

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of  
Application No. 2009-01

of

WHISTLING RIDGE ENERGY PROJECT LLC  
for

WHISTLING RIDGE ENERGY PROJECT

PREHEARING ORDER NO. 8  
COUNCIL ORDER NO. 852

Prehearing Order on Scheduling Matters;  
Notice of Discovery Conference  
(October 12, 2010)

Notice of Prehearing/Status Conference  
(November 5, 2010)

**Procedural Setting:**

The Washington State Energy Facility Site Evaluation Council scheduled a prehearing and status conference in this matter on September 22, 2010 at 10:00 a.m. in Olympia Washington, before Administrative Law Judge C. Robert Wallis.

**Participants:**

The following parties appeared and participated in the conference:

Applicant: Whistling Ridge Energy, LLC, by Darrell Peoples, Attorney, Olympia; Erin Andersen, attorney, Seattle, and Timothy McMahan, attorney, Vancouver, Washington.

Counsel for the Environment: Bruce H. Marvin, Asst. Attorney General, Olympia

Council Member Agency Appearing as Party: Dept. of Commerce, by Dorothy H. Jaffe, Asst. Attorney General, Olympia

**Intervenors:**

Friends of the Columbia Gorge Nathan Baker and Gary K. Kahn, attorneys, Portland

Save Our Scenic Areas J. Richard Aramburu, attorney, Seattle

Skamania County Agri-Tourism Association John Crumpacker, Board Member

Skamania County Economic Development Council Peggy Bryan, Executive Director

Seattle Audubon Society	Shawn Cantrell, Executive Director
Klickitat County Public Econ. Devel. Authority	Michael Canon, Executive Director
Yakama Nation/Cultural Resource Program	George Colby, attorney, Toppenish; Jessica Lally, Yakama Nation Archaeologist, Toppenish
Port of Skamania County, the City of White Salmon, and Skamania County Public Utility District No. 1	Ken Woodrich, attorney, Stevenson

Parties who entered no appearance were the Association of Washington Business, the Columbia River Gorge Commission, Wilbur Slockish, Jr., Johnny Jackson and the Klickitat and Cascades Tribes of the Yakama Nation.

### **Scope of the Conference**

The conference addressed uncontested procedural matters, including hearing preparation issues. This order summarizes the decisions on those matters and addresses some matters not resolved during the conference.

The conference also addressed certain contested issues involving the timing of the administrative hearing and the relationship between implementation of the Washington State Environmental Policy Act (SEPA) and the Administrative Procedure Act (APA).

To avoid unnecessary delay in circulating an affirmation of the scheduling decisions that were discussed, this order addresses only such matters. A subsequent order, to address concerns involving the SEPA-APA relationships and related timing issues, will follow shortly.

#### **A. Procedural Matters**

Several procedural matters were addressed at the conference.

- 1. Word-compatible documents.** The Council asks that parties submitting motions, answers, briefs, prefiled testimony and other documents also provide to the Council one copy in a format compatible with Microsoft Word. The Council often has need to quote passages of such documents. Availability in a Word-compatible format ensures that the Council need not require staff to re-key portions that are quoted. The Council asks that metadata be stripped from these documents, as the only purpose for their use is as noted. Formatting need not be identical with the original, so long as differences in formatting do not render the compatible document difficult to read.

2. **Addressing procedural questions, concerns or requests.** The Council has a small staff and a number of activities in progress that impede its ability to generate a speedy response, and some questions may be beyond Staff’s authority to respond. Please address general questions of process to Staff (“How does the Council count the response time?” “How many copies should we provide?” etc.). Please address discretionary matters (extensions of time to file or waiver of hard copy requirements, for example) to Mr. Wright and the Administrative Law Judge, using both email addresses for the latter. Doing so will help to ensure that you get a prompt response. Again because of staff size, please make all inquiries as far in advance as possible of the need for an answer.
  
3. **Objections to prefiled evidence.** Objections to the Applicant’s prefiled evidence should be submitted on the deadline for submitting responding evidence (November 1). Objections to responding evidence should be submitted on the deadline for rebuttal testimony. Objections to rebuttal evidence should be submitted at the prehearing conference on December 21, 2010.
  
4. **Witness counts and exhibit sequences.** Parties indicated the following estimated number of witnesses. If there is a substantial change in the estimate at any point, please advise the bench as soon as feasible. **NOTE: parties who did not attend the prehearing conference or who did not estimate the number of witnesses, and who do desire to present one or more witnesses, should provide inform the administrative law judge, along with the number of expected witnesses, within five days after service of this notice.**

<b>Party or parties</b>	<b>Number of witnesses</b>	<b>Exhibit sequences<sup>1</sup></b>
SOSA and Friends	three to five witnesses	21 through 30
Counsel for the Environment	one witness	31-33
Department of Commerce	one witness	34-36
Yakama Nation	two witnesses	37-40

<sup>1</sup> These numbers are reserved for the party or parties indicated. Some parties may decide that additional witnesses will be presented above the current estimates. Number sequences may be divided if necessary to accommodate additional witnesses.

<b>Party or parties</b>	<b>Number of witnesses</b>	<b>Exhibit sequences<sup>2</sup></b>
Economic Development Council	one witness	41-43
White Salmon, Port of Skamania County, Skamania P.U.D.	two witnesses	43-46
Skamania Agri-Tourism	no witnesses anticipated	47

5. **Stipulations.** Some parties indicated a desire to enter into stipulations with others for admission of documents. The Council supports such arrangements, although it reserves the right to reject stipulated evidence or require that it be supported with oral or written testimony. Parties may talk among themselves regarding such stipulations. The deadline for stipulations is the deadline for filing of the offering parties' testimony.
  
6. **Submission of documents in the SEPA record for consideration in the adjudicative record.** Two parties indicated a possible desire to submit to the adjudicative record, documents already in the SEPA record. We will address the relationship of the two records in a subsequent order. On the narrow question of whether such documents, if allowed, may be accepted without a physical copy but merely by reference to the SEPA record, our ruling is no. If a document is offered as an exhibit, it must be presented with the required number of copies. Relevant portions of a document whose other portions are not relevant may be submitted as a copy of the relevant portions. In exceptional circumstances, such as a very document that cannot be excerpted, or a copyrighted document of exceptional cost, parties may request an exception to the rule that the document must be physically presented with the appropriate number of copies.
  
7. **Deciding-agency witnesses.** Mr. Aramburu and Mr. Colby indicated the possible desire to call witnesses from EFSEC staff or BPA, respectively, regarding the SEPA process. That question will be addressed in a subsequent order.
  
8. **Prehearing order review schedule.** Applicable rules provide for a ten-day period for the filing of exceptions to "the" prehearing order. WAC 463-30-270. In this proceeding, with multiple prehearing conferences and multiple orders, we propose a five-day response time, calendar days for most routine matters such as scheduling, and business days, as noted in individual orders, for matters involving disputed issues that may require additional time.

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<sup>2</sup> These numbers are reserved for the party or parties indicated. Some parties may decide that additional witnesses will be presented above the current estimates. Number sequences may be divided if necessary to accommodate additional witnesses.

**B. Scheduling notices**

**NOTICE OF PREHEARING CONFERENCE  
REGARDING DISCOVERY DISPUTES  
(October 12, 2010)**

ALL PARTIES PLEASE TAKE NOTICE That the Council hereby sets a prehearing conference in this proceeding as follows:

A Prehearing Conference to address a discovery dispute in which SOSA and Friends have presented information requests that the Applicant opposes will be convened at **1:30 p.m., on October 12, 2010**, in Room 108 of the Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive Southwest, Olympia, Washington 98502, before Council Members who may attend and Administrative Law Judge C. Robert Wallis. Parties taking a position are asked to provide citations to relevant laws, rules, principles and judicial or administrative decisions to support their positions.

The purpose of this conference is to review and resolve the matters under dispute. **Parties to the proceeding who are not directly affected by the matters at issue need not attend.**

Parties may attend by telephone or in person. Parties may attend the conference remotely by 1, reserving a bridge line port and 2, calling the bridge line at least five minutes *prior to* the beginning of the conference. You may reserve a port and get call-in instructions by calling Ms. Talburt at 664-1359 or Ms. Michelle at 360-664-1363. Please do not use more ports than you have reserved.

**NOTICE OF PREHEARING AND STATUS CONFERENCE  
(NOVEMBER 5, 2010)**

ALL PARTIES PLEASE TAKE NOTICE That the Council hereby sets a prehearing conference in this proceeding as follows:

A Prehearing Conference and Status Conference No. 3 will be convened at 2:00 p.m., on November 5, 2010, in Room 206 (Hearing Room) of the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive SW, Olympia, Washington before Council Members who may attend and Administrative Law Judge C. Robert Wallis.

The purpose of this conference is to review the status of the proceeding and to consider procedural matters, including but not limited to procedural motions, including motions regarding evidence; and objections to prefiled evidence. Other matters related to the process of the hearing may be added to the agenda.

Parties are encouraged to attend in person, but may attend the conference remotely by 1, reserving a bridge line port and 2, calling the bridge line prior to the beginning of the conference. You may reserve a port and get call-in instructions by calling Ms. Talburt at 664-1359 or Ms. Michelle at 360-664-1363. Please do not use more ports than you have reserved.

Dated at Olympia, Washington, and effective this first day of October, 2010.

\_\_\_\_\_/s/\_\_\_\_\_  
C. Robert Wallis, Administrative Law Judge

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

**Notice to Parties:**

Unless modified, this prehearing conference order shall control further proceedings in this matter. We ask that any objections to this order be filed within five days after the service date of this order.