

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

POSTHEARING ORDER NO. 19

COUNCIL ORDER NO. 864

Post hearing order
on procedural matters

Several procedural matters remain for resolution prior to parties' final briefing. This order addresses the final exhibit list, the process and approximate timing of the site and KVA views, incorporation by reference in parties' briefs, and responds to apparent requests for oral argument.

Exhibits

A final, updated exhibit list is attached, bearing the service date of this order. It is marked as Exhibit No. 110, dated March 4, 2011, and governs the status of exhibits from this point forward.

The treatment of certain wind portrayal exhibits sponsored by Mr. Till, and portions of the application and three exhibits sponsored by or offered through Mr. Spadaro, were the subject of post-hearing process. The Council asked that the underlying data be provided for examination with reference to the exhibits, and asked that the parties coordinate their presentations (to ensure that the appropriate raw data would be provided). The parties did not coordinate their presentations. They did both present underlying data. However, they also presented additional and newly-created material, and proposed evidence, including information from persons whose prefiled testimony on the topic was withdrawn or rejected. The parties disputed each other's submissions in further submissions. We find the unrequested material to be unhelpful. The Council declines to consider any post-record offers of additional evidence and argument from any party and will not consider the raw underlying data that was provided.

The Council receives the challenged portions of the Application sponsored by Mr. Spadaro, the three exhibits offered on cross of Mr. Spadaro, and the two challenged exhibits from Mr. Till. The qualifications of the two witnesses are clear in the record and are available for consideration in the evaluation of the evidence.

Format and content of briefs.

Detailed formatting instructions for briefs were provided to parties at the post-hearing conference on January 20. No allowance was made for incorporation by reference, and no party requested the opportunity to make such incorporations. In their opening land use briefs, both Friends of the Columbia Gorge (“Friends”) and Save Our Scenic Area (“SOSA”) purported, merely by reference, to incorporate other lengthy documents into the text of their briefs for all the points raised in the incorporated documents. Each party purported to incorporate the brief of the other, and both to incorporate various materials that the Council received into the record at the land use hearing. Allowing the incorporation would result in virtual briefs that are much longer than allowed, less focused on the relevant issues and evidence, and much less helpful than a brief written to address specific issues in the allotted space while appropriately citing matters of record.¹ The attempted incorporations by reference are rejected.

Requests for Oral Argument.

SOSA and Friends both added a line “Oral argument requested” to the title of the briefs they submitted. Neither party offered any reason why their written briefs might not suffice for Council consideration of the issues raised. If Council members have questions and request oral argument to assist them in reaching a decision, we will schedule argument in consultation with the parties.

Site and KVA views.

Parties were offered the opportunity to comment on the timing and process for viewing the proposed site and viewing the proposed site from key viewing areas, or “KVA’s.” Applicant suggested that the Council proceed to perform the view without the presence of the parties, and that it visits all identified KVAs. Friends responded that the view should be open to others and that some KVAs would provide unnecessary duplication of others; it offered specific view suggestions. The Council believes it cannot properly prohibit any party from accompanying the Council as it views the relevant sites, nor exclude members of the public from observing.² The Council Staff will proceed with arrangements and will make efforts to accommodate parties’ schedule requests. Participants other than the Council will be responsible for their own transportation³ and no communication will be allowed between Council members and parties or other observers during the process.

¹ Friends’ brief acknowledged at page 4 that its purported incorporation is a conscious effort to avoid the briefing space limitations established for all parties.

²See, RCW 34.05.449(5).

³The site is on forested terrain with primitive roads, and the Council may have a large number of KVA sites to view. Observers will be responsible for their own transportation and for maintaining the pace needed to complete the views.

The Applicant has offered to the Council, and the Council may accept, the use of vehicles capable of off-road travel, and drivers familiar with the terrain, in order to view the proposed site.

Council staff anticipates that the view will not occur before the latter part of April, for optimal weather. Parties will be notified of the anticipated schedule when the schedule is confirmed.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

Dated at Olympia, Washington, this fourth day of March, 2011

/s/

C. Robert Wallis, Administrative Law Judge