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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

JOINT OBJECTION OF SOSA,
FRIENDS, SCAA, YAKAMA
NATION/CRP, AND SAS TO
PREHEARING ORDER NO. 8
(COUNCIL ORDER NO. 852)

On October 1, 2010, the Administrative Law Judge issued Prehearing Order No. 8 ("PHO") in this matter. Paragraph A.6 of the PHO addresses a question that arose at the September 22, 2010 prehearing and status conference. At that conference, Friends of the Columbia Gorge ("Friends") asked whether parties to the adjudication may reference documents already in the record (for example, previously filed SEPA comments and land use consistency testimony and exhibits), rather than having to file and serve new, duplicate copies. Paragraph A.6 of the PHO holds that parties must resubmit previously filed SEPA documents,¹ including filing and service of the required number of paper copies. Not only will this holding likely require the re-circulation of tens of thousands of pages of duplicate material, it serves little purpose, because the

¹ The PHO is silent on whether previously filed land use consistency documents must be resubmitted.

1 participants in this matter already have ready access to these documents via the
2 EFSEC web site. For the following reasons, Intervenor Friends, Save Our
3 Scenic Area ("SOSA"), Skamania County Agri-Tourism Association ("SCAA"), the
4 Yakama Nation Cultural Resources Program ("YN/CRP"), and the Seattle
5 Audubon Society ("SAS") jointly object to this ruling, and ask that the Council
6 allow the parties in the adjudication to reference documents already in the
7 record, without having to refile and serve multiple copies of these documents.

8 The previously submitted documents are already part of the administrative
9 record. For example, the SEPA scoping comments, scoping report, Draft
10 Environmental Impact Statement ("DEIS"), and comments on the DEIS are
11 already part of the record. This is confirmed by an EFSEC holding in a previous
12 matter:

13 The Council has devoted considerable attention to the relationship
14 between SEPA and the APA. Because the Council is required by
15 SEPA to consider its SEPA determination in its final adjudicative
16 order and is required by the APA to consider only evidence that is
17 in the adjudicative record, the Council has determined that the
18 SEPA documents should be part of the record.

19 Council Order No. 688 at 10 (Aug. 4, 1995); see also Council Order No. 686 at 3
20 (Aug. 3, 1995).

21 Because these documents are already in the record, the parties should be
22 able to refer to them without having to resubmit multiple copies. It defies reason
23 that the same material should need to be submitted twice, to the same agency,
24 simply to again become part of the record.

25 Moreover, the SEPA comments are not only already part of the record,
26 they are also all publicly posted on the EFSEC web site.² The comments are
27 individually numbered and can easily be cited by number during the adjudication,
28 rather than having to renumber and then file and serve 40+ copies of each and

² <http://www.efsec.wa.gov/Whistling%20Ridge/public%20comments.shtml>

1 every document a party wants to reference in the adjudication. Similarly, the
2 previous land use consistency filings are also already part of the record, and are
3 also publicly available on the EFSEC web site.³ Finally, the record also contains
4 multiple SEPA and land use transcripts, all of which are posted on EFSEC's web
5 site, that the parties should be able to cite without having to resubmit.⁴ It serves
6 little to no purpose for the Council to require resubmission and service of SEPA
7 and land use documents that are already in the record and publicly available.

8 Finally, the Council has a mandate "[t]o avoid costly duplication in the
9 siting process and ensure that decisions are made timely and without
10 unnecessary delay." RCW 80.50.010(5). In the past, the Council has respected
11 that mandate and helped parties navigate its procedures without unnecessary
12 expense and duplication. For example, in a previous adjudication, a question
13 arose how to integrate SEPA review with the adjudication when it became
14 apparent that parties would have to prepare both submissions at the same time.
15 Responding to Counsel for the Environment's complaint that this would be
16 burdensome, the Council reasoned as follows:

17 To avoid duplication, the Council expects parties to *adopt*
18 *submissions by reference* or otherwise take reasonable steps to
19 minimize unnecessary duplication. The Council is not imposing
procedural impediments or substantive barriers to efficiency on any
of the parties.

20 Council Order No. 691 at 6 (Oct. 3, 1995) (emphasis added). In that matter, and
21 in accordance with its mandate in RCW 80.50.010(5), the Council permitted
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24 ³<http://www.efsec.wa.gov/Whistling%20Ridge/Landuse/Land%20Use.shtml#Filings>

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26 ⁴<http://www.efsec.wa.gov/Whistling%20Ridge/SEPA/Scoping/Appendix%20C.pdf>
27 <http://www.efsec.wa.gov/Whistling%20Ridge/Landuse/Land%20Use.shtml#transcripts>
28 <http://www.efsec.wa.gov/Whistling%20Ridge/Adjudication/wradj.shtml#transcripts>

1 precisely what it now denies: a reasonable way to ensure efficiency and avoid
2 duplication as between the SEPA and adjudicative proceedings.

3 Parties should not be required to refile and circulate material that is
4 already in the record. This approach is likely to result in the filing and service of
5 tens of thousands of sheets of paper, all duplicating material that is already in
6 the record and publicly available. Intervenors request a ruling that documents
7 already in the record and posted on the Council's web site can be referenced
8 during the adjudication, without the need to file and serve duplicate copies.

9 DATED this 7th day of October, 2010.

10

11 ARAMBURU & EUSTIS, LLP

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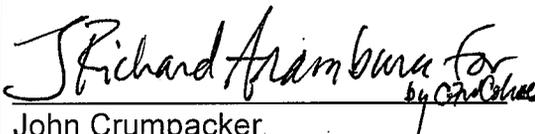
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DECLARATION OF SERVICE

I am an employee in the law offices of Aramburu & Eustis, LLP, over eighteen years of age and competent to be a witness herein.

I hereby certify that on the date below written I caused delivery of one original and 12 copies and an electronic copy on CD by first-class mail, and a copy by email to EFSEC, and sent by email and first-class mail to each of the parties of record on the attached service list a true and correct copy of the foregoing document.

Dated: This 7th day of October, 2010.



Carol Cohoe, Secretary
Aramburu & Eustis, LLP