

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

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

SOSA'S SUPPLEMENTAL  
PETITION FOR INTERVENTION  
AND STATEMENT OF INTEREST

**1. BACKGROUND.**

On July 13, 2009, Save Our Scenic Area ("SOSA") filed a Petition for Intervention in this matter concerning the proposal for development of the Whistling Ridge Energy Project (WREP). This petition set forth the interests of SOSA and specified their legal and environmental concerns.

No objections were received to the SOSA petition, which was granted as a part of the Prehearing Order dated August 4, 2009 ("the PHO").<sup>1</sup> A motion was made by the applicant on July 24, 2009 which sought to compel the consolidation of SOSA and intervenor Friends of the Columbia Gorge ("Friends").

The PHO also called on the intervenors to "present revised or supplemental

---

<sup>1</sup> Because of prior commitments, the undersigned counsel for SOSA was unable to attend the July 28, 2009 prehearing conference.

1 petitions that, consistent with Mr. Kahn's representations, clearly reflect the interests  
2 of the membership of the two petitioners and accurately state the limits of their  
3 issues." PHO at 4. The order also asked that the undersigned counsel "affirm his  
4 agreement with the representations at the hearing and the understandings  
5 expressed on the record and this order, on the schedule for initial submissions."

6 To comply with the Council's direction, this response will address the issue  
7 of affirmation of hearing representations and the PHO and then will address the  
8 revised or supplemental petition.

9 **2. PREHEARING CONFERENCE REPRESENTATIONS.**

10 The issues expressed in the PHO appear to originate in the applicant's  
11 motion for consolidation filed on the Friday before the PHC. This motion was filed  
12 while the undersigned was out of the office and unavailable for telephonic or  
13 electronic communication; accordingly, there was no opportunity to review the  
14 motion or to consult with anyone about it.

15 As to the representations made by Mr. Kahn at the hearing, SOSA can  
16 certainly confirm, based upon the hearing transcript, that they are consistent with  
17 the SOSA position. SOSA and its members are property owners and residents in  
18 the immediate area of the WREP. Friends is a larger organization with concerns  
19 about the Columbia Gorge and the National Scenic Area as a whole. Both  
20 organizations are concerned with the preservation and protection of scenic and  
21 environmental values within the Gorge; many SOSA members live within the NSA.

22 SOSA also has concerns regarding the overall economics and viability of  
23 reliance on wind energy to satisfy long term needs for electricity and impacts on the  
24 capacity of transmission facilities. The SOSA petition reflects and includes these  
25 concerns.

26 The Council seems to be concerned that the similar interests of Friends  
27 and SOSA might result in delay and duplication of effort. This will not be the case.

1 SOSA and Friends carefully separated testimony and argument to the Skamania  
2 County Hearing Examiner when they successfully overturned the Skamania  
3 County's determination of nonsignificance for its zoning code amendments. As  
4 citizen based environmental organizations, neither the Friends nor SOSA wants  
5 to engage in activities that would waste limited resources. Although WREP was  
6 not a party to that proceeding, their representative Jason Spadaro sat through  
7 much of the Hearing Examiner hearing.

8         Probably the one area where there will be differing emphasis at the hearing  
9 is precedential and cumulative impacts. As we understand it, Friends is very  
10 concerned with the precedent created by the first wind farm in forested areas of  
11 the Gorge. SOSA is concerned with the noise, shadow flicker and other impacts  
12 on local residents, an area of lesser concern to Friends.

13         While we can affirm the representations of Mr. Kahn, we do not agree that  
14 the order accurately reflects the statements made during the conference as shown  
15 in the PHC. While SOSA and Friends are interested in a similar scope of issues,  
16 they prioritize and approach those issues differently. Both organizations are  
17 interested in both cumulative and project-specific impacts, but Friends is more  
18 focused on the former, while SOSA is more focused on the latter. This distinction  
19 is not a limitation, as the Order seems to imply, but rather a difference in the two  
20 groups' priorities. To address the concerns raised by the Applicant, SOSA and  
21 Friends will endeavor to avoid duplication by adopting each others' arguments and  
22 evidence wherever possible.

### 23 **3. SPECIFICATION OF LEGAL ISSUES.**

24         As noted in SOSA's petition for intervention, many legal issues are  
25 unresolved at this point in the proceedings because the SEPA/NEPA  
26 environmental impact statement process has not been done. Indeed, there is  
27 apparently not even a scoping statement completed by the Council. Taking  
28

1 account of the very early stage of this proceeding, the following are the legal  
2 issues presented.

3 3.1 Pursuant to State Environmental Policy Act (SEPA) and the SEPA  
4 Regulations, must the EFSEC responsible official direct the areas of research and  
5 examination to be undertaken as a result of the scoping process under the terms  
6 of WAC 197-11-420? This issue was raised in a letter to the Council dated April  
7 22, 2009 which provided additional detail.

8 3.2 Must the environmental review process consider the possible  
9 expansion of the existing project into lands to the north in Klickitat County owned  
10 by DNR? SOSA contends that the scope of environmental and other review  
11 should include impacts on these adjacent properties for which the applicant has  
12 already presented plans.

13 3.3 Is the WREP consistent with the applicable comprehensive plan and  
14 zoning in Skamania County? The detail of this legal issue is provided in the letter  
15 of the undersigned to EFSEC and Skamania County dated May 6, 2009 and  
16 already a part of the record.

17 3.4 Are those portions of the haul routes and roads required for  
18 construction and operation of the WREP consistent with the laws, rules and  
19 regulations of the Columbia Gorge National Scenic Area? Does the authority to  
20 review and approve such facilities within the Scenic Area lie with Skamania  
21 County, EFSEC or the Gorge Commission? This legal issue is that currently  
22 detailed in appeals before the Gorge Commission in which SOSA is a party. This  
23 issue will be heard by the Gorge Commission on October 13, 2009.

24 **4. SUPPLEMENTAL PETITION.**

25 The PHO requests at page 4 that the intervenors "present revised or  
26 supplemental petitions that, consistent with Mr. Kahn's representations, clearly  
27 reflect the interests of the membership of the two petitions and accurately state  
28

1 the limits of their interests.” As Mr. Kahn stated, the membership of SOSA  
2 consists of local residents within the immediate project area, many of whom reside  
3 with the Columbia Gorge National Scenic Area (the “NSA”). This does not mean  
4 however that they are not concerned with more general aspects of the project,  
5 including the economic viability of the project and its economic impact, especially  
6 within Skamania County. SOSA notes that the Port of Skamania County, the  
7 Skamania County Economic Development Council and the Klickitat County Public  
8 Economic Development Authority all raise economic impact concerns to the local  
9 economy.

10 Based on the direction of the Council, SOSA sets forth revised issues as  
11 drawn from its initial petition which reflect that SOSA’s primary concerns are  
12 related to the immediate project area. The remainder of the SOSA initial petition  
13 (dated July 13, 2009) remains the same and is incorporated herein by reference.

14 1. Whether the project and the EFSEC process are consistent with all  
15 applicable laws and regulations, including but not limited to all  
16 county laws and rules, the State Environmental Policy Act, the  
17 Columbia River Gorge National Scenic Area Act, the National  
18 Environmental Policy Act, EFSEC and DNR laws and regulations,  
19 laws and rules pertaining to the National Forest system, and all laws  
20 and regulations related to water quantity, water quality, air quality,  
21 solid and hazardous waste, spills, wetlands, forest practices, and  
22 wildlife.

23 2. Whether all of the project’s potential impacts to the environment  
24 within the immediate area have been adequately assessed and  
25 avoided or mitigated, including any and all issues and matters listed  
26 in the SEPA/NEPA Scoping Report and any and all issues  
27 discussed in the DEIS and FEIS.

- 1           3.     Whether environmental and permitting review of the project may be
- 2           piecemealed, or whether all portions of the overall project proposal
- 3           must be reviewed together, including those portions in both
- 4           Skamania and Klickitat Counties.
- 5           4.     Whether impacts on plants, wildlife, and habitat, including any
- 6           threatened, endangered and sensitive species within the project
- 7           area, have been adequately assessed and avoided or mitigated.
- 8           5.     Whether the project adversely impacts avian species, habitat,
- 9           and/or migratory corridors within the immediate project area,
- 10          including whether those impacts have been adequately assessed
- 11          and avoided or mitigated.
- 12          6.     Whether the project adversely impacts those mammal species
- 13          and/or habitat found within the immediate project area, including
- 14          whether those impacts have been adequately assessed and
- 15          avoided or mitigated.
- 16          7.     Whether the project adversely impacts fish species and/or habitat,
- 17          including whether those impacts have been adequately assessed
- 18          and avoided or mitigated.
- 19          8.     Whether soil erosion and water quality impacts have been
- 20          adequately assessed and avoided or mitigated.
- 21          9.     Whether impacts to forest habitats and resources within the
- 22          immediate project area have been adequately assessed and
- 23          avoided or mitigated.
- 24          10.    Whether noise impacts to wildlife and surrounding communities
- 25          have been adequately assessed and avoided or mitigated.
- 26          11.    Whether adverse impacts to recreational opportunities have been
- 27          assessed and avoided or mitigated, including but not limited to
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

recreational resources in the Columbia River Gorge National Scenic Area, the Columbia River, the Lewis and Clark Historic Trail, the Historic Oregon Trail, the Lower and Upper White Salmon Wild and Scenic River Areas, and the Gifford Pinchot National Forest as located within the immediate project area.

12. Whether adverse impacts to cultural resources have been adequately assessed and avoided or mitigated.

13. Whether adverse impacts to nearby land uses have been adequately assessed and avoided or mitigated.

14. Whether any and all issues involving economic impacts and benefits of the project within the immediate project area, including any issues involving the economic viability of the project, have been adequately assessed and avoided or mitigated.

15. Whether all public health or safety concerns and risks, including but not limited to fire risk, blade throw, ice throw from turbine blades, tower collapse, noise, vibrations, day and nighttime lighting, and interference with aircraft, have been adequately assessed and avoided or mitigated.

16. Whether all light and glare impacts, including but not limited to light, glare, reflected light, shadow, daytime and nighttime views from sensitive areas such as the National Scenic Area, and light pollution impacts to views of the sky, have been adequately assessed and avoided or mitigated.

17. Whether the project has adequately planned for decommissioning of the facility in the event of a financial disaster, natural disaster, and the conclusion of the project's life cycle.

18. Whether impacts to communications and utility facilities in the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

immediate project area have been adequately assessed and avoided or mitigated:

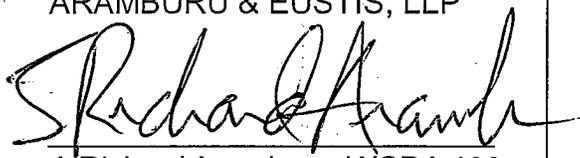
- 19. Whether the impacts from construction, modification, and use of roads and transmission lines have been adequately assessed and avoided or mitigated.
- 20. Whether the impacts from the construction phase of the project have been adequately assessed, avoided, and mitigated including impacts on local roads and the National Scenic Area.
- 21. Whether the project has adequately planned for site restoration of the project area.
- 22. Whether aesthetic and visual impacts to the surrounding lands and community have been analyzed and avoided or mitigated.
- 23. Whether indirect impacts to the immediate project area have been assessed and avoided or mitigated.
- 24. Whether the project involves any beneficial changes to the environment within the immediate project area.
- 25. Whether there has been analysis of the production capacity versus the name plate capacity of the project, the capacity of the electricity grid to accommodate the generated energy, the need for backup power to supplement the intermittent production of power from wind turbines, and the indirect and cumulative impacts of creating demand for additional transmission lines within the grid, and whether those impacts and those of balancing the energy grid have been adequately assessed and avoided or mitigated.
- 26. Whether there are other alternate locations for wind turbine development that are found in areas of better wind resources but at less environmental damage.

1 27. SOSA also has an interest in all procedural matters that may arise  
2 during the adjudicatory process.

3 28. SOSA also specifically requests the right to raise and/or address  
4 any issue identified by any of the other participants in this matter.

5 DATED this 20<sup>th</sup> day of August, 2009.

6 ARAMBURU & EUSTIS, LLP

7 

8 J. Richard Aramburu, WSBA 466  
9 Attorney for SOSA

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VERIFICATION**

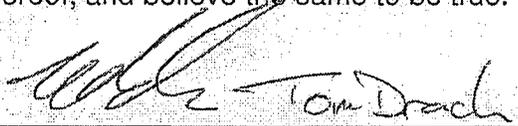
STATE OF WASHINGTON

County of Klickitat

}

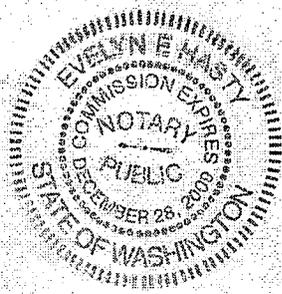
THOMAS DRACH, being first duly sworn on oath, deposes and says:

I am an agent of the Petitioner above and am authorized to make this Verification on Petitioner's behalf. I have reviewed the foregoing Petition for Intervention, know the contents thereof, and believe the same to be true.

  
Thomas Drach, President, Member, SOSA

SUBSCRIBED AND SWORN TO before me this 20<sup>th</sup> day of August, 2009.

  
NOTARY PUBLIC in and for the State of Washington, residing at Leavenworth, OR  
My appointment expires: 12-28-2009





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Skamania County Economic Development  
Council  
Peggy Bryan  
167 NW 2nd  
PO Box 436  
Stevenson WA 98648  
Pbryan@skamania-edc.org

Association of Washington Businesses  
Chris McCabe  
1414 Cherry St NE  
PO Box 658  
Olympia WA 98501  
ChrisM@awb.org

Seattle Audubon Society  
Shawn Cantrell  
8050 35<sup>th</sup> Ave NE  
Seattle WA 981115  
ShawnC@SeattleAudubon.org

Columbia River Gorge Commission  
Jill Arens, Executive Director  
PO Box 730  
White Salmon, WA 98672  
Arens@GorgeCommission.org

Port of Skamania County  
John McSherry, Manager  
PO Box 1099  
Stevenson WA 98648  
John@portofskamania.org

City of White Salmon  
David Poucher, Mayor  
PO Box 2139  
White Salmon, WA 98672  
mayor@ci.white-salmon.wa.us

Klickitat County Public  
Economic Development  
Authority  
Michael Canon, Executive  
Director  
MS - CH -- 26  
127 West Court  
Goldendale WA 98620  
MikeC@co.klickitat.wa.us

Klickitat and Cascades  
Tribes of the Yakama Nation  
c/o Wilbur Slockish, Jr  
PO Box 845  
Wishram WA 98673  
cell 541-993-4779  
(By first class mail; no email  
provided)

Johnson Meninick  
Yakama Nation Cultural  
Resources Program  
Manager, Confederated  
Tribes and Bands of the  
Yakama Nation  
PO Box 151  
Toppenish WA 98948  
509-865-5121, x4737  
(By first class mail; no email  
provided)

Dated: This 20<sup>th</sup> day of August, 2009.



Carol Cohoe, Secretary  
Aramburu & Eustis, LLP