

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

ORDER COMMENCING
ADJUDICATIVE PROCEEDING;

NOTICE OF OPPORTUNITY AND
CLOSING DATE TO FILE PETITIONS
FOR INTERVENTION- **JULY 16, 2009**;

NOTICE OF PREHEARING
CONFERENCE AND ORAL ARGUMENT
ON INTERVENTION – **JULY 28, 2009**

The Application

Whistling Ridge Energy Project, Application No. 2009-01 – On March 10, 2009 Whistling Ridge Wind Energy LLC, a Washington limited liability company, submitted an Application for Site Certification to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Whistling Ridge Energy Project (Project) a wind generation facility. The Project will consist of up to fifty 1.2- to 2.5-megawatt (MW) wind turbines with a maximum generating capacity of 75 MW, to be located on the forested ridges of Saddleback Mountain in eastern Skamania County. The Project includes an operation and maintenance facility, underground collector lines and systems, and other ancillary facilities as well as 2.4 miles of new roads and upgrades on 7.2 miles of existing roads.

EFSEC has taken lead agency status of the Whistling Ridge Energy Project under WAC 197-11-938 of the State Environmental Policy Act (SEPA) rules for the environmental review. EFSEC will also conduct an examination of the project proposal through a formal adjudicative proceeding under RCW 80.50.090(3).

Notice of Adjudicative Proceeding

The Council is reviewing Application No. 2009-01 under the procedures set forth in Chapter 80.50 of the Revised Code of Washington (RCW) and Title 463 of the Washington Administrative Code (WAC) for reviewing applications for new major energy facilities. The statute requires the Council to hold an adjudicative proceeding under Chapter 34.05 RCW, the Administrative Procedure Act. EFSEC in this order commences the adjudicative hearing related to Application No. 2009-01 in accordance with the procedural requirements found in Chapter 463-30 WAC and Chapter 34.05 RCW.

Notice of Closing Date for Submitting Petitions for Intervention – July 16, 2009 at 5:00 p.m.

The statutory parties to an adjudicative proceeding are the Applicant, Whistling Ridge Energy LLC., and the Counsel for the Environment (as defined in RCW 80.50.020(12)), Assistant Attorney General, Bruce Marvin. According to WAC 463-30-050, any state agency that is a member of EFSEC, or has opted pursuant to RCW 80.50 to appoint a Council member for this proposal, may participate as a party. Any other person may petition to intervene as a party in this adjudicative proceeding under RCW 34.05.443, RCW 80.50.090, and WAC 463-30-091. The Council will consider the requests for intervention and determine whether or not to grant intervention.

An "intervenor," as defined in RCW 80.50.020(3), may be an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other legal entity, public or private, however organized. Any such "person" who wishes to participate in this proceeding may petition for intervention. The nature of intervenor status and a discussion of factors that the Council has used in deciding whether to grant petitions for intervention are described in this notice.

Each person admitted to an adjudicative proceeding as an intervenor is a party to the proceedings only for the purposes and subject to any limitations and conditions specified in the EFSEC order granting intervention.

In this proceeding, the deadline for submitting requests for intervention is July 16, 2009 at 5:00 p.m. Pacific Daylight Time.

The Council will consider requests for late intervention according to the requirements of WAC 463-30-091 and 463-30-092 and other considerations identified in this Notice. See the discussion below for further information. Also see Other Opportunities for Public Participation below.

How to Petition for Intervention.

To be considered timely, Petitions for Intervention in the matter of the Whistling Ridge Energy Project, Application No. 2009-01 **must be received in the EFSEC office by the close of business (5:00 p.m.) on July 16, 2009.** Petitions for Intervention will not be considered after that date except for good cause, as discussed below. A copy of each petition must be served on Whistling Ridge Energy LLC, and on Counsel for the Environment at the same time they are filed with the Council. The names and mailing addresses of the Council, all known parties, and their representatives appear in Attachment A.

Petitions for Intervention must be filed with:

Washington State Energy Facility Site Evaluation Council
Attn: Allen J. Fiksdal, Manager
P.O. Box 43172
905 Plum Street SE, 3rd floor
Olympia, WA 98504-3172

Petitions must be filed in hard copy with one original and one copy. A courtesy electronic copy should be provided¹ at the time of filing, or e-mailed to efsec@cted.wa.gov. **NOTE:** **An E-mail submission alone does not constitute filing with EFSEC.**

Persons wishing to intervene should consider relevant provisions of Chapter 463-30 WAC. In particular, WAC 463-30-091 establishes the following requirements for Petitions for Intervention:

All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded.

In considering whether to file a petition to become an intervenor, potential parties should recognize that persons who are granted intervenor status assume responsibilities they must meet in order for the adjudicative process to be an effective means for all participants to resolve the significant issues that are raised. Intervenors are expected to appear at the proceeding, either on their own behalf or by an attorney.

Intervenors must study other parties' cases so they can participate knowledgeably. They must decide whether to cross-examine other parties' witnesses, and determine the nature and scope of the cross-examination. Intervenors also have the responsibility either to attend the entire proceeding, including prehearing conferences, or to monitor it to learn when their interests will be at issue because they may be bound by matters that are resolved in their absence. Intervenors have the responsibility to become familiar with the Council's procedural rules and guidelines to enable them to participate knowledgeably and to advance their interests effectively. Because of potential delay to the proceeding that could interfere with rights of the parties involved, and because simply appearing to give advice to one party could give the appearance of impropriety or could adversely affect the rights of others, the Council cannot instruct participants on procedural matters. Becoming an intervenor in a Council adjudicative proceeding may require a significant commitment of time and/or financial resources.

To receive examples of petitions for intervention that have been filed in previous EFSEC cases, contact Jim La Spina of EFSEC at (360) 956-2047 or the EFSEC office at (360) 956-2121.

Each petitioner for intervention, the Counsel for the Environment, and each governmental agency appearing as a party must identify the particular issue(s) or concern(s) that the petitioner or agency intends to address as a party. The identification of issues must be specific enough for the Council and other parties to identify the specific problem(s) that could cause harm to the petitioner or agency and the nature of that harm. The designation of issue(s) may be a factor in determining whether to grant intervention and will be used to organize and to manage the hearing. Parties may add additional issues later in the proceeding using the same basis the Council may use to grant late-filed petitions for intervention.

¹ Electronic versions must be Microsoft Word compatible and may be supplied on compact disk, DVD, or flash drive. For answers to questions about these requirements, please contact Jim La Spina of EFSEC staff, at (360) 956-2047, or Jimla@cted.wa.gov.

The closing date for receiving petitions for intervention and statements of intervention by authorized governmental agencies who intend to participate as intervenors is July 16, 2009 at 5:00 PM in the Council offices.

Late Intervention for Good Cause Shown

After July 16, 2009, other persons may petition the Council to intervene for the first time. The Council may grant a late-filed petition if the petition establishes that specific new information, not previously known or reasonably discoverable, demonstrates that an interest of the petitioner could be impaired or impeded by the proposed project. Persons previously granted intervenor status may seek expansion of the issues they may address as parties, but must also demonstrate that their petition to do so is based upon new information, not previously known to or reasonably discoverable by them, and that their petition is made within a reasonable period after discovering that information.

Notice of Prehearing Conference – July 28, 2009

The Washington State Energy Facility Site Evaluation Council will convene an initial prehearing conference on July 28, 2009, beginning at **1:30 p.m.**, in the Council hearing room, third floor, **905 Plum Street, Olympia Washington**. The purpose of this prehearing conference will be to hear oral argument on objections, if any, to petitions for intervention and to consider whether to grant the petitions. Because of issues raised at the land use consistency hearing in Underwood on May 7, 2009, apparently unique to this proceeding, the Council may identify issues for discussion and establish a schedule for submission of briefs on those issues. The Conference may consider other matters as provided for in WAC 463-30-270.²

All participants are asked to be prepared to discuss the matters identified above, including petitions to intervene, to the extent that they are reasonably able to do so. A form for requesting assistance is attached to this notice as Attachment B; please fill it out and return it if any party or witness needs an interpreter or other assistance.

Oral Responses To Petitions For Intervention

The Council will hear oral argument, if any, regarding petitions for intervention at the prehearing conference, scheduled for July 28, 2009. If there are objections, petitioners must be prepared to respond to any objections filed. Appearance by telephone does not constitute an acceptable appearance, and will not be considered by the Council for the July 28, 2009 prehearing conference.

Other Opportunities for Public Participation

Besides formal intervention, public participation in the EFSEC process is welcomed in several additional ways. First, under RCW 80.50.080, the Counsel for the Environment represents

² The Council recognizes that environmental studies must be completed prior to issuance of a draft environmental impact statement and does not anticipate the submission of prefiled evidence or establishment of a hearing schedule until the environmental information is available. Therefore, it is anticipated that a later conference will be held to consider hearing schedule and other procedural matters.

“the public and its interest in protecting the quality of the environment”. Second, RCW 80.50.090(3) allows members of the public to present sworn testimony in the hearing without having to intervene formally. Third, the public has the opportunity to submit written comments at any time. When evidentiary hearings begin, the Council will schedule specially-designated sessions to receive testimony from members of the public, at one or more times and places to be set by later notice of hearing. The Council will maintain a copy of current records of the hearing at its offices in Olympia for use by persons who may wish to review them and it will post on its Internet web site information that it has received. Mr. Bruce Marvin has been designated as Counsel for the Environment by the Attorney General under RCW 80.50.080 to represent the public and its interest in protecting the quality of the environment. Persons wishing to contact Counsel for the Environment may contact him directly at the address, e-mail or telephone number listed on Attachment A.

Additional Information

If you have questions about the intervention process, you may contact the EFSEC office at (360) 956-2121. As noted above, the Council can provide information but not advice.

More specific information about the project is available from EFSEC’s office, on EFSEC’s web site at www.efsec.wa.gov, or from copies of the application at public libraries at the following locations:

- Washington State Library, Joel M. Pritchard Branch: 6880 Capitol Blvd South, Olympia, WA, 98504-5513, (360) 704-5200;
- Stevenson Community Library: 120 NW Vancouver Avenue, WA 98648 (509) 427-5471;
- North Bonneville Community Library: 214 CBD Mall (inside City Hall), North Bonneville, WA 98639 (509)427-4439;
- White Salmon Valley Community Library: #5 Town & Country Square, P.O. Box 1579, White Salmon, WA 98672.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

Dated in Olympia, Washington this 24th day of June, 2009.

Allen J. Fiksdal, EFSEC Manager

/s/

Attachment A

Addresses of the Council and representatives of known parties

Whistling Ridge Energy Project, Application No. 2009-01

Note: Parties petitioning to intervene must serve petitions to all of the addresses below.

EFSEC:	
Allen J. Fiksdal EFSEC Manager Energy Facility Site Evaluation Council 905 Plum Street SE, 3 rd Floor PO Box 43172 Olympia, WA 98504-3172 Email: allenf@cted.wa.gov Phone: 360-956-2152 Fax: 360-956-2158	Kyle Crews Assistant Attorney General Office of the Attorney General P.O. Box 40108 Olympia, WA 985 Email: KyleC@atg.wa.gov Phone: 360-664-2510 Fax: 360-586-3593
Whistling Ridge Wind Energy, Applicant	
Jason Spadaro Whistling Ridge Energy LLC P.O. Box 266 Bingen , WA 98605 Email: msdsjss@gorge.net Phone: 509-493-6103 Fax: 509-493-2535	Tim McMahan Stoel Rives LLP 805 Broadway Street, Suite 725 Vancouver, WA 98660 Email: tlmcmahan@stoel.com Phone: 503-294-9517 Fax: 503-504-8693 Erin Anderson Stoel Rives LLP 900 SW Fifth Ave, Suite 2600 Portland, OR 97204 Email: elanderson@stoel.com Phone: 503-294-9546 Fax: 503-220-2480
Counsel for the Environment	
H. Bruce Marvin Assistant Attorney General Counsel for the Environment Office of the Attorney General P.O. Box 40100 Olympia, WA 98504-0100 Email: BruceM1@atg.wa.gov Phone: 360-586-2438 M - W 206-389-3840 Th F Fax: 360-664-0229	

Attachment B

Request for Interpreter or Other Assistance

NOTICE

PLEASE TAKE NOTICE that:

- The hearing facilities are accessible to interested persons with disabilities.
- A qualified interpreter will be appointed at no cost to the party or witness, if a party or witness is hearing impaired or limited English-speaking and needs an interpreter.
- Smoking is prohibited in hearing facilities.

*Information needed to provide an appropriate interpreter or other assistance should be given below and the form returned to **Allen Fiksdal, EFSEC Manager, Energy Facility Site Evaluation Council, P.O. Box 43172, 905 Plum Street, Olympia, WA 98504-3172.***

Please print all requested information.

Hearing date/location: _____

Applicant: Whistling Ridge Energy, LLC _____

Name of Party: _____

Primary language: _____

Hearing impaired? (Yes) ___ (No) ___

Do you need a certified sign language interpreter? Visual _____ Tactile _____

Other type of assistance needed: _____

English-speaking person who can be reached if there are questions:

Name: _____

Address: _____ City: _____

Telephone: () _____