BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2009-01

of
WHISTLING RIDGE ENERGY LLC

for
WHISTLING RIDGE ENERGY

SOSA'S AND FRIENDS'
MEMORANDUM
OF
AUTHORITIES ON QUESTIONS
PRESENTED IN PREHEARING
ORDER No. 7 (Council Order No. 851)

I. INTRODUCTION.

In Prehearing Order No. 7 (PHO No. 7), the Administrative Law Judge
(ALJ) posed two questions to the parties and requested a statement of
authorities be provided. First, on page 3 of PHO No. 7, it was requested that
"parties who have a position on the matter of discovery prepare statement of
authorities" to be filed and served on September 20. Second, at page 4, it was
requested that:

Parties who wish to argue a position on whether the Council can or
should allow discovery, cross examination, or rebuttal regarding
elements of the environmental impact statement must file a
statement of authorities supporting their views.

In this memorandum, we will address the two questions presented by
PHO No. 7.

II. POSITION ON MATTER OF DISCOVERY (Page 2 of PHO No. 7).

On page 2, PHO No. 7 asks for authorities on the "matter of discovery."
SOSA is somewhat confused about this request.

First, in PHO No. 6, it was understood that the parties will use informal
discovery in good faith, with the potential of “more formal treatment of discovery”
if informal processes break down. To date the parties have followed such
procedures, with WRE agreeing to respond to discovery of SOSA and Friends in
a timely fashion.

Though the term “discovery” is used, PHO No. 7 seems to express
concerns regarding “discovery on the draft EIS and the process by which it was
developed and may intend to challenge the EIS at the hearing.” As to the later
proposition, PHO No. 4 stated that the Council expected “that the Applicant will
incorporate into its direct presentation any information needed to address
asserted significant flaws in the DEIS.” The reason for this was that:

It will be unacceptable for the Applicant to place the burden on
other parties to identify such matters and then to respond in its
rebuttal to those concerns;

PHO No. 4 at page 2. Though PHO No. 6 left the decision as to whether the
applicant would present evidence on the EIS to its “professional judgment,” the
terms of PHO No. 4 regarding challenges to adequacy of the EIS remain in
place. This was indeed contemplated by PHO No 6: “The environmental record
is received in evidence; its information is available to the parties and the public
during the adjudicative hearing.” (Emphasis supplied.)

As to the “discovery on the draft EIS and the process by which it was
developed,” there appears to be confusion on this point. “Discovery” is usually
between the parties, a matter already addressed by prior orders. Indeed, such
discovery could include the information or analysis that the applicant has
provided to the agencies as a part of EIS preparation. Requests for information
to agencies, including EFSEC, are governed by the EFSEC’s own rules,
principally WAC 463-06-060 to -170, which implement terms of RCW ch. 42.17, the Washington public disclosure statute. If requests are made for information, then the EFSEC must respond and indicate if they object to the disclosure. There is no procedure for deciding in advance if public documents are subject to disclosure or not.

III. DISCOVERY, CROSS EXAMINATION OR REBUTTAL REGARDING ELEMENTS OF THE ENVIRONMENTAL IMPACT STATEMENT (Page 3 of PHO No. 7).

The second question referred to the parties by PHO No. 7 pertains to discovery, cross examination or rebuttal regarding elements of the environmental impact statement. On this point, the prior orders indicate that the DFEIS will be considered during the adjudicatory hearings.

As described in our objection to PHO No. 4, SEPA requires that an environmental impact statement “accompany a proposal through the agency review process.” RCW 43.21C.030(2d). As such, the parties may criticize and comment on the environmental impact statement as the proposal proceeds through the process because the environmental impact statement is part of the evidence in the hearing. As with other evidence, its substance can be put into question at the hearing.

Further, as it turns out, EFSEC and BPA had originally planned to let WRE prepare the EIS. See BPA description of the “Whistling Ridge Wind Interconnection Project” at Attachment A hereto. Though this procedure was modified, the agencies admit that the EIS primarily used the environmental information prepared by the applicant. As stated in Attachment A hereto: “Accordingly, we have used environmental information provided by Whistling Ridge Energy LLC and its consultants in the EIS as appropriate.” Indeed, in many places, the DEIS adopts not only information from the applicant, but its
analytical content verbatim. The accuracy and content of information and
analysis provided by the applicant are relevant issues for this adjudication.

Similar to other evidence at the hearing, the content of the EIS is relevant
to this proceeding and the parties may wish to present evidence regarding the
environmental impact statement presented at the hearing. Such procedure is
consistent with the prior pre-hearing orders.

DATED this _____ day of September, 2010.

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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 by first-
class mail of one original and 12 copies (plus an electronic copy on CD) after
filing by email with EFSEC (with emailed copies to all parties of record with email
addresses), and sent by 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 20th day of September, 2010.

Carol Cohoe, Secretary
Aramburu & Eustis, LLP
Bonneville Power Administration

http://www.bpa.gov

BPA Home ➔ EFW Home ➔ Environmental Services ➔ NEPA Planning and Review Documents ➔ Whistling Ridge Wind Interconnection Project

Whistling Ridge Energy Project
Skamania County, Washington

PROJECT DESCRIPTION:
Bonneville Power Administration (BPA) has been asked by SDS Lumber Company to interconnect its proposed Whistling Ridge Energy Project in Skamania County, Washington, to the Federal Columbia River Transmission System (FCRTS).

In June 2002, SDS Lumber Company submitted a generation interconnection request for 70-MW on the North Bonneville-Midway 230-kV transmission line approximately five miles West of BPA's Underwood Substation. Subsequently, SDS Lumber Company created a new limited liability company called Whistling Ridge Energy LLC (WRE), which submitted an application with WA EFSEC for site certification for the wind project. WRE would finance, develop, own and operate the proposed wind project. The proposed wind facility would consist of up to approximately 50, 1.2- to 2.5-MW wind turbines up to 426 feet tall, as well as infrastructure such as newly-constructed and improved roads, transformers, underground collector lines, a substation, and an operations and maintenance (O&M) facility.

To inform its decision on whether to allow the proposed interconnection, BPA has prepared a joint Environmental Impact Statement (EIS) with the State of Washington Energy Facility Site Evaluation Council (EFSEC). WRE would independently build, own and operate the wind project and their associated facilities.

This joint SEPA/NEPA EIS has allowed the coordination of EFSEC actions with federal actions in fulfillment of EFSEC's SEPA rules at Washington Administrative Code (WAC) 463-47-150. This joint EIS also complies with NEPA implementing regulations specifying that federal agencies shall cooperate with state and local agencies to the fullest extent possible, including by preparing joint state-federal EISs, to avoid duplication between NEPA and comparable state requirements (See 40 CFR § 1506.2).

While EFSEC and BPA are the entities that have prepared the Draft EIS, these agencies have worked collaboratively with Whistling Ridge Energy LLC to obtain necessary information about the project and its potential impacts for the EIS. Initially, EFSEC had intended to allow Whistling Ridge Energy LLC to prepare the EIS, as allowed by SEPA; however, after public concern was raised, EFSEC and BPA decided that the lead agencies would be directly responsible for preparing the EIS. Accordingly, we have used environmental information provided by Whistling Ridge Energy LLC and its consultants in the EIS as appropriate. All such information has been independently evaluated and reviewed for accuracy by the lead agencies, as well as by an independent, third party consultant retained by EFSEC.

CURRENT STATUS:
The comment period for the Draft EIS closed on August 27, 2010. Both BPA and EFSEC are currently compiling all comments received by both agencies so that we can effectively address all relevant issues suggested in the comments.

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DOCUMENTS:
Draft EIS Public Letter (29Kb pdf) (05/25/10)
Draft EIS Comment Form (9Kb pdf) (05/25/10)
Draft EIS (05/21/10)
Cover & Table of Contents (263Kb pdf) (05/21/10)

Chapter 1 - Summary, Purpose and Need for Action (1.3MB pdf) (05/21/10)
Chapter 2 - Proposed Actions and Alternatives (4MB pdf) (05/21/10)
Chapter 3 - Affected Environment (35.7MB pdf) (05/21/10)
Chapter 4 - Environmental Consultation, Review, and Permitting Requirements (66Kb pdf) (05/21/10)
Chapter 5 - Distribution List (26Kb pdf) (05/21/10)
Chapter 6 - List of Preparers (39Kb pdf) (05/21/10)
Chapter 7 - Index (49Kb pdf) (05/21/10)
Appendix A - Site Certification Application (41.9MB pdf) (05/21/10)
Appendix B - Geotechnical Reports (14.9MB pdf) (05/21/10)
Appendix C - Wildlife Reports (57.4MB pdf) (05/21/10)
Appendix D - Land Use Consistency (3.3MB pdf) (05/21/10)
Appendix E - Historic and Cultural Resources (738Kb pdf) (05/21/10)
Appendix F - Consultant Disclosure Statements (2.9MB pdf) (05/21/10)
Updated Project Vicinity Map (707Kb pdf) (05/05/10)
Letter to the Public (32Kb pdf) (04/17/09)
Comment Form (13Kb pdf) (04/17/09)
Project Vicinity Map (1.6MB pdf) (04/17/09)

If you believe information on this site is missing or in error, please submit that comment here.

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