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7 **BEFORE THE STATE OF WASHINGTON**  
8 **ENERGY FACILITY SITE EVALUATION COUNCIL**

9  
10 In the Matter of Application No. 2009-01  
11 of  
12 WHISTLING RIDGE ENERGY, L.L.C.  
13 for  
14 WHISTLING RIDGE ENERGY  
15 PROJECT

ANSWER TO MOTIONS FOR  
RECONSIDERATION

16  
17 COMES NOW the Washington State Department of Commerce (Commerce), by and  
18 through its attorneys of record, Kristen K. Mitchell, Assistant Attorney General, and Pamela  
19 H. Anderson, Assistant Attorney General, and submits its Answer to Motions for  
20 Reconsideration.

21 **I. INTRODUCTION**

22 Commerce supports the application for the Whistling Ridge Energy Project (WREP),  
23 as described in the Amended Application for Site Certification and supports the petitions of  
24 Applicant and Skamania County/Klickitat County Public Economic Development Authority,  
25 requesting reconsideration of the Energy Facility Site Evaluation Council's (Council's) Order  
26

1 and Report to the Governor. The Council should reconsider its recommendation to exclude  
2 turbines on the C corridor and the A1-7 sites along the A corridor.

## 3 II. ARGUMENT

4 Commerce is charged with increasing and improving jobs in the State of Washington  
5 and facilitating innovation by fostering new partnerships for strong and sustainable  
6 communities. RCW 43.330.005. This mission includes generating “greater local capacity to  
7 respond to both economic growth and environmental challenges” and diversifying “the state’s  
8 economy and export of goods and services . . . [to] “provide greater access to economic  
9 opportunity.” *Id.* Wind power is a clean, renewable energy resource. Development of such  
10 alternative renewable energy resources furthers a fundamental purpose of state government by  
11 providing high quality jobs in underdeveloped portions of the state, stabilizing electricity  
12 prices within the state, providing economic benefits to local governments, protecting the air  
13 and water, and positioning Washington as a national leader in energy technologies.  
14 *See* RCW 19.285.020.

15 The Council’s Recommendation to eliminate the entire C corridor and a substantial  
16 number of turbines along the A corridor from the project jeopardizes the viability of the  
17 WREP. It is inconsistent with the State’s goal of economic recovery and growth and with the  
18 legislative purpose expressed in RCW 80.50.010.

### 19 A. The Whistling Ridge Project Will Spur Environmentally Friendly Economic 20 Recovery in Skamania County

21 RCW 80.50.010 sets forth five factors to be considered when making  
22 recommendations to allow energy projects. The Council is to give due consideration to  
23 assuring safe standards, preserving the environment, providing abundant energy at reasonable  
24 cost, saving costs at unfinished nuclear facilities, and avoiding delay and duplicative  
25 processes in siting decisions. Wind power meets these goals by providing clean, efficient  
26 energy with no wastewater usage during operations, and contributing significantly to lower

1 consumption of fossil fuels, with their resulting emissions. Final Environmental Impact  
2 Statement (FEIS) at 1-12, 3-20-21. Adhering to the protections provided for the National  
3 Scenic Area, but allowing development of clean, efficient wind energy elsewhere in Skamania  
4 County strikes the appropriate balance and gives due weight to all the factors set forth in  
5 RCW 80.50.010.<sup>1</sup>

6 The Applicant makes a compelling argument that elimination of the A1-7 turbines and  
7 the entire C corridor puts the economic viability of the project at risk. Abandonment of the  
8 project would be a serious blow to the fragile economy of rural southwest Washington and  
9 Skamania County in particular. Skamania County has unique challenges. Four percent of its  
10 land is comprised of private commercial forests. Ninety four percent is reserved as state and  
11 federal forest lands or is within the national scenic area. Only 3% of all land is available for  
12 residential and commercial development or redevelopment.

13 Skamania County has been particularly hard-hit by the current recession, with  
14 unemployment rates averaging 12.9% in the first three quarters of 2010, compared to the  
15 statewide average of 9.3%. The county particularly needs to diversify in order to replace a  
16 significant loss of timber related jobs. Final Environmental Impact Statement at 1-6. The  
17 federal government and the State of Washington have expended many millions of taxpayer  
18 dollars in an attempt to address the economic plight of these areas of Southwest Washington.  
19 Exhibit 36 (Testimony of Leonard Bauer at 7). The Whistling Ridge project would provide  
20 long-lasting and environmentally sound diversification in this economically troubled region.  
21 Testimony of Eric Hovee; *See also* Skamania County Petition for Reconsideration at p.11 and  
22 cites to the record therein.

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25 <sup>1</sup> The wholly subjective standard adopted by the Council for weighing the aesthetic considerations in an  
26 undetermined area around the WREP defeats the statutory purpose by increasing uncertainty about future  
decisions, contributing to delay and duplicating(or ignoring) the objective analysis of environmental issues  
provided in the FEIS.

1 The Council should reconsider recommending restrictions that would fatally limit the  
2 project in order to protect views from the National Scenic Area. When Congress enacted the  
3 Columbia River Gorge National Scenic Area Act (Act) in 1986, its expressed intent was to  
4 protect the scenic, cultural, recreational and natural resources of the area, while protecting and  
5 supporting the economy of the area and allowing future development.  
6 16 U.S.C. § 544a. The Act explicitly provides that it does not “establish protective perimeters  
7 or buffer zones around the scenic area or each special management area. The fact that  
8 activities or uses inconsistent with the management directives for the scenic area or special  
9 management areas can be seen or heard from these areas shall not, of itself, preclude such  
10 activities or uses up to the boundaries of the scenic area or special management areas.”  
11 16 USC § 544o(a)(10). In other words, Congress prohibited the *de facto* expansion of the  
12 Columbia River Gorge National Scenic Area

13 The Council acknowledges that the Act does not provide support for restrictions on  
14 development outside the scenic area merely because views or sounds can be observed within  
15 the scenic area. Order No. 868 at 19; 16 U.S.C. § 544o(a)(10). In fact such restrictions would  
16 contravene the balance of interests embodied in the Act. While not bound by this proscription  
17 when it interprets and applies state law, the Council should recognize the wisdom expressed in  
18 the federal legislation.

19 Scenic areas create opportunities for tourism and protect visual assets, but they also  
20 severely limit the diversification of local economies and the tax revenue base for local  
21 governments. Vast areas of Skamania County are within the National Scenic Area and are  
22 already protected from further development. A decision by the Council to apply a subjective  
23 aesthetic standard for development outside, but within eyesight of, the National Scenic Area  
24 will create uncertainty for all private property owners in Skamania County or other adjacent  
25 counties. Uncertainty about the success of future development projects will undermine  
26 Commerce’s efforts to reinvigorate this economically troubled area. It may be interpreted by

1 potential developers as a negative predictor for the viability of other, unrelated proposals for  
2 economic growth. Exhibit 36 at 8.

3 **B. The “Balancing Test” Employed by the Council is a Wholly Subjective Standard**  
4 **Which Is Inconsistent with the Evidentiary Record**

5 The Washington state legislature has directed the Council to balance various factors in  
6 determining whether to recommend a site for a new energy facility. Aesthetic impact of the  
7 project is one factor, among many factors. Unfortunately, the Council’s decision to require the  
8 elimination of the A1-7 turbines and the entire C ridge, solely on aesthetic grounds, failed to  
9 take into account other critical factors such as the continued economic viability of the project,  
10 the need for economic revitalization, and the state-wide need for clean energy. The Council’s  
11 findings also disregarded the aesthetic and environmental values of renewable wind power  
12 over alternative energy sources—values that were endorsed by the citizens of the state of  
13 Washington when they passed I-937 requiring utilities to meet renewable energy targets.<sup>2</sup>  
14 Wind power is one of three energy sources that currently can be built at the scale necessary to  
15 satisfy these requirements. Exhibit 34 (Direct testimony of Tony Usibelli at 5).

16 The Council’s decision rests solely on its own subjective determination of a negative  
17 visual impact from certain viewing areas. This result is not supported by the record and seems  
18 illogical and internally inconsistent. The Council may consider evidence not contained within  
19 the FEIS. *Residents Opposed to Kittitas Turbines v. State Energy Facility Site Evaluation*  
20 *Council*, 165 Wn.2d 275, 313, 197 P.3d 1153 (2008). However, it must base its decision on  
21 evidence received into the record, not on its own “subjective” determination of aesthetic  
22 values.

23 In this case, the Council endorses the methodology employed by Applicant’s expert  
24 witness, Dautis Pearson, for hybrid analysis of mixed use settings. Council Order No. 868 at  
25

26 <sup>2</sup> RCW 19.285.040 carries out this popular mandate by imposing detailed statutory requirements on major utilities for increased reliance on renewable energy over the next decade.

1 19-20. Mr. Pearson's testimony and analysis were based in large part of the Federal Highway  
2 Service Manual guidelines. The Council found the photographs and simulations of visual  
3 effect used by Mr. Pearson to be accurate and adequately representative. *Id.* at 20. The  
4 Council's own FEIS utilized a consistent analysis of visual ratings, viewer sensitivity, and  
5 visual impact. The Council rejected the alternate methodologies proposed by the opponents'  
6 witness, Dean Apostol, finding them unsuited to determining visual impacts in mixed areas  
7 containing developed and undeveloped land. *Id.* at 19-20.

8 However, while it pays lip service to Mr. Pearson's methodology, the Council fails to  
9 employ his tools or the tools in its FEIS in arriving at its conclusions. Nor does the Council  
10 point the parties to other evidence which supports its findings. Instead, the Council imposes  
11 its own subjective value judgment on the viewpoints identified in the FEIS and Amended  
12 Application for Site Certification. This subjective determination leads to inconsistencies and  
13 incongruities.

14 Significantly, the Council's subjective judgment of the project fails to take into  
15 account that the Whistling Ridge project will be built in an area that is currently subject to  
16 commercial, industrial and agricultural uses and contains few pristine scenic natural views.  
17 The project area, and the Columbia Gorge as a whole, currently includes transmission lines,  
18 major highways, and clear-cut slopes. FEIS at 3-138-9. The photographs from viewpoints  
19 within the area demonstrate the extent to which the natural landscape has been altered by  
20 human intervention.<sup>3</sup> Moreover if the project is not built the Applicant will continue to log  
21 the project area for timber, consistent with the use over the past century. FEIS at 1-13, 1-29  
22 (Table 1-1).

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25 <sup>3</sup> The photographs and simulations contained in the Application and FEIS contain illustrative examples  
26 of the development that currently exists in the affected area and the expected view after construction. *See, e.g.*,  
Amended Application, Figures 4.2-4, 4.2-20, 4.2-21, 4-2.23; FEIS Figure 3.9-7, 3.9-8, 3.9-12, 3.9-13, 3.9-15.

1 In fact, not a single viewpoint analyzed in the FEIS achieved a visual rating higher  
2 than “moderately high”.<sup>4</sup> Moderately high visual quality is defined as “[l]andscapes that have  
3 above average scenic value but **are not of high scenic value.**” FEIS at Table 3.9-1 (emphasis  
4 added).<sup>5</sup> The visual impact attributed to the proposed wind turbines never exceeded the  
5 moderate range at any viewpoint. *Id.*

6 Further incongruencies can be found by a careful examination of the choices made by  
7 the Council. One example will suffice. Contrary to the evidence before it, or the suggestion of  
8 Counsel for the Environment, the Council determined that the entire C corridor should be  
9 eliminated. However, the Council’s own demonstrative exhibit reveals that elimination of the  
10 C corridor does not, in itself, result in the total elimination of turbine visibility at any  
11 viewpoint. Only when combined with elimination of A1-7, does elimination of the C corridor  
12 achieve total elimination of visual impact at two viewpoints, Nos. 8 and 10. Because  
13 viewpoints 8 and 10 were not analyzed in the FEIS, the only evidence before the Council as to  
14 the significance of those viewpoints was contained in the Amended Application. Figure 4.2-  
15 12 demonstrates that Viewpoint 8 is a view across a parking lot with a moderate visual quality  
16 rating, or a visual quality described as “common or typical landscape with average scenic  
17 value.”

18 The Council also protected Viewpoint 10 by eliminating the A1-7 and C corridors.  
19 Viewpoint 10 has a view quality which is moderately high, but the turbines are 8-10 miles  
20 from the viewpoint, meaning that the impact on the view is low. In sum, the primary purpose  
21 of eliminating Corridor C seems to have been to preserve the view across the parking lot at  
22 Viewpoint 8 or to eliminate the low impact of a view across 8-10 miles at Viewpoint 10. No  
23

24 <sup>4</sup> Additional viewpoints were analyzed in the Amended Application for Site Certification. Viewpoint  
25 14 at Viento State Park achieved the highest visual rating with a “moderately high to high” rank and an impact  
26 rating of “moderate.” No C string turbines are visible from that viewpoint and elimination of the A 1-7 string  
does not eliminate all turbine visibility at that viewpoint.

<sup>5</sup> Visual quality is rated with scoring system that ranges from 1-6, with 6 being “outstanding” and 5  
being “high” ranking.

1 party, including Counsel for the Environment, suggested that these views should be preserved  
2 at the expense of the C corridor and potentially at the expense of the entire project.

3 With respect to the A 1-7 string, it again appears that the Council has jeopardized the  
4 viability of the project to protect a handful of views that, while attractive, are at best  
5 commonplace. Many views which will include the A 1-7 turbine structures have already been  
6 detrimentally altered by other competing uses. By requiring the elimination of the A1-7  
7 turbines to protect these views, the Council has elevated aesthetic concerns out of all  
8 proportion to the visual resource at issue and relegated other pressing concerns, such as cost  
9 efficient energy and the economy, to the back seat.<sup>6</sup>

10 In sum, the Council's subjective judgment is not supported by the evidence in the  
11 record. The Council's subjective approach leads to inconsistencies in this proceeding and will  
12 ill serve parties to future proceedings before the Council. It will create uncertainty in local  
13 communities and among private property owners as to what commercial uses, if any, can be  
14 made of the land in Skamania County that happens to be within eyesight of the National  
15 Scenic Area. The economic interests of the citizens of the State of Washington are not  
16 furthered by this approach to the extensive record before the Council.

### 17 III. CONCLUSION

18 Commerce supports the Council's decision to recommend that the project be  
19 approved. The visual impact of the turbines in the A1-7 sites and C Corridor is moderate and  
20 subject to mitigations which will diminish the visual impact but not imperil the project. The  
21 WREP supports the dual interests of developing efficient clean renewable energy for  
22 Washington citizens and of spurring economic development in an impoverished area of the  
23 state. As such it is in accord with the purposes articulated by the legislature in  
24  
25

26 <sup>6</sup> Significantly, the subjective aesthetic judgment of many viewers is that the turbines are beautiful, in themselves, and can be viewed as a form of kinesthetic art.

1 chapter RCW 80.50. Therefore Commerce respectfully requests that the Council reconsider  
2 its decision to recommend elimination of the sites at A1-7 and the entirety of Corridor C.

3 DATED this 14th day of November, 2011.

4  
5 ROBERT M. MCKENNA  
6 Attorney General

7   
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1 **PROOF OF SERVICE**

2 I, Linda M. Hoffman, certify that I served a copy of *Commerce's Answer to Motions*  
3 *for Reconsideration* on the party listed below on the date below as follows:

4 See attached Service List

- 5  US Mail Postage Prepaid via Consolidated Mail Service  
6  Facsimile  
7  Electronic Mail  
8  Hand delivered by \_\_\_\_\_

9 I certify under penalty of perjury under the laws of the state of Washington that the  
10 foregoing is true and correct.

11 DATED this 14th day of November, 2011, at Olympia, Washington.

12   
13 \_\_\_\_\_  
14 LINDA M. HOFFMAN  
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<sup>1</sup> Karg replacing H. Bruce Marvin effective per Notice of substitution received by the Council on September 14, 2011

<sup>2</sup> Mitchell replacing Dori Jaffe effective per Notice of substitution received by the Council on September 07, 2011

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