BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of

Application No. 2009-01

of

WHISTLING RIDGE ENERGY PROJECT LLC

for

WHISTLING RIDGE ENERGY PROJECT

PREHEARING ORDER NO.7
COUNCIL ORDER NO. 851

PREHEARING ORDER;
NOTICE OF PREHEARING
CONFERENCE (Sept. 22, 2010)

Procedural Setting:

The Washington State Energy Facility Site Evaluation Council scheduled a prehearing conference in this matter on September 1, 2010 at 10:00 a.m. in Olympia Washington, before Council members Dick Fryhling and Dennis Moss and Administrative Law Judge C. Robert Wallis.

Participants:

The following parties appeared and participated in the conference:


Counsel for the Environment: Bruce H. Marvin, Asst. Attorney General, Olympia

Council Member Agency Appearing as Party: Dept. of Commerce, by Dorothy H. Jaffe, Asst. Attorney General, Olympia

Intervenors:

Friends of the Columbia Gorge Nathan Baker and Gary K. Kahn, attorneys, Seattle
Save Our Scenic Areas
J. Richard Aramburu, attorney, Seattle

Skamania County Agri-Tourism Association and
Isa Ann Taylor, attorney, Oregon

Skamania County Economic Development Council
Peggy Bryan, Executive Director

Seattle Audubon Society
Shawn Cantrell, Executive Director

Klickitat County Public Econ. Devel. Authority
Michael Canon, Executive Director

Wilbur Slockish, Jr., Johnny Jackson and the
Wilbur Slockish, Jr. and Johnny Jackson
Klickitat and Cascades Tribes of the Yakama Nation

Yakama Nation/Cultural Resource Program
George Colby, attorney, Toppenish; Jessica
Lally, Yakama Nation Archaeologist, Toppenish

Parties who entered no appearance were the Association of Washington Business, the Columbia River
Gorge Commission, the Port of Skamania County, and the City of White Salmon.

Procedural Matters

1. Schedule.

The Council earlier circulated a proposed schedule allowing for evidentiary hearings in December, 2010.

Parties expressed a concern that the schedule would not allow adequate review of information in the
environmental impact process prior to the hearing. Parties cited no authority requiring a Washington
State agency to issue a final or to release a draft final EIS prior to a hearing on the merits of a project.

Nevertheless, the Council deferred scheduling until after the deadline for comments on the Draft
Environmental Impact Statement (DEIS) and until a probable review schedule was determined. The
Council has in prior proceedings made public a preliminary draft of its final EIS prior to the hearing on an
application, and has committed to attempt to do so in this proceeding.

Stephen Posner, Council staff member, attended the conference and stated that after consultations with the
Bonneville Power Administration, co-issuer of the DEIS, that the Council’s responsible official could
likely have a draft FEIS available for public examination by November 24, 2010. He indicated that in
light of the number and scope of comments requiring responses, review and accommodation will likely be
extensive, but he believes the task to be achievable by late November.

The Council prepared and distributed to parties a possible revised schedule that contemplated availability
of a draft final environmental impact statement (DFEIS) prior to the beginning of the adjudicative hearing
and that schedules hearings during the first two full weeks of January, 2011. Mr. Aramburu presented a
counter proposal that would delay filing of intervenors' testimony and exhibits until after availability of
the DFEIS, and which suggests a three-month delay from the original Council-proposed schedule.

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1 Ms. Taylor announced her withdrawal as counsel for the intervenor but participated on its behalf during the
conference, and also participated on behalf of intervenor Skamania County Economic Development Council.
The counter proposal is rejected. The Council’s revised proposed schedule anticipates that the DFEIS will be available approximately November 24, 2010 and rebuttal testimony will be filed on December 16, 2010. If the DFEIS issue date slips, there is still a likely opportunity for review of the document prior to the testimony filing deadline. However, the Council does not commit that it will further delay the start of the hearing beyond the January setting. The law appears to require only that the agency’s responsible official issue a final EIS before a final decision is made; the EFSEC recommendation and the FEIS are sent to the Governor simultaneously for that final decision.

During the prehearing conference, Mr. Aramburu suggested that SOSA would propose extensive discovery on the draft EIS and the process by which it was developed, and may intend to challenge the EIS in the hearing. That would constitute a marked change in Council processes. The Council noted in the Sixth prehearing order that the processes for the Environmental Impact Statement preparation are separate and distinct, and that they operate under different laws and rules. The Council asks that parties who have a position on the matter of discovery prepare a statement of authorities for filing and service no later than close of business on Monday, September 20, 2010, and be prepared to argue, with no more than 20 minutes per side plus rebuttal if required, at the prehearing conference.

The Council adopts the hearing schedule attached, which provides for evidentiary hearings during the first two weeks in January, 2010 in or near Stevenson, Washington.

2. Other procedural matters.

The supplemental agenda for the September 1 conference identified several procedural rules for consideration at the conference. Each of the parties present identified a person (other than the party’s attorney) to receive service on behalf of the party, pursuant to WAC 463-30-100. Parties who did not attend are asked to confirm or update the information now of record regarding representation and contacts.

Consistent with WAC 463-30-093, the parties were encouraged to coordinate or consolidate with other parties of similar views to avoid duplication of presentation or cross examination. As the hearing draws closer we will inquire about opportunities for such cooperation.

The Applicant, scheduled to be the first party to file evidence in the proceeding, asked whether the exhibit numbering system used in prior proceedings would be appropriate. Each substantive witness will be assigned a single whole number for her or his exhibits, and that prefilled direct of the first witness be numbered 1.00; the witness’s c.v. or bio be numbered 1.01, and other exhibits presented by the witness identified in numerical order, in the order to be presented in evidence. Exhibits on cross examination would continue in sequence, but would be identified as cross-examination exhibits by a suffix “e”, as 1.93c, and rebuttal with the designation “r”. This system facilitates easily understandable filing and retrieval. Numbers should be left vacant for possible rebuttal witnesses, as determined at a later prehearing conference.

Parties were reminded that the Council requires an original plus twelve paper copies of evidence that any party pre-files or offers. In addition, other parties require one copy each of evidence on paper.
The parties engaged in a brief discussion about discovery. SOSA has made an informal discovery request in writing to the Applicant; Applicant has acknowledged the request and intends to respond. Issues may be referred to the administrative law judge.

NOTICE OF PREHEARING CONFERENCE

ALL PARTIES PLEASE TAKE NOTICE That the Council hereby sets a prehearing conference in this proceeding as follows:

A Prehearing Conference and Status Conference No. 2 will be convened at 10:00 a.m., on September 22, 2010, Washington PUD Association, 212 Union Ave, 1st floor conference room, Olympia, Washington 98501 before Council Members who may attend and Administrative Law Judge C. Robert Wallis.

The purpose of this conference is to review the status of the proceeding and to consider procedural matters, including but not limited to timing of submission of procedural motions, including motions to exclude evidence; timing of objections to prefiled evidence; availability of elements of the development of the EIS process for discovery and introduction into evidence and availability of personnel involved in the process for discovery and cross examination; projected number of proposed witnesses for each party, including identity, if known, and topics to be addressed. Other matters related to the process of the hearing may be added to the agenda. Parties who wish to argue a position on whether the Council can or should allow discovery, cross examination, or rebuttal regarding elements of the environmental impact statement must file a statement of authorities supporting their views. One hour will be allotted to oral presentations, divided equally between proponents and opponents, and among parties by agreement or decision of the bench.

Parties are strongly encouraged to attend in person, but may attend the conference remotely by 1, reserving a bridge line port and 2, calling the bridge line prior to beginning of the conference. You may reserve a port and get call-in instructions by calling Ms. Talburt at 664-1359 or Ms. Michelle at 360-664-1363. Please do not use more ports than you have reserved.

Dated at Olympia, Washington, and effective this 13th day of September, 2010.

C. Robert Wallis, Administrative Law Judge

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

Notice to Parties:

Unless modified, this prehearing conference order shall control further proceedings in this matter. We ask that any objections to this order be filed within five days after the date of this order.

Whistling Ridge Energy Center, Council Order No. 851, Prehearing Order No. 7
Notice of Prehearing Conference (September 22, 2010)
September 13, 2010

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