

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2009-01

EXHIBIT NO. 25.00

of

REBUTTAL TESTIMONY OF
MICHAEL LANG

WHISTLING RIDGE ENERGY LLC

for

WHISTLING RIDGE ENERGY PROJECT

**REBUTTAL TESTIMONY OF WITNESS # 25
MICHAEL LANG**

ON BEHALF OF

**INTERVENORS FRIENDS OF THE COLUMBIA GORGE
AND SAVE OUR SCENIC AREA**

Q. Please state your name, title, and address.

A. My name is Michael Lang. I am the Conservation Director for Friends of the Columbia Gorge. My office address is 522 SW Fifth Avenue, Suite 720, Portland, Oregon 97204.

Q. What is your professional experience and areas of expertise?

A. I am the Conservation Director for Friends of the Columbia Gorge. I have worked for Friends since 1993. My position includes oversight of the organization’s legal and conservation efforts. This includes efforts to ensure proper implementation of the Columbia River Gorge National Scenic Area Act and other environmental laws. We review development proposals within the Scenic Area and development proposals outside the Scenic Area that would affect the Columbia River Gorge and surrounding landscapes. I also closely track state and federal legislative efforts that could potentially affect Gorge resources or implementation of the National Scenic Area Act. I have extensive knowledge of the legislative history behind the Act and how the Act has been implemented since its passage. I have also explored the Columbia River Gorge and surrounding lands

1 extensively for more than twenty years and have extensive knowledge of the landscape
2 that would be affected by the Whistling Ridge Energy Project, other energy projects in the
3 region, and other development in the region.

4 Q. Are you available for cross-examination during the WREP adjudicatory proceeding?

5 A. Yes.

6 Q. Are you familiar with the aesthetics and recreational impacts sections in the WREP
7 Application for Site Certification, and with the Draft Environmental Impact Statement for
8 the project?

9 A. Yes.

10 Q. Have you reviewed the testimony of Chuck Covert, witness for the Klickitat County
11 Public Economic Development Authority, John McSherry, witness for the Port of
12 Skamania County, and Michael Canon, witness for the Klickitat County Public Economic
13 Development Authority?

14 A. Yes.

15 Q. These witnesses have testified about hypothetical situations where the Columbia River
16 Gorge National Scenic Area boundary would be expanded and where land uses outside of
17 the Scenic Area or within the Scenic Area's Urban Areas would be regulated by the
18 Scenic Area land use guidelines, found in the Scenic Area Management Plan. What would
19 it take to expand the Scenic Area boundary or to regulate land uses within the Urban
20 Areas or outside the Scenic Area under the Management Plan's land use guidelines?

21 A. These hypothetical situations raised by other witnesses are not relevant to the Whistling
22 Ridge proposal, because Intervenors have not suggested that wind energy development
23 outside the Scenic Area would be regulated under the Management Plan's land use
guidelines. To answer the question, in order to regulate land uses within the Urban Areas
or outside the Scenic Area directly under the Management Plan's land use guidelines, the
Scenic Area Act would need to be amended. The only caveat is that the Management
Plan's air quality policies require the States of Washington and Oregon to inventory,
monitor, and regulate pollution from sources both outside and inside the National Scenic
Area, including sources in the Scenic Area's urban areas. But the Management Plan's
policies are different from the Management Plan's land use guidelines, and they are treated
differently under the Scenic Area Act.

1 Q. Are you aware of any situations where the National Scenic Area Act has been applied to
2 limit or interfere with state or local regulatory authority to adopt state or local laws that
3 protect resources of the National Scenic Area from development on lands located outside
4 the boundaries of the National Scenic Area?

5 A. No. The National Scenic Area Act has never been interpreted as limiting state or local
6 regulatory authority over land uses outside the Scenic Area boundary. State and local
7 governments have authority to adopt or apply state or local laws that protect resources of
8 the Scenic Area from impacts caused by uses outside the Scenic Area. This authority
9 exists independent of, and is not limited by, the Scenic Area Act.

10 Q. Are you aware of any situations where federal, state, or local governments have exercised
11 this independent authority to adopt laws or rules protecting the National Scenic Area from
12 impacts of development located outside the Scenic Area?

13 A. Yes. To provide one example, the Oregon Energy Facility Siting Council has enacted
14 regulations that expressly prohibit development outside the boundaries of the National
15 Scenic Area that would cause a significant adverse impact on the Scenic Area.

16 Similarly, Wasco County, which includes lands within the National Scenic Area, has
17 adopted a land use ordinance that expressly prohibits certain wind energy facilities within
18 one-quarter mile of the Scenic Area. These laws operate independent of, and in addition
19 to, the protections in the Scenic Area Act.

20 To provide another example, in Washington State, the State Environmental Policy Act
21 requires that agencies analyze impacts to designated sensitive areas, such as the Scenic
22 Area, when undertaking major actions. To my knowledge, this requirement has never been
23 restricted by the Scenic Area Act.

24 Q. Have any of the examples you just provided ever been treated as an attempt to expand the
25 Scenic Area boundary or apply Scenic Area land use guidelines to Urban Areas or non-
26 Scenic Area lands?

27 A. No.

28 Q. On behalf of the Klickitat County Economic Development Authority, Mr. Canon was
29 asked the following question in his prefiled testimony: "Please describe the effect on
30 development in Klickitat County that would occur if the application of the NSA
31 boundaries were expanded to all points outside the NSA boundary that can be seen from
32 inside the NSA boundary?" This question is based on a hypothetical proposal to expand
33 the National Scenic Area boundaries. Are you aware of any efforts to expand the NSA
34 boundaries?

1 A. I am not aware of any efforts to expand the Scenic Area boundaries. I closely track
2 legislative efforts related to the Scenic Area Act. I can confidently say that there are no
3 efforts underway to expand the Scenic Area boundary beyond its current location.

4 Q. Mr. Canon testified that if the Scenic Area land use guidelines were applied to areas in
5 Klickitat County that are outside the National Scenic Area but visible from the Scenic
6 Area, this would take “significant amounts of acreage from the pool of possible energy
7 development lands in this [Klickitat] County.” Do you agree with this assessment?

8 A. No. First, it bears repeating that there is no such proposal to expand the Scenic Area
9 boundary or apply the Scenic Area guidelines to lands outside the Scenic Area. But even if
10 such a hypothetical proposal occurred, it would have only a limited impact on the amount
11 of remaining land developable for energy development in Klickitat County.

12 First, it is important to clarify that the Scenic Area guidelines do not regulate all views
13 from the Scenic Area, but rather only views from specifically designated key viewing areas
14 (“KVAs”). The primary relevant KVAs here would be the Columbia River, Interstate 84,
15 and Washington State Route 14. Much of the views looking north from these KVAs are
16 located within the National Scenic Area and thus already protected from industrial energy
17 development.

18 The photos included below, taken by Friends’ Staff, provide a sample of these viewsheds.
19 The viewsheds encompass the Columbia Hills and extend to the east to include Haystack
20 Butte.

21 In both of the photos, all of the land seen on the horizon is within the National Scenic
22 Area and thus regulated under the Management Plan’s land use guidelines. That’s because
23 the Scenic Area boundary is on the north slope of the Columbia Hills, north of and beyond
the KVA viewshed. Similarly, the boundary on the eastern end of the Scenic Area is on the
eastern side of the Haystack Butte, beyond the KVA viewshed. The location of the
boundary ensures that the views from the vast majority of locations along KVAs are fully
protected and not at risk from development on non-Scenic Area lands.

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*Photo 2: View from the Columbia River at Celilo Park,
looking northeast at the Columbia Hills and Haystack Butte.*

Given the height of modern wind turbines, it is likely that a small number of turbines sited north of the Scenic Area boundary (behind the Columbia Hills as viewed in these photos) would break the skyline and be visible from key viewing areas. However, Friends has reached settlements with an energy developer that prevent development at the most visible of these sites, and thereby protect these viewsheds. Construction on this project (Windy Flats West) will occur soon. The settlements cover much of the potential wind energy sites located in Klickitat County and north of the Scenic Area boundary that have the potential to adversely affect Scenic Area viewsheds. The settlements allowed the project to proceed and did not remove significant amounts of acreage from the pool of possible energy development lands in Klickitat County.

The remaining lands north of the Scenic Area boundary are not likely to be developed with wind turbines for two primary reasons. First, publicly available wind speed data confirms that most of these lands have marginal or poor wind speeds. Second, much of the lands are owned and managed by public agencies for natural resource protection (such as the

1 Columbia Hills Natural Area Preserve). Wind energy development simply will not be an
2 option in these areas, regardless of issues pertaining to scenic impacts.

3 As for other lands in Klickitat County (*e.g.*, lands east of the National Scenic Area), these
4 lands have already been developed with hundreds of wind turbines. Some of these lands
5 are visible from key viewing areas, but in most cases from more than 10 miles away, and in
6 locations where the turbines do not break the skyline above Scenic Area viewsheds.

7 Based on the actual facts on the ground, applying the Management Plan land use
8 guidelines to lands in Klickitat County outside the Scenic Area would have a minimal
9 impact on the remaining wind energy development capacity. I would say that Mr. Canon's
10 testimony grossly overstates the impacts of such a hypothetical scenario.

11 Q. Mr. Canon was asked, "Can the wind energy facilities that are either built or under
12 construction in Klickitat County be seen from points within the NSA?" His answer states
13 that many turbines are visible from Maryhill Winery and Maryhill Museum, both of which
14 are located outside the Scenic Area. Would you please evaluate the question posed to Mr.
15 Canon and his response?

16 A. The question is very misleading, because it asks whether wind energy development is
17 visible *from within the NSA*, as opposed to whether such development is visible *from key*
18 *viewing areas*. Only selected places from within the Scenic Area have been designated as
19 key viewing areas, from which the views are protected.

20 Mr. Canon's answer largely ignores the question that is asked (about views from within
21 the NSA) and instead focuses on views from "around the county" and from specific sites
22 *outside of the NSA*, such as the Maryhill Museum and Winery. The winery is about a half
23 mile outside the Scenic Area, and the museum is a mile outside the Scenic Area. Hundreds
of turbines are visible from these locations. But most of the same turbines are not visible
from KVAs within the Scenic Area.

The fact that hundreds of turbines are located just a few miles outside the National Scenic
Area's eastern boundary, while views from KVAs within the Scenic Area are largely
intact, is a testament to the fact that sensitive siting can protect important natural aspects
of our national heritage, while also allowing wind energy development to move forward.

Q. Chuck Covert's testimony on behalf of the Klickitat County Public Economic
Development Authority focuses on development proposals in Dallesport, including
development proposals at the Columbia Gorge Regional Airport. Mr. Covert testified that
Dallesport is not within a Special Management Area or the General Management Area of
the Scenic Area. Do you agree with that testimony?

1 A. Yes, Dallesport is within one of the thirteen designated Urban Areas that are exempt from
2 the Management Plan's land use guidelines. Dallesport is not an incorporated city, so
3 Klickitat County has zoning authority in the area.

4 Q. Mr. Covert was asked the following question: "What would be the effects on the
5 Columbia Gorge Regional Airport if the development restrictions developed under the
6 CRGNSA were to apply to the CGRA property in the future?" Are you aware of any
7 proposals to regulate development proposals in Dallesport pursuant to the Scenic Area
8 guidelines?

9 A. No. In fact, I can confidently say that there are no proposals to regulate land uses within
10 Dallesport under the Management Plan land use guidelines. But if it wished, Klickitat
11 County could limit land uses in Dallesport as it sees fit. This could include protecting
12 views from KVAs, independent of any authority in the Scenic Area Act.

13 Q. John McSherry was asked the following question: "Please describe the effect on the new
14 Port development [the Cascades Business Park] at North Bonneville that would occur if
15 the application of the NSA boundaries were expanded to all points within the NSA that
16 are currently exempt, or to all areas outside the NSA boundary that can be seen from
17 inside the NSA." Are you aware of any efforts to regulate land uses in North Bonneville,
18 other Urban Areas, or other lands in Skamania County outside the Scenic Area under the
19 Scenic Area Management Plan land use guidelines?

20 A. No. As discussed earlier, the Management Plan's *policies* apply to sources of air pollution
21 inside and outside the Scenic Area. But I am not aware of any efforts to regulate land uses
22 in the Urban Areas or outside the Scenic Area under the Special Management Area or
23 General Management Area land use and development permit provisions.