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5 BEFORE THE STATE OF WASHINGTON
6 ENERGY FACILITY SITE EVALUATION COUNCIL

7 In the Matter of Application No. 2009-01:
8 WHISTLING RIDGE ENERGY LLC;
9 WHISTLING RIDGE ENERGY PROJECT
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SKAMANIA COUNTY AND
Klickitat County Public
Economic Development
Authority's Adjudication Brief

12 I. INTRODUCTION

13 Skamania County and Klickitat County Public Economic Development Authority request
14 EFSEC's approval of the Whistling Ridge Energy Project. The Project application is consistent
15 with EFSEC siting requirements.¹ At the adjudication, evidence documented Project consistency
16 with EFSEC rules, as the applicant's brief addresses in detail. Skamania County submits this
17 brief to emphasize two points:

- 18 • Socio-Economic Benefits to the County. The Project's socio-economic benefits are
19 critical for bolstering the County's fragile tax base and economy; and
- 20 • Federal Statutes do not Provide a Basis for Project Setbacks, and would be Inconsistent
21 with State and County Law and Policy. The Project is consistent with EFSEC's siting
22 criteria on aesthetic impacts and is outside the Columbia River Gorge Scenic Area.
Using the Columbia River Gorge Management Act, or designated trail/auto-tour routes to
impose setbacks is not consistent with federal, state, and county law and policy.

23 Skamania County and Klickitat County Public Economic Development Authority request
24 Project approval.
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26 ¹ WAC 463-14-080(1) (EFSEC determines consistency with Ch. 80.50 and Ch. 463-60).

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II. FACTUAL BACKGROUND

A. County Economic Conditions

Skamania County's economic situation is dire. The County has testified before the Council, both in-person and through pre-filed testimony on this issue.² Commissioner Pearce, with over 30-years of public service,³ explained:

The unemployment and underemployment in the center of the county has a lot of impacts on the county in terms of service levels. We even have a domestic violence shelter in our county, and in November alone we had 77 bed nights in that shelter. So we have a very severe economic problem, especially in the center of our county.⁴

The Commissioner also described the 55-65% of children on free or reduced lunch at its four school districts. The unemployment rate is 12.9%.⁵ These socio-economic pressures on the County are coupled with the County's limited tax base and dependence on federal life support to provide basis services and avoid shuttering its schools.⁶

Twenty years ago, things were different. From 1970 through 1991, the National Forest produced 350 million board feet per year. This resulted in about 10 million dollars in revenue to the County and schools in today's dollars. The State Forest Trust land produced an average of two million dollars for the county throughout the 80's and early 90's.⁷ Then the Spotted Owl was listed as an endangered species, and production shut down. The County went from four full time mills running multiple shifts to one; and from 800 full time family wage jobs

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² See Skamania County and KCPEDA Land Use Brief, which addresses these issues.

³ TR (January 11, 2011 hearing), p. 1328:5-6.

⁴ TR (January 11, 2011 hearing), p. 1357:16-21.

⁵ Ex. 51.00R (Commissioner Pearce's testimony), p. 8:1-2.

⁶ Ex. 51.00R (Commissioner Pearce's testimony), p.7, see specifically lines 13-15.

⁷ Ex. 51.00R (Commissioner Pearce's testimony), pgs. 6-7.

1 in the forest to less than two dozen. This devastated the local economy.⁸ During the 1990's the
2 Federal Government provided "Owl Guarantee" funds, assuming once the species recovered,
3 logging would continue. This did not occur, so Congress passed the Secure Rural Schools and
4 Forest Counties Act which paid the County an amount equal to average logging receipts through
5 2006. Again, there was an assumption that logging receipts would increase. This did not occur.⁹
6 Congress reauthorized the statute, with a yearly declining payment until 2011. Without this
7 money, the County would have laid off half its workforce and the schools would have lost 40%
8 of their funding. Three of the four school districts would have closed.¹⁰ On the state front the
9 first quarter payment for State Timber Trust receipts for 2009 was only one hundred thousand
10 dollars. The federal funding is the County's life blood.¹¹ Skamania County has no alternative: it
11 must transition from a former, rural, timber-dependent county to the new economy.
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14 **B. The Scenic Area Does Not Extend Beyond its Boundaries**

15 Despite the difficult economic conditions, Skamania County protects the Columbia River
16 Gorge Scenic Area running through much of the County through the Scenic Area regulations it
17 has adopted. Consistent with the Columbia River Gorge Management Act, which does not
18 extend regulatory jurisdiction outside the Scenic Area, the County does not use the Act to
19 regulate or otherwise impose buffers on properties outside the Scenic Area.¹² With most land in
20 the County tied up as federal forest land, state trust land, and the Scenic Area, and only 7%
21 remaining available for development (with 4% in forestry operation), such an approach would be
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24 ⁸ Ex. 51.00R (Commissioner Pearce's testimony), pgs. 6-7.

25 ⁹ Ex. 51.00R (Commissioner Pearce's testimony), p. 7.

26 ¹⁰ Ex. 51.00R (Commissioner Pearce's testimony), p. 7.

¹¹ Ex. 51.00R (Commissioner Pearce's testimony), p. 7 ("Less than 17% of our total budget comes from property tax; most counties receive about 45%").

¹² Ex. 51.00R (Commissioner Pearce's testimony), pgs. 3-4, 10:4-8.

1 devastating for the local economy.¹³ Due to these concerns, as well as the Project applicant's
2 devotion to the local community and responsible approach to mitigation, Skamania County
3 supports Project approval.

5 III. ARGUMENT

6 A. The Project's Socio-Economic Benefits Support Approval

7 EFSEC siting criteria require the Project applicant to analyze socio-economic impacts
8 and work with local government to address adverse impacts:

9 The application shall include a detailed socioeconomic impact analysis which identifies
10 primary, secondary, positive as well as negative impacts on the socioeconomic
11 environment in the area potentially affected by the project....

12 The application shall compare local government revenues generated by the project (e.g.,
13 property tax, sales tax, business and occupation tax, payroll taxes) with their additional
14 service expenditures resulting from the project....

15 To the degree that a project will have a primary or secondary negative impact on any
16 element of the socioeconomic environment, the applicant is encouraged to work with
17 local governments to avoid, minimize, or compensate for the negative impact.¹⁴

18 The Project has addressed these criteria. The applicant prepared extensive analysis,¹⁵ which is
19 supported by analysis from:

- 20 • Skamania County Economic Development Council,¹⁶
- 21 • Klickitat County Public Economic Development Authority,¹⁷ and
- 22 • Washington State Department of Commerce.¹⁸

23 The analysis demonstrates the Project's socio-economic benefits:

24 ¹³ Ex. 51.00R (Commissioner Pearce's testimony), p. 4:4-9.

25 ¹⁴ WAC 463-60-535.

26 ¹⁵ Amended Application for Site Certification, § 4.4.

¹⁶ Exs. 42 and 42.01R (Skamania County Economic Development Council, Executive Director testimony)

¹⁷ Exs. 48 and 48.01 (Klickitat County Public Economic Development Authority Executive Director testimony).

¹⁸ Ex. 36 (Dept. of Commerce, Growth Mgmt. Services, Managing Director testimony); Ex. 36R.02 (CRGNSA Economic Development Program – Annual Report).

- 1 • Project's Capital Investment. \$150 million.
- 2 • Direct/Indirect (including induced) Construction Employment. 170 jobs, with a \$21.4
- 3 million annual payroll and average overall wage of \$125,900.
- 4 • Local Construction Procurement Generated (Direct/Indirect): \$15.8 million.
- 5 • Employment Generated (Direct/Indirect). 14 jobs (9 direct) during Project operations,
- 6 with a \$1.9 million annual payroll. In-County annual business revenue generation to
- 7 increase as much as \$17.1 million.
- 8 • Property Taxes: \$609,400 annually.
- 9 • Sales Tax: \$46,600 annually, and \$126,000 in one-time sales tax revenues during
- 10 construction.¹⁹

11 For this struggling, economically challenged County, these estimated figures are a significant,

12 socio-economic benefit to the community.

13 **B. The Project Is Consistent with EFSEC Siting Criteria on Aesthetic Impacts**

14 EFSEC criteria require the Project applicant to describe aesthetic impacts:

15 The application shall describe the aesthetic impact of the proposed energy facility and

16 associated facilities and any alteration of surrounding terrain. The presentation will show

17 the location and design of the facilities relative to the physical features of the site in a

18 way that will show how the installation will appear relative to its surroundings. The

19 applicant shall describe the procedures to be utilized to restore or enhance the landscape

20 disturbed during construction (to include temporary roads).²⁰

21 The siting criteria in no way require setbacks from the Columbia River Gorge Scenic Area or the

22 federally designated "trails" running through the County.

23 **1. Scenic Area Setbacks Are Inconsistent with Federal, State and County Law and**

24 **Policy**

25 Imposing Scenic Area setbacks would not be consistent with how Skamania County

26 regulates development within the Scenic Area, or how Congress does. When Congress first

proposed the Columbia River Gorge National Scenic Area Act, the County initially opposed

¹⁹ Ex. 41.02 (Economic & Fiscal Benefits Memorandum), p. 2.

²⁰ WAC 463-60-362(3).

1 enactment due to concerns over its economic impacts. Congress responded to County concerns
2 in three key ways.

3 First, the Act established urban-exempt areas, to which the Act does not apply. Second,
4 and most importantly for this Project, the Act includes a “savings clause,” which created a hard
5 boundary line.

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7 **Nothing in this Act shall ... establish protective perimeters or buffer zones around**
8 **the scenic area or each special management area.** The fact that activities or uses
9 inconsistent with the management directives for the scenic area or special management
areas can be seen or heard from these areas shall not, of itself, preclude such activities or
uses up to the boundaries of the scenic area or special management areas.²¹

10 Third, Congress “federalized” significant land areas within the County. Since 1986, the federal
11 government has purchased more than 20,000 acres of private land. (Unfortunately, this has also
12 removed it from the private tax rolls.²² As noted in Mr. Hovee’s testimony, this places
13 increasing burden on the local tax base.) Except with respect to the latter impact on public
14 services, these measures softened the Act’s blow. With the urban exemptions and Savings
15 Clause, the Act struck a balance, allowing the County to survive economically, and to sustain
16 public services for its citizens. This three-pronged approach is consistent with the Act’s dual
17 purposes: to protect the Columbia River Gorge from an environmental standpoint, but also to
18 promote economic development.²³ That was the 1986 compromise.

19
20 The County has never upset this legislative compromise by imposing setbacks on projects
21 within either the urban exempt areas or outside the Scenic Area, based on the Act. The Act is
22 comprehensive and complete as a regulatory tool within the area it regulates. For example, the
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25 ²¹ 16 USC §544o(a)(10), emphasis added.

26 ²² Ex. 51.00R (Commissioner Pearce’s testimony), p. 3..

²³ 16 USC §544a(1) and (2).

1 Scenic Act's aesthetic protocols, guidelines and regulatory requirements are incorporated into
2 SCC Title 22, which applies to the Scenic Area and "to no other lands within the county...."²⁴

3 The opponents' position would eliminate the bargain struck in 1986 to balance
4 environmental and economic interests. Gone are the statutorily exempt urban areas. Gone are the
5 distinct Scenic Area boundaries. Instead, the Act would reach outside its jurisdictional
6 boundaries; potentially into all of Skamania County. This would impair the County's economic
7 future, with potential ramifications for major urban and urbanizing areas of Clark County and
8 Multnomah County (e.g., Washougal, Camas and areas in southeast Vancouver, as well as
9 Gresham and Troutdale). At the Gorge's west end, in full view of any number of key viewing
10 areas sits the entire town of Washougal and the stacks of the Camas Paper mill. On the east end,
11 right on the Scenic Area boundary, is the Maryhill Winery & Amphitheatre, and in the distance,
12 wind turbines.²⁵

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15 The Washington State Department of Commerce, Growth Management Services,
16 recognizes the importance of maintaining these distinct regulatory regimes.

17 The development standards in the NSA Management Plan were adopted to guide
18 development within the NSA. If the same standards that are appropriate for the NSA are
19 used for areas outside the NSA, the same projects will be approved, and none other,
20 regardless of the policy goals of the county or city elected officials. That is why we are
21 concerned.²⁶

22 The legislature and appellate courts are similarly concerned with crossing these
23 jurisdictional boundaries. For example, when the Growth Board imported Growth Management
24 Act requirements into the Shoreline Management Act, the legislature took just four months to

25 ²⁴ SCC 22.02.050; See 16 USC 544e(c)(2) ("Upon approval of a land use ordinance by the Commission it shall
supersede any regulations for the county developed by the Commission, subject to valid existing rights.")

26 ²⁵ Ex. 51.00R (Commissioner Pearce's testimony), p. 5.

²⁶ Ex. 36R.00 (Dept. of Commerce, Growth Management Services Director, testimony), p. 4.

1 reverse.²⁷ The legislature explained that that the two regulatory regimes were separate and
2 distinct.²⁸ The Department of Commerce similarly interprets the Scenic Area Act:

3 Applying standards developed to guide development within the NSA [National Scenic
4 Area] to the WREP project [Project] would ... **establish a protective perimeter or
5 buffer zone around the scenic area, in direct contradiction to the law.** And if, as a
6 result, the WREP should be rejected on this basis, county policy goals, and state goals
7 and policies regarding both renewable energy development and economic development in
8 general would be thwarted. ... The Act set boundaries for a purpose, including the
9 purpose of allowing development outside the NSA that would not be approved in it. The
10 Act set aside special management areas within the NSA with even stricter standards, and
11 exempted the urban areas to encourage economic growth there. The urban areas have
12 land use ordinances that allow both commercial and industrial uses. Over the years, these
13 communities have experienced difficult economic times, with the collapse of the timber
14 and fishing industries, and now from the recent recession.²⁹

15 The Project opponents' approach is counter to the Department's economic development
16 objectives and the grant funding it allocates to forward these efforts. Importing the Scenic Area
17 to land use proposals outside its jurisdictional reach "would create great uncertainty about future
18 economic development for private property owners in the areas outside the boundaries of the
19 NSA" and stifle investment.³⁰ This could jeopardize the extensive economic development
20 initiatives the Department, Washington Investment Board, and Skamania County Economic
21 Development Council have partnered on.³¹ By limiting its jurisdictional reach, the Scenic Area
22 Act was drafted to ensure this did not occur.

23 ²⁷ *Futurewise v. WWGMHB*, 164 Wn.2d 242, 246, 189 P.3d 161 (2008).

24 ²⁸ RCW 90.58.030, findings ("The legislature intends that critical areas within the jurisdiction of the shoreline
25 management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of
26 the shoreline management act shall be governed by the growth management act.")

²⁹ Ex. 36R.00 (Testimony of Managing Director of Dept. Commerce, Growth Management Services), pgs. 5-6.

³⁰ Ex. 36R.00 (Testimony of Managing Director of Dept. Commerce, Growth Management Services), p. 6.

³¹ See Ex. 36R.02 (Columbia River Gorge National Scenic Area Economic Development Program, Annual Report,
June, 2010).

1 **2. The Commemorative “Trail” Designations do not Support Further Mitigation**

2 Skamania County does not condition development outside the Scenic Area due to its
3 visibility from the Columbia River, I-84, or SR 14. The River is the designated Trail; the two
4 state highways are “auto tour routes,” which run through both rural and urbanized areas, and are
5 associated with the Lewis & Clark National Historic Trail or Oregon National Historic Trail.
6 They have no federal regulatory protection by virtue of their state-designated auto tour route
7 status. Mitigation based on these “trails” is neither appropriate nor consistent with federal law
8 for at least five reasons:
9

10 First, the Congressional creation of the Lewis and Clark National Historic Trail protects
11 the trail on federal property; not on private land. The Project is on private land and the trail does
12 not cross it.³²

13 Second, there are no non-federally owned sites in Skamania County that have been
14 certified for protection.³³

15 Third, for private land development proposals, the federal comprehensive management
16 Plans say nothing about protecting the viewsheds from these trails.
17

18 Fourth, the Trail Act in no way ties these “trails” to the Scenic Act. Stating that a project
19 negatively impacts a national trail because the project can be seen from the Scenic Area has no
20 grounding in federal law. Moreover, based on the Park Service’s internal review, the official
21 responsible for the Oregon Trail had no such concerns.³⁴
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25 ³² Ex. 51.00R (Commissioner Pearce’s testimony), p. 11.

26 ³³ Ex. 51.00R (Commissioner Pearce’s testimony), p. 11.

³⁴ Ex. 51.00R (Commissioner Pearce’s testimony), p. 12.

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2 Fifth, the routes run through highly urbanized areas. The State of Washington-designated
3 auto-tour route for the Lewis and Clark National Historic Trail is SR 14, and the State of
4 Oregon's is I-84. I-84 is also the auto-tour route for the Oregon National Historic Trail. I-84
5 runs along a landscape that includes urban areas, major hydroelectric facilities, transmission
6 lines, cross-Cascade railroad, and numerous other facilities. Before entering the Scenic Area, the
7 auto routes run through eastern Washington and Oregon, including through areas with wind
8 development, which the Park Service has not commented on.³⁵

9
10 The Cultural Resources Specialist for the Oregon National Historic Trail, stated that
11 Whistling Ridge would have no significant adverse impacts to either the historical route or the
12 auto-tour route of that trail. The comments were deleted from, and not included in the letter
13 ultimately sent from the Department of the Interior.³⁶ In contrast, another individual, who
14 apparently has a role in administering the Lewis & Clark Trail (from Omaha, Nebraska), opined
15 that the Project would impact the Trail.³⁷ This deletion of the "no impact" comment,
16 in favor of a contrary view, for two trails that follow the same route, reflects a division of
17 agency opinion, and subjectivity, rather than being based on the language in the federal statute.
18

19 Federal law provides that only those parts of the routes that are on federally-owned land
20 are "protected;" non-federally owned parts of the route can be "certified" for protection upon
21 application by the property owner. The Project applicant has not made this application, nor has
22 the County ever imposed mitigation based on these trails.
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25 ³⁵ Ex. 51.00R (Commissioner Pearce's testimony), pgs. 9-10.

26 ³⁶ Ex. 51.00R (Commissioner Pearce's testimony), p. 10; Ex. 51.01r (attachment to Commissioner Pearce's
testimony, redlined draft correspondence from Dept. of the Interior).

³⁷ Ex. 51.00R (Commissioner Pearce's testimony), p. 10.

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3 **IV. CONCLUSION**

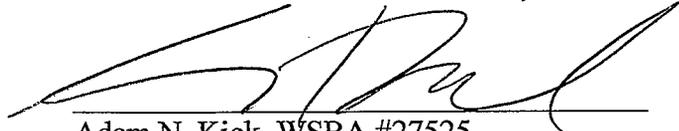
4 The Scenic Area Act promotes both environmental and economic development
5 objectives. It accomplishes this through the historic 1986 compromise, which designated urban-
6 exempt areas and established the Scenic Area's distinct outer boundaries, beyond which the
7 federal legislation does not reach. Consistent with the Act, this Project accomplishes both
8 economic and environmental protection objectives. It protects the Scenic Area; it has been
9 pulled entirely from it. And, with only 7% of the County in private ownership and outside the
10 Scenic Area, most property is likely more protected from development than in any other county
11 in the state.³⁸

12
13 This is the County's first and only wind energy project and it is 35 miles east of any other
14 such project.³⁹ It is fully mitigated and sensitively sited, and would help stabilize the tax base,
15 which is critically important for a county on federal life support. Skamania County and
16 KCPEDA request EFSEC approval.

17
18 DATED this 18th day of March, 2011.

19 ADAM NATHANIEL KICK
20 Prosecuting Attorney for Skamania County

21 LAW OFFICES OF
22 SUSAN ELIZABETH DRUMMOND, PLLC

23 

24 Adam N. Kick, WSBA #27525
25 Susan Drummond, WSBA #30689

26 ³⁸ Ex. 51.00R (Commissioner Pearce's testimony), p. 4.

³⁹ Ex. 51.00R (Commissioner Pearce's testimony), p. 6.