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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 RESPONSE TO
INTERVENOR SAVE OUR SCENIC
AREA’S AND INTERVENOR FRIENDS
OF THE COLUMBIA GORGE’S
OBJECTIONS TO PREHEARING
ORDER NO. 4

COMES NOW the Applicant, Whistling Ridge Energy, LLC, by and through its attorneys of record Stoel Rives, LLP and Darrel L. Peebles and submits this response to Intervenor Save Our Scenic Area’s and Intervenor Friends of the Columbia Gorge’s (collectively, “Intervenors”) objections to Energy Facility Site Evaluation Council (“Council”) Prehearing Order No. 4 (Council Order No. 848). The Applicant responds to correct legal errors and misrepresentations upon which Intervenors’ objections rely.

I. Response to Intervenors’ First Objection: The Council’s Adjudicative Proceeding Can Begin Before the Final Environmental Impact Statement (“FEIS”) is Issued.

A. Intervenors Inappropriately Attempt to Litigate Federal Issues Before the Council.

At the outset, and to set the record straight, the Whistling Ridge Energy Project Draft Environmental Impact Statement (“DEIS”) was issued by the United States Department of Energy, Bonneville Power Administration (“BPA”) and the State of Washington, Energy Facility Site Evaluation Council. It is a joint DEIS, both agencies participated in its

1 preparation, and both agencies considered its content sufficient to issue it for comment. It
2 was not issued by the Applicant. While the Applicant certainly (and properly) participated
3 in its preparation, the DEIS is not the Applicant’s DEIS. The Council retains its own
4 control over the DEIS, as does BPA. Whether the FEIS is prepared as one, joint document
5 or independently by each agency is within the sound discretion of both the United States and
6 the State of Washington.

7 Intervenors are using the Council’s proceedings to attack the National Environmental
8 Policy Act (“NEPA”) process—a strategy and practice that should be halted now.¹
9 Intervenors’ objections are laced with citations to NEPA, its regulations, and its case law,
10 and Intervenors blur the distinctions between NEPA and Washington’s State Environmental
11 Policy Act (“SEPA”). *See* Intervenors’ Objections at 3-8. However, NEPA only applies to
12 “agencies of the Federal Government.” 42 U.S.C. § 4332(2). The Council is not a federal
13 agency, but is instead an agency of the State of Washington. *See* RCW 80.50.030. For this
14 abundantly obvious reason, the Council is not subject to NEPA, and Intervenors’ use of the
15 NEPA rules and arguments in the Council’s proceedings is utterly misplaced. Intervenors
16 should direct concerns they may have under NEPA, if any, to BPA.

17 **B. Intervenors’ Procedural Concerns Ignore that the Governor—Not the**
18 **Council—Decides Whether to Approve or Reject Applications for Site**
19 **Certification.**

19 SEPA requires that state agencies include an environmental impact statement (“EIS”)
20 “*in every recommendation or report on proposals for * * * other major actions significantly*
21 *affecting the quality of the environment.*” RCW 43.21C.030(2)(c) (emphasis added).

22 ¹ Most egregious, Intervenors state on page 11 of their objections: “EFSEC has no
23 power to make decisions for BPA or ensure that agency’s compliance with NEPA. Nothing
24 in the NEPA authorities contemplates turning over to the Council, a state agency, decisions
25 regarding the content of a federal DEIS, let alone allowing such an agency to adjudicate the
26 adequacy of a draft EIS via a state process.” Intervenors are effectively contending that the
Council has no power to influence or adjudicate the DEIS issued by the State of Washington
and that BPA’s NEPA rules and standards control the Council’s proceedings. This specious
contention to undermine the Council’s authority should not be allowed to stand.

1 See also WAC 197-11-406 (providing that the EIS is to “be completed in time for the final
2 statement to be included in appropriate recommendations or reports on the proposal”);
3 WAC 197-11-070(4) (allowing actions necessary to develop a proposal to occur prior to the
4 completion of the SEPA process). Here, it is the Governor who is responsible for approving
5 or rejecting an application for site certification. RCW 80.50.100. The Council cannot
6 approve or reject an application (*i.e.*, it does not have the ultimate decision-making
7 authority). Instead, it makes a *recommendation* to the Governor. *Id.* Consequently,
8 contrary to Intervenor’s claims, the SEPA process does not need to be complete prior to the
9 initiation of the Council’s adjudicatory proceeding. In fact, this is addressed in the
10 Council’s administrative rules. WAC 463-47-060(2) (“The council may initiate an
11 adjudicative proceeding required by RCW 80.50.090 prior to completion of the draft EIS.”).
12 Instead, as SEPA clearly provides, the Council must include a FEIS with its
13 recommendation to the Governor.

14 While the timing of the FEIS has been a long-standing practice of the Council, the
15 Council has authority to issue its FEIS at an earlier point in time. While mindful of the
16 precedential impact of such a decision, the Applicant would not object if the Council elected
17 to modify the schedule for issuance of the FEIS so that the FEIS was issued prior to the
18 Council’s adjudicative hearing, provided this did not delay the current hearing schedule.

19 **II. Response to Intervenor’s Second Objection: Although the Applicant Shares
20 One of Intervenor’s Concerns Regarding the Council’s Treatment of the DEIS,
21 Intervenor’s Have Misrepresented Certain Important SEPA Requirements.**

22 **A. The Applicant Shares the Intervenor’s Concerns Regarding Adjudicating
23 the DEIS at the Council’s Adjudicative Hearing.**

24 While the Intervenor misrepresents elements of the DEIS and applicable SEPA
25 requirements, the Applicant in fact shares, but for different reasons, the Intervenor’s
26 concerns about submitting testimony regarding comments submitted on the DEIS. Again,
the DEIS was issued by the United States Department of Energy and the State of

1 Washington. Language in Prehearing Order No. 4 buttressing unsubstantiated allegations of
2 “serious errors in, or omissions from, the draft EIS” is unhelpful,² especially given that the
3 DEIS is not the Applicant’s DEIS. The Applicant is hesitant to proffer testimony about a
4 document where the responsibility for its content and issuance belongs to the United States
5 Department of Energy and the State of Washington. Moreover, judgments related to
6 whether certain SEPA comments are material and the requirement that such comments,
7 regardless of their lack of merit or insufficient evidentiary weight, should be addressed in
8 the Applicant’s pre-filed testimony in an evidentiary proceeding is unusual, and does in fact
9 unduly intermesh the Council’s SEPA and adjudicatory processes.

10 The Applicant requests that the Council revise Prehearing Order No. 4 to remove any
11 implication of prejudgment, and to allow the parties to conduct themselves professionally,
12 under the rules of evidence, mindful of what is needed to meet the Council’s standards.

13 **B. Intervenor Manifestly Misrepresent Certain Important SEPA’s**
14 **Requirements.**

15 Intervenor’s objections allude to certain alleged deficiencies with the DEIS.
16 However, as explained below, none of these alleged deficiencies have any basis under
17 SEPA and lack legal merit under SEPA. Consequently, the Council should disregard these
18 allegations. Relevant excerpts from the SEPA rules are attached for the Council’s
19 convenience.

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24 ² Prehearing Order No. 4 states that “counsel acknowledged public comments at the
25 June 16 public comment session that identified potentially serious errors in, or omissions
26 from, the draft EIS.” **The Applicant’s legal counsel did not and does not acknowledge
any errors in, or omissions from the DEIS, and believes that the record will
demonstrate just the opposite.**

1 **1. SEPA Does Not Require Analysis of Offsite Alternatives of Private**
2 **Projects and Limits Analysis to Reasonable Onsite Alternatives**
3 **That Achieve the Applicant’s Objectives.**

4 Intervenors allege that the DEIS is flawed for “failure to consider alternatives.”
5 Intervenors’ Objections at 12. Leaving NEPA compliance for the United States Department
6 of Energy, the SEPA rules and case law could not be more clear; SEPA does *not* require the
7 analysis of offsite alternatives for private projects. **Only reasonable onsite alternatives**
8 **that achieve the applicants objectives must be analyzed**, which the State of Washington
9 has done in this DEIS.

10 SEPA requires that the Council’s EIS consider reasonable alternatives to the proposed
11 action. RCW 43.21C.030(c)(iii); WAC 19711-440(5)(b). However, “[w]hen a proposal is
12 for a private project on a specific site, the lead agency shall be required to evaluate *only the*
13 *no action alternative plus other reasonable alternatives for achieving the proposal’s*
14 *objective on the same site.*” WAC 197-11-440(5)(d) (emphasis added). The adequacy of an
15 EIS is tested under the “rule of reason” (*i.e.*, it must contain a “reasonably thorough
16 discussion of the significant aspects of the probable environmental consequences’ of the
17 agency’s decision”). *Klickitat County Citizens Against Imported Waste v. Klickitat County*,
18 122 Wn.2d 619, 633, 860 P.2d 390 (1993). “The rule of reason is ‘in large part a broad,
19 flexible cost-effectiveness standard’, in which the adequacy of an EIS is best determined ‘on
20 a case-by-case basis guided by all of the policy and factual considerations reasonably related
21 to SEPA’s terse directives.’” *Id.*

22 The Whistling Ridge Energy Project is clearly a “private project on a specific site,”
23 because it is being sponsored by a private entity, rather than a government agency, and is
24 not proposed to fulfill a traditional government function. *See Organization to Preserve*
25 *Agricultural Lands v. Adams County*, 128 Wn.2d 869, 875-78, 913 P.2d 793 (1996)
26 (interpreting WAC 197-11-780’s definition of “private project”). As a private project on a
 specific site, “[t]he SEPA rules require the lead agency to examine only the no action and

1 onsite alternatives.” *Citizens Alliance to Protect Our Wetlands v. City of Auburn*, 126
2 Wn.2d 356, 364, 894 P.2d 1300 (1995). Consequently, the DEIS’s analysis of the no action
3 and onsite alternatives for the Whistling Ridge Energy Project is entirely proper under
4 SEPA.

5 The DEIS must consider *reasonable* onsite alternatives. To be a reasonable
6 alternative, the action must “feasibly attain or approximate a proposal’s objectives, but at a
7 lower environmental cost or decreased level of environmental degradation.” WAC 197-11-
8 786. “The word ‘reasonable’ is intended to limit the number and range of alternatives, as
9 well as the amount of detailed analysis for each alternative.” WAC 197-11-440(5)(b)(i).

10 Here, “different project sizes, alternative wind generation technologies, and different
11 project configurations” were considered. DEIS § 1.4.3. The DEIS describes these onsite
12 alternatives and why they were ultimately “eliminated from detailed study in this EIS
13 because of technical or economic feasibility issues, not meeting the indentified purpose and
14 need for proposed action, or clearly greater environmental impacts” (*i.e.*, why they were not
15 “reasonable alternatives”). *Id.* See also DEIS § 2.3. Intervenors’ unsupported allusions to
16 alleged deficiencies in the DEIS’s alternatives analysis lack legal merit under SEPA. To the
17 extent that Intervenors are disappointed that the DEIS did not uncover significant adverse
18 environmental impacts, perhaps this signifies that the Whistling Ridge Energy Project is
19 properly and comprehensively studied, sufficiently mitigated, and is environmentally
20 benign, rather than indicative of deficiencies in the Council’s work.

21 The Applicant feels compelled to note that it attempted to expand the Council’s
22 ability to consider and evaluate available onsite alternatives by leasing land north of the
23 project site from the Department of Natural Resources (“DNR”). See DEIS § 2.3.2. While
24 the Columbia River Gorge National Scenic Area Act is utterly inapplicable to the Project, a
25 DNR lease might have allowed SEPA consideration of whether some of the turbines could
26 have been moved farther to the north while still satisfying the Applicant’s objectives.

1 Unfortunately, after receiving voluminous public comments from Save Our Scenic Area,
2 Friends of the Gorge, and related opponents during the SEPA process, the DNR elected not
3 to lease this land, thereby constraining the onsite alternatives available to the Applicant.
4 The constraints within the site are set forth with clarity within the DEIS. Having obstructed
5 the ability to consider other onsite alternatives, Intervenor are in no position to attack the
6 DEIS on this issue.

7 **2. SEPA Authorizes Applicant Communications with Council Staff**
8 **Regarding the DEIS.**

9 Intervenor allege that the Applicant has engaged in “covert” communications with
10 Council staff regarding the DEIS.³ Intervenor’s Objections at 11. The Applicant has not
11 engaged in any improper communications. Its communications with Council staff are
12 wholly appropriate given the SEPA rules that authorize such communications.

13 The SEPA rules expressly provide that “[t]he lead agency may have an EIS prepared
14 by agency staff, an applicant or its agent.” WAC 197-11-420(2). Furthermore, “[a]n
15 applicant may volunteer to provide any information or effort desired, as long as the EIS is
16 supervised and approved by the responsible official.” WAC 197-11-420(4) (emphasis
17 added). In the context of an agency-prepared EIS, only by communicating with agency staff
18 can the applicant “provide any information * * * desired,” which again is explicitly
19 authorized by the SEPA rules. Alternatively, supervising an applicant-prepared EIS
20 necessarily requires communication between the responsible official and the applicant.

21 ³ Intervenor also assert without citation to any legal authority that having a party
22 prepare a DEIS is an “unheard of procedural misdirection.” Intervenor’s Objections at 9.
23 The applicant assisted in the preparation of the DEIS for the Whistling Ridge Energy
24 Project, and the DEIS was issued not by the Applicant, but by the United States Department
25 of Energy with the acceptance and adoption of the State of Washington, as a joint
26 NEPA/SEPA document. The Council’s own administrative rules expressly provide that it
can require the applicant to prepare the necessary environmental documents with oversight
from the EFSEC Manager. See WAC 463-47-090(2)(c). Consequently, an applicant-
prepared DEIS is more than a “unheard of procedural misdirection;” it is expressly
authorized under SEPA.

1 Furthermore, applicants typically have developed a great deal of information that is
2 potentially relevant to the formulation of EISs. **For example, Whistling Ridge**
3 **accumulated *multiple years of environmental/biological data supporting a finding of no***
4 **probable significant impacts associated with the Project—data necessary for the**
5 **environmental review of the Project.** Ignoring such information by prohibiting
6 communication between Council staff and applicants could force EISs to rely upon less
7 detailed and useful information in order to adhere to the one-year statutory deadline for the
8 Council’s recommendations to the Governor. *See* RCW 80.50.100(1).

9 Here, the Applicant has participated in meetings with Council staff regarding the
10 DEIS. This participation is allowed by the SEPA rules for a either an applicant- or a
11 Council-prepared and issued DEIS, it is encouraged, and such meetings are necessary for a
12 meaningful and successful public SEPA process. Limiting communications regarding the
13 DEIS between the Applicant and Council staff (and other state and federal agencies) to the
14 record would conflict with established Council-process and unduly delay the publication of
15 the DEIS and FEIS without any identified benefit. Intervenor’s own objections do not
16 describe any benefit associated with such a limitation, and none exists. There is no reason
17 for the Council to circumscribe communications that are allowed under the SEPA rules and
18 necessary for the issuance of the most comprehensive and complete SEPA documents.

19 **III. Response to Intervenor’s Third Objection: The Applicant is Confident That the**
20 **Council Will Exercise Its Authority to Extend December’s Hearing Schedule If**
21 **the Need Arises.**

22 Intervenor object to the phrasing in Prehearing Order No. 4 that the hearing will not
23 exceed ten days. The Council is authorized to administer its own proceedings, and in the
24 interest of the fair and timely administration of justice, the Council could, if it chose, strictly
25 limit the time for the hearing. Other state agencies do just that. Although the Applicant’s
26 counsel is not aware that the hearing for any similar project has required more than ten days,
the Applicant is confident that the Council is capable of administering its own rules and

1 conducting its process, and will exercise its discretion, if needed, to extend the hearing
2 schedule beyond ten days.

3 **IV. Response to Intervenors' Fourth Objection: The Applicant is Confident That**
4 **the Council Can Find a Schedule That Works for All Parties.**

5 Intervenors object that the schedule outlined in Prehearing Order No. 4 conflicts with
6 Mr. Kahn's trial calendar and Mr. Aramburu's vacation plans. Yet Intervenors do not offer
7 any schedule or proposal, apparently planning to demand that the Council "bring them
8 another rock." The Applicant is confident that the Council will exercise its discretion and
9 can find a schedule that works for all parties without further delaying the Council's
10 adjudicatory hearing.

11 **V. Response to Intervenors' Supplemental Objection: Informal Discovery Will**
12 **Almost Certainly Be Sufficient.**

13 Intervenors seek to clarify that they did not actually waive their right to request
14 traditional discovery. To the extent that Intervenors have not waived this right, the
15 Applicant respectfully requests that Prehearing Order No. 4 be modified to provide that the
16 Applicant has not waived this right. It is conceivable that the Applicant will need to resort
17 to traditional discovery as well. However, the Applicant strongly concurs with the
18 Council's assessment that informal discovery will almost certainly be sufficient.

19 **VI. Conclusion**

20 For the reasons set forth above, the Applicant respectfully requests that Prehearing
21 Order No. 4 be modified to change improvident characterizations of the DEIS and to
22 address concerns related to the entangling of the SEPA and adjudicatory processes. The
23 Applicant further requests that the Council establish a clear standard for addressing only

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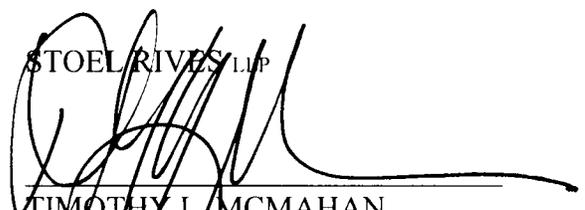
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SEPA issues in these proceedings. The remainder of the Intervenor's requested relief, however, should be denied.

DATED this 19th day of July, 2010.

STOEL RIVES LLP

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And


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SEPA RULES: Evaluation of Alternatives

WAC 197-11-402

General requirements.

Agencies shall prepare environmental impact statements as follows:

(1) EISs need analyze only the reasonable alternatives and probable adverse environmental impacts that are significant. Beneficial environmental impacts or other impacts may be discussed.

(2) The level of detail shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or referenced.

(3) Discussion of insignificant impacts is not required; if included, such discussion shall be brief and limited to summarizing impacts or noting why more study is not warranted.

(4) Description of the existing environment and the nature of environmental impacts shall be limited to the affected environment and shall be no longer than is necessary to understand the environmental consequences of the alternatives, including the proposal.

(5) EISs shall be no longer than necessary to comply with SEPA and these rules. Length should relate first to potential environmental problems and then to the size or complexity of the alternatives, including the proposal.

(6) The basic features and analysis of the proposal, alternatives, and impacts shall be discussed in the EIS and shall be generally understood without turning to other documents; however, an EIS is not required to include all information conceivably relevant to a proposal, and may be supplemented by appendices, reports, or other documents in the agency's record.

(7) Agencies shall reduce paperwork and the accumulation of background data by adopting or incorporating by reference, existing, publicly available environmental documents, wherever possible.

(8) Agencies shall prepare EISs concurrently with and coordinated with environmental studies and related surveys that may be required for the proposal under other laws, when feasible.

(9) The range of alternative courses of action discussed in EISs shall encompass those to be considered by the decision maker.

(10) EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made.

[Emphases added]

EIS CONTENTS: Alternatives Analysis

WAC 197-11-440
EIS contents.

(1) An EIS shall contain the following, in the style and format prescribed in the preceding sections.

* * *

(5) Alternatives including the proposed action.

(a) This section of the EIS describes and presents the proposal (or preferred alternative, if one or more exists) and alternative courses of action.

(b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

(i) The word "reasonable" is intended to limit the number and range of alternatives, as well as the amount of detailed analysis for each alternative.

(ii) The "no-action" alternative shall be evaluated and compared to other alternatives.

(iii) Reasonable alternatives may be those over which an agency with jurisdiction has authority to control impacts either directly, or indirectly through requirement of mitigation measures.

(c) This section of the EIS shall:

(i) Describe the objective(s), proponent(s), and principal features of reasonable alternatives. Include the proposed action, including mitigation measures that are part of the proposal.

(ii) Describe the location of the alternatives including the proposed action, so that a lay person can understand it. Include a map, street address, if any, and legal description (unless long or in metes and bounds).

(iii) Identify any phases of the proposal, their timing, and previous or future environmental analysis on this or related proposals, if known.

(iv) Tailor the level of detail of descriptions to the significance of environmental impacts. The lead agency should retain any detailed engineering drawings and technical data, that have been submitted, in agency files and make them available on request.

(v) Devote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation of the alternatives including the proposed action. The amount of space devoted to each alternative may vary. One alternative (including the proposed action) may be used as a benchmark for comparing alternatives. The EIS may indicate the main reasons for eliminating alternatives from detailed study.

(vi) Present a comparison of the environmental impacts of the reasonable alternatives, and include the no action alternative. Although graphics may be helpful, a matrix or chart is not required. A range of alternatives or a few representative alternatives, rather than every possible reasonable variation, may be discussed.

(vii) Discuss the benefits and disadvantages of reserving for some future time the implementation of the proposal, as compared with possible approval at this time. The agency perspective should be that each generation is, in effect, a trustee of the environment for succeeding generations. Particular attention should be given to the possibility of foreclosing future options by implementing the proposal.

(d) When a proposal is for a private project on a specific site, the lead agency shall be required to evaluate only the no action alternative plus other reasonable alternatives for achieving the proposal's objective on the same site. This subsection shall not apply when the proposal includes a rezone, unless the rezone is for a use allowed in an existing comprehensive plan that was adopted after review under SEPA. Further, alternative sites may be evaluated if other locations for the type of proposed use have not been included or considered in existing planning or zoning documents.

* * *

[Emphases added]

STATE SEPA RULES: EIS Preparation

WAC 197-11-420

EIS preparation.

For draft and final EISs and SEISs:

(1) Preparation of the EIS is the responsibility of the lead agency, by or under the direction of its responsible official, as specified by the lead agency's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the lead agency. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and the procedures of the lead agency.

(2) The lead agency may have an EIS prepared by agency staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the lead agency. The lead agency shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the lead agency is preparing the EIS, the lead agency shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency or person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the lead agency that relate to the subject of the EIS, under chapter 42.17 RCW (Public disclosure and public records law).

(4) Every agency shall specifically provide in its own procedures those situations in which an applicant may be required or authorized to help prepare an EIS. Agency procedures may not require more information of an applicant than allowed by WAC 197-11-100, but may authorize less participation. An applicant may volunteer to provide any information or effort desired, as long as the EIS is supervised and approved by the responsible official. These rules do not prevent an agency from charging any fees which the agency is otherwise allowed to charge (WAC 197-11-914).

[Emphases added]

EFSEC SEPA RULES: EIS Preparation

WAC 463-47-090

EIS preparation.

(1) Preparation of draft and final EISs, SEISs, or addenda is the responsibility of the council. The responsible official shall be satisfied that these documents comply with these rules and chapter 197-11 WAC prior to issuance.

(2) The council has the following options for draft and final EISs, SEISs, or addenda preparation:

(a) The council prepares its own documents.

(b) The council's independent consultant prepares any or all of the documents under the supervision of the responsible official.

(c) The council requires the applicant to prepare the documents with oversight from the responsible official.

(3) If the council prepares its own draft and final EISs, SEISs, or addenda, or its independent consultant prepares them, the council can require an applicant to provide information that the council or independent consultant does not possess, including specific investigations.

(4) The applicant shall bear the expense of the draft and final EISs, SEISs, or addenda preparation, but the consultant will work directly for the council.

(5) Normally, the council will have the documents printed and distributed.

(6) Whenever someone other than the council prepares a draft or final EISs, SEISs, or addenda, the responsible official:

(a) May direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Shall initiate and coordinate scoping, ensuring that the individuals preparing the documents receive all substantive information submitted by any agency or person.

(c) Shall assist in obtaining information on file with other agencies that is needed by the persons preparing the document.

(d) Shall allow the person preparing the document access to council records relating to the document (under chapter 42.17 RCW -- Public disclosure and public records law).

[Emphases added]

EFSEC RULES: Coordination with Federal Actions

WAC 463-47-150

Coordination on combined council — Federal action.

When the council is considering an action which also involves federal actions, it shall attempt to coordinate the two governmental processes so that only one environmental impact statement need be prepared for that proposal.