] their
10 relationship to wind energy acceptance.

11 Do you see that?

12 **A Yes.**

13 MR. ARAMBURU: Okay. Now, if we
14 scroll down the page a little bit, please,
15 Ms. Masengale, to the section on property value
16 impacts.

17 Q (By Mr. Aramburu) Would you just take a moment,
18 Mr. Shook, to review what Mr. Hoenig says about
19 property value impacts?

20 **A Yes. I'll just read it.**

21 **"Some large-scale" --**

22 Q No. No. You don't -- you can read it to yourself.
23 Read it. Read it.

24 **A Oh. Sure.**

25 **Sorry. You just want me to read it?**

1 Q Yes. If you would please. I want to ask you a
2 question or two about it.

3 **A (Witness complies.)**

4 **Okay.**

5 Q Okay. So Mr. Hoenig, in this report, says that there
6 are -- robust longitudinal studies have not found
7 evidence of impacts on home values, but other studies
8 show reduction.

9 Is that -- do I have that correctly?

10 **A Other case studies.**

11 Q Other case studies show a reduction.

12 And then he -- he cites again to some of his own
13 work, but cites to a number of reports.

14 Do you see that?

15 **A I can see that.**

16 Q Have you read any of those reports?

17 **A Off the top -- I haven't cross-checked whether any of**
18 **those are also the ones that are any part of our**
19 **exhibits, but I would maybe think the 2016 study**
20 **perhaps. I don't know. But I wouldn't -- I don't**
21 **know, but -- because I haven't cross-checked any of**
22 **those against our -- the -- the reports that I've**
23 **reviewed.**

24 Q Okay. In your review of the academic literature here,
25 have you explored whether there's any relationship

1 between the number of turbines and property value?

2 **A I'm not aware of any of the research that looks at**
3 **that. Doesn't mean that there isn't. It's not right**
4 **at the tip of my fingers in any of the reports that**
5 **I've looked at.**

6 Q Does the research discuss any impact between -- or any
7 impact on property values from the size of the wind
8 turbines?

9 **A I believe some of the -- they do in some of the -- in**
10 **the Hoen report, they look at different sizes of**
11 **facilities.**

12 Q Okay.

13 **A If I recall correctly.**

14 Q Are any of those wind turbine facilities mentioned in
15 the Hoenig reports as big as the ones in the Horse
16 Heaven wind project?

17 **A I don't know off the top of my head.**

18 Q Do you know how big the turbines in the Horse Heaven
19 wind project are?

20 **A As stated previously, I don't have that at my disposal.**

21 Q Do you have any idea what a typic- -- the height of a
22 typical wind turbine is from the ground to the tip of
23 the rotor --

24 **A I -- I --**

25 Q -- fully?

1 **A I don't know precisely, but I believe it's in the**
2 **hundreds of feet.**

3 Q Okay. And there is some testimony, particularly at
4 the -- at the top of Page 7 of your testimony, about --
5 there we go. I guess I'm working from a different set
6 of page numbers as you are.

7 This would be on Page 10 of 15. There we go.

8 MR. ARAMBURU: At the top of the
9 page, please.

10 Q (By Mr. Aramburu) And the -- you're mentioning some
11 2023 research by Berkeley Lab on property values of
12 solar facilities.

13 Do you see that?

14 **A I do see that.**

15 Q Okay. And are there solar facilities connected with
16 this project?

17 **A There are.**

18 Q Do you know -- do you know what the extent of them is
19 in acres, square miles, whatever?

20 **A I do not have that at -- at my -- at my easy recall.**
21 **Sorry. I don't.**

22 Q Okay. Thank you.

23 And -- and from your trip along I-82 to go over to
24 Pasco, do you know if any of these large-scale solar
25 projects which are in connection with the Horse Heaven

1 project are visible from I-82?

2 **A I don't know from my trip to the extent that that's**
3 **true or not.**

4 Q Have you tried to figure that out?

5 **A I have not. That's not part of my engagement.**

6 Q Have you asked the lawyers about that, whether or not
7 you can see the solar arrays from residences in the
8 Tri-City area?

9 **A Again, my engagement was not to do an independent**
10 **evaluation of the effects on property values of the**
11 **project. It was to review the information that was**
12 **presented and comment on its applicability and for the**
13 **decision -- for decision-making.**

14 Q Okay. Let me ask this question in terms of the
15 analysis here.

16 Did your analysis include a consideration of the
17 number, the absolute number of persons or residences
18 that might be -- that might see wind turbines?

19 **A No, my analysis did not include that. Again, it's**
20 **limited to the information that's presented.**

21 Q Well, the information presented contains a number of
22 analysis of impacts on -- of wind turbines on
23 residences, does it not?

24 **A Again, my review is related to the socioeconomic**
25 **section specifically on property values.**

1 Q No, I understand that.

2 But do any of those studies represent a impact on
3 property values of the number of peoples who -- people
4 who might view this project?

5 A I guess I'm not -- I'm not following the question.

6 Are you asking me, like, do I know how many people
7 will have views of the facility?

8 Q Yes.

9 A I don't know that off the top of my head.

10 Q Is that a relevant consideration?

11 A For what?

12 Q For analysis of the impacts on property values of a
13 wind turbine project.

14 A Yes. Views, proximities to the facility are the
15 typically key variables, and we look at sort of
16 disamenity impacts of a facility. So, yeah, that's --
17 that is an important consideration as part of the
18 re- -- research that is done in this space.

19 Q So -- so have you compared the impacts of this project
20 with any of the specific circumstances involved in the
21 other research?

22 A In what regar- -- I'm -- I'm struggling. Sorry. I'm
23 not trying to be difficult here. I'm not quite sure I
24 understand. Like, what are you -- what are you -- what
25 are you asking that what I compared to?

1 Q Have you compared -- and I understand Mr. Hoenig has
2 done various reports, and he's done some somewhat
3 obscure statistical analysis about the impacts of the
4 project on property values. And he's done that on some
5 specific projects, has he not?

6 **A He's -- he's what? I'm sorry.**

7 Q I said, he has done -- he has done that, made that
8 analysis on some very specific projects, has he not?

9 **A My understanding of his -- his data set for
10 particularly his large study looking at wind turbine
11 effects on property values is kind of both multistate
12 with hundreds of thousands of real estate transactions,
13 so across multiple settings.**

14 Q Well, I don't -- I don't want to belabor the point too
15 much. But on Page 4-236 of the amended site
16 application, a couple of Hoenig studies are -- are
17 discussed. And Page 236, one of them involves 24 wind
18 turbines. Another one involves 12 wind turbines.

19 Have you done the research to see whether or not
20 those studies are relevant to a project that has many
21 more wind turbines than this, than those?

22 **A I belie- -- I believe those are relevant in the same
23 way all the scholarship in this issue is relevant, I
24 guess. And from a -- sort of as you adjudicate sort of
25 the nature and quality of the evidence -- right? -- and**

1 I think this is kind of related to the point around
2 the -- the large-scale Hoen study that said, Well,
3 those are very small facilities. We have very few
4 transactions. Can we look at a whole wealth of -- of
5 facilities and transactions around them in much
6 different settings and determine whether or not we see
7 effect sizes?

8 Q Did you reach out at all to the Benton County assessor
9 to get his -- his take on what the impacts of the wind
10 turbines would be on residential or commercial home
11 values -- or residential or commercial facilities in
12 the Tri-Cities area?

13 A As I answered previously to that question, I have not
14 reached out to Benton County assessor.

15 Q And you're right. I think that was a reframe of the
16 question. Okay.

17 JUDGE TOREM: Mr. Aramburu, how long
18 further are you going? I know we had an hour-plus, but
19 I want to make sure if we're targeting 10:30 perhaps
20 for a break.

21 MR. ARAMBURU: Well, let me just
22 have one moment here, if I may. And just let me look
23 through my questions, if I could. I think I'm just
24 about done, Mr. Torem. So let me just see if there's
25 any cleanup questions here.

1 JUDGE TOREM: Thank you.

2 MR. ARAMBURU: Timely update,
3 Mr. Torem. I -- I don't have any further questions of
4 this witness.

5 Thank you, Mr. Shook, for your testimony today.
6 Nice to meet you.

7 **THE WITNESS: Nice to meet you as**
8 **well. Thank you, Mr. Aramburu.**

9 JUDGE TOREM: Let me ask other
10 parties, if they have questions in cross-examination,
11 to let me know. We'll take them after a break, but I
12 want to know if we're coming back to Ms. Schimelpfenig
13 or if we're coming back to questions from other
14 parties.

15 Mr. Harper, did you have any questions on this you
16 wanted to ask?

17 MR. HARPER: I have no questions for
18 this witness.

19 JUDGE TOREM: Ms. Voelckers?

20 MS. VOELCKERS: Not at this time.
21 Thank you, Your Honor.

22 JUDGE TOREM: Thank you.

23 And Ms. Reyneveld.

24 MS. REYNEVELD: I don't have any
25 questions for this witness. Thank you, Your Honor.

1 JUDGE TOREM: All right. Let's come
2 back a little -- let's come back right at 10:30, and
3 we'll resume, Ms. Schimelpfenig, with your redirect, if
4 anything.

5 And then, Council members, this will give you time
6 to think if you have any other questions as well.

7 All right. We'll be at recess for the next seven
8 minutes.

9 (Pause in proceedings from
10 10:23 a.m. to 10:35 a.m.)

11
12 JUDGE TOREM: All right, everyone.
13 We had to take a little bit longer of a break. The
14 project, we were starting to get you yesterday's
15 transcript except of my ruling during the housekeeping
16 session. We needed to make sure we had everything
17 right with that. But it's been sent to the
18 court-reporting agency, and we expect it will come back
19 to all of you later in the morning.

20 All right. Ms. Schimelpfenig, if everybody's
21 back -- and it looks to me that they are -- we're ready
22 for any redirect that you need to do with Mr. Shook.

23 MS. SCHIMELPFENIG: Thank you, Your
24 Honor.

25 ////

1 REDIRECT EXAMINATION

2 BY MS. SCHIMELPFENIG:

3 Q Mr. Shook, I think a great place to start is with your
4 qualifications.

5 You kind of mentioned that you're not an
6 appraiser. Can you explain your specific role and
7 expertise?

8 A Yes. So I -- I think the relevant expertise here
9 really has to do with land development and
10 understanding the effects of that. And in that space,
11 I kind of have a unique perspective, because I kind of
12 wear three different kind of hats.

13 I wear one as a basic researcher doing basic
14 research reports on questions.

15 I also have a regulator hat where I work with
16 local governments on land-use regulation.

17 And I also kind of have a land development hat,
18 working for a number of housing and private entities
19 doing land development. And in that space, we work on
20 issues of particularly sort of the intersection of sort
21 of market impacts, market research, so basically
22 understanding the potential sort of market
23 opportunities to execute on land development.

24 We also work on the sort of financial liability of
25 those things. But then we also work on sort of the

1 sort of, we'll call it entitlement process, where we
2 try to understand the unique set of impacts that these
3 projects may have and work with agencies to disclose
4 those things.

5 So have a very robust and comprehensive view of
6 the land development process and its different features
7 given the different roles I play for clients on those
8 kind of projects.

9 Q Yeah, you're kind of mentioning these projects
10 generally. And, you know, Mr. Aramburu asked you if
11 you'd worked on any wind projects before.

12 Have you worked on other large-scale or industrial
13 projects, even if they might not be wind or solar?

14 A Yes, I have worked on particularly siting of
15 large-scale data center facilities as well as
16 large-scale distribution and logistics centers.

17 Q Great. Thank you.

18 A Yeah. And also part of those related also work on a
19 range of government-related siting facilities related
20 to transportation, either roads and transit, all the
21 way to jails and recycling and disposal transfer
22 stations.

23 Q Thank you.

24 So, you know, there might be some confusion about,
25 you know, the basis of your view here today and a

1 typical property appraisal assessment that goes on.

2 Why do you think that economic analysis is maybe
3 more accurate than appraisal information? How are
4 those different?

5 **A Yeah, I would say they're not distinctly different.**

6 **Remember, the appraisal is simply a process that uses**
7 **different kinds of tools. And economics is another way**
8 **of understanding those effects. So many appraisers are**
9 **actually economists, and they employ robust statistical**
10 **tools, right?**

11 So within an appraiser's toolbox, they do lots of
12 different things to sort of understand value on whether
13 a specific property, a set of properties, or properties
14 more generally.

15 So, for example, an assessor -- right? -- might
16 appraise a specific property and look at comparable
17 sales, but then they also may run automated mass
18 appraisals where they're running really complex
19 statistical and regression models to estimate what they
20 think the valuation of properties are.

21 **Q** And on the economic side, you know, what kind of
22 analyses are they doing in these Hoen articles that you
23 cite to?

24 **A Yeah, and so maybe to kind of back up. So in reviewing**
25 **the pieces -- right? -- I think the Hoen research is**

1 trying to say they're these small studies. They have
2 some consensus of what they think the impact is, but
3 there are some differences. And they're saying, Well,
4 what we can do potentially to help provide more clarity
5 is to do things in a much more robust fashion by
6 looking at multiple settings, looking at multiple
7 transactions, and saying we have a large sample size
8 that we can infer from.

9 And when you have those large sample sizes in the
10 economic research, particularly when the question is
11 around property values, there are really specific and
12 appropriate tools for the treatment of those to
13 understand what the effect is.

14 And appraisers use these tools. Economists use
15 these tools. They're typically called hedonic
16 regress- -- they're basically called hedonic analyses
17 or regression analyses. They're the same thing.

18 But a regression analysis is really just trying to
19 disentangle the dependent variable: What is the price
20 relative to a set of independent factors that are both
21 endogenous to the property, itself -- like, how big is
22 the home, how big is the lot, what its characteristics,
23 what kind of amenities does it have -- as well as
24 exogenous factors around, like, what happens within
25 time, what's happening within sort of the -- the local

1 economy, that they can sort of then assess how all
2 those independent factors relate back to the price, so
3 what is really sort of the -- that sort of explains the
4 sort of components of -- of -- of how people make their
5 decisions and value things on either residential or
6 commercial site.

7 Q And after completing that hedonic analysis, where does
8 Hoen land in terms of property value impacts from wind
9 turbines and solar facilities?

10 A Yeah, so he did a number of different studies, and each
11 one of them, I would say, ratcheted up both the data
12 set and economic pow- -- economic sort of statistical
13 power to examine the value, the impact of property
14 values in -- in North America, so looking at multi
15 states, multi county, multi facility, tens of thousands
16 of transactions. They conclude that there is no
17 consistent or longitudinal impact on property values
18 from proximity to these wind turbine facilities.

19 Q So that's, like -- that's a broad analysis.

20 Did Scout complete a site-specific analysis and
21 submit it as testimony?

22 A Yes. And I'm aware of a report that was done by -- I'm
23 forgetting -- CohnReznick to examine this issue.

24 Q You can continue. Sorry.

25 A Yeah, no, in that study, I think they really did three

1 different pieces.

2 The first piece was to really actually review the
3 academic literature and provide a consensus view of
4 what they think the impacts are.

5 The second piece was actually to look at specific
6 properties -- or sorry -- specific wind farms -- I
7 believe there are 11 of them -- and the impact on sales
8 of res- -- adjacent residential properties, and they
9 determined that the wind facilities had not caused any
10 consistent or measuring negative impacts on property
11 values.

12 And then the third piece was actually to do a set
13 of market participant interviews where they spoke with
14 a range of county assessors and provided their
15 perspective on what they thought the impact of those
16 facilities were on home values in their respective
17 counties.

18 Q And is that report --

19 MR. ARAMBURU: I want to object to
20 the -- to the testimony that characterizes other
21 testimony in the proceeding.

22 We have a witness to testify about those things.
23 I think that the testimony from this witness
24 essentially trying to rehabilitate his own testimony
25 through a reference to what other people have done is

1 inappropriate and should be stricken.

2 JUDGE TOREM: Ms. Schimelpfenig, any
3 response?

4 MS. SCHIMELPFENIG: Yes, Judge
5 Torem.

6 Mr. Aramburu asked extensive questions about local
7 impacts and concerns of this project, and we just
8 wanted to highlight that there is additional testimony
9 on the record that provides that site-specific analysis
10 that Mr. Aramburu was asking about, and Mr. Shook has
11 reviewed that in advance of this hearing today.

12 JUDGE TOREM: Mr. Aramburu, I agree
13 that --

14 MS. SCHIMELPFENIG: And we are
15 happy -- sorry.

16 JUDGE TOREM: Mr. Aramburu, I agree
17 that this was a little bit of referencing other
18 testimony. But, again, it'll go to weight. I'm going
19 to overrule the objection and allow it.

20 I hope, Ms. Schimelpfenig, now that we've
21 established there's some other testimony the Council
22 will read or hear on this topic, that we can move ahead
23 and just focus on what Mr. Shook said or what else
24 needs to be responded to from Mr. Aramburu's
25 cross-exam.

1 MS. SCHIMELPFENIG: Yes. Thank you,
2 Your Honor.

3 Q (By Ms. Schimelpfenig) Mr. Aramburu asked you about
4 your familiarity with the area and with the specifics
5 of the project.

6 Was revealing the de- -- was reviewing -- my
7 apologies -- the details of the application part of
8 your expert review?

9 **A It was not part of my expert review.**

10 Q And was that necessary to complete your analysis on
11 property impacts?

12 **A It was not necessary, because there's no independent**
13 **sort of prospective analysis within the analysis that**
14 **says the -- that would estimate the effect of property**
15 **values in, like, in a very sort of technical sense.**

16 What the socioeconomic analysis does is review the
17 literature -- right? -- and the level of that to sort
18 of disclose the decision-makers what they think the
19 likely impacts would be in this case.

20 Q And Mr. Aramburu also asked you about visual
21 assessments.

22 Was a visual impact assessment part of your
23 review?

24 **A It was not part of my review.**

25 Q And why might the data that you did review show no

1 negative property value impacts when, you know, when
2 some people maybe don't want to look at turbines on
3 their property?

4 A Yeah, so -- so it's important to understand what these
5 analyses are trying to do, right? They're trying to
6 find consistent measurable impacts. It does not
7 necessarily mean that -- that a single property or
8 single property buyer may be impacted, right?

9 Some people obviously would have a strong
10 preference one way or the other. Some people may have
11 a preference for them, for -- you know, for reasons
12 that may have to do with sort of the consciousness
13 around clean energy. Some people may be completely
14 agnostic or ambivalent to those views.

15 And this is why, when you look at the totality of
16 those perspectives with respect to the revealed
17 decisions that people make with -- in terms of how much
18 they are paying for property, this is why the analysis
19 don't find any of those measurable impacts. Not the
20 fact that some people may be, but when you look at it
21 in totality, they don't find any large-scale impacts
22 on -- on property values.

23 Q And Mr. Aramburu also discussed place attachment.

24 Is that a concept relevant to your economic
25 review?

1 A That is not something I was asked to review.

2 Q And would consulting with local interest groups or an
3 assessor or reading letters from local interest groups
4 or tourism be part of academically accepted economic
5 analysis?

6 A No, it would not.

7 Q And can you explain why?

8 A Yeah. So I would say the letters I reviewed all
9 provided a set of opinions and/or support but did not
10 point to any specific evidence or empirical claims to
11 support some of those pieces.

12 And so I think, as I sort of stated earlier to
13 Mr. Aramburu, when we're doing research, that kind of
14 perspective is -- is important, because we're trying to
15 understand what the issues are, but we still have to
16 then sort of marshal forward a sort of research
17 program, test it against the evidence, and see what the
18 effects are.

19 And I think that's what -- when I'm looking at the
20 Hoen work in particular -- right? -- what we see is
21 basically them weighing those perceptions, right?
22 There's a reason they're looking at this property value
23 question, and there's -- and then that's why they are
24 going to great lengths to actually do the investigation
25 and to -- and to look at it exhaustively and robustly

1 to see if there's any effects.

2 Because I think there obviously is, you know, some
3 perception out there, but when we look at it in
4 totality, those perceptions don't actually turn into
5 sort of material effects.

6 Q Thank you.

7 Mr. Aramburu also focused on the fact that there
8 may exist other studies that conflict with the Berkeley
9 Lab reports. You stated that you hadn't specifically
10 reviewed all of those other studies.

11 Did the research you reviewed contain any, you
12 know, literature review or meta-analysis of those
13 studies?

14 A Yes, they did. And that review -- typically research
15 studies are always focused around why is there a
16 controversy, why is this a question of interest, and
17 particularly in this case, to public policy. And so in
18 that, they typically document, hey, in this case, some
19 folks found no impacts. In some of these cases, some
20 folks found some effects, negative effects.

21 So what should we do with that conflicting
22 information, right? We should try to conduct a much
23 better and much more strong -- to deal with the
24 deficiencies of some of those other studies and try to
25 look at this more robustly.

1 And so -- so not -- I would say it's, one, not --
2 it is not uncommon -- right? -- and it is expected that
3 that level of review to set up the import of the
4 research question is included in these research
5 reports.

6 Q And do you agree with their, you know, literature
7 comprehensive review?

8 A I have no -- I have no reason to believe that it is
9 inaccurate. These are all peer-reviewed articles, and
10 they must, you know, obviously -- they obviously get
11 passed through the review stage for both accuracy and
12 veracity.

13 Q What does that review look like?

14 A The peer-review process?

15 Q Yeah.

16 A The peer-review process typically involves working with
17 the publication. And the publication maintains sets of
18 other researchers as part of its editorial and
19 peer-review board. And so -- and so I publish -- my --
20 my experien- -- I've -- I've worked as a basic
21 researcher and have gone through the peer-review
22 process, but typically you prepare a document for a
23 draft for submittal to a publication. It is sent to
24 these review panels. They'll either make the decision
25 to, you know, to publish your paper or not to publish

1 your paper.

2 But within that publish process, those reviewers
3 may have some questions around evidence you're citing,
4 applications you're doing, and they may ask for
5 additional information, and in some cases, ask for
6 other kinds of robustness checks to make sure that the
7 analysis is correct.

8 And so the peer-review process is meant to be kind
9 of a quality assurance, quality control check on the
10 research that is ultimately published in those
11 journals. And so there's always --

12 Q And --

13 A -- typically some back-and-forth between the authors
14 and the -- and the peer-review board.

15 Q Thank you. My apologies for almost cutting you off
16 there. I'm trying very hard to not talk over you.

17 Based on your review and analysis of the Hoen
18 articles and the other things submitted in your
19 testimony, was it necessary from an academic
20 perspective to review those studies yourself?

21 A The ones that they cited?

22 Q Yeah. The ones that you --

23 A Yeah.

24 Q Yeah.

25 A Yeah.

1 Q Yeah. Sorry. The ones cited in the articles --

2 A Yeah, the ones typically cited in the article, as you
3 can see, most of them, they'll make a specific point,
4 like, "We found this," and then they'll include where
5 those findings were included. So typically, you know,
6 we take that at face value that those -- those cites
7 are correct.

8 MS. SCHIMELPFENIG: And one sec.
9 Let me look and make sure I've answered all of my
10 questions here, or you've answered all of my questions.

11 Judge Torem, can I have a minute or two just to
12 confer with counsel? I don't think I have any further
13 questions.

14 Oh, just kidding. I am receiving confirmation
15 that they don't need a moment to confer. So at this
16 time, I -- I end my questioning.

17 JUDGE TOREM: All right. I'm going
18 to come to the Council members for questions. But in
19 listening to all of this, Mr. Shook, I have a couple of
20 my own.

21 There's a lot of technical terms -- as a lawyer, I
22 hate to accuse another professional of jargon, but
23 there's a lot of high-level words going on that are
24 well outside my own expertise.

25 THE WITNESS: Mm-hmm.

1 JUDGE TOREM: And I just wonder, for
2 the issues in front of the Council, these are great
3 high-level explanations, but I think the bottom line
4 that Mr. Aramburu is trying to make is, if one of the
5 members in the community sells their house, they're
6 afraid the property value's going to go down.

7 Does your study address the sale of any individual
8 houses with a view of the Horse Heaven Hills?

9 **THE WITNESS: Again, I've done no**
10 **independent analysis, right? And so --**

11 JUDGE TOREM: Right. So that's a
12 "yes" -- it's really a "yes" or "no."

13 **THE WITNESS: Yeah. No, nothing**
14 **I've done there.**

15 JUDGE TOREM: Okay. So I'm trying
16 to figure out, as the Council makes its decision on
17 what to recommend to the governor, when they take into
18 account what's happening in the local area, we're going
19 to hear plenty of public comment next Wednesday
20 evening. I don't think it's going to follow the
21 high-level jargon that we got in your report.

22 But how can your testimony help this Council
23 understand what impact or not this renewable energy
24 facility is going to have in Benton County and the
25 Tri-Cities area?

1 THE WITNESS: Mm-hmm.

2 JUDGE TOREM: Can you summarize that
3 in a couple sentences? What should they take -- what's
4 the takeaway?

5 THE WITNESS: Yeah. I would say a
6 lot of times there is -- perception outweighs sort of
7 reality with respect to the impact on property values.
8 Not that these things aren't important, but other
9 things are much more important -- right? -- with
10 respect to why people buy their homes, right? The
11 quality of the home, the school district perhaps.

12 And so -- and so the question that researchers are
13 trying to say is, well, can we find an effect around
14 how people -- how close you are or your views to these
15 facilities? And when we look at this robustly, we find
16 that they find is that there really is no consistent
17 effect or long-term effect of it.

18 And so I think the -- the guidance that the
19 research tells us related to the public conversation on
20 this is that the -- you know, is that some people may
21 not prefer it, other people are agnostic to it, and
22 some people actually might actually prefer it --
23 right? -- in some cases because of the -- the issues
24 around clean energy. And so when we look at that in
25 totality, we don't see any strong impact on how people

1 are paying -- how that materializes in -- in -- in
2 property value.

3 So, for example -- right? -- you could have one
4 person who says, "I -- I will never live next to a wind
5 turbine facility. I'm not going to pay any money for
6 it," but you can have another buyer who says, "I -- I
7 don't really care," right? "I'll pay -- pay whatever
8 the market price is for it," so we see no effect on
9 that sale.

10 So that's maybe a good way to understand sort of
11 that counterfactual around, even though some people may
12 choose not to, there are a lot more buyers and people
13 who are agnostic to it that we don't see it actually
14 impact what homes actually sell for.

15 JUDGE TOREM: Okay. I appreciate
16 the takeaway there.

17 You talked a little bit about your studies with
18 logistics centers and data centers and jails.

19 Would you agree with me those are qualitatively
20 different in at least their appearance and their
21 proximity to individual houses than an energy facility
22 that's spread out over multiple miles like this one?

23 THE WITNESS: Yeah, I would agree.
24 A wind facility is not a large warehouse building, yes.

25 JUDGE TOREM: Okay. I just

1 wanted -- when I heard you talking about those things,
2 I know out in our Columbia Basin, there are plenty of
3 data centers in Grant County and Adams County and the
4 rest along the river.

5 This is along a different portion of the river.
6 But I just wanted to confirm with you, this -- would
7 you agree this would have a different sort of market
8 impact?

9 THE WITNESS: I mean, yes and no. I
10 mean, the complicated part here, related to some of
11 those industrial facilities. So we've looked at
12 jails -- right? -- which have a perception of having a
13 big public safety impact, right? Nobody wants to live
14 next to a jail. Turns out one of the safest places to
15 live is actually next to a jail, when you actually look
16 at the data. This is the kind of, like,
17 counterintuitive side of it.

18 We have looked at the siting of a transfer
19 station, right? And so nobody wants to live next to a
20 transfer station, right? And so -- so I would say, in
21 the sense that -- in that there are a perception around
22 disamenities -- right? -- so things that give less
23 value in terms of perception, but then when you
24 actually look at them from a property value impacts,
25 like, the -- you know, the -- the actual revealed

1 behavior of market participants is a little different
2 than you might expect.

3 So I think that would be the way I would say that
4 obviously they're similar. And obviously the ways that
5 they're different, they're just different structures,
6 and they -- they interact with people's thinking about
7 how they might want to sort of buy or live in a home
8 differently.

9 JUDGE TOREM: All right. I will
10 take that there are alternate perceptions of reality
11 for buyers, sellers, and for others.

12 THE WITNESS: Mm-hmm.

13 JUDGE TOREM: For academics and then
14 what I guess what I would call people in the -- the
15 real world. So we'll take it from there, from my
16 understanding, and now really the people that matter
17 are the Council.

18 Chair Drew, members of the Council, any questions
19 for Mr. Shook?

20 I see Eli Levitt is ready from the Department of
21 Ecology.

22 Go ahead, sir.

23 COUNCIL MEMBER LEVITT: Yeah. Thank
24 you.

25 I'm just curious, as sounds like kind of an

1 economist, in your general expertise, are you aware of
2 the terms "climate adaptation," "climate resiliency,"
3 or "climate mitigation"?

4 **THE WITNESS: I am -- I am aware of**
5 **those, yes.**

6 COUNCIL MEMBER LEVITT: Okay. In
7 your general expertise, it sounds like you've done some
8 work in the Tri-City area.

9 Are you aware if the City, County, Tri-City
10 C.A.R.E.S., or other organizations are doing things to
11 prepare for future impacts, such as extreme heat days,
12 increased flooding, increased risk of wildfire?

13 **THE WITNESS: I'm not aware of**
14 **anything specifically in the Tri-Cities, but we work in**
15 **many communities where these issues are important and**
16 **increasingly topics of public policy conversation.**

17 COUNCIL MEMBER LEVITT: And as an
18 economist or someone studying, you know, the valuation
19 of homes and communities, is it fair to say that these
20 sorts of risks in the future will impact property
21 values, depending on the assessment and which risks are
22 the most significant?

23 **THE WITNESS: You mean -- yes, I**
24 **mean, there's already data to suggest, particularly in**
25 **places that might be prone to wildfire incidents --**

1 right? -- that there is less willingness to pay in
2 those homes. I think I've seen some research out of
3 the northern California experience that suggest that
4 might be the case.

5 COUNCIL MEMBER LEVITT: Yeah. In
6 this particular community, sea level rise is not an
7 issue, but I imagine Oregon, Washington, California.

8 And can I have one more question? Just let me see
9 if it's -- yeah, I guess -- I guess one thing I'll --
10 I'll point out is my understanding of the University of
11 Washington climate impact tools and recent reports is
12 that extreme heat days in eastern Washington will
13 double between the 2050s and 2080s, so going from --
14 going to about an average of 20 to 48 extreme heat days
15 for west -- western Washington and 23 to 47 extreme
16 heat days for eastern Washington.

17 Do you think extreme heat days could potentially
18 impact the value of homes in the Tri-City areas?

19 THE WITNESS: Certainly, right? So
20 when these hedonic analyses are done -- right? --
21 they're trying to look at the totality of these
22 factors; like I said, endogenous ones around the
23 property, itself, and exogenous factors, right? And so
24 things like extreme heat days and quality of the
25 environment all show up, and they would show up

1 consistently across properties, right?

2 And I think this is part of the challenge, I would
3 say, with these property value impacts, right? They're
4 very -- it's a very narrow, in my opinion, examination
5 of the issues related to residents, right? So just
6 looking at that sort of home value piece.

7 And so on -- and so and what is -- what is kind of
8 showing is trying to say, like, with these facilities,
9 are there, you know, potentially positive impacts --
10 right? -- of the -- of the project? It's hard to know
11 what those are and how they accrue, right? And that's
12 cited in some -- some of the literature. But then
13 there's obviously just the sort of what people perceive
14 as sort of the negative impacts around views, and
15 they're trying to weigh those two things.

16 But the things that you're talking about would be
17 kind of in that sort of, like, exogenous things, like,
18 well, are there things that we can't see, can't
19 measure, that are actually, you know, potentially
20 boosting -- right? -- or -- or mitigating those
21 effects? And that's why you don't see the property
22 value impacts, and I believe there's some discussion in
23 those reports that talk about those things.

24 COUNCIL MEMBER LEVITT: Okay. Maybe
25 the last question. On a very general level, your

1 general expertise, for those communities that do less
2 to prepare for a changing future, do you believe
3 there's increased risk at least economically for those
4 communities in terms of the value of commercial or --
5 or, you know, residential properties?

6 **THE WITNESS:** Yeah, so this is
7 actually something I do spend some time in my practice
8 working on, is on community resiliency and making
9 particular sort of infrastructure investments to make
10 communities more resilient.

11 And we just see -- and when we look at this
12 question from a basic research question -- right? --
13 the level of sort of -- you know, not talking about
14 sort of on the environmental side, but just simply
15 understanding kind of the amount of infrastructure that
16 is meant to sort of promote sort of the adequacy of
17 roads, the adequacy of utilities, those all show up in
18 sort of property value impacts.

19 **COUNCIL MEMBER LEVITT:** Okay. Thank
20 you. That's it.

21 **THE WITNESS:** Mm-hmm.

22 **JUDGE TOREM:** Mr. Livingston, I see
23 you have your hand up as well.

24 **COUNCIL MEMBER LIVINGSTON:** Thank
25 you, Judge.

1 a great question actually. So, like, of that -- of the
2 literature and the analysis that's been done, like,
3 what's the relevance to this specific issue, right?
4 And obviously there's no kind of, like, here's -- oh,
5 here's the perfect facility that's just like the Horse
6 Heaven site, and it's in, you know, Franklin County,
7 kind of thing, right? Like, that is not something that
8 one can point to.

9 And so the way to think about the research that's
10 been provided is there is, my understanding, the
11 literature, looking at, reading this, is that there are
12 all these different small studies, like, oh, there's
13 one here of, you know, 50 turbines, and we have 500
14 transactions. What did we find, right? kind of thing.
15 And then you see that all across the -- the -- the
16 country.

17 And so what the Hoen work is trying to do is bring
18 all that together and say, can we look at that mix of
19 settings from sort of a ruralness -- right? -- relative
20 to urbanness and say, do we see consistent effects
21 across those settings?

22 And I think the research shows that basically.
23 It's not saying, like, oh, hey, you have -- if you're
24 in this setting, you have a different effect; if you're
25 in this setting, you have a different effect.

1 They're seeing fairly consistent effects across
2 those multiple settings. Are any of these things
3 really exactly like the Tri-Cities piece? No. I mean,
4 they just don't have that level of resolution --
5 right? -- to do kind of, like, here's, you know,
6 hundreds of -- hundreds of turbines right next to, you
7 know, a large metropolitan area in the -- in south
8 central Washington, right?

9 But they do have sort of places across the
10 country, if you look at that map and that exhibit --
11 right? -- that have similarities to those settings with
12 respect to sort of urbanness, you know, metro areas
13 close to -- in more rural settings perhaps or more
14 isolated settings. And I think that's the -- the best
15 level of confidence one can draw from those -- those
16 pieces, which is better than nothing.

17 COUNCIL MEMBER LIVINGSTON: Yeah.
18 Exactly. I mean, we hear this -- this question and
19 concern all the time, and it's always in the back of my
20 mind: You know, what is the validity of that, and how
21 much should we be weighing of those concerns?

22 The other -- the other question is -- and it was
23 brought up earlier -- is just the scale of this project
24 relative to some of the others, and you mention close
25 to a metropolitan area.

1 How does that -- you know, how did the studies,
2 the literature you provided, compare to our
3 site-specific nature in that regard too?

4 **THE WITNESS:** Yeah, I can't remember
5 exact sort of all the references, but I remember them
6 having kind of a few large ones but many kind of
7 midsize ones as part of their data set in terms of the
8 number of turbines in many of these studies.

9 And so -- so all to say it's -- it's mixed in
10 there, but in the control check, I remember them not
11 really finding a direct -- any strong relationship
12 between sort of increasing numbers of -- of turbines in
13 that. I'll have to -- you know, but that would be
14 something I -- we'd have to sort of double-check. But
15 off the top of my -- my memory, I don't recall that.

16 **COUNCIL MEMBER LIVINGSTON:** Okay.
17 Thank you.

18 **JUDGE TOREM:** Any other Council
19 questions?

20 All right. I see, Ms. Voelckers, you have your
21 hand up.

22 **MS. VOELCKERS:** Thank you, Your
23 Honor.

24 If I may, I have a question prompted by actually
25 what you were asking earlier, if I may ask it now.

1 JUDGE TOREM: Let me --

2 Mr. Aramburu, would you indulge me coming to Yakama
3 Nation before I come back to you for any recross?

4 MR. ARAMBURU: That's perfectly fine
5 with me.

6 JUDGE TOREM: All right.

7 Ms. Voelckers, go ahead.

8 MS. VOELCKERS: Thank you.

9

10 CROSS-EXAMINATION

11 BY MS. VOELCKERS:

12 Q Good morning, Mr. Shook. I represent Yakama Nation in
13 this proceeding, and I will readily admit that I,
14 myself, have -- have read more of the abstracts than --
15 than all the literature that you have provided. But I
16 really appreciate your answers to Judge Torem that kind
17 of distilled this down.

18 So I think what you said in response to one of
19 those questions was that there's no consistent
20 long-term effect expected based upon the research that
21 you've reviewed; is that fair?

22 **A That's a fair characterization.**

23 Q Okay. So what about the short-term effect? Are you
24 speaking today about the short-term effect? And
25 actually also, how do you -- when you say short-term

1 and long-term effect, how are you looking at that?

2 A Oh, yes. And so I'll be clear. One of the Hoen
3 studies -- I can't remember which one -- was -- I think
4 it might have been the 2016 one, most recent one, where
5 they did the large-scale one -- actually was trying to
6 look at time effects and to see, like, well, you can't
7 just look at it from whether after cons- -- like,
8 where -- where is the point in time that you try to say
9 where does the effect start, right? And basically is
10 it at construction? Is it the end of construction? Is
11 it at the announcement of the facility?

12 And so what they did was to try to look at the
13 effects at those different sort of time intervals. And
14 what they found is that there was no -- when they say
15 long-term effect, they didn't see any effect sizes
16 showing up at those different kind of time benchmarks
17 that they -- that you might want to evaluate sort of
18 when to start kind of, like, do we see a property
19 impact, right?

20 Because people in this -- in the literature is
21 basically saying, Hey, we don't see any property
22 impacts once the facility is constructed, but then
23 they -- if you look back and say, Oh, it was announced,
24 like, five years ago. Then you saw a property value
25 impact. And so what they -- what they did in the

1 research was to try to be aware of those at issue and
2 to look at that research question.

3 And so as best of my understanding from their
4 research is they weren't finding any consistent effect
5 across those different announcement or time -- time
6 periods.

7 Q And for this project, are you monitoring those
8 different time periods to see if specifically for this
9 project there -- there has already been an effect or
10 there might be if the project were permanent? Is there
11 a plan to monitor that?

12 A My -- my -- my -- my engagement was really just to look
13 at the materials and research that's in here, but I
14 don't have an answer or understanding of that, and
15 maybe somebody else might be better suited to -- to
16 answer that question.

17 Q Okay. And maybe my final question is -- is better
18 suited for someone else, but I don't want to miss this
19 opportunity, because you don't have an opportunity
20 to -- to recall everyone.

21 What -- what does -- what is the plan, then, if
22 the project is permitted and it does impact property
23 values? What's the plan for -- for that possibility?
24 I understand that you -- your testimony is that that's
25 not what you think is going to happen, but what's the

1 plan if -- if that does happen?

2 **A I don't know. Probably not the best person to answer**
3 **that question.**

4 MS. VOELCKERS: Okay. Thank you.
5 And that's all for me, Judge Torem.

6 JUDGE TOREM: Thank you.

7 Mr. Aramburu, did you have any recross?

8 MR. ARAMBURU: Oh. Yes. Just a
9 couple of questions.

10 And I do want to observe, Judge Torem, that some
11 of the questions seem to be attempting to make a tie
12 between this project and climate change, which was
13 something that you ruled out of order during -- during
14 the course of particularly PHO No. 2. I just want to
15 make that observation. There seems to be --

16 JUDGE TOREM: Let me -- let me just
17 respond -- let me respond that the Council members are
18 not privy to all of our prehearing orders necessarily,
19 Mr. Aramburu. And, again, the scope of what's before
20 them for the adjudication we'll certainly go over in
21 deliberations, but I appreciate where Mr. Levitt's
22 questions were coming from. And certainly if you want
23 to inquire within the scope of those, if that's where
24 you're going, totally permitted, given the development
25 of the record today.

1 But, again, I don't want to open that can of worms
2 beyond what I've ruled with the parties. I'm not going
3 to again limit the fact finders on what might influence
4 their findings on what is appropriate for the
5 adjudication.

6 I do believe also, Mr. Aramburu, in the context
7 we've put it, the information for SEPA may do some of
8 that analysis. And the Council members are looking at
9 that, the entire record, before the recommendation that
10 goes to the governor. So, again, the adjudication is
11 limited, as I've said. Some of those comments might
12 inform their decisions on the SEPA documents and the
13 long-awaited FEIS.

14 MR. ARAMBURU: And it's a point I
15 don't want to belabor, but we continue to believe that
16 the FEIS should be available to the parties in this
17 adjudication. I made that point before. I won't
18 belabor it. I think that is error on your part not to
19 require that.

20 JUDGE TOREM: Noted.

21 MR. ARAMBURU: Okay.

22
23 REXCROSS-EXAMINATION

24 BY MR. ARAMBURU:

25 Q Now, Mr. Shook, have you seen any tie between the

1 building of this project and the reduction of the
2 number of -- of hot days in the Tri-Cities?

3 **A Are you thinking about specific analysis? I've not --**

4 Q Yes.

5 Have you seen anything to support that?

6 **A I have not seen any analysis.**

7 Q Have you seen any analysis that would suggest that
8 property values may be affected by the -- whether or
9 not a property owner might approve the project if they
10 thought it was going to reduce the number of heat days?

11 **A Consistent with my previous statement, I haven't seen**
12 **any analysis that went into Tri-Cities generally or a**
13 **specific property owner in this case.**

14 Q Okay. And in looking at the Hoenig studies, the
15 various ones that were done, how many of those were
16 done in the state of Washington for state of Washington
17 properties?

18 **A I'd have to -- I don't have the list of -- of those**
19 **properties. Maybe there was one at the**
20 **Washington-Oregon border, but I can't recall now.**

21 Q Okay. And do you remember whether there were any done
22 for Oregon?

23 **A I don't recall.**

24 Q Would you agree that property values and values of
25 property owners differ between the state of Washington

1 and, say, central Nebraska?

2 **A I mean, pro- -- I mean, that's true for any property.**

3 **Are you talking about whether or not -- whether**
4 **the -- the state effect, there's an effect related to**
5 **the state when we control for all the other factors**
6 **there's an impact on price?**

7 **Q Yes.**

8 **A I'm not aware of any research that says, for a**
9 **similar-conditioned house, that it should sell less**
10 **because you're in a specific state. But, yeah, I think**
11 **your point is, do our var- -- do our different homes**
12 **price differently depend on where they are? Yes,**
13 **because they all have either specific site**
14 **characteristics that are similar, different, but they**
15 **also have different exogenous things that they're**
16 **related to, like what's the quality of your school**
17 **district, what's your taxation like, what's your public**
18 **safety like, and those all vary by location.**

19 **Q Would it not be the case that the impact on property**
20 **values from wind turbine project would relate to the**
21 **specific resource that's being damaged by the wind**
22 **turbines? I'll take the word "damaged" out. I'll say**
23 **impacted by the wind turbines.**

24 **A Which -- which resource are we talking about?**

25 **Q The -- the -- the impact -- wind turbines don't exist**

1 in a -- in a vacuum, do they? They have impact on a
2 certain thing, correct?

3 **A Well, that's -- in the property value analysis, that's**
4 **exactly what they're trying to understand, is whether**
5 **or not the location proximity of the wind turbine is**
6 **having property value impacts.**

7 **Q So would you agree with me that -- that just looking at**
8 **a wind turbine next door would be different than**
9 **looking at a wind turbine on a piece of iconic**
10 **topography that might exist in a community, such as the**
11 **Horse Heaven Hills?**

12 **A There are for certain differences -- right? -- with**
13 **respect to the facility, where it is, what those views**
14 **look at, right? And that's -- and that's -- that's a**
15 **confounding thing in this issue and also for all the**
16 **research that's been done -- right? -- is to say, like,**
17 **we don't have kind of the exact thing that one can**
18 **point to definitively, so we have to kind of look at**
19 **all the evidence where there's mixes and matches of it,**
20 **right? And because you have mixes and matches and**
21 **confounding things, you need appropriate statistical**
22 **tools to hone in on specifically what the -- what --**
23 **what the, in your case, the impact is, right? In this**
24 **case, the proximity to the wind turbine.**

25 **And when they've done this, like, the Hoen**

1 research, when they do this robustly, you know, to
2 repeat their finding -- right? -- they just don't find
3 that there's property value impacts.

4 Q But does the -- does the Hoen research separate out the
5 impacts of wind turbines on particular features in a
6 community as opposed to just being next door in a flat
7 plane, something of that nature?

8 Is that -- are those kinds of distinctions made?

9 A I'd have to double-check on the specificity, but I know
10 in their data records, they have information about the
11 property and -- and some characteristics that are in
12 there. But, you know, to the extent that you're
13 talking about very specific and precise information, to
14 the extent that that is not, like, recorded as part of
15 your assessor or part of your -- you know, the
16 administrative data, typically then that is not
17 reflected in the analysis.

18 Q So for the most part, the Hoenig studies are really
19 large-scale studies, are they not, considering a
20 variety of circumstances and a variety of locations put
21 into a single study?

22 A Correct.

23 Q That's a "yes"?

24 A Yes.

25 MR. ARAMBURU: Okay. Thank you.

1 Thank you.

2 So, Ms. Masengale, I hate to impose upon you
3 again, but could you put Exhibit 5903 back up on the
4 screen?

5 And the first page, please.

6 So if you could just scroll down a bit so I have
7 the first full sentence.

8 Q (By Mr. Aramburu) So I gather you've talked a great
9 deal about Mr. Hoenig and the research that he's done,
10 but isn't really what Mr. Hoenig is doing is trying to
11 figure out ways to make wind turbine -- wind turbines
12 more acceptable to the community?

13 **A I would think that he's trying to understand the**
14 **effects of it. And public acceptance seems to be a**
15 **controversial issue which his research is dedicated to,**
16 **is my understanding here.**

17 Q But his research is really dedicated to figuring out
18 ways that wind turbines can be more -- made more
19 acceptable to the public so more wind turbine
20 facilities can be installed.

21 Isn't that the case?

22 **A On what basis am I supposed to make that determination?**

23 Q In the abstract of the article that we -- 5903, that we
24 put up.

25 Would you take a look at the last sentence,

1 please?

2 **A "With continued research efforts and a commitment**
3 **towards implementing research findings into developer**
4 **and policymaker practice, conflict and perceived**
5 **injustices around proposed and existing wind energy**
6 **facilities might be significantly lessened."**

7 Q So he's working on ways to figure out how -- how
8 objections to wind turbines can be -- can be
9 significantly lessened.

10 Isn't that the point of this article?

11 **A I -- I think the point of the article is just a**
12 **meta-analysis of the key issues with respect to what**
13 **the -- what the academics know about the siting of**
14 **these facilities.**

15 Q Should we look at Mr. Hoenig's research in light of his
16 desire that objections to wind turbines should be
17 significantly lessened?

18 MS. SCHIMELPFENIG: Objection.

19 Asked and answered.

20 JUDGE TOREM: Well,
21 Ms. Schimelpfenig, I'm not sure that the witness has
22 really answered it.

23 But, Mr. Aramburu, I think you've made your point
24 that this is a professional study looking to mitigate
25 consumer and community feelings against being located

1 next to a wind facility. I think you've made that
2 point.

3 MR. ARAMBURU: Thank you.

4 JUDGE TOREM: Any other questions?

5 While you're thi- -- okay. Go ahead.

6 Q (By Mr. Aramburu) There was -- you answered a number
7 of questions regarding the apparent deficiencies in
8 other studies that have been done that are inconsistent
9 with the Hoen conclusions, did you not?

10 **A I don't believe I testified to the specific**
11 **deficiencies of any individual report.**

12 Q Well, it's been identified that there are problems with
13 these -- these other reports and that Hoen seems to
14 conclude that -- that the -- that his research supports
15 the reduction or the lessening of impacts from wind
16 turbines on property values.

17 Do you have in mind what's -- what's wrong with
18 those other reports? What -- how come we can't rely on
19 those other reports and use them in our analysis of
20 property values?

21 **A So I would say -- right? -- science is a process trying**
22 **to understand these things. And they are always a**
23 **feature of our understanding, and that evolves, right?**
24 **And so -- so what Hoen is trying to do -- right? -- is**
25 **people -- obviously this is a controversial issue, and**

1 people are trying to understand it. And they have
2 done -- commissioned reports or researchers have taken
3 a look at this.

4 And there seems to be a preponderance, at least at
5 the time -- right? -- a preponderance of the evidence
6 that they don't, but there are these other studies --
7 right? -- that are disclosed right front and center
8 in -- in these analysis that maybe they -- there are
9 some negative effects.

10 And so what researchers are trying to do, they
11 say, like, Well, why are we seeing conflicting things?
12 And if we sort of basically build a better analysis,
13 can we sort of understand why those things are
14 happening or adjudicate some of those pieces?

15 And so that -- think that -- think of it as
16 basically not necessarily to say anybody necessarily is
17 wrong, but it's just to evolve our thinking on these
18 things by considering more information, doing stronger
19 technical work on those things so that we can get
20 closer to sort of better information.

21 And that's how I -- I look at the research that's
22 been done in this. Like, it's hard to do these --
23 these very complex studies. And particularly when you
24 have kind of one side over here, one side over here --
25 right? -- there -- there's so many idiosyncratic issues

1 that are related to either the availability of data,
2 the timing of when they were done, right?

3 And so -- so as a researcher, you want to kind of
4 step back and say, like, Well, if we're going to say
5 what the big -- what we think the consensus is, can we
6 take a look at this in multiple settings, multiple
7 characteristics, with a much more statistical power to
8 sort of arrive at a conclusion? which he does in his --
9 in his work.

10 So, I mean, so that's -- that's -- I don't
11 necessarily see him as basically saying those studies
12 were deficient, right? It's really just say, like, we
13 all have all these projects are -- have their
14 limitations, but -- but the best thing we can do is
15 marshal the evidence that we have to sort of provide
16 that information to the decision-makers.

17 Q Well, that was not my question.

18 My question was: There -- there are dissenting
19 reports, there are dissenting studies that have been
20 presented, and -- and Mr. Hoen, in his report,
21 Exhibit 5903, says, yes, there are conflicting reports.

22 What's wrong with those reports? Did these people
23 fail the math part of SAT? What -- what's wrong with
24 these reports that we can't -- we can't use them?

25 I understand the idea we're going to throw it all

1 into some big -- big pot and stir it around. But --
2 but I want to know what your perception is as to why
3 the report, for example, from Mr. Fast, on Page 14 of
4 5903, or Heintzelman, what's wrong with those reports?

5 **A Yeah, I mean, I'm going to go back and look, but I**
6 **recall --**

7 MS. SCHIMELPFENIG: Objection.

8 My apologies, Mr. Shook.

9 Objection. Asked and answered. The witness
10 stated that there was nothing wrong with those reports
11 and that this was an evolving science and that they
12 built upon the previous reports. And so he's answered
13 the question.

14 MR. ARAMBURU: I think it's fair to
15 ask him. He says, perhaps in general, the reports are
16 fine. It's -- it's just that, I think, to help the
17 Council and the parties, what's wrong with those
18 reports? Some specifics would be helpful here.
19 Generalities don't help.

20 JUDGE TOREM: Mr. Shook, are you
21 able -- before I rule on the objection to see, are you
22 able to answer that concisely report by report?

23 **THE WITNESS: I can't answer it**
24 **report by report. The only thing I was going to add is**
25 **that the Hoen study, I think, in one of them, talks**

1 specifically about why they're doing this. Because
2 previous studies suffered from small sample sizes, is
3 kind of the -- one of the big issues of why to take a
4 look at this more exhaustively.

5 JUDGE TOREM: All right.

6 Ms. Schimelpfenig, I guess I'm just going to, looking
7 back, just to allow it and overrule the objection.

8 Mr. Aramburu, I don't know if it's worth
9 belaboring this point with this particular witness.

10 MR. ARAMBURU: I agree with that.

11 Q (By Mr. Aramburu) But I would still like an answer to
12 my question as to what -- if you can identify specific
13 omissions, errors, deficiencies in these -- in these
14 contrary reports.

15 A Like I said, I have not reviewed any of those reports
16 and evaluated their robustness, right? All I can
17 recall is, in one of the Hoen reports, is one of the
18 reasons they were doing this and looking at that
19 conflicting research was that a lot of the times
20 they -- those reports really kind of suffer from small
21 sample sizes, which means you have very large error --
22 standard errors around your estimates, and so -- so
23 that's probably one of the reasons why you undertake
24 more robust, more thorough investigation.

25 Q You're speculating as to -- as to these factors, are

1 you not? You're saying they're probably a small sample
2 size. Is that the problem with this specific report?

3 **A I believe --**

4 MS. SCHIMELPFENIG: Objection, Your
5 Honor. The witness has answered this question many
6 times now.

7 JUDGE TOREM: Mr. Aramburu, I -- I
8 think he has answered it to the best that you're ever
9 going to get out of him and best assistance we're going
10 to get to the Council. It's vague, and it's -- he just
11 hasn't done the -- the specific reading that apparently
12 you have. So let's either move on or --

13 MR. ARAMBURU: Okay. I thought my
14 question was a yes-or-no, but it turned out to be much
15 more than that, so -- so I --

16 JUDGE TOREM: I thought it was yes
17 or no --

18 MR. ARAMBURU: -- I understand --

19 JUDGE TOREM: -- too, for the
20 record. I just don't think you're going to get a "yes"
21 or a "no." We just haven't had that with this witness,
22 and I don't think either of us are going to get any
23 better luck.

24 MR. ARAMBURU: Okay. I think that's
25 all the questions I have.

1 JUDGE TOREM: All right.

2 MR. ARAMBURU: Thank you --

3 JUDGE TOREM: Mr. Aramburu, I have
4 two questions for you.

5 Are you moving the admission of Exhibit 5903_X?

6 MR. ARAMBURU: I am.

7 JUDGE TOREM: All right. Any
8 objections to that in context --

9 MS. SCHIMELPFENIG: Judge Torem?

10 JUDGE TOREM: -- of cross-exam?

11 Yes, Ms. Schimelpfenig?

12 MS. SCHIMELPFENIG: Yes, we have no
13 objection, but we would like the -- Mr. Aramburu to
14 provide us the entire report since this was only a
15 small section of it.

16 JUDGE TOREM: I think Mr. Aramburu
17 probably has access to it. So in the collaborative
18 nature, the parties have been working behind the
19 scenes. If he has it, he'll send it to you.

20 (Exhibit No. 5903_X
21 admitted.)

22
23 JUDGE TOREM: And one other point,
24 Mr. Aramburu. Maybe, again, like you said, you weren't
25 sure on the pronunciation. There was a Hoen, H-o-e-n,

1 and we saw that name on the screen. And then a few
2 times it sounded as though you said "Hoenig." Is that
3 the same person?

4 MR. ARAMBURU: I'm more used to
5 the -- the second name. So every time I said "Hoenig,"
6 I meant "Hoen," H-o-e-n. And I apologize for
7 misspeaking.

8 JUDGE TOREM: No worries. I just
9 wanted to make sure I hadn't missed a report of my own.
10 And then as long as the Council members are all clear
11 that H-o-e-n or H-o-e-n-i-g, as it might appear in the
12 transcript, are referring to the same expert.

13 Okay. Were there any other questions we needed to
14 pose to Mr. Shook?

15 Ms. Schimelpfenig has her hand up. Yes, ma'am.
16 If it's really concise, I'll allow it.

17 MS. SCHIMELPFENIG: Yes. Judge
18 Torem, we just have one question, based on questions
19 from the Council, that we'd like to ask Mr. Shook.

20 JUDGE TOREM: Please do.

21 MS. SCHIMELPFENIG: Okay. Thank
22 you.

23 ////

24 ////

25 ////

1 FURTHER REDIRECT EXAMINATION

2 BY MS. SCHIMELPFENIG:

3 Q Judge Torem asked you about your actual local impacts
4 from the project. In addition, Council Member
5 Livingston also asked you a similar question about
6 region-specific impacts and the scale of the project.

7 Are those things that a project-specific report of
8 analog- -- of -- sorry -- of analogous project impacts
9 like Mr. Lines' CohnReznick reports would answer?

10 **A Yes, that report would shed some light on those issues.**

11 MS. SCHIMELPFENIG: Thank you.

12 No further questions.

13 JUDGE TOREM: All right. Thank you,
14 Ms. Schimelpfenig.

15 Mr. Shook, thank you for your time this morning
16 and taking us into a place that many of us maybe never
17 have been. But I appreciate the -- the angle you bring
18 to this and the information you provided to the
19 Council. We'll let you go.

20 (Witness excused.)

21
22 JUDGE TOREM: And I'm going to ask
23 the parties if there was anything else that we had
24 scheduled on the record today.

25 Ms. Schimelpfenig, are you aware, as you look

1 around your office there, if anybody's flagging and
2 saying there's more to do today?

3 MS. SCHIMELPFENIG: None, Your
4 Honor. Thank you.

5 JUDGE TOREM: Mr. Harper?

6 MR. HARPER: Nothing, Your Honor.

7 JUDGE TOREM: Ms. Reyneveld?

8 MS. REYNEVELD: Nothing, Your Honor.
9 Thank you.

10 JUDGE TOREM: All right.
11 Ms. Voelckers.

12 MS. VOELCKERS: Thank you, Your
13 Honor. I do have one point, while we're still on the
14 record with the Council, I'd like to ask for
15 clarification on.

16 JUDGE TOREM: Certainly.

17 MS. VOELCKERS: Counsel for Yakama
18 Nation would like clarification on something that has
19 been discussed over the last couple years: The Nine
20 Canyon project. It featured prominently in land-use
21 testimony and in questions from the Siting Council. We
22 are concerned that this is being brought into the
23 adjudication without foundation, without evidence in
24 the record to orient ourselves or other parties to the
25 questions and answers, and without support in Benton

1 County's land-use laws, which doesn't actually
2 contemplate comparison of new conditional uses with
3 previously permitted conditional uses.

4 So we would appreciate instruction and
5 clarification from Your Honor before the adjudication
6 hearing proceeds next week.

7 JUDGE TOREM: Thank you. That's a
8 good point, Ms. Voelckers. And I think, as I said this
9 morning, the questions of Council members give you an
10 idea what they're interested in.

11 We did have in Ms. McClain's testimony a number of
12 supporting exhibits that referenced the Nine Canyon
13 project, so those are in the record as support for her
14 testimony.

15 Any of the other documents that come -- there
16 won't be any other documents coming in unless there's
17 something introduced by the parties. And between
18 Mr. Thompson and I instructing the Council members on
19 what the limits of the record are, you can be assured
20 that if it hasn't been entered as an exhibit, it won't
21 be a basis for the decision, findings, conclusions, or
22 the recommendation.

23 There were some testimony also, I think, from
24 Mr. Wendt on what a board of adjudication, I think it
25 was, something along those lines, how they were

1 permitting that project. And definitely his testimony
2 reflected it was on a different standard, a different
3 set of approaches, than are currently before the Benton
4 County Code that exists when this project was applied
5 for.

6 So clearly the law we're operating under for the
7 land-use topics and the development of what conditional
8 uses, if any, would be recommended by this Council
9 interpreting Benton County's code, that's the rules,
10 not anything that was before with Desert Canyon.

11 I hope that sets aside any worries as to
12 perceptions and maybe helps the Council members put
13 this week's testimony in context.

14 MS. VOELCKERS: Nothing further from
15 Yakama Nation. Thank you, Your Honor.

16 JUDGE TOREM: All right.

17 Mr. Aramburu?

18 MR. ARAMBURU: Nothing for today.
19 And -- and not to put pressure on you, Mr. Torem,
20 but -- but in preparation for witness testimony next
21 week, it will be very helpful for me to know your
22 rulings on the various issues, so -- that are
23 outstanding.

24 JUDGE TOREM: Right. And for the
25 Council, I have a number of motions that I've been

1 deciding, some on the fly, here in the last couple of
2 days to catch up. And I do still owe the Council -- or
3 the parties a ruling on some community member testimony
4 and other witnesses that are speaking before the
5 community as a whole that Mr. Aramburu has submitted,
6 particularly those witnesses you might have seen some
7 of their prefiled testimony from Mr. Krupin, Mr. Sharp,
8 Mr. Dunn, and Mr. Simon.

9 Those are a work in progress as to what portions
10 will or won't be admitted, and I'm still working on
11 some motions there. So as you read for next week, keep
12 that in mind. There may be some red-lined versions or
13 revised versions coming that limit, or perhaps in some
14 cases, based on a motion for reconsideration, expand
15 what's in the SharePoint files for you to review.

16 And, again, Mr. Aramburu, I'm going to make sure
17 when we talk about those community impacts for
18 deliberations that we re-emphasize and re-review the
19 ultimate evidentiary rulings that bring information and
20 evidence in front of the Council. I do owe it to you.
21 I'm running late. My apology is on the record.
22 Perhaps today, like I say, when I'm back in Ellensburg,
23 it will be another late night, but the last one until
24 next week.

25 MR. ARAMBURU: Okay. Thank you,

1 Your Honor.

2 JUDGE TOREM: Okay. Council
3 members, any questions that you have about where things
4 stand before we come back into adjudicative hearing
5 next Monday at 9 a.m.?

6 All right. We'll take a recess of the hearing
7 going forward until next Monday. Council members, you
8 can expect to see a revised schedule at some point as
9 to telling you what -- Monday's Monday; it's what you
10 already have -- and what's coming the rest of the week.

11 Please indulge me if we need to go late on Tuesday
12 or add a little bit of time on Wednesday. We might
13 take an early lunch and have a short session and then
14 still have time before the public comment hearing that
15 evening. But as you look at your personal and work
16 schedules, if you can accommodate that and be here for
17 the sessions, all the better.

18 Also, parties members, parties, I think there's
19 been -- our Department of Agriculture rep is going to
20 have to review the two and a half days we've done this
21 week. My understanding is that he had a conflict this
22 entire week and hopefully can get up to speed between
23 now and Monday, but we expect him to be here all of
24 next week, is what I've been informed, so in case
25 anybody's wondering.

1 All right. That's all I have for you, so we'll
2 adjourn the hearing for today. I imagine I'll hear or
3 see most of you on the Council's monthly meeting at
4 1:30. Thank you.

5 (Proceedings adjourned at
6 11:39 a.m.)

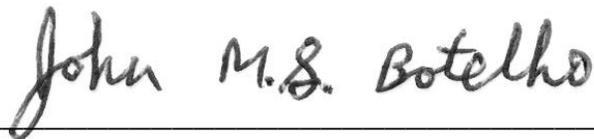
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1 STATE OF WASHINGTON) I, John M.S. Botelho, CCR, RPR,
2) ss a certified court reporter
3 County of Pierce) in the State of Washington, do
4 hereby certify:

5 That the foregoing proceedings were taken in my
6 presence and were adjourned on August 16, 2023, and
7 thereafter were transcribed under my direction; that the
8 transcript is a full, true and complete transcript of the
9 said proceedings and was transcribed to the best of my
10 ability;

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

15 IN WITNESS WHEREOF, I have hereunto set my hand
16 this 11th day of September, 2023.

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