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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, L.L.C.

WHISTLING RIDGE ENERGY  
PROJECT

Application No. 2009-01

MOTION TO CONSOLIDATE  
INTERVENORS' PARTICIPATION IN  
ADJUDICATIVE PROCEEDINGS

COMES NOW the Applicant, Whistling Ridge Energy, LLC, by and through its attorneys of record Stoel Rives, LLP and Darrel L. Peeples and pursuant to the authority contained in RCW 34.05.443(2)(c) and 80.50.040, and WAC 463-30-091, -092, and further upon the pleadings and materials on file and of record herein, moves the Washington Energy Facility Site Evaluation Council ("Council") for a conditioned order granting Friends of the Columbia Gorge ("FOCG") and Save Our Scenic Area ("SOSA") Petitions for Intervention, subject to the Applicant's reservation of its right to address and seek, during the pre-hearing conference or at other appropriate junctures, limitations on the scope of Intervenors' participation in issues involved in this proceeding.

I. RELIEF REQUESTED

FOCG and SOSA's Petitions for Intervention should be granted on the condition that their petitions be consolidated and that their interests and participation be represented by a single lead.

1 By this motion, Applicant is not waiving and hereby reserves its right to address and  
2 seek, during the pre-hearing conference or at other appropriate junctures, limitations on the  
3 scope of Intervenor’s participation in issues involved in this proceeding.

4 II. STATEMENT OF AUTHORITIES

5 EFSEC is authorized to act in accordance with rules it promulgates under the  
6 authority granted at RCW 80.50.040(3). In accordance therewith, intervention is authorized  
7 by EFSEC regulation at WAC 463-30-091: “[o]n timely application in writing to the council,  
8 intervention shall be allowed to any person upon whom a statute confers a right to intervene  
9 and, in the discretion of the council, to any person having an interest in the subject matter and  
10 whose ability to protect such interest may be otherwise impaired or impeded.” The  
11 Washington Administrative Procedure Act (WAPA) is in accord. *See* RCW 34.05.443(1).  
12 Qualifying intervenors’ participation in administrative adjudicative processes may be subject  
13 to conditions, including an order “[r]equiring two or more intervenors to combine their  
14 presentations of evidence and argument, cross-examination, discovery, and other  
15 participation in the proceedings”. RCW 34.05.443(2)(c). Similarly, WAC 463-30-092  
16 provides that “[i]ntervenor status may also be conditioned upon allowance of other parties to  
17 act as lead parties, where appropriate.”

18 III. LEGAL ARGUMENT

19 Intervention is given broad procedural latitude. The ability to intervene in an action is  
20 not unlimited, however. It is incumbent upon the adjudicative body to ensure that the  
21 participation of numerous intervenors not “unduly delay the proceedings or prejudice the  
22 rights of existing parties”. WAC 463-30-092. Insofar as the interests of various parties are  
23 closely aligned, conditioning their participation upon allowance of other parties to act as lead  
24 counsel is contemplated by EFSEC. *Id.*

25 The interests of SOSA and FOCG are not simply closely aligned - they are exactly  
26 identical in both content and appearance. Other than the names of the two entities, the

1 Petitions of the two intervening parties are identical in every substantive recitation contained  
2 in each petition.

3 1. Identification of the Petitioners is identical.

4 “SOSA [Friends’] membership includes [thousands of citizens] residents and  
5 landowners who reside within and near the Columbia River Gorge National Scenic Area.  
6 SOSA’s [Friends’] members recreate, hike, view wildlife, hunt, fish, own land, farm and  
7 work in areas that would be affected by the Whistling Ridge Energy Project.” *See* Save Our  
8 Scenic Area and Friends of the Columbia Gorge’s [in brackets] Petitions for Intervention, at  
9 1.1 – Identification of Petitioner.

10 2. Statement of Interest in the Proceedings is identical.

11 “Friends’ [SOSA’s] mission is to protect and enhance the [environmental] resources  
12 [and scenic values] of the Columbia River Gorge and surrounding lands. Because the  
13 Whistling Ridge Energy Project has the potential to cause significant adverse impacts to  
14 numerous resources in or near the Columbia River Gorge, Friends [SOSA] has participated  
15 during all stages of government review related to this proposal.” *See* Friends of the  
16 Columbia Gorge and Save Our Scenic Area [in brackets] Petitions for Intervention, at 3.1.

17 The only distinction between the two statements of interest in the proceeding is  
18 SOSA’s addition of its moniker “Scenic” to the interests it seeks to protect. This is a matter  
19 of semantics, not substance: the identification of both Petitioners clearly establishes their  
20 members’ interest in their views of the Gorge. FOCG is clearly interested in the same  
21 interest of scenic quality. In fact, its existence is organized around designation of the  
22 Columbia Gorge as a National *Scenic* Area. SOSA has simply added that phrase to its name  
23 and statement of interest, but they are identically aligned in said interests of the NSA.

24 3. Statement of Particularity in Project Issues is Nearly Identical.

25 Both FOCG and SOSA enumerate, with specificity, 28 identical areas of subject  
26 matter as their focus interest in these proceedings, and each seeks identical relief:

1 “SOSA’S [FRIENDS’] INTERESTS EXTEND TO ALL POTENTIAL LEGAL  
2 PROCEDURAL, ENVIRONMENTAL, AND SOCIOECONOMIC ISSUES  
3 PERTINENT TO THE PROJECT.” *See* SOSA and Friends’ Statements of Interests,  
each at page 3:3.2 respectively.

4 The one substantive distinction that SOSA makes in its statement of areas of interest  
5 is into an area that has already been determined in the state of Washington not to be within  
6 the purview of EFSEC. At its Petition, at p. 6, item 26, SOSA seeks to participate in these  
7 proceedings to determine “whether there are other alternate locations for wind turbine  
8 development that are found in areas of better wind resources but at less environmental  
9 damage”.

10 Wind resource data is a highly confidential pecuniary interest of any wind developer.  
11 It is not within any intervenor’s interest or right to force an applicant to divulge such  
12 pecuniary and business data in effort to then advocate for a permit denial on the basis that  
13 there are alternate locations with “better wind resources”. The ability of any applicant to  
14 capture and capitalize on its own wind resource to its own satisfaction is a private business  
15 decision. It is inappropriate for a siting entity, at the urging of an intervenor or any other  
16 party, to introduce the concept of “alternate locations with better wind resources” into an  
17 analysis of the evaluation of this application. Other than this inappropriate effort of SOSA to  
18 inject itself into the Applicant’s business planning on capitalization of its own wind resource,  
19 there is no substantive distinction between the areas in which SOSA and FOCG predicate  
20 their interest in this action.

21 To the extent there is existing precedent before this Council that relates to limitations  
22 on participation regarding certain interests, or the Applicant identifies areas in which SOSA  
23 and FOCG claim an interest in participating and to which participation the Applicant objects,  
24 the Applicant expressly reserve the right to object thereto.

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1           4.       Remainder of Petitions are Identical, Verbatim, other than Names.

2           The entire remaining balance of each Petition is identical, verbatim. *See* Friends of  
3 the Columbia Gorge and Save Our Scenic Area Petitions for Intervention, at 3.3, 4.1., 4.2.

4           Clearly, these two parties have coordinated their efforts to produce, in essence, a  
5 single petition for intervention. The pleadings themselves are a “copy and paste” job with no  
6 effort to distinguish, in any meaningful fashion, any differences between the two. The  
7 alignment of these two parties’ interests is best evidenced by both FOCG and SOSA having  
8 filed a single petition for review of the Skamania County land use consistency determination  
9 with the Columbia River Gorge Commission in Matter COA-S-09-01.

10          It is clear, from the petitions filed with EFSEC and in the CRGC actions, these two  
11 parties have identical interests and objectives in this proceeding. It is precisely this type of  
12 alignment of interest that the consolidation requirements of both WAPA and the EFSEC  
13 regulations are aimed at. The two entities are already coordinating their efforts to file two  
14 sets of identical documents and legal arguments in effort to try and protect their identical  
15 interests. Neither intervenor’s interests would be impaired by entry of an order that they  
16 combine briefs into one: they are already filing identical pleadings, which establish a single,  
17 unified set of interests held by them both.

18          Further, it is in the interest of the efficient administration of this proceeding that these  
19 petitioners’ interests be consolidated. It is unduly burdensome to those already a party hereto  
20 to reply to two set of identical motions. If consolidation is not granted, the burden on parties  
21 will double as relates to these two entities - twice the oral arguments, twice the cross-  
22 examination, twice the discovery requests, twice the briefing load. This will unduly burden  
23 the parties, and has the very real potential to delay what should otherwise be an orderly,  
24 expeditious process.

25          Petitioners’ identical Petitions for Intervention themselves provide *prima facie*  
26 evidence that they would in no way be harmed by the consolidations of their petitions into

1 one single, interested intervenor. They are already coordinating their briefing and legal  
2 representation efforts into a single product. Granting of this motion would simply formalize  
3 the tacit coordination and collaboration already underway.

4 IV. CONCLUSION

5 In the interest of an orderly procedure that fully preserves both the exiting parties'  
6 and the Petitioners SOSA and FOCG's abilities to protect and advance their interests in this  
7 action, it is respectfully submitted that this motion should be granted and an order entered  
8 that requires the SOSA and FOCG parties to combine their presentations of evidence and  
9 argument, cross-examination, discovery, and otherwise coordinate their participation in the  
10 proceedings to a single, consolidated lead in this action. All other objections to the scope of  
11 interests in which FOCG and SOSA seek participation are reserved.

12 DATED this 24 day of July, 2009.

13 STOEL RIVES, LLP

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15   
16 Timothy L. McMahon  
17 WSBA #16377

18 Attorney for Applicant

19 

20 Erin L. Anderson

21 WSBA #23282

22 Attorney for Applicant

23 And

24   
25 Darrel L. Peoples,

26 WSBA #885

Attorney for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24<sup>th</sup> day of July, 2009, I served a true copy of the foregoing *Motion to Consolidate Intervenors' Participation in Adjudicative Proceedings* on the following named person(s) by the following method:

**Mailing/ U.S. first-class postage prepaid**

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<b>Whistling Ridge Wind Power, Applicant</b>	
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<sup>1</sup> PLEASE NOTE: Allen Fiksdal new email address.

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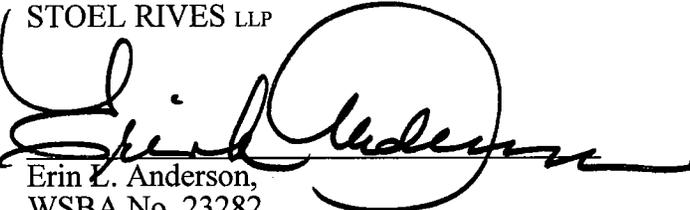
<sup>2</sup> PLEASE NOTE: New email address for Tony Usibelli

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DATED: July 24, 2009.

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