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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 2009-01  
WHISTLING RIDGE ENERGY LLC  
  
WHISTLING RIDGE ENERGY PROJECT

**APPLICANT'S ADJUDICATION  
RESPONSE BRIEF AND CLOSING  
ARGUMENT**  
  
**ORAL ARGUMENT OPPOSED**

To The Parties of Record (See Attached Service List)

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1 **I. INTRODUCTION**

2 Whistling Ridge’s opening adjudication brief (“WREP Brief”) refuted the vast majority of  
3 the issues intervenors raised in their opening adjudication briefs concerning the Whistling Ridge  
4 Energy Project (“Project”). This brief responds to the fallacious arguments made by FOCG,  
5 SOSA, Seattle Audubon (collectively “Opponents”), and the Counsel for the Environment  
6 (“CFE”).<sup>1</sup> The extensive evidence in the adjudicative record before the Energy Facility Site  
7 Evaluation Council (“EFSEC”) demonstrates that this 75 MW Project on a site with degraded  
8 habitat will have minimal impacts to wildlife, aesthetics, and traffic, while providing vital  
9 economic development, county tax revenues, and benefits for the local and regional electrical grid.

10 Whistling Ridge opposes FOCG’s request for oral argument. *See* FOCG Brief at 3:10-23.  
11 No other intervenor requested oral argument, but even if they had, oral argument would just  
12 further Opponents’ strategy of running up costs and causing delay. Enough is enough.

13 **II. RESPONSE TO INTERVENORS’ OPENING BRIEFS**

14 **A. Whistling Ridge’s stipulation to mitigate environmental impacts did not amend the**  
15 **Application for Site Certification (“ASC”) and is consistent with EFSEC practice**

16 Contrary to FOCG’s claims, Whistling Ridge’s stipulation in the adjudicative hearing that  
17 the Project would consist of no more than 38 2-plus MW turbines is entirely consistent with  
18 EFSEC practice. *See id.* at 6:12-12:22. This stipulation does not constitute an amendment to the  
19 ASC. As ASC § I-4 stated, the Project includes “[u]p to fifty 1.2- to 2.5-MW wind turbines.”  
20 *See also* ASC §§ 2.3.2, 2.3.3.1, 2.9.2.1, 2.10.2, 4.2.3.3. At the adjudicative hearing, Judge  
21 Wallis recognized that the stipulation is consistent both with the ASC and EFSEC’s “process of  
22 developing the application to mitigate matters.” Tr. at 182:20-183:2. Because this stipulation  
23 does not amend the ASC, WAC 463-60-116(2)-(3)’s provisions concerning ASC amendments  
24 simply do not apply.

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25 <sup>1</sup> Whistling Ridge objects to FOCG and SOSA’s purported incorporation of each other’s opening  
26 adjudication briefs. *See* FOCG Brief at 2 n.1; SOSA Brief at 1:8-11. FOCG and SOSA deliberately disregarded  
Posthearing Order No. 19, which was affirmed in Posthearing Order No. 20. The remedy for the ongoing disregard  
of EFSEC’s decisions is unclear.

1 Because the ASC’s analysis was based on the worst case scenario, no one—much less  
2 Opponents who spent eight days cross-examining witnesses—was deprived of a full under-  
3 standing of the Project’s likely environmental impacts.<sup>2</sup> As Judge Wallis explained,

4 the review of this application and the environmental review are being  
5 based upon this worst-case scenario in which the turbine tower heights  
6 are the maximum, the number of turbines is the maximum, and so on. So  
7 we find no adverse effect to your clients by reduction in the  
8 environmental consequences of the application.

9 Tr. at 183:22-184:2. EFSEC’s long-standing practice is (i) to encourage voluntarily mitigation,  
10 (ii) to permit wind turbine corridors, and (iii) to site final turbine locations through micro-siting.<sup>3</sup>  
11 The ASC and Whistling Ridge’s stipulation are entirely consistent with that practice.<sup>4</sup>

12 **B. FOCG failed to undermine the ASC’s methodologically sound and properly  
13 conducted aesthetic impact analysis**

14 FOCG’s critique of the ASC’s aesthetic impact analysis relies on the faulty premise that  
15 Whistling Ridge “invented its own methodology for analyzing the scenic impacts of this Project.”  
16 FOCG Brief at 31:18-19. The truth is that “the Council has relied on this methodology in the  
17 past.” Ex. 9.02r at 8:22-9:1. “And this is a process again as this Council has seen several times  
18 and has reviewed several times, and it’s passed through SEPA with Wild Horse and two of the  
19 other wind projects within the same vicinity. This process is nothing new to the Council.” Tr.

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20 <sup>2</sup> FOCG’s purported concern that the ASC did not provide a full understanding of the Project’s likely environ-  
21 mental impacts is ironic in light of Apostol’s testimony that if any turbines are visible from a Scenic Area KVA there  
22 is “by definition” a high aesthetic impact. See WREP Brief at 33:12-14, 40:3-41:16. Under Apostol’s analysis by  
23 assumption methodology, Whistling Ridge’s stipulation to construct fewer turbines has no impact on an aesthetic  
24 impact analysis. This inevitable conclusion from Apostol’s testimony demonstrates the fallacy of Apostol’s analysis.

25 Amending the ASC in October 2009 was necessary to account for changes to the Project that were beyond the  
26 scope of the original ASC’s analysis (e.g., increasing the size of the maintenance and operations yard). Without these  
ASC amendments, the Project’s environmental analysis would have been deficient. In contrast, a stipulation limiting  
the number of turbines does not implicate the environmental analysis, which has always been based on a worst case  
scenario. Rather, the stipulation simply ensures minimized impacts.

<sup>3</sup> See Order No. 826 at 57 (“[A]ll construction activities will occur within the corridors identified in the  
Application for Site Certification, with any final adjustments to specific turbine locations made to maintain adequate  
spacing between turbines for optimized energy efficiency, to comply with setback requirements, and to compensate  
for local conditions.”); Order No. 831 at 3-4 (affirming the use of micro-siting within permitted turbine corridors).

<sup>4</sup> FOCG’s assertion that Whistling Ridge’s voluntary offer of the habitat mitigation parcel constitutes an  
“amendment” to the ASC is ludicrous and, if accepted by EFSEC, would destroy any incentive to continue efforts to  
further reduce impacts after filing an ASC.

1 at 367:6-10 (Dautis Pearson); *see also* WREP Brief at 24:1-25:4.

2 FOCG's critique also relies on four sources of information: Apostol's written testimony,  
3 two communications from the U.S. Forest Service ("USFS"), two communications from the  
4 National Park Service ("NPS"),<sup>5</sup> and the public comments of one Jurgen Hess. *See* FOCG Brief  
5 at ii, 19:11-26:14. The rebuttal testimony of Dautis Pearson and Tom Watson thoroughly refuted  
6 Apostol's testimony, and Whistling Ridge's opening adjudication brief extensively described the  
7 abundant errors that pervade Apostol's entire critique of the ASC's aesthetic impact analysis.  
8 *See* Exs. 8.03r, 9.02r; WREP Brief at 25:5-44:3.

9 **1. FOCG's reliance on the USFS and NPS's comments is misplaced; the NPS's**  
10 **comments greatly exceed its authority under the National Trails System Act**  
11 **and are inconsistent with its own staff's assessment**

12 None of the four communications from these two federal agencies (which have no  
13 jurisdictional authority here) actually supports FOCG's contention that "the Project would cause  
14 unacceptable adverse impacts to scenic resources." FOCG Brief at 22:16-17. Although FOCG  
15 presents all four communications as NEPA/SEPA "comment" letters, in fact, only the agencies'  
16 last two (*i.e.*, Exs. 21.03 and 21.05) are comment letters on the DEIS that was prepared for the  
17 Project. The first two (*i.e.*, Exs. 21.02 and 21.04) are not comment letters but rather scoping  
18 letters issued *before* the DEIS was prepared. This distinction is critical.<sup>6</sup>

19 The purpose of scoping is not to comment on the proposal but rather to narrow the scope  
20 of issues to be addressed in the EIS. *See* WAC 197-11-408, 197-11-502(4); 40 C.F.R. § 1501.7;  
21 *see also* 74 Fed. Reg. 18,213 (Apr. 21, 2009) ("Send letters with comments and suggestions on  
22 the proposed scope of the Whistling Ridge Energy Project Draft EIS[.]"). Scoping letters are  
23 issued before the lead agency has begun formulating the environmental analysis for the proposal.

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24 <sup>5</sup> Although the second NPS communication was issued on U.S. Department of the Interior letterhead, the  
25 content that FOCG focused upon originated directly from the NPS. *Compare* Ex. 21.05 *with* Ex. 51.01r.

26 <sup>6</sup> The CFE, whose opening brief also inappropriately relied on these two scoping letters, appears to have  
been ignorant of this important distinction. *See* CFE Brief at 18 n.13 ("In a second letter commenting [on] the  
DEIS, Daniel T. Harkenrider, an Area Manager with the U.S. Forest Service[,] offered these comments . . .").  
USFS only commented on the DEIS once.

1 In contrast, once the DEIS is complete, the lead agency must consider and respond to comments  
2 on the DEIS, which are attached to the FEIS. *See* WAC 197-11-502(5), 197-11-560; 40 C.F.R.  
3 § 1503.4. Consequently, it is the DEIS comment letters, issued *after* the DEIS is complete, that  
4 could contain meaningful input, not the scoping letters issued at the very beginning of the lead  
5 agency’s review. Here, neither of the two DEIS comment letters supports FOCG’s contentions.

6 FOCG focused on USFS’s scoping letter and ignored USFS’s DEIS comment letter, which  
7 stated, “As described in your analysis on Table 3.92 (Viewpoints 13 and 14) the Columbia River  
8 gorge has moderately high to high levels of visual quality.” Ex. 21.03. The ASC’s aesthetic  
9 impact analysis similiarly determined that visual quality (or scenic quality) from these two  
10 viewpoints was “Moderately High” and Moderately High to High.” ASC Table 4.2-5. Although  
11 USFS also commented on the DEIS’s consideration of viewer sensitivity, after reviewing the  
12 DEIS for the Project, USFS expressed no issue with the aesthetic impact methodology, nor did it  
13 recommend that turbines visible from KVAs be eliminated. *See* Ex. 21.03. Consequently, the  
14 USFS’s informed DEIS comments provide no basis upon which to deny or change the Project.

15 The NPS’s DEIS comments have no validity in light of the irreconcilable differences of  
16 opinion evidenced in Ex. 51.01r. Congress designated the Columbia River as the route of both  
17 the Lewis and Clark National Historic Trail (“NHT”) and the Oregon NHT. Ex. 51.01r at 1. The  
18 designated routes of both trails are exactly the same. Exs. 21.04, 51.00r at 10:22-23, 51.01r at 1.  
19 I-84 is also the auto-tour route in Oregon for both trails. Ex. 51.01r at 1. Unlike its scoping letter,  
20 the NPS’s DEIS comment letter strangely fails to even mention the Oregon NHT. *See* Ex. 21.05.  
21 Instead, its only concern is the Lewis and Clark NHT, notwithstanding that the designated route  
22 for both NHTs is the same. Ex. 51.01r evidences that the NPS cultural resource professionals for  
23 these two NHTs arrived at irreconcilable differences of opinion regarding the Project’s likely  
24 effects on these two NHTs. On the one hand, Lee Kreutzer, the NPS cultural resource  
25 professional for the Oregon NHT, determined that the Oregon NHT “should not be adversely  
26 impacted by the proposed project.” Ex. 51.01r at 2. “Lee Kreutzer from National Trails did not

1 feel there would be significant impacts to either the historical route [of the Oregon NHT], which  
2 is the river at this location, or the auto tour route/I-84.” *Id.* at 1. In contrast, Dan Wiley, the NPS  
3 cultural resource professional for the Lewis and Clark NHT, determined that “the impact [from  
4 Viewpoint 14: Viento State Park] should be rated as high given the placement of turbines on the  
5 skyline within *four miles* of a park located along the *auto tour route.*” *Id.* at 2 (emphases added).  
6 There is simply no way to reconcile a “no adverse impact” assessment with a “high impact”  
7 assessment for two NHTs that follow the same route and are administered under the same statute.

8 In addition to these irreconcilable conclusions regarding the Project’s likely aesthetic  
9 impact on the same NHT route, the NPS purposefully chose not to disclose Lee Kreutzer’s  
10 conclusions. Instead, the NPS simply removed any reference to the Oregon NHT from the DEIS  
11 comment letter. *Compare* Ex. 51.01r *with* Ex. 21.05. This deletion of highly relevant information  
12 evidences dishonesty and subjective bias by NPS employees against the Project.

13 The National Trails System Act (“Trails Act”) only protects designated trail routes on  
14 federal property and on non-federal property that has been certified for protection. 16 U.S.C.  
15 § 1242(a)(3). The Project is on private land that the designated route does not cross, and no non-  
16 federal property in Skamania County has been certified for protection. Ex. 51.00r at 11:3-8.  
17 Moreover, the Trails Act contains numerous provisions that protect landowners by limiting the  
18 federal government’s authority. For example, the federal government’s authority to protect the  
19 designated route through property acquisition is limited to ¼ mile on either side of the designated  
20 route.<sup>7</sup> 16 U.S.C. § 1244(a)(3), (6). Also, the Trails Act does not protect the viewsheds of auto-  
21 tour routes, which are merely intended “to facilitate retracement of the historic route, and . . .  
22 may be marked to commemorate the historic route.” 16 U.S.C. § 1246(c). Here, though, the  
23 NPS is trying to restrict development on private property that is nearly two miles away from the

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24  
25 <sup>7</sup> See also 16 U.S.C. §§ 1246(a)(2) (“[F]ull consideration shall be given to minimizing the adverse effect  
26 upon the adjacent landowner or user and his operation.”), 1246(c) (prohibiting the use of motorized vehicles on trails  
except “to enable adjacent landowners or land users to have reasonable access to their lands or timber rights”).

1 designated historical route based on asserted impacts to a park along the auto-tour route.<sup>8</sup> *See*  
2 Ex. 8.04r. For all these reasons—not to mention Congress’s express prohibition against  
3 protecting the Scenic Area and its resources through the establishment of buffer zones—the  
4 NPS’s DEIS comments have no validity, exceed the NPS’s jurisdiction, and should be dismissed.

5 **2. Purported “expert” testimony given by Jurgen Hess in a public hearing reflects**  
6 **FOCG’s conscious effort to do an end-run around EFSEC’s process and to**  
7 **avoid cross-examination, is internally inconsistent, and deserves no weight**

8 Whistling Ridge objects to Opponents’ repeated attempts to demonstrate noncompliance  
9 with EFSEC’s requirements and standards through the use of comments offered during EFSEC’s  
10 public comment hearings. *See, e.g.*, FOCG Brief at 24:1-26:13; SOSA Brief at 7:8-8:7. Public  
11 comments are not “evidence” that can be used in an adjudicative proceeding to assess  
12 compliance with applicable requirements and standards.<sup>9</sup> EFSEC’s rules require that parties  
13 submit evidence “sufficiently in advance to permit study and preparation of cross-examination  
14 and rebuttal evidence.” WAC 463-30-310(2)(a); *see also* Prehearing Order No. 14 at 2 (“The  
15 witness will not be allowed to testify without sufficient prefiling of his direct evidence.”).  
16 Reliance on public comments to prove or disprove an issue being litigated in an adjudicative  
17 proceeding prejudices applicants by precluding the opportunity to offer rebuttal testimony and to  
18 cross-examine commenters on the veracity of their statements. Certainly, EFSEC should  
19 consider the public comments in its review of the Project, but these public comments should not  
20 be used by parties as evidence that proves or disproves compliance with WAC Title 463’s  
21 requirements and standards.

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22 <sup>8</sup> Wiley’s auto-tour route based reasoning is also at odds with the NPS’s comprehensive management plan  
23 for the Lewis and Clark NHT, which merely identifies Viento State Park as a place for an “appropriate interpretive  
24 sign.” Ex. 51.00r at 11:14-15. Even more mystifying, Wiley states that “[t]he NPS considers the viewshed along  
25 the river and auto tour routes to be a critical part of the trail visitor experience.” Ex. 21.05 at 2. Yet neither the  
26 Trails Act nor the comprehensive management plan say anything about protecting viewsheds. Ex. 51.00r at 11:16-  
17. EFSEC will recall that the Opponents intended to call Wiley as a witness, yet never did.

<sup>9</sup> For example, only evidence that is made under oath is admissible under EFSEC’s administrative rules.  
WAC 463-30-310(1) (relying on RCW 34.05.452). Yet Jurgen Hess never adopted his written comments under oath.  
*See* Tr. at 565:25-568:2.

1           The fact that FOCG devotes more space to the comments of Jurgen Hess than to Apostol's  
2 testimony illuminates FOCG's orchestrated end-run around EFSEC's process to get "evidence"  
3 into the record without submitting pre-filed testimony and without subjecting it to rebuttal and  
4 cross-examination. Because Hess did not appear as an official FOCG witness, Whistling Ridge  
5 was unable to ask him any questions concerning the validity of his comments or his ties to FOCG,  
6 such as whether he regularly volunteers with FOCG or whether he was a trustee of FOCG's land  
7 trust. Whistling Ridge can only note that a few months ago Hess and FOCG were co-petitioners  
8 in an unsuccessful appeal in Oregon of a Columbia River Gorge Commission decision concerning  
9 Washington. *See Friends of the Columbia Gorge, Inc. v. Columbia River Gorge Comm'n*, 236  
10 Or. App. 479, 238 P.3d 378 (2010). Mr. Kahn represented both Hess and FOCG. *Id.*

11           Hess's comments are internally inconsistent and deserve no weight. Hess commented  
12 that Appendix D of the National Academy of Science's "Environmental Impacts of Wind Energy  
13 Projects," which another member of the public conveniently attached to her comments, provides  
14 "guidance on project visual impact assessment." Public Comment #398 at 2. Hess also  
15 commented that the "use of existing foreground vegetation to screen project visual impact is  
16 inappropriate and does not meet visual resource professional standards." *Id.* at 1. However,  
17 Appendix D identifies "screening" as an appropriate mitigation technique and states the  
18 "[e]xisting vegetation is usually preferable" for screening. Public Comment #351 at 373. Either  
19 Hess is wrong or Appendix D is wrong.<sup>10</sup> To the extent that purported "expert" testimony can be  
20 submitted through public comments, one person's inconsistent comments are necessarily  
21 unreliable, and EFSEC should give Hess's comments the weight they deserve: zero.

22           **3. WAC 463-60-362(3) does not require visual simulations from each and every**  
23           **location where some miniscule part of a turbine would be visible**

24           WAC 463-60-362(3) requires that the ASC show how the Project "will appear relative to  
25 its surroundings." FOCG twists this into a mandate that visual simulations be prepared regardless

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26           <sup>10</sup> Hess also commented that visual simulations should be done with 75-80 mm focal length lens. Public  
Comment #398 at 1. Yet, Appendix D states that a 50 mm focal length is appropriate. Public Comment #351 at 353.

1 of how few turbines might be visible at a particular location. For example, FOCG criticizes  
2 Whistling Ridge for failing to provide any simulations from SR 14. FOCG Brief at 36:5-12. But  
3 only a few turbines would be visible from SR 14 and only in the “dead center” of Bingen. Tr.  
4 at 278:7-21 (Tom Watson). Such limited visibility does not warrant additional simulations.

5 FOCG also continues to sound the Mitchell Point drum, claiming that a visual simulation  
6 should have been prepared from that location. FOCG Brief at 33:18-34:15. Yet, based on  
7 terrain and visibility analysis, only portions of two to three turbines would be visible from  
8 Mitchell Point and Ruthton Point.<sup>11</sup> Ex. 8.03r at 17:2-5. Again, such limited visibility does not  
9 warrant additional simulations. Ex. 8.03r at 17:2-8.

10 **C. EFSEC’s adopted SEPA policy cannot be used to condition or deny the Project**  
11 **based on its purported impacts to the Scenic Area; EFSEC must consider Skamania**  
12 **County’s legislatively expressed “community interest”**

13 EFSEC’s adjudicative process and SEPA process are distinct.<sup>12</sup> Nonetheless, SOSA  
14 devoted an entire section of its opening adjudication brief to the “Balancing Required by SEPA  
15 and EFSEC’s SEPA Regulations.” SOSA Brief at 20:22-22:12. For this reason, Whistling  
16 Ridge responds to SOSA’s SEPA argument, notwithstanding the adjudicative setting.

17 SEPA does convey substantive authority to regulate land uses. *Victoria Tower P’ship v.*  
18 *City of Seattle*, 59 Wn. App. 592, 597, 800 P.2d 380 (1990). However, conditioning or denying a  
19 project under SEPA must be based on policies “incorporated into regulations, plans, or codes

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20 <sup>11</sup> FOCG claims that 6 to 15 turbines would be visible from Mitchell Point, based solely on ASC Figure  
21 4.2-5. FOCG Brief at 33:18-21. Yet Tom Watson testified that Figure 4.2-5 only represented the terrain analysis.  
22 Ex. 8.03r at 2:7-9, 2:17-18, 3:12-13, 16:1-2. The visibility analysis indicated that only portions of two to three  
23 turbines would be visible from Mitchell Point. *Id.* at 17:2-5. Tom Watson testified that “[s]lightly more” than two  
24 to three turbines would be visible at Mitchell Point if vegetation was not considered; turbines are “[m]ostly blocked  
25 by the terrain and a very small amount by the trees on top of the terrain.” Tr. at 260:14-17.

26 <sup>12</sup> Prehearing Order No. 9 at 2 unambiguously stated, “Two legally separate processes are involved in  
reaching a Council recommendation to the Governor. . . . SOSA and Friends (‘Intervenors’ in this order) continue to  
raise matters resolved in prior prehearing decisions. . . . Must the Council *in its Adjudicative process*, consider  
evidence or argument aiming to discredit, negate, challenge, examine, support, enhance or inquire into the SEPA  
process, or the information and comments that inform the SEPA process, or supplement the SEPA record through  
which the Council reaches and considers the Final Environmental Impact Statement (FEIS)? The answer, expressed  
in prehearing orders number 6 and 7, is ‘No.’”

1 which are formally designated by the agency . . . as possible bases for the exercise of [SEPA]  
2 authority.” RCW 43.21C.060; *see also* WAC 197-11-660(1). This requirement protects applicants  
3 by preventing agencies from conditioning or denying a project merely based on NIMBYism.  
4 Furthermore, due process prohibits the regulation of land use “in terms so vague that persons of  
5 ordinary intelligence must guess at its meaning.” *Cingular Wireless, L.L.C. v. Thurston Cnty.*, 131  
6 Wn. App. 756, 777, 129 P.3d 300 (2006) (citing *Anderson v. City of Issaquah*, 70 Wn. App. 64, 75,  
7 851 P.2d 744 (1993)). In other words, SEPA polices “must be specific enough to limit arbitrary  
8 and discretionary enforcement of the law.” *Id.* (citing *Anderson*, 70 Wn. App. at 75).

9 EFSEC’s adopted SEPA policy—WAC 463-47-110—is exceedingly general. For  
10 example, EFSEC is to “[a]ssure for all people of Washington safe, healthful, productive, and  
11 aesthetically and culturally pleasing surroundings.” WAC 463-47-110(1)(b)(ii). Two persons of  
12 extraordinary intelligence would almost certainly come to different conclusions on how this  
13 SEPA policy’s vague terms are to be applied to a given project. In fact, the aesthetic guidelines  
14 found to be unconstitutional in *Anderson* were much more precise than WAC 463-47-  
15 110(1)(b)(ii). *See Anderson*, 70 Wn. App. at 66-67. For this reason, conditioning or denying the  
16 Project based on WAC 463-47-110 would violate Whistling Ridge’s due process rights.

17 EFSEC is statutorily required to consider “community interests.” RCW 80.50.100(1).  
18 Land use regulation in the context of the Scenic Act is a matter of great concern and interest to  
19 Skamania County. Ex. 51.00r at 3:1-5:24. This important “community interest” is reflected in  
20 Skamania County’s regulations, which expressly provide that the very specific aesthetic  
21 standards imposed by Skamania County Code (“SCC”) Title 22, such as the “visually  
22 subordinate” standard, apply to the Scenic Area “*and to no other lands within the county.*”  
23 SCC 22.02.050 (emphasis added); *see also* Ex. 51.00r at 4:16-21; Tr. at 1368:24-1369:21,  
24 1383:11-1384:23 (Michael Lang’s testimony that Scenic Area land use guidelines and SCC Title  
25 22 do not apply outside the Scenic Area). SCC Title 22 further provides that it does not  
26 “[e]stablish protective perimeters or buffer zones outside of the Columbia River Gorge National

1 Scenic Area.” SCC 22.02.120(A)(10). These legislatively enacted embodiments of “community  
2 interest” should be given due regard in EFSEC’s consideration of the Project.

3 FOCG, SOSA, and the CFE’s argument that the Project (or parts thereof) should be  
4 denied based on purported aesthetic impacts to the Scenic Area runs counter to these legislatively  
5 enacted embodiments of “community interest.”<sup>13</sup> No one has articulated a reason why this  
6 important “community interest” should be disregarded. In the absence of a significant rationale  
7 for ignoring this important “community interest,” EFSEC should not use SEPA to condition or  
8 deny the Project based on its purported impacts to the Scenic Area. As the Honorable Senator  
9 Daniel Evans, the Scenic Act’s co-sponsor, advised EFSEC, the Scenic Area

10 has boundaries, which represent the limits to the area we [members of the  
11 Oregon and Washington congressional delegations] sought to protect.  
12 The EFSEC should respect these boundaries, and should not attempt to  
13 apply the Scenic Area’s proscriptions indirectly through the application  
14 of Scenic Area visual management criteria to projects outside the Scenic  
15 Area. The EFSEC’s responsibility under the State Environmental Policy  
16 Act is to consider the environmental impacts of a project. In my view,  
17 this responsibility means no more – or less – because of the existence of  
18 the Columbia River Gorge National Scenic Area.

19 Public Comment #357 at 3.<sup>14</sup>

20 **D. The Project’s wildlife surveys and analysis are consistent with WDFW and U.S. Fish  
21 and Wildlife Service (“USFWS”) guidelines and protocols; WDFW itself has found  
22 that the proposed mitigation parcel is consistent with WDFW’s 2009 *Wind Power  
23 Guidelines (“WDFW Guidelines”)***

24 **1. As required by EFSEC and federal law, Whistling Ridge followed WDFW  
25 and USFWS guidelines and protocols for its avian surveys**

26 The Project is likely Washington’s most studied wind energy facility concerning wildlife  
and habitat. The studies used standard methodologies endorsed by wildlife agencies. Ex. 6.04r  
at 2:4-10. The studies span years of time and covered all four seasons, including migratory periods.  
*See* ASC at 3.4-21 to -29; ASC App. B-3 to B-6. The studies received full concurrence and

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<sup>13</sup> FOCG, SOSA, and the CFE’s arguments are also in direct conflict with Congress’s prohibition against  
the establishment of a buffer zone around the Scenic Area (*e.g.*, by prohibiting or restricting uses outside the Scenic  
Area) if done for the sole reason of protecting the Scenic Area. *See* WREP Brief at 27:9-32:16.

<sup>14</sup> Whistling Ridge does not cite this letter to demonstrate compliance with any EFSEC requirement or  
standard or to inform the interpretation of the Scenic Act, but rather to address the SEPA issue Opponents raised.

1 approval by the WDFW as compliant with the *WDFW Guidelines*. Ex. 1.02r. WDFW advises  
2 EFSEC about an applicant’s compliance with the *WDFW Guidelines*.<sup>15</sup> Deviating from best  
3 available science, standard protocols, and survey practices that are uniformly expected by, and  
4 applied to, EFSEC projects and instead applying “novel,” unaccepted theories justified after the  
5 fact would be in derogation of EFSEC requirements and would constitute bad faith.

6 Nevertheless, this is precisely what FOCG, joined by the CFE and Seattle Audubon,  
7 demands be done: divine what unfounded methodologies would satisfy Opponents, then do the  
8 studies in accordance therewith so as to “correctly” assess wildlife impacts. That is an absurd  
9 suggestion, running against EFSEC’s hallmark of regulatory certainty. The following addresses  
10 specific significant allegations of deficiencies in wildlife studies:

11 • **Failure to obtain avian data from other western coniferous forest sites.** FOCG and  
12 Seattle Audubon claim that not enough is known about impacts from wind development at other  
13 forested Pacific Northwest sites to approve the Project. *See* FOCG Brief at 48:18-23; Audubon  
14 Brief at 2:21-25. True, there is no site with an operating wind energy facility comparable to the  
15 Project.<sup>16</sup> Exs. 1.02r , 6.04r at 25:15-17. But lack of existing comparable projects is no reason to  
16 deny the Project and would invite a mobius loop of denials; it is illogical to posit that because a  
17 project has not been built on similar habitat elsewhere, the Project cannot proceed. If this were  
18 correct, no wind project (let alone any development) would ever be built. EFSEC need not grapple  
19 with the argument, however, as WDFW anticipated this issue through adoption of the *WDFW*  
20 *Guidelines*, which counsel a developer about the required studies for any type of habitat.

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21 <sup>15</sup> The *WDFW Guidelines* do not support Seattle Audubon’s argument that Whistling Ridge’s pre-project  
22 avian surveys are deficient, because specific turbine locations have not yet been identified. *See* Audubon Brief at  
23 6:15-25. As Seattle Audubon well knows, the *WDFW Guidelines* actually provide that pre-project wildlife  
24 assessment studies are to be done first, with that information subsequently used to identify specific turbine locations.  
25 *See* Ex. 6.09c at § 1.1. This is exactly the approach that Whistling Ridge has followed, which is one of the reasons  
26 why WDFW has found that “[t]he pre-project assessment and avian/bat uses surveys . . . are consistent with the  
WDFW Wind Power Guidelines (WDFW 2009).” Ex. 1.02r at 1.

<sup>16</sup> Contrary to Seattle Audubon’s assertion, comparisons to avian mortality predictions at wind facilities  
proposed at other forested sites in Washington add nothing to this analysis, as there are no other projects yet built or  
operating in industrial forests. Exs. 1.02r , 6.04r at 25:15-17.

1 Seattle Audubon charges that data should have been gathered from other agencies with  
2 general avian population knowledge in order to make impact predictions. Audubon Brief at 2:12-  
3 20. Seattle Audubon ignores WDFW's September 27, 2010 letter to EFSEC. Ex. 1.02r. WDFW  
4 has definitively concluded that because no data exists from constructed wind energy projects on  
5 other industrial forests, the data generated from this particular site represents the *best available*  
6 *science* for predicting Project impacts. *Id.*

7 • **Inadequacy of the protocols used for the avian and bat surveys.** FOCG faults  
8 Whistling Ridge for using conventional, WDFW-approved, and EFSEC-applied methods of  
9 assessing base-line information to generate avian and bat impact predictions. FOCG Brief  
10 at 41:12-42:13. FOCG intimates that the *WDFW Guidelines* incorporated into EFSEC siting  
11 regulations under WAC 463-60-332(4) should not be relied upon.<sup>17</sup> Instead, Whistling Ridge  
12 apparently should have stepped outside the norm and made up new, even “novel” methodologies  
13 that, while not adopted in Washington and not applied in any other jurisdiction, are promoted by  
14 Smallwood. *See* Ex. 6.04r at 21:11-23:24. This is an ironic twist, as FOCG makes the exact  
15 *opposite* argument about Whistling Ridge's aesthetic impact analysis. FOCG cannot have it both  
16 ways, in one breath demanding denial due to Whistling Ridge's failure to apply new, unadopted  
17 methodologies (wildlife) while simultaneously demanding denial by wrongly contending that  
18 Whistling Ridge applied new, unadopted methodologies (aesthetics).

19 FOCG's situationally convenient legal posturing is plain to see. Whistling Ridge cannot  
20 tailor its baseline research, subsequent analysis, the ASC or its adjudication evidence to  
21 anticipate arguments and untested theories advanced after the fact by Opponents.<sup>18</sup> Whistling  
22 Ridge has met its burden here. WDFW, best suited to offer an opinion, has indicated that the

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23 <sup>17</sup> FOCG's argument is based on (i) six-year-old meeting notes that predate the current *WDFW Guidelines*  
24 and (ii) an uncorroborated excerpt of an email chain from WDFW staffers who obviously do not understand the  
Project or the relevance and science of point count surveys. Exs. 6.05c, 6.08c.

25 <sup>18</sup> An applicant must present an ASC that satisfies a demanding host of pre-determined criteria, rules,  
26 surveys, protocols, guidelines, and precedent. The applicant is charged with gathering objective baseline data and  
conducting analyses in a manner consistent with EFSEC and WDFW precedent, rules, and expectations.

1 protocols, surveys, and analysis have been correctly performed. *See* Ex. 1.02r. WDFW goes  
2 further, concurring with avian biologist Greg Johnson that the relationship between avian use and  
3 mortality (as evidenced in the ASC at 3.4-22 to -29 and App. B-5 and B-6, and Mr. Johnson's  
4 pre-filed testimony in Exs. 6.00 at 6:10-13, 6.04r at 34:26-35:4 and forthright and unshakeable  
5 testimony under cross-examination) has been reasonably consistent across habitat types and is  
6 likely to remain consistent here. Tr. at 702:15-703:2 (Johnson). This is true notwithstanding  
7 FOCG's specious complaints that a continuous 365 days' worth of studies, across inter-annual  
8 periods, is necessary. FOCG Brief at 42:5-9, 43:15-44:1. FOCG's interpretation of the *WDFW*  
9 *Guidelines* defies logic, standard practice, and the conclusions of WDFW itself, finding  
10 compliance across seasons, and migratory and breeding periods.

11 • **Failure to quantify impacts to birds, other fauna, and habitat.** In an instance of simply  
12 ignoring the extensive baseline studies, ASC § 3.4, and Mr. Johnson's prefiled testimony, FOCG  
13 has the temerity to suggest that Whistling Ridge has not quantified the impacts to avians, other  
14 fauna, and habitat. FOCG Brief at 42:16-27, 50:20-23. Whistling Ridge's compliance with  
15 EFSEC rules is abundantly discussed in its opening brief. *See* WREP Brief at 4:8-8:19.

16 The work supporting the ASC demonstrates that this ASC complies not only with the  
17 *WDFW Guidelines* but with EFSEC's rules as applied and interpreted by it on other wind  
18 projects. Ex. 6.04r at 6:5-89, 35:4-13. The predicted mortality levels for raptors and other avian  
19 species necessarily lie within a defined range; as the Project is not yet built, it is impossible to  
20 quantify with precision exact numbers. *Id.* at 6:10-15, 6:19-7:2. There is a major difference  
21 between pre-construction predictive modeling for siting purposes and post-construction  
22 monitoring to assess those predictions against what happens during operation. It is on that basis  
23 that adaptive management techniques are assessed. *Id.* It is ludicrous to suggest that predictions  
24 of avian mortality (i) by range of numbers (*e.g.*, 0.0 to 0.25 raptors per megawatt per year), (ii)  
25 by comparison to other projects' avian mortality rates, and (iii) in consideration of breeding,  
26 transient, and other characteristic population numbers are not *both* quantitative and qualitative

1 analysis. The fauna has been exhaustively studied for multiple years to encompass all seasonal,  
2 breeding, and migratory periods, as well as to adapt study methodologies particularly targeted to  
3 emerging volumes of consistent thought on bat behaviors. Ex. 6.04r at 26:4-28:24. The  
4 mitigation measures proposed are consistent with EFSEC and WDFW expectations and  
5 requirements, and are thoughtfully tailored to emergent data, particularly as they pertain to bats,  
6 and should be embraced rather than rejected in favor of Opponents’ unsupported arguments.

7 **2. The Project does not pose any risk to northern spotted owls (“NSO”)**

8 In their opening briefs, both FOCG and Seattle Audubon brush off the conclusions  
9 reached by the USFWS after convening a scientific review panel of wildlife biologists, including  
10 WDFW’s own NSO expert. *See* FOCG Brief at 53:1-26; Audubon Brief at 7:5-22. They  
11 represent that the USFWS’s Endangered Species Act Concurrence Letter contains mistakes  
12 (inferring that its conclusions are not reliable). They mischaracterize the Project site as  
13 containing “suitable habitat” for this species, and they contend that somehow, by failing to  
14 identify specific, final turbine locations, it is not possible to conclude that there will be no likely  
15 impact to this species—this notwithstanding the fact that the USFWS letter applies to *the entire*  
16 *site*, including the entirety of the proposed turbine corridors. And they offer no evidence to rebut  
17 the conclusion by the USFWS review panel that even if NSOs “disperse” through this site, the  
18 risk of injury or mortality is “discountable.” *See* Ex. 5.04 at 4. The following addresses  
19 Opponents’ alleged deficiencies in the USFWS Concurrence Letter:

- 20 • **Moss Creek owl circle reference.** FOCG makes much of a scrivener’s error in the first  
21 full paragraph on the third page of the USFWS letter, which referenced the NSO detection as  
22 within the Moss Creek owl circle, rather than the Mill Creek owl circle. However, in the  
23 immediately preceding paragraph (which actually describes the NSO surveys and results) USFWS  
24 correctly stated that the NSO was detected “in the north edge of the Mill Creek” owl circle.  
25 Ex. 5.04 at 3. USFWS had the map, knew the locations, and accurately evaluated the issues. An  
26 *////*

1 obvious scrivener's error does not undermine the regulatory and scientific conclusions or effect of  
2 this informal consultation by the agency with jurisdiction over this species.

3 • **Location of detections.** On May 7, 2010, the single male NSO was detected at a  
4 location approximately one mile southwest of the drainage in which it had first been detected the  
5 day before. Ex. 5.00 at 8:25-9:3. The USFWS letter expressly references that the single male  
6 NSO was detected, among other dates, on May 7. Ex. 5.00 at 9:2-4. On that date this NSO was  
7 pulled out of the original drainage by the biologist's calls. Ex. 5.00 at 9:2-4; Tr. at 797:9-799:16  
8 (Reams). The logical inference from these facts is that USFWS was aware that the single male  
9 NSO had been detected outside the original drainage and that USFWS agreed that the owl had  
10 been pulled out by the biologist's calls. Mr. Reams testified that the biologist's calls induced the  
11 single male NSO to leave his drainage and go into the 1.8-mile area, and that the best habitat for  
12 the NSO was back in the drainage. Tr. at 799:1-3, 803:8-9. Consequently, detecting this NSO  
13 outside the drainage has no biological significance, and it is irrelevant to the behavior of this owl.

14 • **"Suitable owl habitat."** Opponents allege that the USFWS erred in stating that the  
15 Project site does not contain "suitable spotted owl habitat." FOCG Brief at 53:10-12; Audubon  
16 Brief at 7:16-18. That was not an error. It is true. As Mr. Reams explained, the broad brush  
17 characterization of "suitable habitat" does not apply to the Project site, which at best is "dispersal  
18 habitat."<sup>19</sup> Tr. at 783:9-19. Mr. Reams further testified that this "industrial forestland" would  
19 "potentially impact the owl's ability to disperse" into these areas. Tr. at 792:3-5. USFWS was  
20 entirely correct. There is no suitable NSO habitat on the Project site.

21  
22  
23 <sup>19</sup> Mr. Reams' un rebutted testimony is clear: "Spotted Owls prefer a more mature forested environment  
24 that's multilayered, multispecies. They need to be able to fly underneath the canopy. This is a big monoculture,  
25 very densely positioned trees where I think it would be difficult for an owl to sort of get around if there were other  
26 options . . . I would think the owl would avoid this whole general area and make a living more to the north of this  
site." Tr. at 786:2-25. Mr. Reams found that even taking Opponents' critiques of the USFWS letter at face value,  
none of the purported deficiencies "were significant in matters that changes the outcome" of the informal  
consultation. Tr. at 785:14-17.

1 In summary, there is no documented presence of NSOs on the Project site. It is  
2 biologically improbable, and likely impossible, that this species would inhabit any portion of the  
3 site, with or without the Project. It is similarly unlikely that NSOs would disperse into the  
4 Project site. And if NSOs defy known behavior characteristics and habitat imperatives by flying  
5 through the site, the USFWS’s conclusion that any risk is “discountable” has not been rebutted.  
6 So, at the end of all the drama and cynical misuse of this environmental icon to stop this Project,  
7 there is simply no issue, from a biological or regulatory basis, that would justify any conditions,  
8 much less denial, due to the unproven and in fact likely impossible potential impact on NSOs.<sup>20</sup>

9 **3. Opponents’ attack on Whistling Ridge’s proposed mitigation parcel ignores**  
10 **the facts in the record and WDFW’s strong endorsement of the proposal**

11 FOCG and Seattle Audubon are joined by the CFE<sup>21</sup> in a surprising attack on Whistling  
12 Ridge’s voluntary offer to convey a mitigation parcel to comprehensively address potential  
13 impacts of the Project. See FOCG Brief at 54:19-59:26; Audubon Brief at 9:10-10:8; CFE Brief  
14 at 10:20-13:17. This despite WDFW’s strong endorsement of this offer. Ex. 1.20r (Dec. 20,  
15 2010 letter). Opponents, including the CFE, fail to understand the following:

- 16 • **The Project site is and will continue to be a highly degraded industrial timber site.**

17 Regardless of whether the Project is developed, the Project site is not and will not be “coniferous  
18 wildlife habitat” within any reasonable meaning of that characterization. Such a characterization  
19 is akin to describing the dry land wheat fields of the Columbia Basin as “shrub steppe habitat,”  
20 despite a cultivated agricultural area having no such habitat value. Moreover, the *WDFW*  
21 *Guidelines* encourage wind project developers “to site wind power projects on disturbed lands.”  
22 Ex. 6.09c at 8; see also *id.* at 5. “Impact” to “habitat” associated with the Project is debatable at

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23 <sup>20</sup> Washington Department of Natural Resources’ (“DNR”) DEIS comment letter has been addressed in its  
24 entirety by USFWS and WDFW, as the participants in the informal consultation process. The SEPA process is the  
25 appropriate place for any further consideration of the DNR letter, the significance of which was rendered moot by  
26 the expert wildlife agencies’ subsequent review.

<sup>21</sup> It is unprecedented for the CFE to so closely align with opposition by giving absolutely no regard to  
Washington’s own wildlife agency—WDFW—in its review of an energy facility.

1 best. The *WDFW Guidelines* state that “[n]o mitigation will be required for impacts to lands that  
2 have low habitat value.” *Id.* at 9. Recognizing the debatable habitat value of commercial forest  
3 lands, the *WDFW Guidelines* do not recommend any mitigation ratio for wind projects on  
4 commercial forest lands but instead suggest “consultation” with WDFW and permitting agencies.  
5 *Id.* at 19; *see also* Ex. 1.20r (Dec. 10, 2010 letter at 1). Whistling Ridge has consulted in spades  
6 and has consistently kept EFSEC staff “in the loop,” and WDFW has apprised EFSEC staff.  
7 Finally, it is bizarre to demand “mitigation” associated with NSOs, as there is simply no  
8 presence on the Project site and no impact to this species whatsoever. *See* Ex. 5.04.

9 • **WDFW itself has found that the mitigation parcel satisfies the *WDFW Guidelines*,  
10 which WDFW (obviously) administers.** Even though the obligation to “mitigate” in this  
11 circumstance is debatable at best, Whistling Ridge has consulted actively with WDFW and  
12 agreed to convey a parcel that WDFW wants to protect as mitigation. As confirmed in WDFW’s  
13 Dec. 20, 2010 letter, the mitigation parcel meets many objectives of WDFW in conserving  
14 important habitat in the vicinity. Ex. 1.20r. The mechanics of how to enhance and protect this  
15 habitat will be hammered out with WDFW after site certification. In contrast to Opponents’  
16 arguments, the *WDFW Guidelines* do not require “like kind” habitat. They allow for conveyance  
17 of “[l]ike-kind . . . and/or of equal or higher habitat value than the impacted area.” Ex. 6.09c at 9  
18 (emphasis added). It is beyond debate that the 100-acre mitigation parcel, adjacent to DNR-  
19 owned property, currently zoned to allow residential development, and proposed in an area  
20 undergoing substantial development pressure, is of “higher habitat value” than the degraded  
21 Project site, where ongoing industrial timber operations will continue permanently, with or  
22 without the Project. While Opponents may wish to demand an alternative site that would be  
23 impossible to acquire and cause substantial commercial loss to Whistling Ridge, they do not get  
24 to choose. That decision is up to WDFW, in consultation with EFSEC. EFSEC has traditionally  
25 given significant and appropriate deference to WDFW’s mitigation recommendations and even  
26 delegated the consideration of habitat parcel choice to WDFW following site certification.

1       • **The mitigation parcel presumptively fully mitigates for habitat losses for all species,**  
2 **regardless of whether each and every species can be found on the mitigation parcel.** The  
3 *WDFW Guidelines* are explicit: “Implementation of the habitat mitigation measures contained in  
4 this proposal are presumed to fully mitigate for habitat losses for all species, including species  
5 classified as ‘protected’” in applicable regulations. Ex. 6.09c at 8. Whistling Ridge invites  
6 EFSEC’s consideration of the mitigation parcel. EFSEC does, in fact, have the authority to  
7 consider this offer. The rationale of Opponents and the CFE offers nothing to disturb the  
8 approach confirmed by WDFW, within its discretion and its authority, especially in the context of  
9 a highly degraded site where no mitigation is even required to satisfy the *WDFW Guidelines*. Tr.  
10 at 941:23-942:4 (Spadaro). Again, Whistling Ridge has no choice: WAC 463-60-332(4) requires  
11 an applicant to show how the *WDFW Guidelines* are “satisfied.” There can be no better evidence  
12 than a confirming letter from WDFW’s Renewable Energy Section Manager—the person charged  
13 with implementing the *WDFW Guidelines* and responsible for advising EFSEC accordingly.

14       **4. Opponents demand that EFSEC ignore WDFW and USFWS’s conclusions**

15       As stated above and in Whistling Ridge’s opening adjudication brief, the Project would  
16 have modest, insignificant, localized, and highly predictable wildlife effects. These effects  
17 simply do not rise anywhere near the level of significance contended by the opposition.  
18 Compared to other operating Northwest wind energy facilities (where wildlife impacts have  
19 proven to be insignificant), the Project will have very low impacts on wildlife. Exs. 1.03r (May  
20 24, 2010 WEST, Inc. memo at 1), 6.00 at 5:6-6:2, 6.02, 6.03. It is ironic that Opponents focus so  
21 much attention on the extra-jurisdictional comments from two federal agencies (*i.e.*, NPS and  
22 USFS) in the context of aesthetics while utterly disregarding the important input from the  
23 WDFW (who by law advises EFSEC and is accorded deference under SEPA) and the USFWS  
24 (with undisputed, preemptive jurisdiction over NSOs) in the context of wildlife. Opponents  
25 stand above these wildlife agencies and tell EFSEC to disregard years of collaboration and input  
26 derived from Whistling Ridge’s engagement with these agencies, and the informed decisions and

1 opinions presented to EFSEC by these agencies. Most egregious, they demand that EFSEC  
2 totally disregard WAC 463-60-332(4), its own established precedent, and its own knowledge in  
3 regulating wind energy facilities.

4 **E. SOSA fails to comprehend the distinction between noise monitoring and noise**  
5 **modeling; Whistling Ridge has done both properly**

6 EFSEC has long interpreted and applied its noise rules to the many energy facilities it has  
7 sited, and those rules should be consistently applied here. The monitoring methodology and  
8 modeling software used here are consistent with the approach used in the Kittitas Valley and  
9 Desert Claim wind projects. EFSEC should not be led astray by SOSA's attempt to confuse  
10 ambient noise *monitoring* requirements in WAC 463-60-352(1)(a) with the noise *modeling*  
11 necessary to predict an operational project's maximum noise levels and its compliance with  
12 WAC 463-62-030's performance standard. *See* SOSA Brief at 10:5-8 (suggesting ambient noise  
13 monitoring locations were "specifically chosen in such a way as to maximize the decibel level of  
14 the ambient environment so the increase of operation of the Project would not seem as great"),  
15 10:17-19 ("The purpose of monitoring was to determine both the ambient noise level at those  
16 residences as well as the noise level that would result from the operation of the Project.").

17 Monitoring and modeling are definitely not the same thing and do not serve the same  
18 purpose. Understanding the distinction between the two is critical. EFSEC regulates the  
19 absolute maximum noise emitted from an energy facility; it does *not* regulate energy facilities  
20 based on the change to ambient noise as a result of a project's operations. *See* WAC 463-62-  
21 030. Ambient noise *monitoring* results do not contribute in any way to the level of a project's  
22 noise emissions. *Tr.* at 460:4-7 (Mark Storm). Ambient noise is simply not an input in the  
23 *modeling* that demonstrates maximum noise emissions. This fact is lost on SOSA and is a fatal  
24 flaw to SOSA's entire argument.

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26 ////

1           **1. Whistling Ridge appropriately monitored the ambient noise levels of the two**  
2           **noise environments around the Project**

3           EFSEC does not prescribe a methodology for quantifying ambient noise levels.<sup>22</sup> The  
4           Project’s ambient noise monitoring is consistent with past EFSEC practice on wind projects that  
5           have residential receivers in much closer proximity to proposed turbines.<sup>23</sup> Noise monitoring was  
6           performed to depict the two representative noise environments surrounding the Project site:  
7           scattered, single-family residences, and a more dense, mixed-use area characterized by the Mill A  
8           mixed-use area (school/sport court/clustered residential area) to the west of the Project. ASC Fig.  
9           4.1-1; ASC at 4.1-4 to -9; Exs. 7.08c to 7.10c; Tr. at 418:15-18, 1445:12-1446:1 (Storm).

10          The more sensitive of the two noise environments is the scattered, single-family  
11          residence in forested areas surrounding the Project. To describe and quantify the ambient noise  
12          that characterizes such residential receivers, both short-term and long-term noise monitoring  
13          were performed near a scattered, single-family residence close to the Project (*i.e.*, ST1/LT1).  
14          There is extensive evidence in the record about the results of this monitoring.<sup>24</sup> ASC Tables 4.1-  
15          2, 4.1-3, 4.1-4; ASC at 4.1-4 to -9; Exs. 7.02c, 7.03c, 7.05c to 7.07c; Tr. at 414-442, 1428-1456  
16          (Storm). Short-term modeling was also performed at the busier, more distant Mill A area (*i.e.*,  
17          ST2), which represents the other type of noise environment near the Project. It is true that there  
18          was no long-term monitoring done at the noisier Mill A monitoring site. EFSEC’s regulations do  
19          not require it, and there is no evidence suggesting that long-term monitoring might have revealed

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20                   <sup>22</sup> The WAC 173-60-090 requirement SOSA cited regarding measuring noise “within the receiving  
21                   property” expressly applies to “enforcing” noise standards, not to pre-project ambient monitoring. The WAC ch.  
22                   173-58 requirements SOSA cited regarding the monitoring of noise, including calibration and device location, apply  
23                   to noise being regulated by the Department of Ecology, not EFSEC. *See* WAC 173-58-010(2), 463-62-030(1).

24                   <sup>23</sup> Unlike the Kittitas Valley project, which had numerous residential receivers within 2,500 feet of  
25                   proposed turbine locations, here the two closest residential structures to Project turbines are 2,560 feet (0.48 mile)  
26                   and 4,265 feet (0.80 mile) away, respectively. *Compare* Order No. 831 *with* ASC at 4.1-4.

<sup>24</sup> SOSA suggests that the ambient noise monitoring results cannot be accurate or relied upon because they  
include roadway sounds from hard surface roads. SOSA Brief at 14:1-7. However, the field notes prepared during  
monitoring detail passing cars. Exs. 7.11c, 7.12c. The ASC addresses this by presenting ambient noise both with  
*and* without car noise. ASC Tables 4.1-2, 4.1-4. While SOSA can ignore the evidence that roadway noise was  
removed to present quieter, more conservative, and accurate ambient noise monitoring levels, EFSEC cannot.

1 a bucolic, peaceful ambient noise level, or even the reasonable expectation of one, near an  
2 elementary school, sport court, and clustered houses. The short-term monitoring results at Mill  
3 A are appropriately indicative of the ambient noise levels for the second type of noise  
4 environment.

5 **2. The noise modeling for the Project used the gold standard modeling program**

6 SOSA challenges the ASC's predictive results because (i) Whistling Ridge's noise expert  
7 has not field tested the modeling software and (ii) turbine selection has not yet been finalized.  
8 *See* SOSA Brief at 17:4-12. CADNA-A© is the gold standard for noise modeling on wind and  
9 other noise-generating facilities. *See* WREP Brief at 15:3-5, 18:3-14. This same software was  
10 used for the Kittitas Valley and Desert Claim wind projects, and it is routinely relied upon by  
11 acoustical professionals to predict noise levels at complex industrial sources, including wind  
12 turbines. Ex. 7.00 at 7:15-19. It is the manufacturer's responsibility to field test its program, and  
13 its widespread use is indicative of its reliability.

14 Selecting the final turbine after site certification is standard protocol at EFSEC.  
15 Regardless of the turbine ultimately chosen, the maximum Project noise emissions in WAC 463-  
16 62-030 must be met at every receiver. Whistling Ridge cannot simply model one type of turbine  
17 to show compliance with WAC 463-62-030 in the ASC, and then use a turbine that does not  
18 comply with the standard. Aside from the fact that an applicant would never expend millions of  
19 dollars on such a boondoggle, EFSEC would not allow operation of the Project or a constituent  
20 turbine in violation of the applicable maximum emission levels. For that reason, the ASC  
21 suggests that Whistling Ridge re-run the noise modeling once the final turbine is selected in  
22 order to provide actual, pre-construction evidence demonstrating that the Project as constructed  
23 will meet WAC 463-62-030. *See* ASC § 1.4.1.8.

24 **F. The Project does not pose a landslide hazard**

25 There is no landslide hazard that cannot be avoided or mitigated through standard and  
26 accepted engineering and design practices. Mr. Meier's expert testimony could not be more

1 clear. Tr. at 1211:2-5. SOSA relies on the irrelevant fact that some of the turbine corridors are  
2 proposed “adjacent to very steep slopes.” SOSA Brief at 2:16. Correct. Some turbine corridors  
3 are proposed adjacent to steep slopes, but not *on* steep slopes. Mr. Meier’s testimony was not  
4 rebutted by any other witness or through cross-examination. The soils and geological  
5 investigation demonstrated that all elements and areas of the Project can be built without risk to  
6 public safety, and in full compliance with applicable county, state, and international standards.  
7 EFSEC accepts preliminary geologic reports, because until final selection of equipment and  
8 project design and engineering is complete, it is impossible to do more. Tr. at 1124:1-1125:3  
9 (Meier). As noted by Mr. Meier, Oregon EFSC follows precisely the same standard, and the  
10 Oregon Supreme Court unanimously upheld this practice even for a 62-mile, 24-inch natural gas  
11 pipeline proposed, ultimately built, and safely operated across diverse terrain, including landslide  
12 risk areas, in the Willamette Valley.<sup>25</sup> *Id.* It is, in fact, excellent news that, due to the density of  
13 the underlying bedrock, test pits were not possible below a depth of 15 feet. WREP Brief at  
14 47:24-27. Even blasting does not raise concerns in this environment. Tr. at 1102:1-16 (Meier).  
15 The information meets WAC 463-60-302(1)(a)’s informational requirements.

16 **G. The Project will not cause undue traffic impacts on Cook-Underwood Road, and the**  
17 **ASC’s alternatives analysis satisfies WAC 463-60-296**

18 SOSA’s mischaracterization of the transportation information in the ASC leads to  
19 SOSA’s erroneous conclusion that Project construction “would cause unacceptable, significant  
20 adverse traffic impacts” on Cook-Underwood Road. SOSA Brief at 5:14-15. SOSA argues there  
21 are three transportation problems: oversize construction vehicles will block traffic in both  
22

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23 <sup>25</sup> In *Friends of Parrett Mountain v. Northwest Natural Gas Co.*, 336 Or. 93, 79 P.3d 869 (2003), the  
24 Oregon Supreme Court upheld the preliminary geological evaluation conducted by NW Natural’s geologist for a  
25 natural gas pipeline. The Oregon EFSC found that preliminary geological evaluation complied with OAR 345-021-  
26 0010(1)(h), requiring information “from reasonably available sources regarding the geological and soil stability” of  
the site and vicinity. In a dispute over the quantum of evidence needed in a preliminary evaluation and conflicting  
geological experts, the Court sustained the Council’s finding that the preliminary evaluation was sufficient during  
the site certification phase, even where a historic landslide had been mapped along the route. *Id.* at 103-05.

1 directions on Cook-Underwood Road for up to 20 minutes at a time, the number of construction  
2 vehicles using Cook-Underwood Road “would cause harm to rural residential, agricultural, and  
3 recreational areas,” and the ASC’s transportation alternatives analysis was deficient. SOSA  
4 Brief at 6:17-20, 7:9-10, 7:15-26. In short, none of these asserted problems have any merit.

5           There is simply no evidence in the record that oversized construction vehicles will block  
6 traffic in both directions on Cook-Underwood Road for up to 20 minutes at a time. The  
7 information SOSA cites as the basis for its claim is a proposed mitigation measure that would  
8 prevent traffic flow from being restricted for more than 20 minutes. *See* ASC at 1.4-10, 4.3-23.  
9 Restricting traffic flow is not the same as blocking traffic entirely. In fact, appropriately  
10 addressing non-Project traffic flow will be one of the requirements for securing a right-of-way  
11 use permit from Skamania County. The County Engineer testified that:

12           Prior to the issuance of that [County] right-of-way use permit, the  
13 applicant must submit an acceptable (i) traffic control plan, (ii) signing  
14 plan, and (iii) traffic management plan. The traffic management plan has  
15 heightened importance in this situation, because it will describe how  
16 flaggers will manage Project-related traffic in such a way as *to facilitate*  
17 *the movement of non-Project traffic.*

18 Ex. 12.00 at 7:15-20 (emphasis added). Furthermore, Cook-Underwood Road intersects SR 14  
19 at two locations. *Id.* at 4:24. Oversize vehicles will be using only the east intersection.

20 Ex. 11.00 at 5:15-18. Consequently, even when flaggers temporarily block Cook-Underwood  
21 Road at one location, there will always be another way to access SR 14.

22           The ASC’s traffic analysis overstates the likely impact on Cook-Underwood Road.

23           For traffic analyses purposes, two worst case scenarios were considered.  
24 The first assumes that all vehicles related to the Project during construc-  
25 tion would travel through the west junction of Cook-Underwood Road  
26 with SR 14. The second assumes that all vehicles related to the Project  
during construction would travel through the east junction of Cook-  
Underwood Road with SR 14. In other words, for our analysis, we  
assumed double the actual amount of anticipated traffic by assigning the  
total volumes to each of the two junctions. In actuality, some would use  
the west junction and some would use the east junction . . . . In my  
opinion, the numbers shown in Table 4.3-7 [including the 285 on Cook-  
Underwood Road] for the east junction for the “worst case scenario” of  
100% of the drivers using that junction are over-stated.

1 *Id.* at 12:18-13:4; *see also* ASC at 4.3-18 to -19. In addition, this “worst case” analysis used peak  
2 hour traffic, which necessarily represents the worst traffic conditions. *See* Ex. 11.00 at 13:9-17.  
3 Even with all these “worst case” assumptions, the delay for vehicles turning onto SR 14 from  
4 Cook-Underwood Road be approximately five seconds and the resulting LOS (level of service) B  
5 is better than Skamania County’s LOS C. *See id.* at 15:13-23. In other words, the “unacceptable,  
6 significant adverse traffic impacts” of which SOSA complains is a five-second delay during  
7 Project construction at the intersections of Cook-Underwood Road and SR 14. As the ASC  
8 properly concluded, construction of the Project “would have a minimal impact on the operations  
9 of either the west or east junction of SR 14 and Cook-Underwood Road.” ASC at 4.3-19.

10 ASC § 2.19.5’s analysis of three different access routes satisfies WAC 463-60-296.  
11 Whistling Ridge’s preferred alternative (*i.e.*, Route 3) was added due to Opponents’ opposition  
12 to Route 2. *See* Ex. 25.03c. The fact that only one route is viable does not mean that the ASC  
13 lacks an analysis of alternatives. Furthermore, neither SOSA nor any other intervenor inquired  
14 about the purported “Little Buck Creek Road and/or Lacock Kelchner Road” route. *See* Tr.  
15 at 487:15-505:9. One single public comment offered toward the end of these lengthy  
16 proceedings does not evidence that this is a viable route worthy of consideration. Furthermore,  
17 this purported route would still entail the use of Cook-Underwood Road. *See* Public Comment  
18 #394. Consequently, for purposes of the traffic analysis, this purported route would not change  
19 the traffic analysis in any way. In short, none of SOSA’s asserted transportation deficiencies  
20 undermine the transportation and traffic analysis in the ASC.

21 **H. SOSA’s imaginary “need” test would preclude EFSEC from siting intermittent**  
22 **renewable energy facilities**

23 SOSA devotes 41 pages to redundant narrative that primarily regurgitates the utterly  
24 discredited Michaels testimony.<sup>26</sup> *See* SOSA Brief at 19:1-59:25. SOSA’s argument is

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25 <sup>26</sup> Michaels’ bias and hostility toward renewable energy, and his ties to the fossil fuel industry and its  
26 lobbyists, are clear enough from his credentials. *See* Ex. 30.01. The cynical decision of so-called environmental  
advocates to pay him to advocate that perspective is also clear enough. It is clear too that Michaels has no depth of

(continued . . .)

1 unequivocal in its aim is to prove that the Project is not “needed,” concluding with the statement  
2 that a “largely unneeded variable energy resource” should not be approved in view of  
3 (exaggerated and largely misrepresented) “tangible impacts.” *Id.* at 59:21-23. According to  
4 SOSA, the Project “is a low value resource in the Northwest where both electric power and  
5 renewable requirements are being met.” *Id.* at 53:20-21. To support this contention, SOSA  
6 summarizes eight reasons—based on SOSA’s “evidence”—why the Project is not “needed” and  
7 should not be permitted. *Id.* at 53:19-54:25. Whistling Ridge responds as follows:

8 • **“1. Unknown output.”** Whether or not the energy output from the Whistling Ridge  
9 Project is “confirmed” by confidential information SOSA demanded is immaterial and utterly  
10 irrelevant to whether the Project meets EFSEC requirements or standards. This matter has been  
11 litigated to death in this proceeding. *See* Prehearing Order Nos. 11, 12.

12 • **“2. Not dependable source of power.” “3. Wind power glut.” “4. Minimal need for  
13 new generation.” “5. I-937 Met.” “6. Problems of ‘Excess Energy Events.’”** These elements  
14 of alleged “evidence” have no unique relevance to the Project. Instead, they implicate all inter-  
15 mittent renewables. Thus, according to SOSA, no renewable energy facility can be approved by  
16 EFSEC because: (1) the energy is intermittent, (2) there is significant wind power already in the  
17 system, (3) there is little additional need for long-term energy in the Northwest, (4) the *short-term*  
18 requirements of Washington’s RPS standards are already met, and (5) electric grid congestion and  
19 “excess energy events” are challenging but transitory problems. FOCG and SOSA’s battle is with  
20 renewable energy, all intermittent energy resources, and in fact, all new energy generation of any  
21 source proposed within the Northwest. If EFSEC accepts Opponents’ reasoning here, EFSEC  
22 will close its door to any further renewable energy projects proposed in Washington, and in fact,  
23 under such findings it would be impossible for EFSEC to permit any other energy generation

24 \_\_\_\_\_  
(. . . continued)

25 knowledge, his testimony is in total contrast to the actual policies guiding EFSEC, and he either disregards or knows  
26 nothing about the situation in the Northwest. *See* WREP Brief at 51:18-58:2.

1 facility of any other kind. Moreover, every element of the purported “evidence” related to these  
2 five reasons is aimed at disproving the “need” for the Project and in studious disregard for  
3 WAC 463-60-021 and RCW 80.50.010. See WREP Brief at 50:8-59:13.

4 • **“7. Power to California.”** This “evidence” is pure speculation. SOSA’s argument is  
5 based on a misrepresentation of Mr. Spadaro’s answers on cross-examination,<sup>27</sup> and it is rebutted  
6 by Randall Hardy’s testimony. Ex. 16.00r at 12:6-14. Moreover, in Prehearing Order No. 12  
7 at 2-3, EFSEC already ruled that the potential delivery point of power is an issue for the market,  
8 not an issue for EFSEC, to decide. According to the full testimony in the record, it is just as  
9 likely that the power will be sold to Washington utilities as to any out-of-state buyer. Ex. 16.00r  
10 at 12:6-14. However, whether renewable energy is sold to a California or Washington utility, its  
11 generation reduces greenhouse gases on a megawatt-to-megawatt basis, and satisfies a binding  
12 policy to address climate change, regardless of its destination. This argument, and related  
13 “evidence,” is utterly irrelevant and is blind to public policy mandates.

14 • **“8. Minor Resource.”** Finally, SOSA contends that the Project “is a very small project  
15 that will make no difference in meeting load or RPS requirements. Many other sites are  
16 available to develop wind power that do not create unacceptable resource impacts.” SOSA Brief  
17 at 54:21-24. Accepting this classic NIMBY reasoning would effectively make it policy that  
18 EFSEC will only consider large projects that satisfy some undetermined threshold of generation.  
19 The irony of this purported “evidence” and argument is that were EFSEC to consider a 400-MW  
20 project versus a 75-MW project, SOSA’s alleged “impacts” on the transmission system would be  
21 far more profound and create what it contends are untenable effects. Consequently, SOSA’s  
22 argument would put EFSEC in the position to say “no” to small projects because those are a  
23 “minor resource,” and to deny large projects because they are too big—or too “major”—a  
24 resource to be allowed under SOSA’s imaginary “need” test.

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25 <sup>27</sup> Mr. Spadaro did not testify that it is likely that power would be sold to the California market. See SOSA  
26 Brief at 50:5-6. He testified that California power sales have offsetting costs, including transmission costs, and to  
active efforts to sell to Washington’s largest independently owned utility. Tr. at 122:3-18; 92:13-94:5.

1 In contrast to the many pages of mischaracterizations, the selective quoting from the  
2 record, the complete disregard of the totality of the evidence and testimony, and the utter  
3 dismissal of the actual policy at issue here, the Project is a small, “locally grown” energy facility  
4 proposed on a degraded industrial forest. Neighbors are distant from the Project. It emits no  
5 CO<sub>2</sub>, and in fact, it has *beneficial* impacts on the local and regional electrical transmission  
6 system. There is no need to extend transmission lines off the Project site (and no associated  
7 environmental impacts with a long transmission line), and the Project provides proven, significant  
8 benefits both to Skamania PUD and to BPA, and the management of its transmission system. If  
9 permitted, the Project will provide substantial flexibility and incentives to maintain the ongoing  
10 timber production of a significant Northwest timber site. It will provide major environmental  
11 benefits through the megawatt-per-megawatt reduction in greenhouse gases, in full accordance  
12 with, and fully implementing, important state and national policy. The Project will provide  
13 significant and permanent tax revenues and both short-term and long-term jobs, all of which are  
14 highly meaningful to Skamania County. This location on the BPA transmission grid is more than  
15 60 miles from the Columbia Plateau Wind Generation Area, and it is at a “gateway” location in  
16 the grid, providing BPA with a major opportunity to best implement DSO 216, which both (i)  
17 “allows BPA dispatchers to immediately curtail wind projects when their aggregate generation  
18 threatens to exceed available balancing resources, or when the combination of wind and hydro  
19 generation might violate Endangered Species Act fish spill limit,” and (ii) encourages greater  
20 diversity of wind energy facility locations to tap different wind patterns.<sup>28</sup> Ex. 16.00r at 8:23-9:1,  
21 13:23-25. In other words, the Project actually enhances grid management opportunities and in  
22 fact provides a critical opportunity to *protect* fish species under major electrical generation events.

23 <sup>28</sup> Although the DEIS is not part of the adjudicative record, intervenors’ opening briefs repeatedly cite to  
24 the DEIS extensively. See CFE Brief at 12 n.6; SOSA Brief at 7:26, 24:8; FOCG Brief at 43:20 & n.18, 45:15,  
25 52:20. For this reason, Whistling Ridge directs EFSEC’s attention to page 3-278 of the DEIS, which details the  
26 transmission benefits that the Project provides. SOSA’s arguments misunderstand DSO 216. See SOSA Brief at  
47:17-25. BPA’s enforcement of DSO 216 facilitates the Project’s integration into BPA’s transmission system, and  
as documented in the DEIS, the Project will be an important asset to BPA in its implementation.

1 The Project is among a number of efforts that are spurring innovation in the integration of  
2 intermittent renewable resources, and it is in fact part of the solution, not a part of the problem. It  
3 is geographically diverse from other locations, and consequently it better enables BPA and other  
4 utilities to manage the integration of these important resources into the system.

5 **III. CONCLUSION**

6 Let there be no mistake. The battle FOCG and SOSA are waging is not so much with the  
7 Project but rather with development in general outside the boundary of the Scenic Area (and  
8 inside urban exempt areas) and with permitting intermittent renewable energy resources  
9 anywhere in the State of Washington. With regard to the Scenic Area, will EFSEC and the  
10 Governor of the State of Washington disregard federal law and SCC Title 22 by drawing buffers  
11 around the Scenic Area, literally as far as the eye can see, thereby disregarding the advice of the  
12 State’s own agency that manages growth management and land use throughout the State of  
13 Washington? *See* WREP Brief at 33:3-34:8 (describing the testimony of Leonard Bauer,  
14 Managing Director of Growth Management Services for the Department of Commerce).  
15 Considering the fact that the Scenic Area is internally complete as a regulatory program and has  
16 exacerbated economic catastrophe within the Columbia Gorge region, will EFSEC effectively  
17 expand its boundaries, thereby wiping out the opportunity to plan and utilize the seven percent  
18 (7%) of Skamania County that remains capable of economic use? FOCG would undoubtedly use  
19 any EFSEC precedent in its litigation machine to grind regional economic development to a halt.  
20 Opponents’ only legal rationale for using SEPA to apply Scenic Area restrictions outside of its  
21 jurisdictional boundaries is the Scenic Act itself. Yet, the Scenic Act could not be clearer.  
22 Buffers cannot be established solely to protect the Scenic Area; the Scenic Area can have **no**  
23 **legal effect** beyond its boundaries. That is what federal law says in clear, unambiguous terms.  
24 That is what the Gorge Commission has stated in its own regulations, and that is what Skamania  
25 County has adopted as a matter of law in its zoning code. Federal law, Gorge Commission  
26 regulations, and SCC Title 22 adopt and formalize the 1986 “compromise” as discussed by

1 Skamania County in its testimony. FOCG knows this; it was involved in the process to  
2 formulate the law, and it unsuccessfully advocated that Congress eliminate the Scenic Act's  
3 savings clause. *See* WREP Brief at 30 n.21. Now FOCG seeks to accomplish what it knows  
4 Congress prohibited by demanding that EFSEC impose buffers around the Scenic Area. That is  
5 the effect of its argument, and EFSEC cannot avoid it. It is in complete derogation of the buffer  
6 prohibition enacted by Congress.

7 With regard to Opponents' battle against permitting intermittent renewable energy  
8 resources in the State of Washington, the Project cannot be denied without EFSEC making a  
9 fundamental determination that renewable energy will not be accepted by one of the nation's  
10 premier energy facility permitting agencies. In contrast to the insignificant environmental effects  
11 of the Project, saddling our nation to a certain future of fossil fuel generation (and also nuclear  
12 power) ensures a predictable, actual, and proven loss of whole species and entire landscapes due to  
13 climate change, radioactive contamination, and pollution.<sup>29</sup> It burdens us with actual, proven  
14 health effects caused by pollutants and the climate effects associated with fossil fuels. The battle-  
15 ground for a clean energy future is fought right here, right now, with this small, out-of-the way,  
16 localized, and locally grown wind farm, proposed on degraded, industrial timber land, with little  
17 habitat value and major environmental, social, and economic benefits. We say this with certainty  
18 and not in an effort to over-dramatize the consequence of this proceeding. ***Everyone is watching***  
19 ***what EFSEC does with this Project. How EFSEC and the Governor rule here will determine***  
20 ***the future.***

21 SOSA and FOCG have made this proceeding a matter of precedent and policy. To decide  
22 against the Project will be to distinguish Washington as a place that cannot balance and reconcile  
23 competing interests for the purpose of encouraging projects that fight climate change and provide  
24 many positive benefits. While it is true that a major infusion of intermittent renewable power

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25 <sup>29</sup> Ironically, ongoing reliance on fossil fuel generation will continue to despoil the scenic resources and air  
26 quality of the Scenic Area. *See* Ex. 8.03r at 12:1-2 (haze affects visibility).

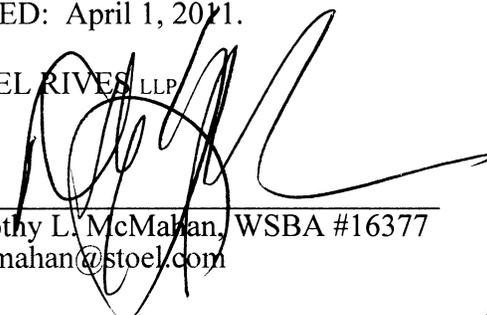
1 would stress an antiquated grid,<sup>30</sup> that is a reason to update the grid and to spur on the already  
2 remarkable pace of innovation. It is not a reason to abandon renewable energy and attendant  
3 policies, to ignore climate change, and to lock ourselves into a future of environmental and  
4 human catastrophe associated with climate change.

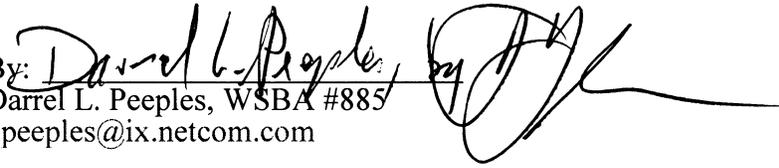
5 Wind energy is cheap and getting cheaper. It is abundant. Unlike nuclear and coal  
6 power, it is embraced by the financial community. Unfortunately, “perfect storms” inflicting  
7 unthinkable human and environmental costs do happen in the quest to satisfy our energy needs,  
8 as evidenced by the BP oil spill, by the Massey Energy coal mine explosion, and now at the  
9 Fukushima Daiichi nuclear power plant. Renewable energy is a fundamental and important key  
10 to avoiding future “perfect storms.” SOSA and FOCG cannot change this future. They cannot  
11 be allowed to roll back Washington policy, and they certainly cannot change the fact that the  
12 federal government will certainly ratchet back CO<sub>2</sub> emissions, either through Congressional  
13 action or EPA rulemaking. A clean energy future is the certain future, not the fantasy of  
14 intractable problems alleged by Opponents’ witness. Washington policy directs EFSEC to drive  
15 toward a clean energy future with all deliberate speed. The Project will continue to spur the  
16 innovation and modernization of our grandparents’ electrical grid and will further utilities’  
17 internalization of the costs of CO<sub>2</sub>. The Project is part of the solution.

18 DATED: April 1, 2011.

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24 <sup>30</sup> BPA continues to lag behind the rest of the nation in how it schedules renewable energy. FERC is now  
25 requiring all regulated utilities to change their practices to schedule renewable energy at 1/2- and 1/4-hour intervals.  
26 Ex. 18r at 8:6-19; Tr. at 1230:15-1232:14 (Yourkowski). This “would significantly reduce the amount of balancing  
reserves capacity measured in megawatts Bonneville will have to hold for a given amount of wind energy that’s  
connected to its fleet,” thereby enabling far more renewable energy on the grid. Tr. at 1231:22-25 (Yourkowski).