BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of

Application No. 2009-01  Prehearing Conference
WHISTLING RIDGE ENERGY, LLC. Pages 1 - 23
WHISTLING RIDGE ENERGY PROJECT

A prehearing conference in the above matter was held on Friday, December 3, 2010, at the Washington State Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., Room 108, in Olympia, Washington at 2:00 p.m., before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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REPORTED BY:

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   JUDGE WALLIS: This is a prehearing conference,
   status conference in the matter of the application of
   Whistling Ridge Energy Project, LLC, for the Whistling Ridge
   Energy Project.

   My name is Robert Wallis. I'm the Administrative
   Law Judge for this proceeding, and we are holding this
   prehearing conference in the Offices of the Utilities and
Transportation Commission in Olympia, Washington.

I'm going to read the list of parties for this docket and ask the lead representative for each of the parties to introduce him or herself and any other person who is appearing on behalf of that party beginning with the Applicant Whistling Ridge.

MR. PEEPLES: Darrel Peeples is here and I think Tim McMahan will be on the phone.

MR. McMAHAN: I am on the phone and my colleague Eric Martin is sitting here with me.

JUDGE WALLIS: Counsel for the Environment?

MR. MARVIN: Bruce Marvin is here by phone.

JUDGE WALLIS: Department of Commerce?

MS. JAFFE: Dorothy Jaffe is here by phone.

JUDGE WALLIS: Friends of the Columbia Gorge?

MR. KAHN: Gary Kahn by phone and Nathan Baker is with me.

JUDGE WALLIS: Save our Scenic Area?

MR. ARAMBURU: Rick Aramburu is here by phone.

JUDGE WALLIS: Skamania County PUD No. 1?

Skamania County Economic Development Council?

Skamania County Agri-Tourism Association?

Association of Washington Business?

Columbia River Gorge Commission?

MR. KAHN: Judge, this is Gary Kahn. A couple
1 days ago I received a pleading from their counsel indicating
2 they were withdrawing their intervention.
3 JUDGE WALLIS: Thank you.
4 Port of Skamania County?
5 City of White Salmon?
6 Klickitat County Public Economic Development
7 Authority?
8 The Klickitat and Cascade Tribes of the Yakama
9 Nation?
10 And the Confederated Tribes and Bands of the
11 Yakama Nation?
12 MR. COLBY: George Colby by phone and Jessica
13 Lally by phone.
14 JUDGE WALLIS: Okay. Thank you very much.
15 I do want to thank you all for taking time from
16 your schedule this Friday afternoon, and we'll do our best
17 to make this process as brief and as productive as possible.
18 I am concerned about the logistical preparation
19 for the hearing. As most of you know the staff of the
20 Council is very small and the timing of the concluding
21 prehearing conference, status conference is such that there
22 is very little time between that and the start of the
23 hearing. So what I am hoping to do today is to get some
24 questions answered and some indication of how things are
25 going to play out so we can make sure that we are doing the
best job possible on behalf of each one of the parties to this proceeding.

This is a little bit complicated by the fact that not only is there a holiday during the week before the hearing, but there is a furlough day for state employees which means that there are three workdays, and there is a restriction against any excess time beyond the 32 hours during that pay period during that week period.

Therefore, we need to anticipate as many issues as possible again to help you do the best possible job for your clients. I'm going to run through a number of procedural matters here and ask for a status report and then see where we are at the conclusion.

In terms of the stipulations, I believe that there's been some mention of stipulations. Can we have an indication of what in general terms might be coming for stipulations and what parties would be involved? Let me ask if there are any?

Let the record show that we hear no response.

In terms of the rebuttal testimony, I'd like to hear who is planning to present rebuttal testimony and in general terms the volume of the presentation.

The Applicant, are you planning to present rebuttal?

MR. PEEPLES: Yes, we will have rebuttal
JUDGE WALLIS: Can you estimate the volume of that?

MR. PEEPLES: As far as pages?

JUDGE WALLIS: As far as number of witnesses and pages. I'm not asking for anything other than a very broad guess at this time.

MR. PEEPLES: Let me count on my fingers.

MR. KAHN: This is Gary Kahn. Friends intends to present -- and you're referring to the rebuttal testimony that we are suppose to submit by December 16. Correct?

JUDGE WALLIS: Yes, that's correct.

MR. KAHN: We intend to have three witnesses. In terms of time hard to say but not too terribly long. Part of it may depend on what we see from other parties on the 16th as well.

JUDGE WALLIS: Very well.

MR. PEEPLES: I think we'll probably have about five witnesses, correct me if I'm wrong, Tim, and not very long?

MR. McMAHAN: Well, actually I'm not so sure about that. It somewhat depends, but I think it's between five and ten witnesses.

JUDGE WALLIS: Would these be new witnesses?

MR. McMAHAN: A mix of new witnesses and about
half of them are those who filed direct testimony.

MR. PEEPLES: That's kind of what I was counting.

I was counting new witnesses.

MR. McMAHAN: Yes.

MS. ADELSMAN: Sorry. This is Hedia. I just joined. Sorry for the delay, for being late.

JUDGE WALLIS: Ms. Adelsman, thank you for joining us.

MS. ADELSMAN: Yes, you're welcome. Sorry about being late.

JUDGE WALLIS: Any other parties planning to present rebuttal?

MR. ARAMBURU: This is Rick Aramburu on behalf of SOSA. We will likely have two witnesses. Volume by way of page of testimony perhaps 25 or 30. There may be a mix of exhibits as well, 5 to 10 exhibits. We're not sure about that in terms of a mix of rebuttal exhibits as opposed to cross-examination exhibits, but we are contemplating at least two witnesses and probably 30 pages of testimony.

JUDGE WALLIS: Thank you. Do any other parties intend to present witnesses?

MS. JAFFE: Yes, this is Dorothy Jaffe with the Department of Commerce, and we do intend on having I believe two to three additional rebuttal witnesses. Two have already prefiled and there will be one new witness.
JUDGE WALLIS: Very well. Any other parties?

All right. Now, one person has already mentioned exhibits on cross, and I'm going to ask in terms of cross-examination of the opening and answering testimony how many exhibits, again in broad terms. Are we talking about one or two or are we talking about one hundred or two hundred beginning with the Applicant?

MR. PEEPLES: I'm not sure.

MR. McMAHAN: Tim McMahan here. I guess, no, we are not thinking about hundreds at all. I would say to the extent we cross-examine, and I think that we will be limited in the amount of cross-examination we do, I would say it would probably be just a few documents per witness.

MR. KAHN: This is Gary Kahn. I am going to echo what Mr. McMahan just said. We don't know exactly, but the number of exhibits will certainly be closer to one or two than to the hundred or two hundred.

JUDGE WALLIS: Very well.

MR. ARAMBURU: On behalf of SOSA, we are pulling together cross-examination exhibits now, and is it going to be 100? No. Is it going to be 10? No. Is it going to be 15 or 20? Probably so, something like that.

JUDGE WALLIS: Very good. This information is very helpful to us.

There has been an objection filed to Mr. Wiley's
I'm going to ask the parties if you need to have an early ruling on that or if the ruling would be timely if presented at the prehearing conference?

MR. PEEPLES: I think it would be timely presented at the prehearing conference.

Did everyone hear Mr. Peeples?

MR. KAHN: This is Gary Kahn. Since we're working on testimony for him, it would be helpful to know ahead of time because if you rule he is not an allowable witness we will have wasted our time and his time.

JUDGE WALLIS: Very well. Thank you. That helps us.

May I ask who joined the conference call?

MS. ANDERSON: Good Afternoon. This is Erin Anderson at Stoel Rives in the Seattle Office.

JUDGE WALLIS: Thank you.

MS. ANDERSON: Thank you.

MR. HAYES: Andy Hayes is also here with the Department of Natural Resources.

JUDGE WALLIS: Thank you, Mr. Hayes.

Mr. McMahan, you have filed a letter indicating that there is some effort going on in terms of hearing organization, and I wanted to ask you if there's been any follow up to that initial letter that you presented.

MR. McMAHAN: Tim McMahan here. I really would
say Mr. Aramburu did the first suggestion. I was just
giving our perspective on it. So I sent my e-mail on
Tuesday, the 30th of November, and I have not received a
response.

MR. PEEPLES: I guess I think I was tasked with
that last time, and what I plan to do as I thought I was
requested by the hearings officer is to come up with a list
of witnesses and witness order and groupings. The way
essentially it's always been done to my memory, and I think
the order of witnesses as outlined by Mr. McMahan's document
pretty much is what's consistently been done. It starts out
with a description of the project so everybody can get
oriented, and then it goes through and we're using the same
type of order on as essentially we've done at least for the
last, I don't know, ten cases.

What I plan to do when we have all the witness
lists, I plan to group them according to the order that
Mr. McMahan has put out, list the witness name, the
sponsor party, the subject matter, and I'll be sending
this out originally to all the attorneys asking for their
estimates of cross-examination time which will give us some
idea. And the way we've always done that in the past is we
have just put down whatever cross-examination time the
responding attorney puts down and take it at face value --
I'm not going to guess on cross-examination time -- and add
those together and try to come up with an order of how much
time it's going to take to go through these witnesses and
set them out on a day-to-day basis. So that's what I was
planning to do, and I'm planning to use the subject order
that Tim McMahan put out because that's what we've always
used.

MR. KAHN: Judge Wallis, this is Gary Kahn.

Generally the way I think Mr. Peeples just spoke is fine
except that we question the order, grouping of the
witnesses, the subject matter that were in Mr. McMahan's
letter.

There are some of the subject matters that are
clearly going to be more contentious than others. Some
there may not be any cross-examination or any rebuttal
witnesses on. What we would suggest -- and I think I also
speak for SOSA. Rick, tell me if you disagree -- that we
would think it would make more sense to have the issues that
we know are going to be contested and will take some time up
front and leave the ones that may or may not even be issues
for the end of the process rather than the other way around
which is how Mr. McMahan has it now.

Subject matters that I'm thinking from our
perspective would be the scenic and visual issues, wildlife,
the socioeconomic, and then I'm speaking more for the
Yakama, and I don't mean to, but cultural issues I know is
going to be an issue as well. Some of the other ones, for example, transportation and some of the minor may not be an issue at all. Why don't we leave those to the end, if they're going to be an issue at all, and deal with the ones we know will take up some time up front.

MR. PEEPLES: Well, I guess my response is I think the one's that are easy you get rid of first, and then you move on and take the contentious ones at the end. And the other thing we've always been able to do is adjust witness order. If any of the parties has a witness that they can't make it at a certain time, we've always been able to adjust witness order to take into account the individual problems with witnesses.

I think you need a description of the project just to get everybody going, and I just think trying to put all the contentious stuff up first I'm totally opposed to. That should come at the end. Get the other stuff out of the way first.

JUDGE WALLIS: What I'm going to do I think is ask the parties to agree on a time for a telephone conference among the parties so that this issue, these questions may be addressed. As to the presentation to the Council of the proposal, it would be very helpful if as to each of the topics the parties identify the name of the witness who may be or witnesses who may be involved and the pages and lines
of the direct testimony that would be at issue during the
discussion of that particular subject matter.

The Council, one or two of the members of the Council have expressed to me a desire to address the
significant questions earlier in the proceeding so that doesn't necessarily determine it, but it does indicate the only view that I have heard from Council Members.

MR. ARAMBURU: This is Rick Aramburu speaking. We feel strongly about that from our side. We have a couple of scheduling issues on the SOSA-Friends side, and we have two witnesses coming from California that we will need to book flights and accommodations for. So, again, we think that the issues that are the contentious ones should be grouped, and we have, for example, a scenic day to the extent that is a category and a wildlife day or something like that that we can set up. But just to alert everyone, my witness there's a conference on Friday, January 7 so he is not available that day.

The other matter that Friends and SOSA have been discussing is the timing of the public hearing which I think can be set. Our recommendation to the Council on that score is to set the evening session on Thursday evening, January 6, at a location to be determined and then a day session perhaps on the 7th.

Other counsel and other parties have warned me
that there's potentially a major football game that is going
to happen on the 10th of January, national championship
game, and that may keep people from attending a conference.
So we want to make sure that those things that are going on
in the rest of the world don't interfere. So that would be
our observation and recommendation on that score.

JUDGE WALLIS: Thank you. We've asked staff to
look into facility availability, and it was our preference
to have the public sessions relatively early in the process
so we were looking at days during that first week to hold
the public sessions.

MR. ARAMBURU: Mr. Wallis, may I just ask a
question about one of the statements, and that is
identification of lines of testimony. Would that be for
cross-examination purposes?

JUDGE WALLIS: No, the Council Members want to
have access before and during the examination of the
witnesses so that they can themselves look at the material
that the witness has presented. So if this topic is covered
in Witness A's testimony from page 17, line 3 until page 31,
line 6, that would be the information that would be helpful
to us. It doesn't have to be that precise I guess but in
terms of the general pages on which the witness addresses
that topic. Some of the witnesses address more than one
topic. If not, just the name of the witness would be
MR. ARAMBURU: Very well.

JUDGE WALLIS: It often happens in proceedings such as this that there are changes and corrections to the prefiled testimony. It is my strong preference that most of these be addressed by means of an errata sheet, and that can be presented at the time the witness is sworn, and we do not need to go through any of the minor corrections on the record. That will save us a little bit of time. Instead we can just indicate that on the errata sheet which pages and lines would be corrected.

If there is a significant substantive correction, then we would ask that that be addressed at the time the witness is sworn, and we also ask minor grammatical or punctuation errors that have no affect on the testimony not be addressed at all by an oral inquiry. It's okay if they are addressed in the errata sheet.

Now, are there any problems other than the ones we've touched on during that discussion that any of the parties would like to address here? Any concerns or issues that you would like to explore on the record?

MR. ARAMBURU: This is Rick Aramburu speaking.

JUDGE WALLIS: Mr. Aramburu, again I'm having quite a bit of trouble hearing you. So if you could keep your volume up and pull that microphone closer that I hope
MR. ARAMBURU: Okay.

JUDGE WALLIS: That's better. Thank you.

MR. ARAMBURU: I'll get my voice up here. As I understand the deadlines established, they include a deadline for rebuttal, for the identification of cross-examination exhibits by December 16, and it may be that the parties would use existing exhibits for cross-examination. Would there be a need to identify those as part of this disclosure?

JUDGE WALLIS: No. What we're looking is to have those prefiled or identified at least so that they can be identified on the record easily. We would like to have them prefiled on the original testimony, in the answering testimony so that the staff can distribute them to the Council Members prior to the hearing.

Again, we don't want to take up time during the hearing itself for housekeeping matters that we can address in advance.

MR. ARAMBURU: Would the Council then want to have copies of these?

JUDGE WALLIS: Yes, that is correct.

MR. ARAMBURU: Okay. So the Council and the parties then would receive copies of expected cross-examination exhibits.
JUDGE WALLIS: Yes, that's correct, and submitting a document would not require that you use it.

MR. ARAMBURU: Thank you.

MR. McMahan: Mr. Wallis, Tim McMahan here. It just occurred if we've got new witnesses coming in on the 16th, obviously we won't be filing cross-examination exhibits for those witness on the 16th.

JUDGE WALLIS: Yes, we have asked that those be presented at the prehearing conference on the morning of the first day.

MR. McMahan: Okay. All right.

MR. KAHN: This is Gary Kahn. I would like to go back two steps and revisit the issue of the public hearing.

JUDGE WALLIS: Yes.

MR. KAHN: Mr. Aramburu suggested Thursday night for the evening session and Friday for the day session, and, Judge Wallis, you indicated that you had heard some feedback from the Council Members to do it early in the week, early in the hearing. I don't know if Thursday and Friday is deemed early in the hearing, but we would urge that it be closer to those days than the beginning of the week for two reasons.

Number one, that's still right after the New Year, the Christmas-New Year's Holiday, and there could be people that are not back from vacation yet at the beginning of the
week, and secondly there may very well be members of the public who are going to be attending the adjudication part of the hearing and may want to hear what some of the witnesses say before they speak in public testimony. So we agree it should be earlier in the proceeding rather than later, but we urge it be sort of at the end of the first week.

JUDGE WALLIS: Very well. We will see what facilities are available when.

To allow us to have some comfort in the size of our facility, if any of the parties are aware that there are more than a few members of the public likely to be attending the adjudicative sessions, if you could let us know that would help us at least to ensure that there are adequate chairs in the room, and that the setup is designed as best as we can to accommodate people who wish to attend.

MR. ARAMBURU: I had just one more. This is Rick Aramburu again. I have just one more housekeeping matter. With respect to the cross-examination exhibits, would you like those to be numbered in some fashion in relation to the witness's designations or do we leave that matter for another time?

JUDGE WALLIS: Because we may have cross-examination exhibits from more than one party, I would suggest that they not be numbered, but that we take that up
when we see the order of cross-examination that the parties propose. If you could identify the order of the exhibits in your examination, that would be helpful; otherwise, we will do a tune up to that at the prehearing conference on the first day, and, of course, at that time we will look to the witnesses who are appearing first in the hearing session and see how far we get depending on what all we have to cover on that morning.

Okay. Will there be any questions or comments that any of the parties have?

MR. PEEPLES: Will you be putting out an order from this proceeding?

JUDGE WALLIS: I was not planning on putting out an order. If the parties would like, I will prepare a summary and distribute that.

MR. PEEPLES: That would be nice.

MR. KAHN: Yes, that would be helpful.

JUDGE WALLIS: Very well. Okay. If there is nothing further, then we will --

CHAIR LUCE: Judge Wallis, Jim Luce. Question?

JUDGE WALLIS: Mr. Luce.

CHAIR LUCE: When is the next prehearing conference?

JUDGE WALLIS: The next prehearing conference is scheduled for I believe ten o'clock in the morning on the
CHAIR LUCE: Let me raise something now, not necessarily to be decided now, and I have not had a chance to talk to other Council Members. But with respect to the view scape, the scenic issues as they've been discussed, I would like the Council, and I'll request the Council to consider the possibility of a view, if you will, from the sites that have been identified by the Applicant with visual simulations. In other words, I would like to drive to those sites and look, and I would like to do so with the benefit of having the visual simulations that have been prepared.

Now there have been some dispute I believe between the Applicant and Friends of the Columbia Gorge and SOSA with respect to the preparation of visual simulations, and I'm not a photographer, but it has something to do with 35 mm versus 55 mm and panoramic views. Correct me if I'm wrong on that.

MR. McMAHAN: That's correct.

CHAIR LUCE: I would like to see, and I'm speaking just for myself because I haven't had a chance to talk to Council Members, I would like to see both 35 mm and 55 mm visual simulations, and I would like to have those in hand at the time we hopefully schedule a view of those sites presumably by van or something else and notice, of course, to all parties.
MR. McMAHAN: Tim McMahan for the Applicant. We
would be happy to provide that information.

MR. KAHN: This is Gary Kahn. Mr. Luce, we
couldn't hear all of it. Were you suggesting that the
Council make a site visit?

CHAIR LUCE: Yes.

MR. KAHN: Okay.

CHAIR LUCE: Not a site visit necessarily to the
actual site where we have them, but a site visit along the
roads where the visual simulations have been identified by
the Applicant.

MR. KAHN: Okay. Thanks. Friends of the Gorge
are certainly in support of that.

MR. PEEPLES: And us.

JUDGE WALLIS: As you are preparing your proposed
schedule, it might be helpful to have the idea of the tour
in mind looking at the schedule.

CHAIR LUCE: If we could have both the 35 and 55
millimeter visual simulations at the same time I think the
tour will be greatly benefited by that. The Council Members
would be benefitted on the tour by that.

JUDGE WALLIS: Very good. Thank you, Chairman
Luce.

Is there anything else further?

Let the record show that there is no response.
Thank you all for your participation today.

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(Prehearing conference adjourned at 2:39 p.m.)
In re Whistling Ridge Energy Project
Application No. 2009-01

AFFIDAVIT

I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on December 2, 2010, in Olympia, Washington.

____________________________________
Shaun Linse, CCR 2029