

UMATILLA COUNTY BOARD OF COMMISSIONERS
Meeting of Monday, February 13, 2012 9:30 a.m.
Umatilla County Justice Center, Media Room
Pendleton, Oregon

COMMISSIONERS PRESENT: Larry Givens, Bill Hansell, Dennis Doherty
COUNTY COUNSEL: Doug Olsen.
STAFF: Tamra Mabbott, Carol Johnson, Connie Hendrickson,
Gina Miller

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.

CALL TO ORDER:

Commissioner Givens called the hearing to order at 9:30 a.m., and read the opening statement.

NEW HEARING:

APPEAL OF THE UMATILLA COUNTY PLANNING COMMISSION DENIAL OF LAND USE DECISION REQUEST, #LUD-138-11; WKN Chopin, LLC, Applicant. The applicant has appealed the decision of the Planning Commission. The Board will hear the applicant's request for a Land Use Decision Permit to construct and operate a substation and a 230 kV transmission line from a proposed project site northeast of the City of Athena to a point of interconnection with an existing PacifiCorp 230 kV transmission line located on Linton Mountain. The transmission line is approximately 12 miles in length, and approximately 11.5 miles are proposed to be located on existing public rights of way. The private property lands proposed for the line include lands owned by Carl & Nancy Vollmer, Mark and Jan Perkins (Agents), Ted Reid, The Arne L. Filan and Harriet Y. Filan Family Trust, Randall Barton, Trustee. The applicable Standards of Approval are found in Umatilla County Development Code Sections 152.617(II) (7).

Commissioner Givens called for abstentions, biases, or declarations of ex-parte` contact. Norm Kralman asked to read a letter into the record, and requested that Commissioner Hansell recuse himself from the hearing. The letter stated that since Commissioner Hansell was running for the state legislature, and his campaign financial manager was also the attorney representing the applicant, this would pose a conflict of interest.

Commissioner Givens asked County Counsel Doug Olsen for his opinion on this request. Mr. Olsen commented that Steve Corey would not be participating in this hearing. Commissioner Hansell asked if Mr. Kralman had any further issues with his participation in this hearing. Mr. Kralman responded that he still objected as Mr. Corey's firm still represented W.K.N. Chopin. Commissioner Givens commented that he did not have the authority to ask Commissioner Hansell to recuse himself from the hearing.

Mr. Olsen commented that Commissioner Hansell should enter into the record if he had any conflict with the proceedings. Commissioner Doherty asked to clarify if Mr. Kralman had concerns about a financial connection between the applicant and Commissioner Hansell. Mr. Kralman responded that he did not have this concern, but asked why Mr. Corey was not present today as he had been present at prior hearings for this applicant.

Mr. Olsen explained that typically in land use hearings, a conflict is based on personal financial gain for the hearings officer. In this situation, the conflict comes from Mr. Corey representing both the applicant and is involved in Commissioner Hansell's election campaign and this is a personal conflict. Discussion followed on what constituted a conflict under these circumstances. Commissioner Hansell asked Mr. Olsen if a perceived conflict of interest could result in grounds for an appeal, and Mr. Olsen replied no.

Commissioner Hansell stated that he would step down from this hearing, but wanted it noted in the record that Mr. Corey had not contributed financially to his campaign and this was not a conflict of interest for himself. Commissioner Hansell did not want to confuse these appeal proceedings, and upon the recommendation of his commissioner colleagues, he recused himself. Commissioner Hansell left the room and Commissioner Givens continued with the opening statement reading.

Staff Report: Tamra Mabbott presented the staff report. She referenced the packet of information that had been given to the commissioners seven days prior to this hearing and listed the exhibits received in the last seven days. Exhibit #36 was a letter from Lindsay Windsor, Exhibit #37 was a letter from Chris Banks and Exhibit #38 were PowerPoint slides from the Walla Walla Basin Watershed Council. Mrs. Mabbott explained that they also needed to include Exhibits #1-#35 in this motion. Commissioner Doherty moved to accept these exhibits into the record, and Commissioner Givens seconded the motion. Motion carried 2:0.

Mrs. Mabbott referenced a map displayed on the overhead projector which showed the parcels where the project would be located, and described the proposed transmission line shown in yellow. This map also showed other transmission lines in the vicinity with other colors. Mrs. Mabbott explained what voltages were involved in the other transmission lines. Another map showed the proposed transmission line, with the balance of the project constructed on county right-of-way up to the point of interconnection with the PacifiCorp line. Mrs. Mabbott showed the dedicated right-of-way areas on an overhead slide.

Commissioner Givens asked if easements were needed from land owners for this section. Mrs. Mabbott confirmed that she included notes in her staff report that legalization of this county road way would need to be addressed, depending on the final decision of the Board of Commissioners. She also addressed options for this, as the county is in the process of legalizing this road way and has been for some time, unrelated to this application. The board could require a condition of approval that required authorization from the underlying landowners to use the easements, as there is no record that they have given approval to take action on this application.

Mrs. Mabbott explained that Exhibit #1 was a memo from her to the Board summarizing the four issues named in the appeal where the applicant stated that the Planning Commission erred on five different matters that the applicant will address. Mrs. Mabbott referenced substantive criteria found in Section 152.617 of the Umatilla County Development Code (UCDC) for utility facilities, and applicable sections of the Comprehensive Plan (Comp Plan). She also summarized the findings of the Planning Commission's decision to deny the application. Mrs. Mabbott explained the timeline for this application. The final date to make a decision, including a 60 day waiver signed by the applicant, is February 24, 2012.

Commissioner Doherty asked Mrs. Mabbott to clarify Error #5 pertaining to the alternative analysis. Mrs. Mabbott explained that the burden of proof on the alternatives analysis is on the applicant. The Planning Commission found that the applicant did not consider the alternatives to building a new transmission line and could consider co-locating on an existing transmission line. She directed the commissioners to Exhibit #2 in the packet that outlined how courts had interpreted an alternatives analysis. The applicant has the burden of proof to show a record of why, other than financial reasons, that alternative routes were not chosen.

Mr. Olsen commented that case law indicates that the alternative sites being looked at in an alternatives analysis should be on non-resource land. The alternative routes are in a resource zone, and is there not an alternative route through a non-resource zone for consideration.

Commissioner Doherty asked if all of the Planning Commission participated in this unanimous vote. Mrs. Mabbott confirmed that they did, with the exception of one member who was absent, and one who abstained from the hearing.

Commissioner Givens read from Chapter 14, Policy 19 from the Comp Plan. This policy stated that when feasible, all utility lines and facilities should be located on or adjacent to existing public or private right-of-ways to avoid dividing existing farm or forest lands, and transmission lines should be located within existing corridors as much as possible. Mrs. Mabbott confirmed that this chapter was also referenced by the Planning Commission in their denial of the application in addition to the lack of consideration of alternatives analysis.

Applicant Testimony: Patrick Gregg, PO Box 218, Pendleton, OR, associate of Corey, Byler, Rue, Lorenzen and Hojem law firm. He was with Eric Johnston and Micah Engum from W.K.N., and Doug Hojem from his law firm. Mr. Gregg requested a brief recess to examine the new exhibits entered into the record, #36-#38. Commissioner Givens granted a ten minute recess.

Recess: audio failure from 10:13:44 to 10:28:36

Mr. Gregg stated that the wind project had already been approved by the Planning Commission, so they need to discuss how WKN will get their product to market. He discussed the Planning Commission denial of the application for the transmission line. He stated the application was denied because it did not comply with the applicable standards in the Oregon Revised Statutes (ORS) at ORS 215.275 and in the UCDC, which required that WKN demonstrate that this was a utility facility necessary for public service in order to have the application approved. Mr. Gregg discussed reasonable alternatives, which the applicant had to consider reasonable alternatives. He stated that the reasonable alternatives were not defined, but Land Use Board of Appeals (LUBA) had clearly referred to the alternatives that are on land that was not zoned Exclusive Farm Use (EFU). The alternative routes identified, PacifiCorp, Umatilla Electric Coop (UEC), and Bonneville Power Administration (BPA) are also on EFU land, so consideration of these alternative routes is essentially a significant error by the Planning Commission. Mr. Gregg stated that these three alternative routes cannot properly be considered to determine if this was a utility facility necessary for public service.

Mr. Gregg discussed the second element of the standard, and the statute sets out six separate factors. The applicant must only show one standard to demonstrate that it is a utility facility necessary for public service. WKN must show that the facility is locationally dependent, meaning that the proposed route must cross lands zoned EFU for the most direct route in order to get the power out. This would satisfy this requirement or standard. Additionally, a lack of urban or non-resource lands available also demonstrates that this criteria was met. WKN feels that the Planning Commission erred in their decision to deny their application for the transmission line.

Commissioner Givens asked about the reduction of the transmission line from a 230 kV line to a 69 kV line proposed by WKN.

Applicant Testimony: Eric Johnston, 4365 Executive Dr. #1470, San Diego, CA, representing WKN Chopin. Mr. Johnston stated that they had originally proposed to have the facility interconnect with a 230 kV line, but decided to reduce the size of the line to a 69 kV line and add a second substation to convert power up to the interconnect line based on objections to the project proposal. This was their way to offer a concession at additional cost to them to reduce the footprint and satisfy the community objections by using smaller power poles and power lines. They will continue to propose the 69 kV line project, and the project would never be built to any larger degree.

Mr. Gregg asked to clarify the perspective that the alternative lines on EFU land do not address the criteria. The basis of their appeal is that reasonable alternatives were not

clearly defined in the statute, and they were depending on the LUBA definition to protect resource land and limit development on these lands. Alternatives on resource land do

not meet the policy of the statute, and this is demonstrated because the three alternative lines are also on EFU land. Commissioner Doherty asked about the fourth alternative, and Mr. Olsen advised that the only non-resource zone route would be through the city of Milton-Freewater. Commissioner Doherty stated that there were already three existing lines, so why was WKN proposing to build a fourth line on resource lands. He commented that it would be more reasonable to protect resource lands from this type of intrusion, and use one of the existing lines. Mr. Gregg responded that LUBA and the court of appeals have taken a different approach, and WKN wanted to work in that framework. Commissioner Doherty asked if it was the position of WKN that they could not consider one of the three existing lines because they were on EFU land. It would make more sense to protect the resource lands and use an existing alternative line.

Commissioner Givens noted that the court cases cited by Mr. Gregg did not relate to transmission lines, but did relate to cell towers, water treatment plants, and radio towers sited on EFU land. Mr. Gregg agreed that the cases cited did not deal with transmission lines, but that the question was the same for utility facilities sited on EFU land and the same analysis and standards were applied. Commissioner Givens noted that the standards for alternative siting requirements for a transmission line on EFU land would be very different than a water treatment plant.

Mr. Gregg stated that they would like to discuss the reasons that WKN did not choose to use the three existing alternative lines. Commissioner Doherty replied that they were in a conundrum because WKN was asking the Board of Commissioners to allow their transmission line on EFU land, but still wanted the Board of Commissioners to consider the alternative lines unusable because they were also on EFU land. He commented that he would be inclined to vote no on this application, to force WKN to take their case to the state level for further clarification and definition.

Applicant Testimony: Doug Hojem, Co-counsel, PO Box 218, Pendleton, OR, 97801. Mr. Hojem stated that the Board of Commissioners can disagree with the way they are interpreting the case law. It is important that the applicant be allowed to make their record to present to LUBA. They have to have the reasons shown why the alternative lines were considered but not chosen.

Commissioner Givens requested that another agency representative be allowed to speak, as they had another scheduled obligation and would have to leave soon. The applicant and representatives agreed to testify later.

Agency Testimony: Steve Eldridge, Umatilla Electric Cooperative (UEC), CEO, Hermiston, OR. Mr. Eldridge was present to appeal to the Board of Commissioners to not permit non-utility owned transmission lines. He commented that transmission lines should be kept in corridors, and that transmission lines should be maintained by utility facilities for the sake of consistency. He discussed a brief history of utility facilities in the state. He advised that the Federal Energy Regulatory Commission (FERC) mandated that if a private company requested transmission service, the utility facility would have to

provide that service to them at the same cost as it would be to the utility facility. If WKN were to request transmission service from UEC, they would prepare a plan of

service and move the energy from the project to where ever they wanted it to go. Mr. Eldridge discussed a small 69 kV transmission line south of Hermiston. He described this as an "orphan" line, meaning that it is not maintained by any utility facility. He stated that it was much better to have a utility facility from an electrical service standpoint. They have qualified, trained staff on call every day of the year in the event of an electrical emergency. They plan for long term operation of the lines. UEC does not build transmission lines in public rights-of-ways (ROW) because they feel it is a safety hazard issue.

Mr. Eldridge discussed an existing transmission that UEC owns, south of the Milton-Freewater area that goes to their substation at the top of Weston Mountain. He described this as the better way to go for WKN to go, as UEC would own and operate this line and take responsibility for the maintenance. He stated that there is a formula based on how much energy is moving on the line to pay for annual operating and maintenance costs, or they have the option of a set annual management fee. Mr. Eldridge said that the 69 kV line is adequate voltage level for the 99 megawatt wind project proposed.

Commissioner Doherty commented about energy generation, transmission and distribution. He asked Mr. Eldridge about transmission corridors and how far out did he think they were. Mr. Eldridge replied that he believed that it would be a good idea to begin now to require use of existing transmission lines to connect to the grid. He estimated that they are decades away from this being a complete level of cooperation. Commission Doherty asked if there were any authority to require companies to stay within existing corridors. Mr. Eldridge replied that existing energy regulations are consistent with land use planning, that insist on using existing ROW's, open access obligations, and good utility planning. Eventually new transmission lines will have to be built, but it is more practical to first utilize existing corridors that will reduce the impact on the land.

Commissioner Givens asked if UEC had the capacity to add the 69 kV transmission line. Mr. Eldridge stated that they would have to re-build the line to a larger infrastructure of poles. They should be able to build in the same place, but would talk with land owners to increase the ROW to connect to the PacifiCorp line at the top of Weston Mountain. This would mean an increase of 10 feet to make the line a double circuit line to allow for equipment and maintenance vehicles and to accommodate for weather impacts.

Commissioner Givens brought the applicants back to the testimony table.

Applicant Testimony: Commissioner Doherty asked Mr. Gregg if he felt that the Board of Commissioners had any authority where WKN sited their proposed line. Mr. Gregg responded that it was difficult to separate this issue from the alternative lines question not being on EFU land. Because there are no alternatives on non-resource land that meet the qualifications, they cannot talk about the route at this time. Mr. Gregg asked to discuss how their proposed route does satisfy all the other requirements and is consistent with county land use planning goals. Mr. Gregg stated that they wanted to

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explain substantively why the proposed route meets the standards and requirements. Discussion followed on whether or not the Board of Commissioners had any authority on siting the route. Mr. Gregg explained that there are two elements to the utility facility necessary for public service decision, and the Board has the authority to decide if this meets the criteria for public service. The second element is the analysis of the six factors. He stated that the Board has the authority to look at the statute and the development code and which provisions implement it and decide whether the Board feels it meets the criteria for a utility facility necessary for public service.

Commissioner Doherty asked if they had a definition of utility facility and Mr. Gregg responded that the definition was found on page 311 of the UCDC Section 152.617. He read the section of the code and stated that utility facilities include transmission lines. This is also true of the state law definition of a utility facility. Commissioner Doherty asked Mr. Gregg if WKN Chopin was a utility. Mr. Gregg responded that they were, but that they did not sell power to rate payers like PacifiCorp. He stated that he did not believe it possible to separate out the term utility and facility, and that utility facility does not refer to a facility managed by a utility company. It refers to a structure or a concept like a transmission line that provides a utility service.

Commissioner Doherty asked about the difference between transmission lines that are built and maintained by a utility company and a wind project, as described by earlier testimony from Mr. Eldridge. He referenced the UCDC Section 152.617 and asked if the ordinance was written to combine the words utility and facility together. Mr. Gregg stated that the answer to this was found by looking at state law that left this interpretation up to county standards, as state law does not define utility facility to be only a facility owned by a utility company. Commissioner Doherty asked Mr. Gregg to comment on the term public service, and what it meant to WKN Chopin. Mr. Gregg stated that this was set out in case law, as being necessary for public service. Case law indicates that a facility needs to be on EFU zoned land in order to provide this service. The courts have taken a narrow view that "necessary for public service" means that the facility, or transmission line in this case, must be on EFU land in order to provide the service. In WKN's view, the proposed route for the transmission line does have to be on EFU land to get the power out from the project. Commissioner Doherty asked about the phrase "public service" and would it describe the "who" as being the recipient of the power. Mr. Gregg responded that they did not feel that it applied to who received the power. Commissioner Doherty commented on this being a utility facility for public service, and what public that this service was being provided for and what impact would it have on that public. If the Board were tasked with protecting the public, then who ultimately had the authority to make the decision on this application.

Mr. Johnston stated that the Chopin wind facility is an independent utility that will connect to the PacifiCorp line, which is also an independent utility, and would be regulated by the Public Utilities Commission (PUC) in Oregon. The renewable energy generated by this facility would be part of the state mandated 20% renewable energy goal from the State of Oregon. Mr. Johnston clarified that Chopin would be an independent facility as opposed to being owned by a municipal agency like UEC. It is a private utility, not a public utility, but oversight would still lay with the PUC in the State of

Oregon. Mrs. Mabbott clarified that the PUC had no jurisdiction over privately owned electric transmission lines or generating facilities in Oregon.

Commissioner Givens read from the UCDC Section 152.617, and commented that the Board's job is to develop good policy. He asked WKN to respond to the six standards of criteria named in that section, with the first one being the requirement to demonstrate consideration of reasonable alternatives. Mr. Johnston replied that the location of the project dictated that they would have to pass through EFU lands in order to get their power out. They did look at three other lines and these were not utilized for the reasons that were provided to the Planning Commission at that hearing. Commissioner Givens confirmed that this information was a part of the record.

Mr. Johnston discussed why WKN did not choose the alternatives. He stated the BPA had stopped soliciting for renewable inputs to their system, as the renewable power is in direct competition with their own hydro electric assets. Last spring, there were lawsuits filed against BPA for giving preference to their own hydro projects over the renewable energy resources that they are contracted with. WKN last had contact with BPA in 2011, and BPA indicated at that time they had no interest to work with WKN. Mr. Johnston stated that they considered the Pacific Power line, a six single cycle transmission line that goes from Walla Walla delivering power to Weston. The power flows only one way from Walla Walla to Weston, and does not have enough capacity to transmit power both ways. In order to upgrade that line, Pacific Power would have had to increase their ROW's. Pacific Power told WKN that because this line is so old, they do not have the paperwork for the existing ROW's and they did not want to open this up to try and acquire additional ROW's from land owners.

Mr. Johnston discussed the third alternative with the UEC line. WKN had met with UEC and looked at the line, location and distance and what it would take to upgrade the line to accommodate their power. UEC indicated they would need to increase the size of the towers, and obtain larger ROW's for 10 miles. This would mean that their line would be twice as long as the proposed line from WKN, it would result in more trees in the pine forest areas being removed to accommodate the wider ROW. It seemed like a lot of trees and sensitive area to disturb for a 10 mile long stretch when WKN could place a line in the public ROW near existing roads. UEC would have to acquire additional easements through purchasing or the eminent domain process. Commissioner Givens commented that Mr. Eldridge, UEC, had stated in earlier testimony, that getting additional ROW would not be an obstacle. Mr. Johnston replied that UEC would have a monetary interest in doing the 22 mile long line by charging a significant "wheeling" charge for the cost of building, operating and maintenance of the line. WKN is proposing to build their own line that would be much shorter than what UEC proposed, and it would not be an "orphan" transmission line. It would be part of the Chopin project and subject to maintenance from that project.

Commissioner Givens read from Section 152.017 pertaining to the public transportation system. (Unintelligible audio) The applicant may be required to mitigate impacts to public safety. Mr. Johnston commented that they have done surveys of the line area, and the paved/graveled areas are approximately 24 feet wide. The overall ROW is 40 feet, so they felt that there is sufficient space to add their power poles for the proposed line. The

line would be engineered with the road master and state standards for safety requirements.

Commissioner Givens read from the next section that stated that whenever feasible, all lines should be located on or near adjacent ROW's to avoid dividing farm and forest lands, and lines should be developed in existing corridors. Mr. Johnston replied that WKN is asking to put their transmission line in the public ROW, as permitted by county ordinance. In their review of the three alternatives, WKN found that two of them came down to feasibility with transmission issues and the third option was more destructive than the proposed route they currently have. Commissioner Givens advised that cost cannot be the main factor when considering the alternatives and Mr. Johnston replied that cost was not the only factor considered in their decision.

Applicant Testimony: Steve Corey, attorney with Corey, Byler and Rew, PO Box 218, Pendleton, OR. Mr. Gregg referred to the memo from Mrs. Mabbott. On page 3, in point #2, the memo stated that the application did not comply with Section 19, minimizing adverse impacts to the community. Mr. Johnston stated that WKN offered to reduce the voltage of the line to 69 kV as a compromise and decrease the size of the poles by 50% to reduce the visual impact. They would prefer not to go along the Hwy 204 route because WKN doesn't feel that tearing up additional trees in the Blue Mountains is not necessary. They don't want to get into the eminent domain issue with land owners to increase the ROW, as this is not in the best interest of the public.

Mr. Johnston addressed the concern about future expansion of the line. WKN will do their best to plan for the future of the line and existing roads, and are confident that they can safely place their poles within the 40 feet ROW. They are not aware of any future plans to widen the road, and cannot plan for that. If that were to happen, they would work with the county and state to relocate their poles. WKN feels that their plan addresses the safety concerns and will meet all the standards of the county road master and Oregon Department of Transportation (ODOT). Mr. Gregg referenced a point in Mrs. Mabbott's memo, #2, pertaining to Blue Mountain Station Road. He commented that the Board has already signed off on the legalization of this roadway, and this issue will be resolved.

Commissioner Doherty asked about the contractual obligation for conjunctive use from BPA. Mr. Johnston stated that the problem is that BPA does not have any off-take opportunity for WKN. BPA's lines only go to their distributing assets, and they are not looking to buy any additional power to put on those lines. PacifiCorp has a 230 kV line running through the northwest part of the county, and WKN has an interconnect agreement at the Linton Mountain substation. He also said that the 69 kV line out of Weston did not have the capacity for their power. Mr. Johnston stated that the alternatives are not reasonable, and that their proposal is the only viable option. Discussion followed on interpretations of the law pertaining to reasonable alternatives. Mr. Corey explained that they have looked at the alternatives and how they would not work for WKN. Mr. Corey stated that the UEC process would take too much time to complete because of having to increase the ROW. This would mean negotiating with land owners. WKN feels that their proposed route is the least intrusive way to go, and the best option. Mr. Corey stated that they do not believe that the county has an

alternatives analysis based on the state statute. Discussion followed on the alternatives analysis and what is considered reasonable. Commissioner Doherty asked Mr. Gregg if they thought that the Board of Commissioners had any review authority on the issue of reasonableness. Mr. Corey responded that if all alternative routes were on EFU ground, it would depend on where the interconnect point would dictate what was reasonable. Mr. Corey stated that if the routes out are on non-EFU land, then the Board has the authority to review the application. If the routes are all on EFU land, and the developer proposed a route in the public ROW, then this complies with the standard and the developer can select the route.

Mrs. Mabbott commented that the laws for transmission lines were written before the recent growth in renewable energy. The laws were written at that time with an understanding that all transmission lines would be built and governed by regulated public utilities. This perspective has changed with renewable energies and private companies. If federal funds were used to build a transmission line, this would require a National Environmental Policy Act (NEPA) analysis. The wind industry is not regulated like government agencies, and so do not have to meet the high bar as in the past.

Proponent Testimony: Ernie Filan, 733 Francis Ave, Walla Walla, WA. Mr. Filan is representing the Filan Trust. He stated that he supported this project, and doesn't feel the need to repeat the details. He wanted to state for the record that he didn't appreciate how Commissioner Hansell was dismissed.

Proponent Testimony: Rod Anderson, 4531 A Avenue, Pendleton, OR. Mr. Anderson stated that this is a tough situation for the community. They are trying to fulfill the state mandate to have renewable energy available. He supports the project and is willing to make adjustments to make the project fit better. He wants to work with land owners to make the transmission line work. They have an approved project, but need someplace to plug it into. The federal government is in a pickle and the responsibility is coming back to local governments in order to survive. They need to be prepared a federal implosion. These projects help the economy and support the Sheriff's office, State Patrol and city law enforcement. They need to look at every avenue of tax income monies they can to support the community.

Recess for lunch: 12:03 p.m. to 1:03 p.m.

Agency Testimony: Brian Wolcott, Walla Walla Basin Watershed Council, 810 S. Main St., Milton-Freewater, OR. Mr. Wolcott is the Executive Director of the Watershed Council. He stated that he supported alternative energy development, as long as it did not impact natural resources. He displayed photos of the subject area near Kinnear Road and Linton Mountain Road that demonstrated the steep terrain. He spoke about erosion issues, wildlife impact issues and endangered species. Mr. Wolcott stated that the proposed transmission line is right in the middle of the Walla Walla Watershed Sensitive Habitat Area. Confederated Tribes of the Umatilla Indian Reservation (CTUIR) were not able to be present at this hearing, but they have three miles of conservation easements in this area for wildlife conservation. The Watershed Council

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has spent \$106 million dollars on preservation of this habitat. There are endangered species in this area, such as steelhead, bull trout and salmon. Mr. Wolcott displayed a map showing the erosion potential determined by the Department of Agriculture in this sensitive habitat area. Next he showed a graph showing the levels of precipitation to demonstrate the higher rainfall zones in the transmission line area, and explained how development in this area will result in higher amounts of erosion into the sensitive watershed. He displayed a topographical map demonstrating the slope percentages in the designated transmission line area, which will also be impacted with erosion as a result of development. Mr. Wolcott explained that the erosion risk index was developed by the Natural Resource Conservation Service (NRCS). The Walla Walla Basin Watershed Council has been working to come into compliance with Environmental Protection Agency (EPA) and the Clean Water Act with sediment and temperature improvements. If this transmission line development so near to Couse Creek was allowed, it would be problematic. Additional roads and increased use will cause sedimentation into the rivers and streams in the sensitive habitat area.

Commissioner Doherty asked if Kinnear Road connects with Couse Creek Road, and Mr. Wolcott confirmed that it does. It drops steeply down at Couse Creek and Blue Mountain Station Road. Mr. Wolcott confirmed that the proposed transmission line runs adjacent to this area for several miles.

Opponent Testimony: Dave Price, 80488 Zerba Rd, Athena, OR: Mr. Price stated that their group would be presenting in four parts, and distributed materials to the Board pertaining to water resources in the sensitive habitat.

Mr. Olsen advised that Mr. Kralman's letter would be Exhibit #39, Mr. Price's letter would be Exhibit #40, and the Blue Mountain Alliance letter would be Exhibit #41. Commissioner Doherty moved to accept these exhibits into the record, and Commissioner Givens seconded the motion. Motion carried 2:0.

Mr. Price stated that he was representing the Blue Mountain Alliance. Their objective was to reach a balance between property rights and development. Their task was to provide information to the decision makers, and they do not intend to stop the development of the transmission line. He discussed the history of this application and what had transpired at previous hearings, including the change of the proposed line from 230 kV to 69 kV. Mr. Price discussed the alternate routes, and how much impact these routes would have to the EFU lands. They feel that WKN did not evaluate the alternative routes with this in mind. It is their contention that WKN would prefer to construct and own their own transmission line. If every wind project applicant wanted their own line, there would be even more lines in the future. Mr. Price commented that it would be smarter to manage the amount of transmission lines to reduce the impact to the environment. He referenced Chapter 14 Policy 19 of the Comprehensive Plan. They do not feel that the engineering feasibility can work in the public ROW, and no one really knows if the study was done. Mr. Price commented on the impacts in the sensitive area to the highly erodible soils and fish and wildlife. Couse Creek is a Class 4 stream, listed as critical habitat and is adjacent to Kinnear Road with the potential to contribute silt to the Walla Walla River. He referenced the highly erodible soils data provided by the Department of Agriculture, and noted that the risk was considered high for this area.

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Both the transmission line and the substation interconnect are in this area. These are high impact concerns that have not been properly addressed in the application.

Mr. Price discussed the feasibility aspect, the ROW issues and surveys. Policy 19 does require co-location of existing corridors to minimize impact to EFU lands. The Planning Commission denied the application because they felt that the information provided by the applicant was insufficient. Blue Mountain Alliance has retained an attorney, and they have provided a written opinion from their attorney to be entered into the record.

Commissioner Doherty moved to accept a letter from Reeves-Kerns into the record as Exhibit #42, a letter from Debbie Kelly as Exhibit #43 and a letter from Sunny Danforth as Exhibit #44, and Commissioner Givens seconded the motion. Motion carried 2:0.

Opponent Testimony: Sunny Danforth, 1103 Walnut St, Milton-Freewater, OR. Ms. Danforth stated that the attorney for the Blue Mountain Alliance could not be present today, so she would be reading that letter, the letter from Debbie Kelley, and her letter into the record.

Opponent Testimony: Richard Jolly, 54462 Upper Dry Creek Road, Milton-Freewater, OR. Mr. Jolly commented that they are unclear as to what voltage is currently proposed for the transmission line as this has changed. He supports using the existing line with a wider ROW and easement. They have concerns about the project being permitted at one size, and then being able to update to higher voltage without further permitting. The PacifiCorp 69 kV line from Walla Walla to Weston has a lesser impact and footprint and goes on to Pendleton. Even though it is in the ROW, the land is still zoned EFU. The proposed project as stated does not warrant needing a 230 kV line. In order to get to the Linton Mountain interconnect point, the money saved by not building a new line could be used to upgrade the existing transmission line, which was quoted as costing \$1 million per mile. Mr. Jolly stated that it is in the best interest to Umatilla County to deny this application and to continue to support protection of the sensitive watershed impact areas.

Commissioner Doherty moved to accept Mr. Jolly's letter into the record as Exhibit #45, and Commissioner Givens seconded the motion. Motion carried 2:0.

Commissioner Doherty moved to accept Mr. Kralman's letter into the record as Exhibit #46, and packet of 12 pictures as Exhibit #47, and Commissioner Givens seconded the motion. Motion carried 2:0.

Opponent Testimony: Norm Kralman, 52151 Fruitvale Rd, Milton-Freewater, OR. Mr. Kralman recently took a drive along the proposed route and took pictures that he has submitted to the Board. He described the locations and circumstances from which he took these pictures. He also took measurements to represent the width of the proposed easements and ROW's. Mr. Kralman supports the Board to uphold the denial of the WKN application.

Opponent Testimony: Dave Shaffer, 52979 Hwy 332, Milton-Freewater, OR. Mr. Shaffer stated that he was opposed to wind mills in the Blue Mountains, and he questioned the motive of building a transmission line and a substation right up the middle

of the Blue Mountains. He stated that it may be to establish an infrastructure for further development of wind farms in the Blue Mountains.

Opponent Testimony: Frank Kaminski, Vice-Chair of Umatilla County Planning Commission. Mr. Kaminski stated that he had requested multiple times for additional information to show that an actual analysis had been done, and he received nothing. He stated that UEC testified that they had been in contact with WKN and had offered to work with them to use their existing line. With regards to scenic values, the existing UEC line cannot be viewed from Hwy 204, past mile marker 16 near The Chalet (restaurant), and that is where the tie in with the 230 kV line would occur. Mr. Kaminski commented that they must be cautious about the mischaracterization from WKN about the term "towers" and what this really means. It is his understanding that they intend to use the single wood poles similar to what is currently in use.

Opponent Testimony: Lindsay Winsor, 224 SE 20th Place, Milton-Freewater, OR. Mrs. Winsor represents the Shumway Conservancy, LLC. They own property along the proposed route on Couse Creek Road. She had already submitted a written statement to the Board, but asked to highlight several points in her testimony. The proposed route has serious impacts to the property owners there. Couse Creek Road has very sharp curves, and people walk along the road. With the addition of power poles, it will cause significant safety issues. The Board of Commissioners has the authority and responsibility to protect the land and the people of this county. Kinnear Road and Blue Mountain Station Road are used for harvest in the summer. Harvest trucks and farm machinery use these roads. These roads are already dangerous, and that danger will increase with more power poles. Mrs. Winsor stated that Blue Mountain Station Road and Kinnear Road are impassable during winter storms. She questioned how WKN would be able to get their maintenance trucks to their proposed line during the winter if the roads are impassable. Mrs. Winsor referenced earlier testimony from Brian Wolcott from the Walla Walla Basin Watershed Council, and the work that has been done to preserve and improve the stream habitat on Couse Creek. They have been working with the Oregon Department of Fish and Wildlife (ODFW), Watershed Council and CTUIR since 1996 to improve the fish habitat above where Kinnear Road enters Couse Creek. Increased traffic and construction from the transmission line will cause increased siltation into Couse Creek. They have worked to slow the flow of the creek and shaded the stream, but they would not be able to overcome increased siltation. Couse Creek is a very valuable resource and the Board needs to work to protect it. The Board has a difficult decision, and it will be hard to discern the truth from all sides. Mrs. Winsor commented that building 11 miles of new transmission line is not the better option over improving the existing 22 mile transmission line. She would support the Board denying the appeal, and making WKN find another way to take their power out.

Mrs. Winsor read a written statement from Jack and Barbara Howard who were not able to be present today. Commissioner Doherty moved to accept this letter into the record as Exhibit #48, and Commissioner Givens seconded the motion. Motion carried 2:0.

Opponent Testimony: Ginger Johnston, 142 SE 6th Ave., Milton-Freewater, OR. Ms. Johnston testified that she moved to the Milton-Freewater area from a large, urban California area. The view of the Blue Mountains has fed her soul, and the thought of

another power line disturbs her greatly. She asked that the Board support the Planning Commission decision and deny the appeal.

Opponent Testimony: Chris Banks, 80856 Couse Creek Road, Milton-Freewater, OR. Mr. Banks stated that his wife is a member of the Shumway family and they have lived in the Shumway house for 34 years. He wants to give a personal view of his fears regarding the transmission line going up through Couse Creek. Couse Creek is a very narrow valley and the creek comes right up to the road in most places. The most susceptible place is where Kinnear Road crosses because of the steep slopes. They have encountered many problems over the years with water runoff getting into the stream carrying siltation because of the steep slopes surrounding the entire area. The Tribes has tried to protect the creek in this area. Mr. Banks stated that he addressed the ROW in his letter to the Board, and he is not sure how the ROW was determined and from what point. The existing power poles are mostly on the west side of the road, and because of the steep drop off into the creek the poles range in varying distances from the road. The county does come through every two or three years to clean out the ditch on the opposite side of the road because of the steepness of the slope. The ROW is used up already in most instances, and one of these instances is on Shumway property. The Shumway's will not grant any additional easements to WKN to place a pole on that road. With power poles already on one side of the road, the other side of the road is too steep and narrow to place a new set of poles. Mr. Banks is also very concerned about the environmental and health impacts of high voltage power lines. The wildlife on the hillsides includes hawks, bats, owls, doves. The proposed transmission line comes very close to the Jack Howard property, and he would not want to live in the homes there. He has read about the effects on health of electromagnetic radiation and the possible links to cancer. Mr. Banks commented that the alternative route that should be considered is the UEC line and it should be a simple decision to make. The UEC is ready and willing to work with them, so why would WKN want to go any where else.

Agency Testimony: Nate Rivera, 750 W. Elm, Hermiston, OR. Mr. Rivera represents UEC. Mr. Rivera is concerned about the WKN proposed route and wanted to address comments made in earlier testimony about UEC. He stated that WKN representatives did come to the UEC office, and later they did drive along the proposed route. WKN indicated at that time that they would come back later to discuss the UEC line, but that they never were contacted by WKN again. Mr. Rivera testified that UEC is willing to work with WKN, but until a full feasibility study is done they cannot say if their line would work or not or what the impacts would be on their line. UEC feels that it is in the best interest of the county that the Board ensures that the safest route possible is used. Mr. Rivera explained that UEC is a not-for-profit company, and would not stand to gain financially from an arrangement with WKN. They would only charge what it would cost them to upgrade and maintain their existing line to co-locate with WKN. They would cost share on the upgraded line, but it would still be owned by UEC. UEC is a cooperative and would not be making any money from WKN. They have serious concerns about the safety, design and ability to provide maintenance to the WKN proposed route. WKN has stated that they would have a qualified engineer design their line, but if they are not held to PUC standards, there would be no regulation authority to ensure this. Mr. Rivera stated that UEC was also concerned with who would be

inspecting and maintaining their proposed line following construction. It is not known if WKN has any experience building transmission lines in Oregon. There are questions about the environmental challenges unique to Oregon, who will implement the vegetation management plan and how qualified are they to perform maintenance on their line. Mr. Rivera questioned what materials will be used in the construction. Safety is the number one concern for UEC, and they want to make sure that the provider of service has the appropriate credentials and experience to safely repair the poles and the line. He stated that there should be a written plan with policies and standards in place for working with high energized power lines, a safety operation plan with standards for emergency repairs, schedules of inspections of poles and tree trimming. There needs to be an emergency contact available to the county in the case of a downed line, with response times. Wind turbine technicians are not qualified to work on high energized power lines. Mr. Rivera stated that all of these things need to be taken into consideration when proceeding with this application. UEC fully recommends that a feasibility study be done before proceeding further.

Commissioner Doherty stated that earlier testimony from Mrs. Mabbott indicated that the PUC does not oversee privately built lines. Mr. Rivera confirmed this was correct and advised that PUC does oversee their operation because they are a public cooperative with access to federal funding; they have a higher standard to ensure. Commissioner Doherty asked if there were different levels of standards for utilities and transmission lines. Mr. Rivera stated there are minimal standards created by the federal government, but a privately owned line wouldn't be held to those standards. Commissioner Doherty asked if a private utility line would have to adhere to get any permits from state or federal regulatory agency, and Mr. Rivera replied that privately owned lines do not have to go through this process and are not subject to inspection by these agencies. Once the line is constructed, there is no obligation from the privately owned line to provide ROW maintenance or inspection, vegetation management, repairs of pole conditions, insulators, etc.

Mr. Rivera stated that there had been testimony about the length of their alternative line. There would be two miles of new line and a little over 20 existing miles to be upgraded. This information is still an approximation until the full feasibility study is done. An upgraded line could include increased easements and larger poles. They would use a single wood pole built in the current ROW they have. They may need to increase their existing easements by 5-10 feet in some places, but there would be no need for new easements. They have worked with other wind developers and worked directly with the land owners to accomplish the easements.

Commissioner Givens asked about the visibility of their line near Hwy 204. Mr. Rivera stated that he could not describe the view impact until the feasibility study was done, but an upgraded line would require larger poles in some section. The final height of the pole needed would be approximately 70 feet.

Proponent Rebuttal: Mr. Corey and Mr. Johnston testified for WKN. Mr. Johnston testified in response to comments from Mr. Wolcott. He stated that in order to engineer a transmission line, there needs to be a risk analysis done first to determine if the developer wanted to proceed with the project. WKN knew that there was a possibility that their

application would be denied so they asked that their engineered plans and best management plans be made a condition of approval for the LUD to compensate for that. They have successfully developed wind projects near other water areas before by using Best Management Practices (BMP) and they would apply those same standards in this watershed area. They would work to ensure the sensitive habitat was protected. In response to the Blue Mt. Alliance attorney's written statement, WKN believes that their proposed line offers the least amount of impact to EFU lands by locating their transmission line in the public ROW and easements and not taking EFU ground out of production. Mr. Johnston stated that the opponent was operating under two mistaken premises. The opponent contends that the WKN proposed line disrupts EFU land, and WKN feels that they do not interrupt EFU lands because they will be operating in the public ROW and easements. The other misconception was that the three alternative routes were shorter. This was not accurate as their proposed line was only 11 miles long, and the UEC line would be twice as long at 22 miles. Their line is the shortest option. Mr. Johnston referenced Mr. Kralman's photos and commented that they supported their case to show that they would be operating in the ROW on the upland side, away from the creek. Only 19 feet of the current ROW is in use, and that leaves them plenty of room to place another line of poles. Mr. Johnston apologized to Mr. Kaminski for any confusion as a result of using the term "tower" instead of "pole". They will be building a 69 kV line and utilizing wood poles. They might use metal poles near Hwy 11 to get clearance over the roadway. Mr. Johnston referenced testimony from Mr. Rivera and stated that they would build their line to the state standards and would invite a condition of approval to this effect as part of their LUD.

Mr. Corey discussed the state statute and how WKN could demonstrate how they considered the reasonable alternatives. They respectfully believe that the Board must approve their application with mitigation for impacts from the proposed facility. The options and alternatives they have offered satisfy the criteria and standards according to the statute. Mr. Corey stated that being required to work with UEC and completing a feasibility study was not timely or practical, and not a good option for them. He advised that the Board must follow the law and approve the WKN application.

Commissioner Givens asked if WKN had a signed contract for the sale of the power, and Mr. Johnston replied that they are in negotiations with PacifiCorp. They won't sign contracts until they have a project to build. Mr. Corey stated that this was an inappropriate question to be asked of WKN.

Commissioner Doherty asked if PacifiCorp couldn't put conditions on a contract with WKN, not unlike the county puts conditions on an application. Mr. Johnston stated that he cannot force PacifiCorp to sign a contract with conditions. They have committed to taking the power at the point of delivery with a large generator interconnect agreement, but nothing further.

Deliberation: Commissioner Givens closed the hearing and moved to deliberation. He asked Mr. Olsen what choices were open to the Board. According to the UCDC Section 152.766, they have to make a decision within 150 days, or February 24, 2012. The

Board can decide to amend, rescind, affirm or remand the application at this point, within the time constraints.

Commissioner Doherty discussed the recusal of Commissioner Hansell. He did not have to recuse himself, and he did this on his own based on counsel from colleagues. He did so to avoid further confusion on this issue with a conflict of interest perception. Commissioner Doherty cautioned everyone to not read anything into this decision, and it was not an admission to a conflict on any level.

Commissioner Doherty stated that he supported the Chopin Wind Project for the energy generating facility. He referenced testimony from Mrs. Mabbott, and that the laws were written for siting standards before renewable energy and wind development were relevant. They may no longer apply to the current uses of utility facilities. The current standards are ambivalent to today's situations. The Planning Commission spends much more time on these issues than the Board has the opportunity to, and has a better understanding of the pertinent facts and issues. The idea of an energy corridor is not new, and many have been considering this for some time. Land use law was meant to regulate the values and processes to deal with this issue. He stated he was having a difficult time understanding where their authority starts and stops, so he believes that this ambivalence can be sorted out by the state.

Commissioner Doherty commented that there were three alternatives presented but whether or not they were reasonable is difficult to define. In his opinion, the UEC option was the best choice for this project. It was the legal position of WKN that the Board would have to approve the application because they satisfied the criteria of looking at the alternatives. Commissioner Doherty stated that he does not agree with that, and if the state does agree with that, then they can impose that standard.

Commissioner Doherty stated that there are three lines existing now, and if WKN can co-locate on one of these lines by creating 2 miles more of new line, he believes that this would be the least amount of impact and the best alternative. It would not necessarily be the best option for the county for WKN to own and operate their own transmission line. Protecting farmland was the reason that land use law was started in 1972. He commented that the burden of proof was on WKN, and they did not persuade him that their proposed route was the best option. He also noted that testimony provided today cast doubt on their ability to build their preferred route because of the narrow ROW and safety issues. Commissioner Doherty moved to affirm the decision of the Planning Commission to deny the WKN application

Commissioner Givens commented that he was also not convinced that WKN had met their obligation to meet the burden of proof. They did not establish that their preferred route was the best option. He referenced the Comprehensive Plan. The Board wants to make good policy and opening up new areas for more transmission lines when they want to encourage development of a corridor for energy transmission is not good policy. He encouraged WKN to work harder with the three alternatives and those respective providers.

Commissioner Givens seconded the motion to uphold the decision of the Planning Commission. Motion carried 2:0.

Mr. Olsen stated that the staff would review and draft the findings for the Board to sign. The applicant would then have 21 days to file an appeal to LUBA once the findings are signed by the Board.

The hearing was adjourned at 3:27 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gina Miller".

Gina Miller
Secretary

(adopted by Board of Commissioners on 03/13/12)