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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 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."

1 SOSA is somewhat confused about this request.

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

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

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

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

21 As to the "discovery on the draft EIS and the process by which it was  
22 developed," there appears to be confusion on this point. "Discovery" is usually  
23 between the parties, a matter already addressed by prior orders. Indeed, such  
24 discovery could include the information or analysis that the applicant has  
25 provided to the agencies as a part of EIS preparation. Requests for information  
26 to agencies, including EFSEC, are governed by the EFSEC's own rules,

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28 SOSA'S AND FRIENDS' MEMO OF AUTHORITIES ON  
QUESTIONS PRESENTED IN PREHEARING  
ORDER No. 7 (Council Order No. 851) - 2

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1 principally WAC 463-06-060 to -170, which implement terms of RCW ch. 42.17,  
2 the Washington public disclosure statute. If requests are made for information,  
3 then the EFSEC must respond and indicate if they object to the disclosure.  
4 There is no procedure for deciding in advance if public documents are subject to  
5 disclosure or not.

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

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

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

19 Further, as it turns out, EFSEC and BPA had originally planned to let  
20 WRE prepare the EIS. See BPA description of the "Whistling Ridge Wind  
21 Interconnection Project" at Attachment A hereto. Though this procedure was  
22 modified, the agencies admit that the EIS primarily used the environmental  
23 information prepared by the applicant. As stated in Attachment A hereto:  
24 "Accordingly, we have used environmental information provided by Whistling  
25 Ridge Energy LLC and its consultants in the EIS as appropriate." Indeed, in  
26 many places, the DEIS adopts not only information from the applicant, but its  
27

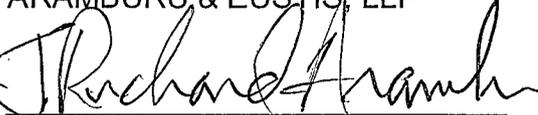
1 analytical content verbatim. The accuracy and content of information and  
2 analysis provided by the applicant are relevant issues for this adjudication.

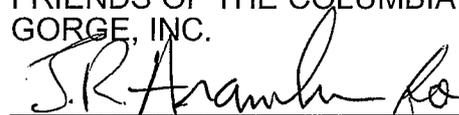
3 Similar to other evidence at the hearing, the content of the EIS is relevant  
4 to this proceeding and the parties may wish to present evidence regarding the  
5 environmental impact statement presented at the hearing. Such procedure is  
6 consistent with the prior pre-hearing orders.

7 DATED this \_\_\_\_ day of September, 2010.

8 ARAMBURU & EUSTIS, LLP

FRIENDS OF THE COLUMBIA  
GORGE, INC.

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13  
14 DECLARATION OF SERVICE

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

17 I hereby certify that on the date below written I caused delivery by first-  
18 class mail of one original and 12 copies (plus an electronic copy on CD) after  
19 filing by email with EFSEC (with emailed copies to all parties of record with email  
20 addresses), and sent by first-class mail to each of the parties of record on the  
21 attached service list a true and correct copy of the foregoing document.

22 Dated: This 20<sup>th</sup> day of September, 2010.

23  
24   
25 Carol Coñoe, Secretary  
26 Aramburu & Eustis, LLP

# Attachment A

**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**

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**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.

**CONTACT:**

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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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