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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

OBJECTION OF SOSA AND
FRIENDS OF THE COLUMBIA
GORGE TO COUNCIL ORDER
851

On September 13, 2010, the Administrative Law Judge ("ALJ") issued Prehearing Order ("PHO") No. 7 in this matter (Council Order No. 851) as a result of the prehearing conference ("PHC") held on September 1, 2010. PHO No. 7 provided that any objections to that order be filed within five days.

Intervenors Save Our Scenic Area and Friends of the Columbia Gorge (collectively here "SOSA") file this objection to PHO No. 7.

SOSA continues its objection to the ruling of the Council that would permit the FEIS or the draft FEIS to be filed after the date for pre-filing hearing testimony required by SOSA and other intervenors. As detailed in SOSA's objection to PHO No. 4, dated July 8, 2010, under SEPA, an FEIS is to accompany the proposal through the agency review process under RCW 43.21C.030. This was confirmed in *West Main Assocs. v. City of Bellevue*, 49 Wn. App. 513, 517-18, 742 P.2d 1266 (1987):

1 The environmental impact statement (EIS) must "accompany the
2 proposal through the existing agency review processes" so that
3 officials will use it in making decisions, RCW 43.21C.030(2)(d),
4 WAC 197-11-655, and "[a]ny governmental action may be
5 conditioned or denied" on the basis of adverse impacts disclosed
6 by SEPA's environmental review process. RCW 43.21C.060; WAC
7 197-11-660; BCC 22.02.605B; *The Polygon Corp. v. Seattle*, 90
8 Wash.2d 59, 65, 578 P.2d 1309 (1978).

9 Thus, under SEPA, the Council must consider environmental impacts in ruling on
10 such applications.

11 Indeed, in PHO No. 6 (August 11, 2010) at page 3, the Council ruled that:

12 The DFEIS precedes the beginning of the adjudicative hearing. Its
13 information is public and available. The environmental record is
14 received in evidence; its information is available to the parties and
15 the public during the adjudicative hearing.

16 (Emphasis supplied).

17 As matters stand, there seems considerable doubt that the ruling of the
18 Council will be fulfilled. The Council's SEPA responsible official, Mr. Posner,
19 reported on September 1 that there were a large number of comments on the
20 DEIS. Indeed, the EFSEC website shows 577 comments totalling some 2,840
21 pages, not counting the comments received on the DEIS at the public hearing.
22 Many of the comments request additional analysis that may be time consuming.
23 It is difficult to imagine that the DFEIS will not only be written but printed and
24 circulated to the parties and the public by November 24, 2010 as the EFSEC
25 proposed schedule anticipates.

26 Further, PHO No. 7 also indicates that the SEPA Responsible Official will
27 only "attempt to have the DFEIS made public before the hearing," contrary to the
28 commitment in PHO No. 6. PHO No. 7 now seems to conclude that the FEIS
does not have to be prepared until just before a final decision is made by the
Governor. PHO 7 at page 3.

SOSA believes SEPA and its rules are clear on this matter; that the FEIS
must be available during the agency review process, which in this case is the

1 required adjudication. Our court has made clear that the EIS is to be used in
2 making decisions, not justifying them later:

3 The point of an EIS is not to evaluate agency decisions after they
4 are made, but rather to provide environmental information to assist
5 with *making* those decisions. *Norway Hill*, 87 Wash.2d at 279, 552
6 P.2d 674; *Sisley v. San Juan Cy.*, 89 Wash.2d 78, 86-87, 569 P.2d
7 712 (1977).

8 *King County v. Washington State Boundary Review Bd. for King County*, 122
9 Wn.2d 648, 666, 860 P.2d 1024, 1034 (1993) (Emphasis in original). Similarly,
10 the Court emphasized the need to complete the EIS process as soon as
11 possible:

12 One of SEPA's purposes is to provide consideration of
13 environmental factors at the earliest possible stage to allow
14 decisions to be based on complete disclosure of environmental
15 consequences. *Stempel v. Department of Water Resources*, 82
16 Wash.2d 109, 118, 508 P.2d 166 (1973); *Loveless v. Yantis*, 82
17 Wash.2d 754, 765-66, 513 P.2d 1023 (1973).

18 *King County v. Washington State Boundary Review Bd. for King County, supra*,
19 122 Wn.2d at 663-664. (Emphasis supplied).

20 The holdings in these cases are consistent with the requirements of the
21 SEPA Rules at WAC ch. 197-11. Thus under WAC 197-11-402,

22 Agencies shall prepare environmental impact statements as follows:

23
24 (8) Agencies shall prepare EISs concurrently with and coordinated with
25 environmental studies and related surveys that may be required for the
26 proposal under other laws, when feasible.

27 (Emphasis supplied) Similarly:

28 The statement shall be prepared early enough so it can serve practically
as an important contribution to the decision making process and will not
be used to rationalize or justify decisions already made.

WAC 197-11-406. (Emphasis supplied.)

It is also important to understand how this hearing differs from other
administrative proceedings. Here, early on, it was decided that the testimony
and exhibits would be pre-filed, with a sequence of applicant pre-filing, other

1 parties' pre-filing and then rebuttal and cross rebuttal pre-filed testimony. See
2 PHO No. 4. Thus the "hearing" (now scheduled to begin on January 5, 2011) will
3 consist primarily of cross examination of witnesses based on testimony
4 previously submitted. If the DFEIS is submitted after principal testimony is
5 received, the parties will not, as a practical matter, be able to use the DFEIS as a
6 part of their presentations. As such, the DFEIS or FEIS will not meet the
7 mandates for concurrent and coordinated use of the EIS in review processes
8 and serving "practically as an important contribution to the decision making
9 process."

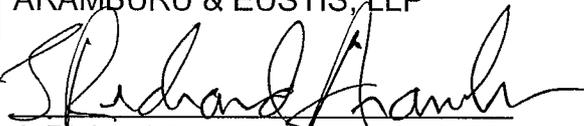
10 PHO No. 7 expressed concerns regarding timing of the hearing. While
11 SOSA appreciates the need for expeditious decision-making, it was more than a
12 year after the scoping hearing that the DEIS was issued. Further, this project
13 has been proposed by SDS Lumber since 2002 when it submitted a request to
14 BPA to connect its proposed project with the BPA grid. See BPA description of
15 the "Whistling Ridge Wind Interconnection Project" at Attachment A hereto:

16 In June 2002, SDS Lumber Company submitted a generation
17 interconnection request for 70-MW on the North Bonneville-Midway
18 230-kV transmission line approximately five miles West of BPA's
19 Underwood Substation. Subsequently, SDS Lumber Company
20 created a new limited liability company called Whistling Ridge
21 Energy LLC (WRE), which submitted an application with WA
22 EFSEC for site certification for the wind project.

23 However, this application was not submitted to EFSEC until March 2009 and
24 then was substantively amended in October, 2009. Neither SOSA nor other
25 intervenors are responsible for the delay of this applicant in filing its application
26 before this Council nor for the length of time that it took to prepare the DEIS.

27 Accordingly, SOSA objects to the schedule for the hearing established in
28 PHO No. 7 and request it be modified to require that the FEIS or DFEIS be
available to the parties and the public prior to the deadline for submitting pre-filed
testimony and exhibits.

1 DATED this _____ day of September, 2010.

2 ARAMBURU & EUSTIS, LLP
3 
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12 DECLARATION OF SERVICE

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

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

20 Dated: This 20th day of September, 2010.

21 
22 Carol Cohoe, Secretary
23 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**

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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