

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Wautoma Solar,

Applicant.

Docket No. 279466

PREHEARING CONFERENCE ORDER

Agency: Energy Facility Site Evaluation Council

Program: Land Use Consistency

Agency No. EF-220355

1. CASE SCHEDULE:

Date and Time	Event
August 13, 2024, by 5:00 p.m.	Final Day for submission of Jointly-Agreed Stipulated Facts
September 11, 2024, by 5:00 p.m.	Final day for filing and serving Witness Lists, Exhibit Lists, and marked Exhibits
September 18, 2024, by 5:00 p.m.	Final day for filing and serving voluntary hearing briefs
September 20, 2024, 9:00 a.m. – 11:00 a.m.	Final Status Conference for Admission of Exhibits and other Prehearing Matters ; see Notice of Status Conference for more information and instructions
September 25, 2024, 9:00 a.m. – 5:00 p.m. <i>Teams Video</i>	Evidentiary Hearing ; see Notice of Hearing for more information and instructions

1.1 **DEFAULT:** If you do not participate in any stage of the proceedings or if you fail to appear at your hearing, you may be held in default. This means you lose the right to a hearing and your appeal will be dismissed. RCW 34.05.440.

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2. PREHEARING CONFERENCE SUMMARY:

2.1 Administrative Law Judge Dan Gerard conducted the prehearing conference on Monday, July 22, 2024.

2.2 Parties Present:

2.2.1 Applicant Wautoma Solar

2.2.1.1. Erin Anderson, Attorney and Representative

2.2.1.2. Andrew Lewis

2.2.1.3. Laura O'Neill

2.2.1.4. Linnea Fossum

2.2.2 Benton County

2.2.2.1. LeeAnne Holt, Attorney and Representative

2.2.2.2. Michelle Mercer

2.2.2.3. Greg Wendt

2.2.3 Counsel for the Environment

2.2.3.1. Sarah Reyneveld, Assistant Attorney General and Representative

2.2.4 Energy Facility Site Evaluation Council

2.2.4.1. Ami Hafkemeyer

2.2.4.2. Jon Thompson

2.2.4.3. Jenna Slocum

2.2.4.4. Audra Allen

2.2.4.5. Andrea Grantham

2.2.4.6. Catherine Taliaferro

2.2.4.7. Joan Owens

2.2.4.8. Adrienne Barker

2.2.4.9. Ale Shiley

2.2.4.10. Lance Caputo

2.2.4.11. Lisa McLean

2.2.4.12. Martin McMurry

2.2.4.13. Ali Smith

2.2.5 Other Parties

2.2.5.1. David Witt, Department of Archeology and Historical Preservation.

3. ISSUES:

3.1.1 Whether the Council should recommend to the Governor that the state preempt the land use plans, zoning ordinances, or other development regulations for the site for the alternative energy resource proposed by the Applicant?

3.1.2 If the Council approves the Applicant's request for preemption, what conditions the Council should include, if any, in a draft certification agreement to consider state or local governmental or community interests affected by the construction or operation of the alternative energy resource and the purposes of laws or ordinances, or rules or regulations promulgated thereunder that are preempted pursuant to RCW 80.50.110(2)?

3.1.3 The hearing in this matter will be limited to these issues, unless they are modified at a later prehearing conference.

3.2 CASE SCHEDULE: The Case Schedule in Section 1 governs this case.

4. HEARING PROCEDURES:

4.1 FILING AND SERVING DOCUMENTS

4.1.1 FILING WITH EFSEC and OAH: Documents will be filed with EFSEC and OAH via email to adjudication@efsec.wa.gov.

4.1.2 SERVICE ON OTHER PARTIES: Any documents submitted to EFSEC and OAH must also be served on the other parties and the other party's representative, if applicable.¹ Copies to the other parties will be served through the parties' e-mail.

¹ WAC 10-08-110(2)(a)

- 4.2 CONTINUANCES: You may request a continuance of any hearing event. If you have good reason for a continuance, file your request before the event. Your request should explain the good reason you are seeking a continuance. If the request is urgent, call (253) 476-6888. You must appear at the hearing event, unless OAH has informed you it has continued the hearing.
- 4.3 PRESENTING WITNESSES: If you want to present witnesses at the hearing, you must file a witness list. Your witness list must include the following information about each witness: (a) name, (b) role, (c) phone number, (d) address, (e) the testimony you expect the witness to give, and (f) whether your witness will appear in-person or by telephone. Without approval from the ALJ, only witnesses named in a timely filed witness list will be allowed to testify. Find a form attached.
- 4.4 PRESENTING EXHIBITS:
- 4.4.1 Preparing an Exhibit List: Exhibits are documents used as evidence. If you want to introduce exhibits, you must file an exhibit list and a fully marked set of your exhibits. For each exhibit, your list must include: (a) title or description, (b) date, and (c) number of pages. Without approval from the ALJ, only exhibits named in a timely filed exhibit list will be admitted. Find a form attached.
- 4.4.2 Marking Exhibits: you must mark each page of your exhibits in the lower right hand corner with an exhibit number and a page number. Wautoma Solar will identify exhibits numerically. Benton County will identify exhibits alphabetically. Counsel for the Environment will identify exhibits with repeating letters. For example:
- Wautoma Solar: Exhibit 1, page 1 of 10
 - Benton County: Exhibit A, page 1 of 10
 - Counsel for the Environment: Exhibit AA, page 1 of 10
- 4.5 CONTACT INFORMATION: If your address or telephone number changes, you must immediately update OAH.
- 4.6 RIGHT TO REPRESENTATION: You have a right to representation at your own expense. If you plan to seek representation, start looking now. If you delay, your representative may not be available for the hearing.
- 4.7 WEAPONS: Except for law enforcement personnel, no one may bring firearms or other dangerous weapons to an administrative hearing or an OAH facility.²

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² Chapter 10-20 WAC

5. ORDER:

IT IS HEREBY ORDERED:

- 5.1 This order governs this matter unless modified by the Administrative Law Judge.
- 5.2 Because I have not made any substantive discretionary ruling, OAH may assign this matter to a different Administrative Law Judge.

ISSUED from Tacoma, Washington, on the date of mailing.



Dan Gerard
Administrative Law Judge
Office of Administrative Hearings

Objections: Each party has 10 days to file an objection to this order. If no party timely objects, this order governs this matter as written, unless modified by an Administrative Law Judge.³

CERTIFICATE OF SERVICE ATTACHED

³ WAC 10-08-130

EXHIBIT LIST

Case Name: *In the matter of Wautoma Solar, Docket No. 279466*

Party Proposing Exhibits:

Exhibit Number Or Letter	Name and Date of Document Example: Investigative Report, January 12, 2017	Number Of Pages	Treatment Of Exhibit (FOR ALJ USE ONLY)

WITNESS LIST

Case Name: In the matter of Wautoma Solar, Docket No. 279466

Party Proposing Witnesses:

Witness Name	Relationship to Case (Example: Department Investigator)	Telephone Number	Contact Address	Method of Appearance (In-Person/By Phone)
Brief Description of Testimony:				
Brief Description of Testimony:				
Brief Description of Testimony:				
Brief Description of Testimony:				
Brief Description of Testimony:				

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 279466

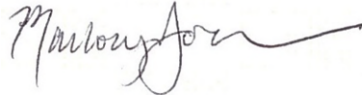
I certify that true copies of this document were served on those listed below, from Olympia, Washington via Consolidated Mail Services by one of the following: First Class Mail, Certified Mail, Hand Delivery via Messenger, Campus Mail, Facsimile, or by email.

<p>Innergex Renewable Development USA LLC Attn: Wautoma Solar Energy Project c/o Erin Anderson and Andrew Lewis Van Ness Feldman LLP 1191 Second Ave Ste 1800 Seattle, WA 98101 Applicant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail:</p>
<p>Erin Anderson Andrew Lewis Van Ness Feldman LLP 1191 Second Ave Ste 1800 Seattle, WA 98101 Applicant Representatives</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail: eanderson@vnf.com alewis@vnf.com</p>
<p>Benton County c/o Leeann Holt Deputy Prosecuting Attorney, Civil 7122 W Okanogan PI Ste A230 Kennewick, WA 99336 Respondent</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail:</p>
<p>Leeann Holt Deputy Prosecuting Attorney, Civil 7122 W Okanogan PI Ste A230 Kennewick, WA 99336 Respondent Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail: leeann.holt@co.benton.wa.us Eric.eisinger@co.benton.wa.us</p>

<p>Yuriy Korol, AAG Office of the Attorney General Environmental Protection Division MS: TB-14 800 5th Ave Ste 2000 Seattle, WA 98104 Counsel for the Environment</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: yuriy.korol@atg.wa.gov</p>
<p>Jonathan Thompson, AAG Jenna Slocum, AAG Office of the Attorney General Energy Facility Site Evaluation Council PO Box 40100 Olympia, WA 98504 Agency Representatives</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: adjudication@efsec.wa.gov jonathan.thompson@atg.wa.gov jenna.slocum@atg.wa.gov</p>

Date: Wednesday, July 31, 2024

OFFICE OF ADMINISTRATIVE HEARINGS



Mallory Jordan
Legal Assistant 2