SPECIAL MEETING
CAPITAL PROJECTS ADVISORY REVIEW BOARD
Minutes
La Quinta Inn & Suites
4600 Capitol Boulevard SE
Tumwater, Washington 98501
June 6, 2017

MEMBERS PRESENT	REPRESENTING	MEMBERS ABSENT	REPRESENTING
Bill Frare, Chair	*State Government*	Teresa Berntsen	*OMWBE*
Andrew Thompson, VC *(Telecon)*	*General Contractors*	Rep. Steve Tharinger	*House (D)*
Rep. Vincent Buys *(Telecon)*	*House (R)*	Greg Fuller	*Specialty Contractors*
Steven Crawford	*School Districts*	Senator Bob Hasegawa	*Senate (D)*
Joaquin Hernandez *(Telecon)*	*Private Industry*	Ty Heim	*Public Hospital Districts*
Rebecca Keith	*Cities*	Charles Horn	*Insurance/Surety Industry*
Santosh Kuruvilla	*Engineers*	Lee Newgent	*Const. Trades Industry*
Brent LeVander	*General Contractors*	Alan Nygaard	*Higher Education*
Robert Maruska	*Washington Ports*	Mark Riker	*Construction Trades Labor*
Irene Reyes (Telecon)	*Private Industry*	Gary Rowe	*Counties*
Walter Schacht	*Architects*	Mike Shinn	*Specialty Contractors*
		Vacant	*Senate (R)*

Staff & Guests are listed on the last page

WELCOME & INTRODUCTIONS
Chair Bill Frare called the special meeting of the Capital Projects Advisory Review Board (CPARB) meeting to order at 8:21 a.m. to consider an appeal of the Project Review Committee's (PRC) approval of a Design-Build Application submitted by Okanogan Public Utility District No. 1 (OPUD) for the Enloe Hydroelectric Project.

A meeting quorum was attained.

Everyone present provided self-introduction.

EXECUTIVE SESSION
Chair Frare recessed the meeting at 8:24 a.m. to an executive session pursuant to RCW 42.31.10 to consult with legal counsel. The executive session was scheduled not to exceed 30 minutes.

RECONVENE FROM EXECUTIVE SESSION
Chair Frare reconvened the meeting at 9:08 a.m.

APPEAL OF PROJECT REVIEW COMMITTEE DESIGN-BUILD APPLICATION APPROVAL OF OKANOGAN PUBLIC UTILITY DISTRICT NO. 1 ENLOE HYDROELECTRIC PROJECT - *Action*
Chair Frare outlined the hearing process as agreed by the parties during the preconference hearing. Each party was allocated 20 minutes to present their respective case. Questions by the Board will be at the end of each party's presentation, which is not included in the 20 minutes. All parties to the appeal affirmed understanding of the hearing process.

Chair Frare invited Alyssa Englebrecht, Smith & Lowney, PLLC, representing the appellant, Columbia River Bioregional Education Project (Columbiana), to present oral arguments.

Alyssa Englebrecht: I am the counsel for Columbiana. The matter before the Board involves two broad categories of issues. The first is whether Columbiana has been denied due process rights, and the second is whether the PRC erred in approving Okanogan Public Utility District No. 1 application to use Design-Build on the project.

Ultimately, the Board should reverse and remand the PRC's decision back to the PRC where the matter should be conducted as an adjudicative hearing.

First, the hearing before the PRC should have been conducted as an adjudicative hearing. Columbiana has never argued and is not now arguing that every hearing conducted by the PRC should be conducted as an adjudicative hearing. Rather, Columbiana argues that in this case, such a proceeding was appropriate. The PRC and the Board do have the authority to conduct an adjudicative hearing under the APA, which is the Administrative Procedures Act. While these administrative procedures are not contemplated by RCW Chapter 39.10, which is the RCW that governs PRC, the PRC is also governed by the Administrative Procedures Act. Neither OPUD nor the PRC presented any authority that the PRC is not a closed agency as defined by RCW 34.05.010. Second, agencies as defined by the statute are governed by the APA. Furthermore, the exemption from the APA for decisions regarding procurement and contracts is not applicable here. The decision by the PRC is regarding a project delivery method utilized by a public entity. It is not a decision by the PRC to enter into a contract or procure goods. Because the PRC is governed by the APA, the provision of the APA allowing for proceedings to be converted is also applicable. OPUD and the PRC contend that this proceeding could not have been converted because PRC hearings are not a form of proceeding contemplated by the APA. This is incorrect. To explain, I have to delve into some secondary definitions. The APA provides broadly for only two types of proceedings: rulemakings and adjudications. Those are part three and four of RCW Chapter 34.05. An adjudicated proceeding as defined by RCW 34.05.010 states, *"A proceeding before an agency in which an opportunity for hearing before the agency is required by statute or constitutional right before or after the entry of an order by the agency."* A rulemaking is defined by RCW 34.05.010 (18) as, *"The process for formulation and adoption of a rule."* A rule is then defined in subsection 16 as, *"Any agency order, directive, or regulation of general applicability which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law."* Under this definition, the PRC hearing was a rulemaking proceeding. The PRC establishes via its approval and disapproval of whether a public body has met the qualifications and requirements to enjoy the benefits or privilege of being able to use Design-Build on a project.

So, turning back to the provision of the APA, which allows for conversion under RCW 34.05.070.1, this means that this issue becomes apparent during the course of an adjudicative or rulemaking proceeding undertaken pursuant to this chapter that another formal proceeding under the chapter is necessary in the public interest or is more appropriate to resolve the issue, the presiding officer or other official responsible shall commence to do proceedings. The only two types of proceedings contemplated by the APA are rulemaking proceedings and adjudications. So this provision allowing conversions from one type of proceeding to another must mean that a proceeding could be converted from a rulemaking to adjudication or vice versa. Because the PRC proceeding was a rulemaking, it could not be converted into an adjudication. Moreover, this hearing should have been converted into adjudication as argued in Columbiana's motion to convert. Conversion was necessary because the adjudicated procedures that would have been provided by the hearing would have allowed Columbiana to present a more complete factual picture to the Board. Conversion was also in the public's interest given the clear public opposition to the project. The public has an interest in seeing this matter properly adjudicated and, in my viewpoint, a conversion to adjudication was more appropriate.

Next, the conversion would not have impacted OPUD in any meaningful way. While agreement would cause additional delay, OPUD must comply with the provisions of Chapter 39.10 RCW regardless of any impending deadline. Additionally, arguing this fact that this deadline is rapidly approaching, the OPUD has not suffered further delays is disingenuous. OPUD has held its FERC license for four years. Now, one month before that deadline it cannot invoke an argument that Columbiana is causing unreasonable delay. Columbiana however, was impacted by the lack of due process before the PRC. The opportunity to make comment alone was not enough. I cited in the petitioner's response brief on page four that the United States Supreme Court in *Stanley vs. Illinois, "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation."* Here, Columbiana should have been afforded with procedural due process rights that come with adjudication. And, Columbiana is entitled to those procedural due process rights. The courts have made clear that a third party, such as Columbiana, challenging an agency action can have a property right giving rights to due process. This property right allows for statutes governing the agency to provide specific mandatory and carefully certain prescribed requirements, which constrain an agency's discretion. Here, Chapter 39.10 RCW clearly does that. It provides specific requirements for the public body application and carefully prescribed requirements by which the PRC must evaluate those applications.

Now, moving on to the second issue before the Board was whether the PRC erred in approving the Design-Build on this project. As Columbiana has argued in its brief, OPUD has not demonstrated to the PRC that it has the recommended requisite experience. Columbiana understands that OPUD may hire people, hence this requirement, which in this case, it

must actually do because no one at OPUD itself has the requisite experience. Columbiana's contention is that the consultants who have been hired are either not available for enough time, have the skill and knowledge of Design-Build, or have not even been identified yet. Ms. Parkinson is only available to OPUD 10% of the time, Mr. Christensen 50%, and Mr. McCreedy is just listed as on-call. Mr. Christensen and Mr. McCreedy have not had the Design-Build experience in the past five years, which would tend to indicate that their knowledge is stale. Finally, one member of the consultant team who works in construction has yet to be identified. These facts should lead the Board to conclude that OPUD did not demonstrate to the PRC that it has the requisite experience necessary.

Second, OPUD has not demonstrated that Design-Build will provide a substantial fiscal benefit. OPUD first intended in its answers to the PRC's preliminary questions that it was not even required to show this under the statute, which was clearly incorrect. Columbiana is again aware that the PRC is not considering the fiscal benefit of this project as a whole, but the fact that this project is fundamentally economically flawed should factor into whether Design-Build could provide substantial fiscal benefit to such a project. OPUD itself states, *"In a Design-Build project, the owner selects a design builder prior to the establishment of final price, therefore, there is a cost risk on the owner if the parties will not be able to reach agreement on a final maximum cost of the project."* In this case, when the project has been shown to be economically irresponsible reaching agreement on a final price prior to the selection of bidder would allow for increases in cost (unintelligible). The Board should ultimately conclude here that OPUD has not demonstrated sufficiently that the use of Design-Build would provide substantial fiscal benefit.

Finally, SEPA (State Environmental Policy Act) applies to the PRC's decision. The action by the PRC clearly falls within actions under SEPA. WAC 197-11-704 defines action as, *"Agency decisions to license, fund, or undertake any activity that will directly modify the environment whether the activity will be conducted by the agency, an applicant, or under contract."* The decision by the PRC allows construction to begin on a dam that has very obvious environmental modifications. In sum, Columbiana has been denied its due process rights by the PRC. It should have held its meeting as an adjudicative hearing on motion by Columbian to convert these proceedings. This denial of due process and failure to convert the proceeding was in error. Furthermore, the substitutive decision by the PRC was also in error, as OPUD did not demonstrate all the necessary findings. For these reasons, the PRC decision should be remanded and should be conducted by the PRC as an adjudicative proceeding.

Thank you for your time and attention. At this time, I'd like to reserve any additional of my 20 minutes for rebuttal.

Chair Frare advised Ms. Englebrecht that she has over eight minutes reserved for rebuttal.

Chair Frare invited Colm Nelson, Foster Pepper PLLC, as counsel representing OPUD, to provide oral arguments.

Colm Nelson: Good morning everyone. Thanks for being here today. My name is Colm Nelson representing the PUD. I will spend most of my time actually talking about 39.10 and why this project is suited for Design-Build.

Joaquin Hernandez: Would you mind speaking up or bringing the phone closer to you?

Colm Nelson: Is that better?

Joaquin Hernandez: Yes, thank you.

Colm Nelson: So, what I was saying, I'm going to spend most of time and will reserve five minutes for rebuttal. But, I'm primarily going to be talking about why this project is suited for Design-Build and talk a little bit about the history and I will reserve any questions regarding constitutional issues and APA issues as necessary in the question and answer session. But, we have the same position as the PRC's counsel as to the APA issues and we agree it doesn't apply. Counsel for the PRC will address those (issues) primarily.

The starting point for this meeting should be the same starting point as the last meeting, which was before the second PRC meeting to examine this project. The meeting began with one point John Grubich made of keeping in the mind everyone's jobs here. This is a very limited review. The review is not an examination of the authority of the project, as the PUD

made the decision. The PUD has 16,000 customers and they have elected Commissioners on the Board who have ultimately over the process of about 10 years decided that this is what we are going to do. That's within their authority. They looked at various options including removing the dam and, at one point, they considered a public/private partnership arrangement. Ultimately, they concluded that the best thing for Enloe is to re-energize. That decision has been made and there has been a lot of public comment, but the reality is that there are 16,000 customers and they have elected this Board who has already made the decision. What we are talking about at the PRC and now before the CPARB is whether this project is a good project for Design-Build and whether Okanogan PUD has the requisite team, a good team.

The PUD has been looking at this for a long time. It looked at the Design-Build statute. There are three criteria. It is worth taking a few moments to look back at why this is a really good project for Design-Build. The first criteria is, *"Are the construction activities highly specialized, and is a Design-Build approach critical in developing a construction methodology?"* This is an extremely complicated project. It is $40 million, but it's complicated. It will involve working with strict federal oversight with 500 mitigation measures that need to be addressed and followed. The project is located in a relatively remote area of the state and there will be labor issues to track, and a lot of design issues to work through. The project entails installing a turbine and generator inside a power house. Integrating all those components, as we all know, is very difficult. We also have a situation where, keep in mind, the original Enloe Dam was decommissioned in 1958 because of O&M and everyone has attended seminars about lifecycle costs of buildings and we are familiar with the fact that O&M can be 90% of the cost of the building. This dam was originally decommissioned because of O&M, and now the PUD needs to keep track of O&M moving forward. It is a big part of this project. All of those complexities of federal oversight, design issues, and early involvement all lend themselves to Design-Build.

The next criteria, *"The project selected provides opportunity for greater innovation or efficiencies between the designer and the builder."* I can't think of a better project for Design-Build based on that factor. There will be value engineering taking place early on, you will have early meetings and early sharing of concepts, review of constructability issues early. All of that will take place on the frontend, and the PUD will be proactive about planning and will look at risk and will have risk registers and they will be coming up with contingencies in the event of these plans. It will be somewhat opposite of Design-Bid-Build where we run into problems where there are RFIs and change orders, and we see reaction. Here, we will have the opportunity to be proactive as that is the very point of Design-Build. And, what a great project this will be as we are going to take a lot of that design risk which we know extraordinarily rests on the shoulders of the owner, although we could potentially chase after the designer, but ultimately with respect to the builder, the owner owns the design and the accuracy of the design drawings. We are taking all that risk and we are going to put it over onto our design builder, and who better to put that on than the entity with the most knowledge. That's the design builder in this instance. So, when we talk about … I heard a moment ago you know, complaints about the fiscal benefits – I can't think of a better way to do this project than Design-Build. Look at some of the PRC comments as they looked at that and some of the PRC members also shared that. You could potentially conceivably do this as Design-Bid-Build, but we all know on a project this complex what will happen if you did that. You will have huge contingencies in the bids and then we would be reacting after the fact with RFIs and possible change orders. This is a much better way of doing a complex project like this. So, in terms of satisfying this criteria, I think this clearly weighs in favor of Design-Build.

The last criteria is whether there are significant savings in project delivery time. I've handed out a chart demonstrating the last several years of the project. I heard over the phone just now some discussion about perhaps suggesting that the PUD has created its own problems with delays. And, take a look at this chart. This project has been fully litigated. We have gone through the FERC process and received FERC approval. That was challenged and again, though the FERC approval was reinforced and ensured that there was nothing wrong. All the environmental was taken care of and approved. There was a water rights challenge that went all the way up to the Court of Appeals. This case has been fully litigated and now the problem is we are up against a July 9th deadline. This isn't because of the PUD. The PUD has followed both 39.10 and all other applicable laws and got its FERC license – everything appropriately, but now, because of these delays and having to go through, for instance, two PRC hearings, we are in the situation where we are up against the wall. This would be a very harmful impact if we don't get started and we lose our permit. This has been in the process for years and a lot of money and time has been invested in this project. To suggest that there won't be substantial harm I just reject that notion. There will undoubtedly be a huge harm to the PUD if we cannot get started before the FERC permit expires.

I also heard on the phone and have seen in the briefing a challenge with respect to the team in place. We all know that the statute allows owners in Washington to bring in consultants to bolster the Design Build and overall team for this project. When we look at the team, we have to look at the industry. This is a niche industry. There are not many people who do this. I have gone through the record and if you look at the record, there is an indication that over the last 10 years, there has only been about eight of these new projects in the western states. There are not many people who do this. What an excellent job the PUD has done in putting together a team of not just one or two people, but a team of five who not only have design-build experience but also substantial experience in hydroelectric power. I will hit some of the high points. Mr. Christensen is a civil engineer and he has 40 years of experience. Contrary to what was said on the phone, he does have experience in Design-Build and it was about five years ago, but I categorically reject the nation that somehow your Design-Build experience becomes stale. This was something taken up by the PRC and it's not like you are suddenly washed of those learning experiences and your memories of the last project. The experience is taken with you, what makes a person great, and that's why we have this selection process. It is because the experience is in fact, so valuable. Mr. Christensen has completed three Design-Build projects and he is also backed up by Mr. McCreedy, another guy with substantial experience. I think the record indicated eight of these projects in the last 10 years and Mr. McCreedy has worked on four of them. That is in the record. So, this is somebody who is on an as-needed basis, but he also saw complaints in the briefing about not enough backup or something along those lines. I cannot think of a better person to have on an as-needed basis to address technical questions regarding hydroelectric power but also Design-Build. We have Mr. Martel and Mr. Carson and again they have very deep experience in hydroelectric power. I think Mr. Martel has 35 years' experience in hydroelectric power and Mr. Carson has 39 years of experience having worked on 35 hydroelectric projects of which 15 were retrofits. Mr. Carson is dedicating 50% of his time. This is very deep experience for a project like this. Now the complaint is, well, they don't have Design-Build experience. Well, that's where we get to the fifth member of the team who we all know as Robynne who is not only a lawyer, but is very involved in DBIA. She trains people on this. If you go to a DBIA meeting, I've gone to several where you go and you just don't talk about the legal framework of 39.10, you talk about what worked on a particular project and lessons learned from the project. All that experience and all that knowledge Robynne gets to download and she gets to share with her clients. So, she is the perfect addition to the team and if there is a complaint about lack of Design-Build experience.

The PRC looked at this both times. Keep in mind the PRC had two different panels and each time there was a unanimous decision by the panel. There were no black marks. They looked at this team and scrutinized the team. There were a couple of comments that he wants to share. There were two things that are clear from the record that the PRC established. One is the integrity of the system – the process. They wanted to make sure that the public comments were considered in a meaningful way. That is very clear. Second, they really wanted to focus in on the question before them, which was whether this project is a good project for Design-Build. Not whether this project should proceed or whether it was a great project, but because the PRC in both situations recognized that it was the PUD's Board responsibility to make those types of decisions.

There were a couple of comments that are worth taking a quick look at. The first was from Rob Warnaca. Rob specifically said, *"I have read all 164 comments. I like, Mike, tried to read them in the context of what the PRC is commissioned to do, and that is to uphold RCW 39.10 related to sections 280 and 300 for alternative delivery and specifically Design-Build delivery...And, based on the complexities of the project, I would have a hard time believing that a Design-Bid-Build delivery method would offer a greater fiscal benefit than Design-Build..."* For all the reasons that we have just discussed, it is very clear in the record that Design-Build is the best approach and he is saying that right here and he has carefully looked at it, *"...especially in a Progressive Design-Build delivery method where all the specifications, performance criteria, and long-term operations of the plant..."* keep in mind that it was decommissioned in '58 because of O&M, *" …of the plant to be considered collectively before a contractor (contract) is made."*

Let's look at Bill Dobyns who also carefully looked at this. He said, *"...I have also read all the public comments for the application and reviewed the RCW, and I have not seen anything that tells me that this project wouldn't benefit by using this delivery method."* Again, carefully looking at the record, carefully looking at what the PRC is supposed do and concluding Design-Build is the right approach.

Chair Frare: You are at fifteen minutes.

Colm Nelson: Okay, I will wrap it up here, thank you. A couple more comments. So, Linneth Riley-Hall said, *"...it could probably be done as Design-Bid-Build, but you wouldn't get the benefits that you would using the alternative delivery method and having a contractor involved from the very start of the design phase and going through that process. I did have a concern about experience on the team because that is one of the things that we need to look at, hence my question of Robynne's 10% on the project and probing a little bit more as did Rob on that. And, I think that Robynne is correct, that during the procurement phase that's where her involvement ramps up more and then John Christensen kind of takes over in the construction management phase."* Again, very carefully deliberating over some of the public comments and concerns regarding experience and factoring that in and ultimately concluding now that we have a great team here and they are sufficiently dedicated to this project and ultimately as part of a unanimous decision concluded that this project was a good project for Design-Build.

I'll close with one comment from the Chair (Curt Gimmestad) who said, *"I am in favor of the project, as I do believe it meets the intent in what's required of 39.10 from a Design-Build alternative procurement process. I can't imagine trying to figure all the risks associated with the project like this in Design-Bid-Build, as it's almost next to impossible. We are talking about fiscal responsibility and you cannot imagine how to manage what is a fiscal risk at the end of a Design-Bid-Build project if you don't know all the parameters going into it from a bidding standpoint."* Again here, this is Design-Build and we are going to proactive and we are going to look at the risks and we are going to guard against them and we are not going to go with a traditional Design-Bid-Build approach where we would have to after the sealed bids are opened, we have to figure this out through a reactive approach with RFIs and change orders.

So, there can be no doubt this statute has been followed. I mean, the PRC in an abundance of caution withdrew its unanimous opinion the first time just to ensure that public comment was considered. It walked very carefully and I encourage you to read the transcript, very carefully through 39.10, very carefully the PRC considered the public comments, and the factors at play. On both occasions, even though there were different panels, unanimously decided that this project and this project team was a good fit for Design-Build. I will reserve the rest of my time for rebuttal.

Chair Frare advised Mr. Nelson that he had 2-1/2 minutes remaining.

Chair Frare recessed the meeting for a break from 9:39 am to 9:44 a.m.

Chair Frare reaffirmed attendance of Irene Reyes, Joaquin Hernandez, and Andrew Thompson by telephone to ensure a meeting quorum.

Chair Frare invited Dawn Cortez to proceed with arguments for the PRC.

Dawn Cortez: I am an Assistant Attorney General and work with the Project Review Committee (PRC). Two parties have offered testimony who have an interest in the merits of the decision, but the PRC really only has an interest in making sure that the correct procedural process is followed; the statutory procedure. I will only be addressing the process today.

By way of background, there is no constitutional right or other legal right outside of 39.10 for a party to be heard on what delivery method is used in a public works project. Traditionally, as you all know, public works were done through the Design-Bid-Build process and eventually the Legislature allowed the alternative process to use. However, in doing so, it set up criteria in 39.10 to require that these projects be presented to a panel of experts to ensure that it was a good use of public funds. The Legislature not only determined what kind of process to use but it determines the funds the agency that provides that process. So, the Legislature not only determines what process is most appropriate to a particular project, but it also in doing so is determining how much money is going to be provided for that process. It determined in 39.10 when it set up the PRC that the appropriate process for review of these projects is an open public meeting, a consideration of an application that is filed by a requesting entity, and public comment. It's been our view that an adjudicative process under the APA shouldn't be allowed in this particular hearing, and we all know that should CPARB decide to allow one entity to do an adjudicative hearing, anybody who opposes any project in the future would want a similar right. Maybe even just competitor companies might want to require an adjudicative process simply to slow it down, make it difficult, or make someone choose a different delivery so that a company providing a different delivery might have a shot at it. An

adjudicative proceeding of the APA is a lengthy, adversarial, expensive trial-like proceeding. It requires briefing by the parties, it requires discovery like a process with depositions and interrogatories, production of documents, and hearings in which the PRC would be hearing from witnesses with both direct and cross examination. The Legislature did not intend state or local agencies to use resources that would be required to conduct trials, but to determine whether alternative delivery method is in the best use of public funds. One way that you could look at this is that a company or an entity could go forward and use the traditional Design-Bid-Build without doing any of this. Why would the Legislature want a full trial to determine whether one could use GC/CM or Design-Build?

The PRC followed the proper procedures in this case. The process was set up as enabling statute in 39.10 in Sections 240 through 280. Section 260 lays out the statutory requirements that the PRC must follow to review applications. If the PRC does not follow that process, then a court could actually turn it over. So, if you move to another process, there is the potential for a court to find that it didn't in fact follow the process it was supposed to be following and reverse that decision.

Subsection 280 (says) this process first of all, is supposed to be a swift one with very short timelines that are to be followed. In 280, it requires within 10 business days after the public meeting, the Committee shall provide a written determination to the public body and make its determination available to the public on the Committee's website. If the Committee fails to make a written determination within 10 business days of the public meeting, the request of the public body to use alternative contracting procedures on the requested project shall be deemed approved. Further, under Subsection 5, it says failure of the Committee to meet within 60 calendar days of the public body's application to use alternative contracting procedures on a project shall be deemed an approval of the application. So, it would be very unusual for the Legislature to intend to have a full trial-like process that can be thrown out essentially by not meeting a timeline whereby the process can simply be approved by failure to follow the process.

In Section 290 where an entity can appeal, that has to be filed within 7 days and then CPARB only has 45 days to resolve the appeal. These are not normal timeframes; none of these are the normal timeframes for a trial-like process.

Further, although the Open Public Meetings Act itself does not require any entity to take public comment, the Legislature specifically added that into the statute that the entity must take comments from the public. The APA and the adjudicative proceeding does not allow for public comment. That is a process similar to a trial of parties moving forward with witnesses and there is nothing in the APA adjudicative proceeding where public comment is taken. It is taken in the rule-making proceeding.

Further, agencies only have the powers that are expressly granted to them in their statutory delegation of authority. So, they have been arguing to you that you can choose to change the nature of this proceeding to another one. In a minute, I'll go into the rule-making argument that they make. But, basically, you can only do what the Legislature allows you to do and the PRC's argument is that. What you are allowed to do are those proceedings specifically in 39.10.

First, they argue that this is a rulemaking proceeding under the APA (and) that as a rulemaking proceeding, you then, under another provision in the APA, can convert into the adjudicative proceeding because the PRC has argued in its briefing that only an adjudicative proceeding can be altered to some other form of process under the APA. This is not a rulemaking proceeding. A rulemaking hearing under the APA , first of all a *"'Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of a license."* None of those apply here and further, the actual rulemaking definition means a process for formulation and adoption of a rule. And, while you are considering applications that come before the PRC – the PRC is considering applications that come before it - they are not setting any process, they are not determining the rules about how that will be heard, they are not even determining the criteria for approving a Design-Build. That has all been previously set out by the Legislature in 39.10, and so, none of this means any rulemaking criteria and there is nothing in the APA that allows the PRC and there is nothing in 39.10, that allows the CPARB or the PRC – either one of them - to convert the proceedings that are required in the 39.10 into this other type of process.

They have argued in their Briefing under the APA that you have - even if it's not required - that you have the ability to convert and that you should convert under these circumstances; however, under the conversion statute, it says that within the scope of its authority, an agency may commence an adjudicative proceeding. And, I have been arguing to you that it is not within the scope of your authority to change the proceeding that has already been established by the Legislature.

Where two statutes appear to conflict they have argued to you that the APA is required under certain circumstances, and this is one of them and that you should convert 39.10. Where two statutes appear to conflict, the courts look to the plain language of the statute first, and if they do conflict, they look to the most recent specific statute that applies to the topic. The APA was created in 1988. The 39.10 was created in - I have in my Briefing, but not here - but long long after the APA. (Someone advised that it was in 2007.) If the Legislature had wanted to apply the Administrative Procedures Act to the process here, it clearly could have done so. The Legislature is deemed to know the other laws that are out there and they did not choose to apply the APA. And, in this very specific setting, they applied these very specific rules that they crafted for this process. It is clear from the legislative intent, that they were not looking to a broad picture of every person that might be impacted, they were looking at the use of government funding and wanting it used in the best way in these projects and they were clearly worried in the beginning about the use of alternative methods and whether they were in fact, the best methods. They did open it up to communities to hear from them through the public comment process, but clearly, this is the method that they chose.

They made an argument as well that they have a constitutional due process right to an adjudicative-type proceeding. They have argued that because the Legislature, in somewhat of a circular argument, but because the Legislature created a process for hearing these that under the 14th Amendment to the U.S. Constitution that created for them a property interest in these decisions. However, so they are arguing that therefore they have a constitutional property interest that under the APA ruling that they then have a right to an adjudicative proceeding because if they have a constitutional right they would be allowed an adjudicative proceeding under the APA. However, even the case law the petitioner cites does not support the argument that a property right is created here. They cite the *Shanks v. Dressel, 540 F. 3d 1082 (9th Cir. 2008)* case. It is a very similar case actually, where the City of Spokane was involved in issuing a permit for construction of student housing in the middle of an historic district. The neighborhood came forward and said that the permitting process created a property interest for them in the decision that was made and therefore they had to have due process and a full hearing where they were able to come forward, as they are arguing here, and present all of their arguments in a trial-like setting, a full due process hearing. The court said, this is the Ninth Circuit, so this is our Circuit, said that considering a building permit for construction of student housing in an historic neighborhood – I'm sorry – Spokane's Mayor approval or acquiesce in the Dressel's construction is not sufficient to justify holding it responsible for that construction under the terms of the 14th Amendment and did not give the neighbors here the very same type of hearing that the petitioners are requesting in this case. So, I think that the very case law that they have cited doesn't even support the proposition that they have a due process right to this type of hearing. Therefore, they don't have a right to an adjudicative hearing.

Turning to their argument regarding SEPA, there is no requirement anywhere in the lengthy and specific requirements of RCW 39.10 for the PRC to consider environmental impacts. There is a list, a very clear list, of the things that must be considered by the PRC during its hearings. Further, the RCW – the PRC review does not meet the definitions under SEPA of actions requiring an environmental impact statement, which are required for "*major actions having a probable significant adverse environmental impact and analyze only those probable adverse environmental impacts, which are significant.*" The project itself clearly would meet those definitions. But, the delivery method that is used in this project does not meet those definitions. Again, we are talking about they can already use the Design-Bid-Build delivery method, and now we are simply talking about whether another delivery method is in the public interest. These do no raise environmental impacts and that consideration, that decision does not raise environmental impacts, which are significant and therefore a SEPA analysis was never anticipated by the Legislature in this type of proceeding and is not appropriate here.

Chair Frare: Dawn, you are at 15 minutes.

Dawn Cortez: Thank you. Since the Project Review Committee is subject to the specific procedures set up by the Legislature in 39.10 and because agency decisions related to the procurement of public works projects are not subject to the APA or to the SEPA, those statutes do not apply to the PRC hearings and this body should uphold the procedures that were applied in this setting. Thank you. Are there any questions?

Rebecca Keith: I have a question. As I understand Columbiana's arguments, they are arguing that not only are they entitled to a different procedure, but they are making an argument based on the merits of the PRC's decision. You haven't responded to the merits. Do you have any response to the merits?

Dawn Cortez: There is actually case law in the state of Washington that says that the entity that makes the decision doesn't have a right to argue to uphold its decision. It is very similar to a court when a superior court makes a decision in a case that doesn't go to the Court of Appeals and argue that its decision was appropriate. But, the case also says that because we have an interest in the procedures, in upholding the procedures of our committee, that we are authorized to argue those. So, I am really not authorized by statute to argue that. That is why I am not presenting the merits.

Rebecca Keith: Thank you for clarifying that.

Chair Frare: So, I have a question Mark. Shall we do open questions now and have folks come back for any rebuttals or do we do the rebuttals and then any questions by the Board?

Mark Lyon: It is up to you.

Chair Frare: I think it makes more sense to ask the questions first and then have the rebuttal arguments go forward. Does the Board have any questions for either Columbiana or Okanagan PUD?

Robert Maruska: I have one for each. So, for Columbiana, I believe their arguments here were that Design-Build was not the appropriate delivery method to build the project. Can you share with us what your position is in how the project should be built? Are you advocating for Design-Bid-Build or GC/CM procurement?

Alyssa Englebrecht: Well, I would characterize our argument not that Design-Build is not appropriate necessarily; we are arguing that OPUD did not present enough evidence to the PRC to show that Design-Build is appropriate. So, you know, the question before the Board is not is Design-Build appropriate, but did the PRC err in determining Design-Build is appropriate. So, our argument is that in terms of the qualifications of the team and in terms of showing that Design-Build could benefit the mutual fiscal benefit over another form of delivery, that OPUD did not show the PRC enough evidence to prove those facts.

Robert Maruska: A follow-up question to your response then. By inference, are you saying that Design-Bid-Build would have then been the appropriate methodology?

Alyssa Englebrecht: Certainly, you've got - it seems to be what the alternative to Design-Build is, but we are saying that OPUD did not consider whether Design-Build would be appropriate but that Design-Bid-Build would be the next most appropriate method.

Robert Maruska: Thank you. If there is an opportunity for another question then?

Chair Frare: Please.

Robert Maruska: To the PUD, can you share with us what factors were considered when you were assembling your Design-Build team members and perhaps why since that's a question about the qualifications of the team? Can you share any information relative to that?

Colm Nelson: Yes and I might rope in Robynne a little bit on this because I am somewhat stuck with the administrative record because we are on appeal, but I can share what's in the record and what is before the CPARB. They did look at

experience in this very niche industry. There's not many people who do this type of work and so they were looking for people who have worked in these types of projects either in Design-Bid-Build or whatever type procurement method, but ideally someone who has also done Design-Build. And so, in terms of what the primary qualifications, those two stuck out as the two guiding qualifications. Obviously it's got to be – you know there's more to it that and being able to work with your team and personality and all the other tangibles. But, those were the driving factors.

Robynne Parkinson: John Christensen has been working on this process at the onset assisting the PUD in the FERC license, the Federal Energy Regulation Commission license, and his expertise has been used by the PUD from the onset of the project. So, the fact that he has Design-Build experience, which actually is a common way to deliver these projects when they are actually being able to be delivered and he has so much experience with small hydropower, which is very different than large hydropower. The small hydropower is significant and he was a natural person to continue on with the project. They were interested in the use of Progressive Design-Build and was looking for a consultant to help them with contracting the procurement. There are maybe two sets of lawyers in the state of Washington who do progress Design-Build. I think I've done more of those projects than anyone other than the people representing the University of Washington. I don't represent the University of Washington. But, I think that I have represented anyone else who has done them. So, you have two choices and they chose me to help them with their Progressive Design-Build project.

Colm Nelson: I think just because we are in appeal and we are looking at the record, if you look at the application I think all that is supported by the application.

Robert Maruska: Thank you.

Chair Frare: Any other questions from the Board? Folks on the phone, any questions? Okay, not hearing any questions we will move on to the rebuttals. It only seems fair that it should go in the reverse order. Dawn, did you have any rebuttals for the PRC?

Dawn Cortez: No.

Chair Frare: And, the PUD, would you like to go next?

Colm Nelson: Yes, I have a couple of quick comments to touch on.

Chair Frare: Okay, you have 2-1/2 minutes remaining.

Colm Nelson: I wanted to briefly address the constitutional and SEPA arguments. I want CPARB to take a step back and think about what the Legislature really wants. It cannot be that the Legislature wants SEPA review (and) adjudicative hearings only for Design-Build and GC/CM projects but is absolutely fine leaving those decisions up to public entities to make those decisions for Design-Bid-Build. We would be creating a very strange inconsistency in law by adopting that approach. No one, well, I don't know if – I'm not going so far as to say no one would go with alternative procurement, but it would certainly would have a chilling effect on the use of alternative procurement if we were to adopt what is being suggested here, which is a full adjudicative hearing and also a SEPA analysis. Regarding SEPA, if you look at the definitions at play, SEPA only comes into effect when there's an actual direct modification of the environment. Here, we have gone through all of that. It happened years ago, it has been fully litigated, and we are done with part of the process. Regarding constitutional claims, I agree with the PRC. If you actually take a look at the cases that have been cited by Columbiana, they actually say just because the mere existence of an entitlement to a hearing under state law without further substitutive limitation does not give rise to an independent substitutive interest protected by the 14th Amendment. Here, there is not even a right to a hearing, which is our position, you look at what has been set up, and at most, you are entitled to public comment. So, the question is, is there a right, a constitutional right? No, there is in fact is not. Usually, in fact, these cases deal with an applicant who makes the claim for a government violation of its due process, not a neighbor or a third party. Usually it is the applicant itself. Even in each situations – and in each of those cases they cited, it was denied and there was no violation. Here, we follow the statute. Public comment was provided, it was received, it was considered, and a decision was ultimately made. The constitution doesn't come into play at all. There's also another test under the constitutional analysis whether, and again because it only applies to the applicant, is whether the decision

made by the government body had to reach a mandatory conclusion. Here, this entire process regarding public comment is – there is nothing mandatory about it, PRC is entitled to hear what the public has to say, but just because the public says something, doesn't bind the PRC to that public comment. So, for a variety of legal reasons, there is no constitutional analysis in this and there is no right in the first place, which is what our constitution protects. I'll briefly...

Chair Frare: Your time is up.

Colm Nelson: Okay.

Chair Frare: Alyssa with Columbiana, you get the last word and you have 8-1/2 minutes left.

Alyssa Englebrecht: All right, there are couple things I would like to touch on. First is the issue of the delay and the pending FERC deadline. The PUD contends that the potential new delay would cause great harm to it and of course that may be true, but the PUD should not get its permit, should not be permitted to start construction until it complies with the law. Second is regarding the stale analysis of the consultants, and I would just say that while yes, it may not be true that they have forgotten everything they ever learned about Design-Build, I know personally, it is very hard to remember things that happened five years ago and that you learned five years ago. I do not think it is disingenuous to argue that they may have stale knowledge about this process. So, Mr. Hertel and Carson and their experience at hydropower; the fact that it requires Design-Build experience - so these two members of the consulting team don't contribute to that statutory requirement. The idea that this proceeding and potentially converting it would have a chilling effect on any future proceedings in front of the PRC, I think is incorrect. First off, this is the only time that any decision by the PRC has ever been appealed and it is clearly not something that happens very often. In terms of what would happen before the PRC in terms of granting an adjudicative hearing to people who request them, the PRC granted (unintelligible) requirements that were argued by Columbiana and (unintelligible) including that it would have to be necessary, in the public interest, and more appropriate. So, if another third party wanted to have adjudication in these types of proceedings they would also have to prove those three factors. The only reason that the plain language as a factor came up is because the PUD argued that there is no case law that interprets the conversion services of the APA. What Columbiana is arguing is that just because there's a lack of case law does not mean that the conversion of the APA would be void or invalid and because of the lack of case law according to the plain language of the conversion statute and the APA, which clearly applies to the PRC and allows these proceedings to be converted. In terms of the constitutional argument of the property rights, yes, those cases that we cited, the factual scenarios led the court to conclude that those particular third parties did not have a property interest but what those cases told is that third parties can have property interest and therefore have property process rights. And then, in terms of there being a right to a hearing and the procedural due process claims, this is whether the applicant has the right to a hearing and an administrative review, that's why we are here as the PUD had a hearing before the PRC, so we are the third party. The original party, the PUD, does have a right to a hearing and that hearing defers this property interest on us, the third party. I believe that is all for Columbiana. Thanks again for your attention.

Chair Frare: All right, thank you. We have heard the arguments and it is time to move on to some decision-making. The first, I would like to take this in three chunks. There were two preliminary motions that I made determinations or at least talked about early on. I want to confirm those decisions and then move on to the decision about upholding the PRC or not. In the preliminary hearings or preliminary motions, there was a preliminary motion to convert to an adjudicative proceeding. I declined to make a decision as the Chair and wanted to bring that before the Board and have a discussion and a vote on that. Following that, there was also a preliminary motion to have a stay on Okanogan PUD, and I declined to issue a stay. I need to have that confirmed by the Board pursuant to the rules that were we set out in the last CPARB meeting. Then we can proceed to our decision about upholding or overturning the PRC.

On the first issue for the motion to convert to an adjudicative proceeding, I would like to open that up for discussion.

Walter Schacht: Having heard the arguments and rebuttals, I would have to say from my perspective the Assistant Attorney General's presentation was most compelling. I think it speaks directly to the specifics of the RCW, as well as the intent. Although I know that you are introducing this as two motions, I think it is compelling in terms of the application of the Open Public Meetings Act and why that is necessary. I think it is also compelling relative to the second

issue of the stay because the Assistant Attorney General spoke to the legislative intent to make decisions swiftly. The fact that they are not made swiftly, there are procedures to move ahead without PRC review. So that to me, that is the most important piece of information and I would not be supportive of an administrative adjudicative hearing.

Chair Frare: Others? Steve.

Steve Crawford: I would concur and I think it is pretty clear that the Legislature did not intend for adjudicated proceedings to be used in the PRC review process. I think that has been made pretty clear.

Alyssa Englebrecht: I'm sorry I am having trouble hearing you again.

Chair Frare: Steve can you restate that and speak up so that…

Steve Crawford: It's clear that the Legislature did not intend for an adjudicated proceedings to be used in the PRC review process. I think that was made very clear today in the information presented in both the materials and verbal.

Chair Frare: Others? Robert.

Robert Maruska: My thoughts are in working with the reauthorization bills and with the Legislature over the years with this, I believe the intent of the Legislature is very clear in statute, and that the process that is spelled for the PRC and the criteria that's going to be used and how we were going to judge whether or not a public owner was appropriate to use an alternative delivery method is consistent with that, and that the intent was not to use a more of a legal or adjudicative process in that. On many projects, the public owners had input that time is important and so the Legislature concurred with the 60 day and 45 day notice or schedule and the fact that if PRC and the Board could not meet those, it was deemed approved. So I think that's a very important factor here as that, if we take no action as a PRC or CPARB, the applicant can proceed with the alternative delivery, and so I just feel that is the intent and how we should approach this.

Chair Frare: Do any Board members on the phone have any comments to add to the discussion?

Irene Keyes: Not at this time.

Santosh Kuruvilla: One of the points made by Columbiana was that the team that was put forth had little Design-Build experience. For the benefit of the other Board members in the engineering industry, I think the hydroelectric and dam design experience is very very specialized. Most of the folks that have done that in the past are mostly retired. There are just a few left and I think that the firm that has been selected has, I think, great credentials And so, to find that perfect combination of having the hydroelectric power experience and also Design-Build is very rare. I feel that they supplemented that by bringing Robynne onboard. I see very little merit in that argument. The second point is even – I see little merit in the CPARB argument that was presented that the action by PRC was subject to SEPA.

Chair Frare: Thank you. Rebecca.

Rebecca Keith: I just, I, you know, not to pound on too much, but I really take it seriously when someone feels like their due process rights are at stake and somehow we are involved. But, I really didn't find a compelling reason given by Columbiana as to why they meet the criteria for specific mandatory and prescribed rights. I'm really struggling to imagine what they would really have gained by going back to do cross-examinations with the PRC. I'm not persuaded that they meet the criteria even if that was within our authority that it would grant them much benefit, to be honest.

Chair Frare: Brent?

Brent LeVander: And, furthermore, I feel that the Legislature contemplated the question at hand as far as an adjudicative hearing and that is why they assign public comment to the process – to address that flow of information. So, I believe the original intent of the legislation to have the PRC weigh in and to allow for public comment was their answer to the process.

Chair Frare: ***Okay, so I am going move that the CPARB denies the motion to convert to an adjudicative proceeding pursuant to APA. Seconded by Steve Crawford. An individual voice vote by telephone participants voted in favor of the motion. All others Board members present voted in support of the motion. Motion carried unanimously.***

Chair Frare: Moving to the second preliminary decision of which was to stay the PRC decision pending final appeal. Is there any discussion or questions from the Board on that?

Andrew Thompson: A couple of observations in listening to the exchange today. I have gone back and reviewed the parts of 39.10.280 and the whole process and in reviewing the record and in the second review of the application, you know, I attended the meeting on the 27th and was a member of the audience in my role as the Vice Chair. I was able to listen to the deliberations of that meeting and followed the exchange between all the parties. In today's discussion about public comment and the significance of it that were made to the PRC - and I go back to the framework of 39.10 - and I don't think that input from the public, respectfully, provided a way to influence the outcome in front of us today. Furthermore, with respect to the point made about the SEPA process as part of the assessment in front of the PRC and its proceedings is not relevant within the statutory process. There is a bright line in the CPARB guidelines, in the bylaws, and RCW 39.10

Chair Frare: Thank you Andy. Bob Maruska.

Robert Maruska: I guess one of my thoughts is that the function of a stay relative to what's currently in statute - I know that we've in the past at other requests for a stay of PRC decisions and the fact that there is an appeal process that is set forth with so many days to file an appeal. I think it is prescribed in the statutes, so, and we have so many days to hear an appeal. So, I am not sure what additional benefit a stay would grant because the public owner can actually proceed ahead all the way up until actually executing a contract until the final PRC or the issue is resolved. So, we can't stop them from doing any work. A stay would not have any impact on what the owner could do. They could proceed in any fashion that they see fit until such time that they need to sign a contract and the statute then kicks in. So, I guess that's where I am struggling with any value a stay would have, or in fact, if it would be appropriate given 39.10 already has a process to do the appeal and a timeframe for that.

Chair Frare: Thank you. So just for clarity, I'm going to put out a motion and then we will know what we are all talking about.

Chair Frare: ***I move that the Board confirm the Chair's decision to deny the stay pending appeal. Robert Maruska seconded the motion.***

Chair Frare: My reason for the motion is because the Board gave me authority to make some decisions pending your confirmation and now I am seeking your confirmation.

Rebecca Keith: Okay, for discussion, I would like to offer a friendly amendment. I feel that it is not within the scope of the Board's authority to issue a stay. I find that very persuasive and by saying that we are upholding your decision, I agree with the decision, but I just want it to be clear that it's because I don't see that as being something that we would have the authority to do. And so, I don't know if that should be reflected in the motion, but I can try and articulate it better. My amendment would be, ***"We uphold the decision for the reason that we do not believe the Board has the authority to issue a stay."*** We can decide the appeal or not decide the appeal, but that's what we can do.

Chair Frare: Any discussion on that friendly amendment. ***Then I accept it.***

Robert Maruska: ***And the second accepts it.***

Chair Frare: Any further discussion on the motion? Again, I will poll the folks on the phone. ***All Board members participating by telephone voted in favor of the motion. All Board members presented voted in support of the motion. Motion carried unanimously.***

Chair Frare: Moving to the meat of the matter, which is the appeal of the PRC decision. I would like to move us into discussion about that. Brent.

Brent LeVander: It is my understanding, but I just wanted to be clear – had the PUD not decided to go forward with an application to do this project Design-Build, could they in fact, be in the construction process today in Design-Bid-Build?

Tim DeVries: No.

Brent LeVander: And why is that?

Tim DeVries: We have to have a design.

Brent LeVander: Right, so you would be in that process though. You would have been able to commence the Design-Bid-Build process. There are no more regulatory requirements that would have had to been met to start that process?

Colm Nelson: I will add that there's been a water rights lawsuit, which is on the timeline.

Brent LeVander: And that's not resolved?

Colm Nelson: That is now resolved.

Brent LeVander: That is now resolved?

Colm Nelson: Yes.

Brent LeVander: Okay.

Robert Maruska: I would like to follow up on that. As far as starting construction by the July date (by the permit) is there some definition about how much construction needs to start or does design, because in many Design-Bid-Builds you have many phases, many packages. So, I'm trying to understand what is the definition for start construction by July of this year.

Robynne Parkinson: I can take that. So Bob, the definition for starting construction under the FERC license is relatively small and it could be as much as building the road, the access road. However, there are some – they have to go to FERC for anything. Everything that they do on this project, they have to go through FERC and get approvals. One of the selection criteria in fact for the design builders was experience on getting approval from FERC on early construction packages. The PUD is currently at – one of the reasons that Tim is here, he is one of the only people with the PUD that was not in Washington, D.C. right now lobbying for an extension from Congress, which they are working very hard and they are working with Senator Murkowski to obtain that extension. With respect to whether they are able to go forward, there is a belief that they work very closely with FERC to get some expedited approvals to be able to start the access road relatively quickly.

Colm Nelson: Just to confirm because it is important for the process that we are reviewing the record and the license that we attached; the term, "construction" is not defined.

Robert Maruska: Okay.

Chair Frare: Others?

Santosh Kuruvilla: Just at the risk of going a little more detail here, does Okanagan PUD have a position or maybe some more insight on the financial study that was done by Commetrix.

Colm Nelson: Well, it's our position as outlined in our Briefing - that type of argument is misplaced. That type of analysis isn't before the PRC. What was before the PRC is Design-Build and is that an appropriate procurement vehicle and do you have the requisite team to do Design-Build? So that kind of fiscal analysis – the time for that has passed and that's kind of the way we perceive that it is almost intruding into the local democratic process with the Board. The elected Board made that decision.

Walter Schacht: I am little confused, but I wonder in reviewing the PRC's motion if the whole issue of fiscal benefit really falls underneath our purview. It's not one of the five specific reasons that an applicant can indicate that project should be procured through Design-Build. So, what I would like to say is, from my perspective, it seems to me that the PRC executed its duty to review a project. There are five reasons, any of which, any one of which can be identified as motivating or justifying the use of Design-Build. Several were spoken to today. I think my perspective in general, is that at CPARB, we are a policy-oriented Board here at CPARB. The PRC is specifically constituted to have the expertise and resources to evaluate the applications. Now, we know some of what they know and they know some of what we know, but I actually think that we organized the select members there with a specific understanding that they have the resources and experience to review these applications. So, I would like to make a motion that we (CPARB) uphold the PRC's decision because I haven't heard an argument today that indicates that they didn't execute their delegated authority.

Brent LeVander: I second the motion.

Chair Frare: Any discussion on the motion?

Steve Crawford: I concur. I think the PRC properly conducted their review of both applications for the Design-Build alternative contracting method. I think the PRC review process very closely followed the specifically crafted legislative process. I think that the PRC was correct in their determination that the project brought benefit to the construction process by the use of Design-Build and that the proposed team brought the necessary specialized and Design-Build experience to the project.

Chair Frare: Thank you. Brent.

Brent LeVander: And I find it particularly compelling that as Walter stated, it's the Board's job to place people on the PRC with the correct background so that they can make those decisions about the projects. The PRC ruled twice unanimously on the projects. So we have 18 elected members of the PRC elected by this Board that felt that the project met the five requirements. I find that to be compelling, especially the second time around when the spotlight was on. They knew a lot of the details surrounding the decision in front of them, so they did not make that blind and they did not make their decision blind to the questions at hand and in fact, the second time ruled unanimously again. I feel that is compelling.

Chair Frare: Robert Maruska.

Robert Maruska: I would like to clarify that the statute did anticipate public owners that did not have internal experience in alternative deliveries or methodologies. So, the statute was put together so that you could do a project specific, which utilized a consultant team to ensure the adequate expertise is there in combination with the public owner. So, we anticipated that and it appears that in this particular application as a project specific is what was presented to the PRC and they deemed that the team was qualified to do that. And a commentary – if public owners apply for certification, the statute is very clear about experience on staff. So, I believe the right approach was taken here on a project-specific using consultants to ensure as best we can a successful outcome to a Design-Build procurement methodology.

Chair Frare: I think it is time to vote and so we are going to poll the folks on the phone first. The motion on the floor is for CPARB to uphold the PRC's decision relative to the Okanagan PUD's application. ***All members participating by telephone voted in favor of the motion. All members present voted in favor of the motion.***

Motion carried unanimously.

Chair Frare: Thank you everyone for your participation today and congratulations to the PRC and PUD.

Robert Maruska: A point of interest – will the Chair issue a decision letter?

Chair Frare: Yes.

Robert Maruska: And the timeframe for that is?

Chair Frare: The timeframe for that is spelled out in statute and has to be sent out by June 19, right? Forty-five days falls on Saturday, the 17th, so the following Monday is when we anticipate having that out.

Colm Nelson: Would you like the parties to submit a proposed written order?

Chair Frare: No, thank you. All right, with that, I'll entertain a motion to adjourn.

ADJOURNMENT
Robert Maruska moved, seconded by Steve Crawford, to adjourn the meeting at 10:46 a.m. Motion carried unanimously.

STAFF & GUESTS

Talia Baker, Department of Enterprise Services	Administrative Support
Dawn Cortez, Attorney General's Office	Counsel for PRC
Tim DeVries, Okanogan PUD	Owner
Alyssa Englebrecht, Smith & Lowney, PLLC	Counsel for Appellant *(Participating via Telecon)*
Valerie Gow, Puget Sound Meeting Services	
Mark Lyon, Attorney General's Office	Counsel for CPARB
Colm Nelson, Foster Pepper PLLC	Counsel for Respondent
Robynne Parkinson, Thaxton Parkinson PLLC	Representing Okanogan PUD