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

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

OBJECTION OF SOSA AND FRIENDS
TO COUNCIL ORDER 851 - 1
The environmental impact statement (EIS) must "accompany the proposal through the existing agency review processes" so that officials will use it in making decisions, RCW 43.21C.030(2)(d), WAC 197-11-655, and "[a]ny governmental action may be conditioned or denied" on the basis of adverse impacts disclosed by SEPA's environmental review process. RCW 43.21C.060; WAC 197-11-660; BCC 22.02.605B; The Polygon Corp. v. Seattle, 90 Wash.2d 59, 65, 578 P.2d 1309 (1978).

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

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

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

(Emphasis supplied).

As matters stand, there seems considerable doubt that the ruling of the Council will be fulfilled. The Council's SEPA responsible official, Mr. Posner, reported on September 1 that there were a large number of comments on the DEIS. Indeed, the EFSEC website shows 577 comments totalling some 2,840 pages, not counting the comments received on the DEIS at the public hearing.

Many of the comments request additional analysis that may be time consuming. It is difficult to imagine that the DFEIS will not only be written but printed and circulated to the parties and the public by November 24, 2010 as the EFSEC proposed schedule anticipates.

Further, PHO No. 7 also indicates that the SEPA Responsible Official will only "attempt to have the DFEIS made public before the hearing," contrary to the 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

OBJECTION OF SOSA AND FRIENDS TO COUNCIL ORDER 851 - 2
required adjudication. Our court has made clear that the EIS is to be used in making decisions, not justifying them later:

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

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

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

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

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

Agencies shall prepare environmental impact statements as follows:

(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.

(Emphasis supplied) Similarly:

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

OBJECTION OF SOSA AND FRIENDS TO COUNCIL ORDER 851 - 3
parties' pre-filing and then rebuttal and cross rebuttal pre-filed testimony. See
PHO No. 4. Thus the "hearing" (now scheduled to begin on January 5, 2011) will
consist primarily of cross examination of witnesses based on testimony
previously submitted. If the DFEIS is submitted after principal testimony is
received, the parties will not, as a practical matter, be able to use the DFEIS as a
part of their presentations. As such, the DFEIS or FEIS will not meet the
mandates for concurrent and coordinated use of the EIS in review processes
and serving "practically as an important contribution to the decision making
process."

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

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.

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

Accordingly, SOSA objects to the schedule for the hearing established in
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.
DATED this ____ day of September, 2010.

ARAMBURU & EUSTIS, LLP
J. Richard Aramburu, WSBA #466
Attorney for Intervenor SOSA
(206) 625-9515
rick@aramburo-eustis.com

FRIENDS OF THE COLUMBIA GORGE, INC.
Nathan Baker, WSBA #35193
Attorney for Intervenor Friends
(503) 241-3762 x101
nathan@gorgefriends.org

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 30th day of September, 2010.

Carol Cohoe, Secretary
Aramburo & 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.

CONTACT:
Andrew M. Montañé, Environmental Project Manager, Bonneville Power Administration - KEC-4, P.O. Box 3621, Portland, Oregon, 97208-3621; direct telephone number 503-230-4145; toll-free telephone number 1-800-282-3713; fax number 503-230-5699; e-mail address: ammontano@bpa.gov.

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)


9/19/2010
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.

NOTICE: This site is owned and operated by the Bonneville Power Administration, United States Department of Energy. Use of this system is monitored by system and Security personnel. Anyone using this system consents to MONITORING of this use by system or security personnel. BPA Privacy Policy

Page last reviewed on 4/17/2009 2:50:11 PM