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BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATON COUNCIL

In the matter of)	SEATTLEAUDUBON
Application No. 2009-01)	SOCIETY’S PETITION
)	FOR RECONSIDERATION
WHISTLING RIDGE ENERGY LLC)	OF RECOMMENDATION
)	PACKAGE TO THE
WHISTLING RIDGE ENERGY PROJECT)	GOVERNOR
_____)	

Seattle Audubon requests the Council reconsider key portions of its Recommendation Package to the Governor regarding the Whistling Ridge Energy Project. The Recommendation Package includes significant errors and omissions regarding wildlife and habitat impacts of the Project and the Council has the opportunity and the responsibility to adequately address those impacts.

I. Adequacy of Pre-Project Avian Assessments

A.) In its discussion of the Applicant’s pre-project avian studies, the Council acknowledges the absence of both abundance surveys and a literature review. (Council Order No. 868, p. 25). Unfortunately, the Council also asserts, incorrectly, that “*Their importance is not critical and their absence is not fatal, however.*” (ibid.) The WDFW guidelines explicitly call for the Applicant to review multiple sources of existing information, including resource agencies, local experts, recognized databases, and data gathered at other wind facilities or other types of projects. (Exhibit 6.09c, page 3) The assertion by the Council that the “*Applicant’s wildlife studies comply with the requirements of the WDFW Guidelines and WAC 463-60-362*” (Council Order No. 868, p. 38) directly conflicts with the unambiguous language of the Guidelines. While Seattle Audubon appreciates the Council’s attempt to remedy this problem in part by requiring

1 addition post-construction monitoring for avian impacts (Council Order No. 868, p. 25),
2 there remains a clear need for baseline avian use data for comparison to post-construction
3 monitoring results. Our requested additional pre-project studies are not simply something
4 that “*may have been helpful*” (ibid.); they are essential for making informed adaptive
5 management decisions during post-construction Project operation to minimize adverse
6 impacts to avian species.

7 Seattle Audubon specifically requests that the Council amend Article IV.E. to
8 include a new requirement that the Applicant conduct additional pre-project avian
9 assessments, including abundance surveys and a literature review.

10 B.) Regarding the potential for the Project to adversely impact protected species,
11 the Council concludes the risk is low and does not appear to be an issue (ibid.) The
12 Council appears to rely heavily on the July 19, 2010 Concurrence Letter from the U.S.
13 Fish and Wildlife Service (USFWS) to the Bonneville Power Administration (BPA)
14 regarding the likely impacts of the Project on the threatened northern spotted owl
15 (Exhibit No. 5.04) Yet the record in this proceeding includes detailed information
16 regarding numerous factual errors, mis-statements, omissions, and oversights contained
17 in the Concurrence Letter regarding the status of the northern spotted owl detected in the
18 project vicinity. Those errors are so significant that USFWS is currently considering
19 whether to re-initiate consultation with BPA on the potential impacts of this Project. The
20 Council should defer forwarding a Recommendation Package on this Project until after
21 the USFWS completes its assessment.

22 If, however, the Council chooses to proceed prior to the completion of that
23 review, Seattle Audubon requests that the Council eliminate from the Recommendation
24 Package any turbines that would be located within either the Mill Creek or Moss Creek
25 owl circles that overlap with the Project. (FEIS p. 3-50, “*A total of 9 turbines are*

1 *proposed within the 1.8 mile provincial range of two northern spotted owl activity*
2 *centers.”) The Council has recommended, for aesthetic reasons, the elimination of the C*
3 *corridor of turbines, several of which would be located within the Mill Creek circle.*
4 *However multiple turbines at the northern end of the B corridor would be located within*
5 *the Moss Creek circle and remain in the Recommendation Package. The Council should*
6 *eliminate those turbines, given the continuing decline of the northern spotted owl as well*
7 *as the recent recommendation by the USFWS calling for the increased measures to*
8 *protect this threatened species by “conserving occupied sites and unoccupied, high value*
9 *spotted owl habitat on State and private lands wherever possible” (Revised Recovery*
10 *Plan for the Northern Spotted Owl, USFWS, June 28, 2011, p. III-51)*

11

12 **II. Adequacy of Habitat Mitigation Plan**

13 The Council includes a condition in the Recommendation Package for the
14 Applicant to develop a Habitat Mitigation Plan for the Project (Article IV.E.1). While
15 Seattle Audubon strongly supports this condition, failure of the Applicant to include its
16 suggested mitigation parcel in the Project application (or a subsequent amendment) has
17 prevented the Council and other parties to this proceeding, including Seattle Audubon,
18 from evaluating whether the parcel satisfies all applicable mitigation standards, including
19 the requirement to provide “*no net loss of fish and wildlife habitat function and value*”
20 (WAC 463-62-040.2.a.) Despite the Council’s assertion that the suggested mitigation
21 parcel “*was discussed extensively in the Adjudicative proceedings,*” (Council Order No.
22 868, p. 27), little useful information regarding the parcel was actually presented in the
23 proceeding. Despite persistent questioning by Seattle Audubon of wildlife expert
24 witnesses for the Applicant and the Counsel for the Environment, none of these witnesses
25 were willing or able to offer any professional judgment on the adequacy of the parcel,

1 including the quality of the habitat or the extent to which it may provide mitigation for
2 the wildlife species impacted by the Project.

3 The Council errors by not requiring a process for addressing the Applicant's
4 habitat mitigation obligations in which all parties to this proceeding can participate. It is
5 unclear how and when parties, including Seattle Audubon, will have an opportunity to
6 evaluate and comment on the Habitat Mitigation Plan. While the Council seems to
7 suggest that the Applicant will be required to formally offer to EFSEC a "*stipulated*
8 *mitigation plan*" (Council Order No. 868, p. 2), the Recommendation Package does not
9 provide any details of how, when or by whom such a stipulated mitigation plan would be
10 developed. The Council should defer forwarding a Recommendation Package for this
11 Project until the all parties have the opportunity to evaluate the Applicant's Habitat
12 Mitigation Plan and present evidence on its adequacy. If the Council chooses to proceed
13 without such a process, Seattle Audubon requests that the Council include additional
14 detailed conditions in the Recommendation Package regarding the Habitat Mitigation
15 Plan, requiring like-kind habitat (Exhibit 6.09c, p.9) with ratios of replacement habitat to
16 impacted habitat greater than 1:1 (WAC 463-62-040.2.d), as well as consultation with the
17 TAC in addition to WDFW regarding the plan (Article IV.E.1).

18

19 **III. Adequacy of Post-Construction Avian Monitoring Plan**

20 A.) Seattle Audubon supports the inclusion of a Post-Construction Avian
21 Monitoring Plan in the Council's Recommendation Package. The specific components
22 that are required to be included in the plan are appropriate and will provide valuable
23 information for adaptive management of the Project operations. (Article VI.C.) The
24 Council falls short of its obligations, however, by not including a requirement in the
25 Recommendation Package for the Applicant to conduct a three year post-construction

1 avian displacement study. Such a study will help evaluate the extent to what Project
2 construction and operation displaces species from the Project area as well as the ability of
3 various bird species to adapt to the Project's presence. Beyond mortality carcass surveys,
4 there is a need to evaluate the impact on live birds at the Project site. This
5 recommendation was specifically supported by the Applicant's avian expert witness Mr.
6 Johnson (Transcript page 726, line 6 through page 728, line 13) as well as by the Counsel
7 of the Environment's avian expert witness Mr. McIvor (Transcript page 826, line 12
8 through page 830, line 23). Given the Council's statement that "*we do support taking the*
9 *opportunity to establish pre- and post-construction studies and reporting requirements*
10 *that will enable ongoing adjustments to continue to reduce adverse environmental*
11 *consequences*" (Council Order No. 868, pp. 24-25), it is critical that the Recommendation
12 Package be amended to include a requirement that the Applicant conduct a three year
13 post-construction avian displacement monitoring study.

14 B.) In addition to the requirement for the Applicant to "*perform a minimum of*
15 *two breeding season' raptor nest survey of the Project Area, including a 1 mile buffer,*"
16 (Article VI.C.2.), the Council should also include in the Recommendation Package a
17 requirement for the Applicant to conduct northern spotted owl surveys, conforming to the
18 current USFWS protocol, for a minimum of three years, in order to monitor presence or
19 absence. These surveys should be implemented in all potentially suitable habitat located
20 within a 1.8 mile radius of any turbine corridor. Given the multiple detections of an owl
21 in the project vicinity in 2010, and in light of the threatened status of this species, it is
22 essential that post-construction avian monitoring explicitly include owl protocol surveys.

23

24 **VI. Conclusion**

1 As the Council considers whether to forward to the Governor a Recommendation
2 Package for this Project, and if so what conditions should be included, it is essential that
3 it fully address the impacts the project would have on wildlife. Seattle Audubon requests
4 the reconsider the wildlife and habitat issues associated with the Project as specified
5 above. Thank you for consideration of our views.

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7 SIGNED this 26th day of October, 2011 at Seattle, Washington.

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11 Shawn Cantrell

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