

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)
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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:

SHAUN LINSE, CCR

CCR NO. 2029

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

23 My name is Robert Wallis. I'm the Administrative
24 Law Judge for this proceeding, and we are holding this
25 prehearing conference in the Offices of the Utilities and

1 Transportation Commission in Olympia, Washington.

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

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

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

11 JUDGE WALLIS: Counsel for the Environment?

12 MR. MARVIN: Bruce Marvin is here by phone.

13 JUDGE WALLIS: Department of Commerce?

14 MS. JAFFE: Dorothy Jaffe is here by phone.

15 JUDGE WALLIS: Friends of the Columbia Gorge?

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

18 JUDGE WALLIS: Save our Scenic Area?

19 MR. ARAMBURU: Rick Aramburu is here by phone.

20 JUDGE WALLIS: Skamania County PUD No. 1?

21 Skamania County Economic Development Council?

22 Skamania County Agri-Tourism Association?

23 Association of Washington Business?

24 Columbia River Gorge Commission?

25 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

1 best job possible on behalf of each one of the parties to
2 this proceeding.

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

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

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

19 Let the record show that we hear no response.

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

23 The Applicant, are you planning to present
24 rebuttal?

25 MR. PEEPLES: Yes, we will have rebuttal

1 testimony.

2 JUDGE WALLIS: Can you estimate the volume of
3 that?

4 MR. PEEPLES: As far as pages?

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

8 MR. PEEPLES: Let me count on my fingers.

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

12 JUDGE WALLIS: Yes, that's correct.

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

17 JUDGE WALLIS: Very well.

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

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

24 JUDGE WALLIS: Would these be new witnesses?

25 MR. McMAHAN: A mix of new witnesses and about

1 half of them are those who filed direct testimony.

2 MR. PEEPLES: That's kind of what I was counting.
3 I was counting new witnesses.

4 MR. McMAHAN: Yes.

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

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

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

11 JUDGE WALLIS: Any other parties planning to
12 present rebuttal?

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

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

22 MS. JAFFE: Yes, this is Dorothy Jaffe with the
23 Department of Commerce, and we do intend on having I believe
24 two to three additional rebuttal witnesses. Two have
25 already prefiled and there will be one new witness.

1 JUDGE WALLIS: Very well. Any other parties?

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

8 MR. PEEPLES: I'm not sure.

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

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

18 JUDGE WALLIS: Very well.

19 MR. ARAMBURU: On behalf of SOSA, we are pulling
20 together cross-examination exhibits now, and is it going to
21 be 100? No. Is it going to be 10? No. Is it going to be
22 15 or 20? Probably so, something like that.

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

25 There has been an objection filed to Mr. Wiley's

1 participation. I'm going to ask the parties if you need to
2 have an early ruling on that or if the ruling would be
3 timely if presented at the prehearing conference?

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

6 Did everyone hear Mr. Peeples?

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

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

13 May I ask who joined the conference call?

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

16 JUDGE WALLIS: Thank you.

17 MS. ANDERSON: Thank you.

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

20 JUDGE WALLIS: Thank you, Mr. Hayes.

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

25 MR. McMAHAN: Tim McMahan here. I really would

1 say Mr. Aramburu did the first suggestion. I was just
2 giving our perspective on it. So I sent my e-mail on
3 Tuesday, the 30th of November, and I have not received a
4 response.

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

16 What I plan to do when we have all the witness
17 lists, I plan to group them according to the order that
18 Mr. McMahan has put out, list the witness name, the
19 sponsoring party, the subject matter, and I'll be sending
20 this out originally to all the attorneys asking for their
21 estimates of cross-examination time which will give us some
22 idea. And the way we've always done that in the past is we
23 have just put down whatever cross-examination time the
24 responding attorney puts down and take it at face value --
25 I'm not going to guess on cross-examination time -- and add

1 those together and try to come up with an order of how much
2 time it's going to take to go through these witnesses and
3 set them out on a day-to-day basis. So that's what I was
4 planning to do, and I'm planning to use the subject order
5 that Tim McMahan put out because that's what we've always
6 used.

7 MR. KAHN: Judge Wallis, this is Gary Kahn.
8 Generally the way I think Mr. Peebles just spoke is fine
9 except that we question the order, grouping of the
10 witnesses, the subject matter that were in Mr. McMahan's
11 letter.

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

22 Subject matters that I'm thinking from our
23 perspective would be the scenic and visual issues, wildlife,
24 the socioeconomic, and then I'm speaking more for the
25 Yakama, and I don't mean to, but cultural issues I know is

1 going to be an issue as well. Some of the other ones, for
2 example, transportation and some of the minor may not be an
3 issue at all. Why don't we leave those to the end, if
4 they're going to be an issue at all, and deal with the ones
5 we know will take up some time up front.

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

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

19 JUDGE WALLIS: What I'm going to do I think is ask
20 the parties to agree on a time for a telephone conference
21 among the parties so that this issue, these questions may be
22 addressed. As to the presentation to the Council of the
23 proposal, it would be very helpful if as to each of the
24 topics the parties identify the name of the witness who may
25 be or witnesses who may be involved and the pages and lines

1 of the direct testimony that would be at issue during the
2 discussion of that particular subject matter.

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

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

19 The other matter that Friends and SOSA have been
20 discussing is the timing of the public hearing which I think
21 can be set. Our recommendation to the Council on that score
22 is to set the evening session on Thursday evening, January
23 6, at a location to be determined and then a day session
24 perhaps on the 7th.

25 Other counsel and other parties have warned me

1 that there's potentially a major football game that is going
2 to happen on the 10th of January, national championship
3 game, and that may keep people from attending a conference.
4 So we want to make sure that those things that are going on
5 in the rest of the world don't interfere. So that would be
6 our observation and recommendation on that score.

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

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

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

1 adequate.

2 MR. ARAMBURU: Very well.

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

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

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

22 MR. ARAMBURU: This is Rick Aramburu speaking.

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

1 will help.

2 MR. ARAMBURU: Okay.

3 JUDGE WALLIS: That's better. Thank you.

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

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

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

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

22 JUDGE WALLIS: Yes, that is correct.

23 MR. ARAMBURU: Okay. So the Council and the
24 parties then would receive copies of expected
25 cross-examination exhibits.

1 JUDGE WALLIS: Yes, that's correct, and submitting
2 a document would not require that you use it.

3 MR. ARAMBURU: Thank you.

4 MR. McMAHAN: Mr. Wallis, Tim McMahan here. It
5 just occurred if we've got new witnesses coming in on the
6 16th, obviously we won't be filing cross-examination
7 exhibits for those witness on the 16th.

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

11 MR. McMAHAN: Okay. All right.

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

14 JUDGE WALLIS: Yes.

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

23 Number one, that's still right after the New Year,
24 the Christmas-New Year's Holiday, and there could be people
25 that are not back from vacation yet at the beginning of the

1 week, and secondly there may very well be members of the
2 public who are going to be attending the adjudication part
3 of the hearing and may want to hear what some of the
4 witnesses say before they speak in public testimony. So we
5 agree it should be earlier in the proceeding rather than
6 later, but we urge it be sort of at the end of the first
7 week.

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

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

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

23 JUDGE WALLIS: Because we may have
24 cross-examination exhibits from more than one party, I would
25 suggest that they not be numbered, but that we take that up

1 when we see the order of cross-examination that the parties
2 propose. If you could identify the order of the exhibits in
3 your examination, that would be helpful; otherwise, we will
4 do a tune up to that at the prehearing conference on the
5 first day, and, of course, at that time we will look to the
6 witnesses who are appearing first in the hearing session and
7 see how far we get depending on what all we have to cover on
8 that morning.

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

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

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

16 MR. PEEPLES: That would be nice.

17 MR. KAHN: Yes, that would be helpful.

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

20 CHAIR LUCE: Judge Wallis, Jim Luce. Question?

21 JUDGE WALLIS: Mr. Luce.

22 CHAIR LUCE: When is the next prehearing
23 conference?

24 JUDGE WALLIS: The next prehearing conference is
25 scheduled for I believe ten o'clock in the morning on the

1 21st of December.

2 CHAIR LUCE: Let me raise something now, not
3 necessarily to be decided now, and I have not had a chance
4 to talk to other Council Members. But with respect to the
5 view scape, the scenic issues as they've been discussed, I
6 would like the Council, and I'll request the Council to
7 consider the possibility of a view, if you will, from the
8 sites that have been identified by the Applicant with visual
9 simulations. In other words, I would like to drive to those
10 sites and look, and I would like to do so with the benefit
11 of having the visual simulations that have been prepared.

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

18 MR. McMAHAN: That's correct.

19 CHAIR LUCE: I would like to see, and I'm speaking
20 just for myself because I haven't had a chance to talk to
21 Council Members, I would like to see both 35 mm and 55 mm
22 visual simulations, and I would like to have those in hand
23 at the time we hopefully schedule a view of those sites
24 presumably by van or something else and notice, of course,
25 to all parties.

1 MR. McMAHAN: Tim McMahan for the Applicant. We
2 would be happy to provide that information.

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

6 CHAIR LUCE: Yes.

7 MR. KAHN: Okay.

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

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

14 MR. PEEPLES: And us.

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

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

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

24 Is there anything else further?

25 Let the record show that there is no response.

1 Thank you all for your participation today.

2 * * * * *

3 (Prehearing conference adjourned at 2:39 p.m.)

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In re Whistling Ridge Energy Project
Application No. 2009-01

A F F I D A V I T

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