Special Meeting Regarding Whistling Ridge Energy, LLC

Washington State Energy Facility Site Evaluation Council

December 27, 2011
STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

Utilities and Transportation Commission Building

1300 S. Evergreen Park Drive SW, Room 206

Olympia, Washington

Tuesday, December 27, 2011, 10:00 a.m.

SPECIAL MEETING

REGARDING

WHISTLING RIDGE ENERGY, LLC

Verbatim Transcript of Proceeding

REPORTED BY:  JOLENE C. HANECA, CCR# 2741

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APPEARANCES

Councilmembers Present in Attendance:
Jim Luce, EFSEC Chair

Councilmembers Present in Attendance Via Phone:
Dick Fryhling, Department of Commerce
Jeff Tayer, Department of Fish and Wildlife
Andrew Hayes, Department of Natural Resources
Dennis Moss, Utilities and Transportation Commission
Hedia Adelsman, Department of Ecology
Doug Sutherland, Skamania County

Staff in Attendance:
Al Wright, EFSEC Manager
Stephen Posner, Compliance Manager
Amber George, Office Assistant 3
Gordon Karg, Assistant Attorney General

Guests in Attendance:
Mark Anderson, Friends of the Columbia Gorge
Nathan Baker, Friends of the Columbia Gorge
Gary Kahn, Department of Commerce
Phil Collins, Interested Citizen

Guests in Attendance via Phone:
Richard Aramburu, Aramburu & Eustis, SOSA
Eric Martin, Stoel Rives, Whistling Ridge
David McClure, Klickitat County
OLYMPIA, WASHINGTON, DECEMBER 27, 2011

10:00 A.M.

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CHAIR LUCE: Special Meeting of the Washington State Energy Facility Site Evaluation Council will come to order. Today is Tuesday, December 27th, 2011. The time is 10:00 a.m. We are meeting at the Utilities and Transportation Commission Building in Olympia, Washington.

Would the clerk please call the roll.

THE CLERK: Chair?

CHAIR LUCE: Chair is present.

THE CLERK: Department of Commerce?

Department of Ecology?

MR. WRIGHT: Hedia is on.

UNIDENTIFIED SPEAKER: Department of Ecology, I got. I'm sorry. I'm going to try another number.

CHAIR LUCE: Is the Department of Commerce present?

MR. FRYHLING: Yeah. This is Dick.

CHAIR LUCE: Thank you.

MR. FRYHLING: Oh, okay. You're already going through?

CHAIR LUCE: We're going through the roll at
MR. WRIGHT: Is your mike on?

MR. FRYHLING: My computer clock just turned over to 10 o'clock, so.

CHAIR LUCE: That's okay. Here we go.

THE CLERK: Department of Ecology?

CHAIR LUCE: Go ahead.

THE CLERK: Department of Fish and Wildlife?

Department of Natural Resources?

MR. HAYES: Andy Hayes, present.

THE CLERK: Utilities and Transportation Commission?

MR. MOSS: This is Dennis Moss.

THE CLERK: Skamania County?

CHAIR LUCE: I think we have a little watch differentiation. So let's try to call the roll again.

THE CLERK: Department of Ecology?

Fish and Wildlife?

Natural Resources?

MR. HAYES: Andy Hayes, here.

THE CLERK: Utilities and Transportation Commission?

MR. MOSS: Dennis Moss is on the line.

THE CLERK: Skamania County?

CHAIR LUCE: How many people do we have here?
1     Do we have a quorum?

2             MR. WRIGHT:  No.

3             MR. TAYER:  Mr. Chair, this is Jeff Tayer.

4             CHAIR LUCE:  Jeff Tayer. Thank you, Jeff

5             Tayer.

6             MR. WRIGHT:  You've got a quorum.

7             CHAIR LUCE:  All right. So let's reconstruct

8             the members of the Commission that are present. We have

9             Jeff Tayer, correct?

10            MR. TAYER:  I'm here.

11            CHAIR LUCE:  We have Dick Fryhling.

12            MR. FRYHLING:  I'm here.

13            CHAIR LUCE:  We have Dennis Moss.

14            MR. MOSS:  I am here.

15            CHAIR LUCE:  We have Andy Hayes.

16            MR. HAYES:  I am here.

17            CHAIR LUCE:  All right. Now, have any other

18            councilmembers come on since the beginning of this

19            elaborate roll call?

20            All right. We will begin with four, which

21            constitutes a quorum.

22            I will now ask the people on the phone to

23            please identify themselves. Speak slowly, because we

24            have a new court reporter here and we want to make sure

25            we get it right.
MR. McCLURE: David McClure, Klickitat

(inaudible.)

CHAIR LUCE: Go ahead people on the phone.

MR. ARAMBURU: This is Richard Aramburu, A-R-A-M-B-U-R-U, representing SOSA.

CHAIR LUCE: Thank you, Richard.

MR. MARTIN: Eric Martin from Stoel Rives for Whistling Ridge.

CHAIR LUCE: Thank you. Anyone else on the phone?

All right. The purpose of today's meeting is to finalize the Council's process with respect to Whistling Ridge Energy Project, LLC.

We have an agenda that councilmembers have been provided. Are there any requests to change or modify that agenda?

Hearing none, the -- I'm sorry, did you raise your hand? Hearing none, the agenda is adopted.

I would like to recognize Mr. Gordon Karg. Is that the correct pronunciation, sir?

MR. KARG: Yes, Chair.

CHAIR LUCE: Our new counsel for the Environment, Assistant Attorney General.

MR. KARG: Thank you, sir.

CHAIR LUCE: I would ask staff, Al Wright, to
summarize what has been previously provided to and
reviewed by the Council. That would be Order No. 870 and
Resolution 332, which has been reformatted without a word
being changed into a letter format, and those are the two
items on which the Council will be acting today.

And someone else just came on the phone. If

you could --

MS. ADELSMAN: It's me. It's Hedia.

CHAIR LUCE: Okay, well.

MS. ADELSMAN: Good morning.

CHAIR LUCE: Good morning, Hedia. We're moving

into the action items at this point in time.

MS. ADELSMAN: Sorry, I missed it.

MR. FRYHLING: This is Dick Fryhling. Are

there any people in the audience that are participants in

this?

CHAIR LUCE: Yes, there are. Mr. Kahn is here

and others. So would the audience members please

identify themselves for Councilmember Fryhling?

MR. KAHN: Gary Kahn, representing Friends of

the Columbia Gorge.

MR. BAKER: Nathan Baker, representing Friends

of the Columbia Gorge.

MR. ANDERSON: Mark Anderson with the State

Department of Commerce.
PHIL COLLINS: Phil Collins, interested citizen.

CHAIR LUCE: All right, thank you. We particularly appreciate interested citizens. The phone keeps beeping, but we will assume we can go forward at this point in time.

Would you care to please summarize Order 870, Al?

MR. WRIGHT: Yes. You have in front of you a completed, a completed order that the Council --

(Noise on the speakerphone.)

CHAIR LUCE: I agree. Yes.

MR. WRIGHT: That's similar to the comments we've gotten.

CHAIR LUCE: All right, Al. That was very good, by the way.

MR. WRIGHT: We do have, well, still a draft, I guess, Council Order in its final form 870. It's been reviewed, circulated and reviewed in draft form. We now have it in final form for your consideration and vote.

It responds to -- as you know, we were required by law to conduct a 20-day period after the Council voted on October 6th to allow for petition for reconsideration. That closed on October 27th.

We received five petitions and an objection,
which we will deal with later today; and then we allowed
15 days, which closed on November the 14th, for responses
to those petitions, and we had six responses.

Order 870 now is a compilation of the Council's
response to those petitions and the order resulting from
the Council's analysis of the petitions and the responses
to petitions.

I don't know. Do you want to go through any
detail at this point, or?

CHAIR LUCE: I don't think that that's
necessary. You might, if you wanted to highlight
something, there were two issues that particularly are
addressed in here.

MR. WRIGHT: The issues of greatest concern and
the amount of effort that the Council put into
responding, not that the effort on other issues was not
as important, but the two that stand out of course, and
it's no surprise, one is the land use issue, which has
continued to be controversial throughout this process;
and, second, is the aesthetic and viewscape issues
relating to the Council's, or the Council's order to
allow a certain amount of turbines within the boundary
area.

Those are the two that received the most
attention. The remaining of the issues, probably the
third in order is the avian and wildlife issues.

Many of the issues -- there were very few things in both Order 868 and 869 that were not covered, and there were many of the issues that were combined into more generalized responses in this order, but those three are the primary issues that the Council was responding to.

CHAIR LUCE: And I guess I would read the draft, until it's adopted, the summary.

The Council has considered all petitions for reconsideration as required under RCW 34.05.470 and WAC 463-30-335. EFSEC finds and concludes that none of the petitions raises any factual or legal arguments that EFSEC has not already heard during the adjudication and in post-hearing briefs, deliberated upon, and discussed in Orders 868 and 869 and the draft Site Certification Agreement. No basis has been provided to justify any changes in the Council's findings, conclusions, or recommendations.

Hence, the Council -- and this is a draft -- denies all motions for reconsideration, and I should say at the same time, the recommendation of the Council is to deny opportunity for oral argument, as requested by some of the parties.

Is there a discussion among the councilmembers
with respect to Order No. 870?

Is there a motion to adopt Order 870 as proposed and provided to councilmembers and the public?

MR. FRYHLING: This is Dick Fryhling. I would so move.

CHAIR LUCE: There is a motion. Do I hear a second?

MR. HAYES: This is Andy Hayes. I will second that motion.

CHAIR LUCE: There's a motion and a second. Is there a discussion among the councilmembers with respect to Order No. 870?

MR. FRYHLING: This is Dick Fryhling. I just want to say I really appreciate that order, the way it's been done and how it covered all the various arguments that were presented and how we resolved that problem. I want to thank the drafter of that order.

CHAIR LUCE: Thank you. Any other discussion? If not, the clerk will call the roll. Clerk?

THE CLERK: Chair?

CHAIR LUCE: Chair votes aye.

THE CLERK: Commerce?

MR. FRYHLING: Commerce votes aye.

THE CLERK: Ecology?

Fish and Wildlife?
Special Meeting Regarding Whistling Ridge Energy, LLC - 12/27/2011

1 MR. TAYER: Jeff Tayer votes yes.
2 THE CLERK: Natural Resources?
3 MR. HAYES: Andy Hayes votes yes.
4 THE CLERK: Utilities and Transportation Commission?
5 MR. MOSS: Dennis Moss votes yes.
6 CHAIR LUCE: Coming back to Hedia, are you on the phone?
7 THE CLERK: Ecology?
8 CHAIR LUCE: We will take a pass on Hedia. The clerk will report the vote.
9 MR. WRIGHT: Mr. Chair?
10 CHAIR LUCE: Yes?
11 MR. WRIGHT: You might check to see if Doug Sutherland is on the line by now.
12 CHAIR LUCE: Doug, are you on the phone?
13 MS. ADELSMAN: I'm here, too. I'm sorry. I was on mute and I had to take it off. I vote yes.
14 CHAIR LUCE: You vote yes. Is Mr. Sutherland on the phone? He's not.
15 The clerk will report the vote. The vote is all in favor, unanimous; Doug Sutherland being absent and excused. Thank you very much. That concludes the Council's action on Order 870.
16 The next item for consideration is what was
earlier written, drafted as a resolution, and now has
been rewritten without any words being changed, with the
exception of "whereas," as a letter.

Councilmembers have had a chance to review the
resolution, reconstituted as a letter, No. 332.

Are there any comments on the resolution, now a
letter?

MS. ADELSMAN: No.

CHAIR LUCE: Councilmembers, do I hear a motion
to adopt the sending of this letter as a letter
supporting the position of the Council?

MR. FRYHLING: Yeah, I would so move. This is
Dick Fryhling.

CHAIR LUCE: Thank you. Do I have a second?

MS. ADELSMAN: I second.

CHAIR LUCE: The motion is seconded.

Is there any consideration or any comments or
questions by councilmembers?

All right. Hearing none, the clerk will call
the roll.

THE CLERK: Chair?

CHAIR LUCE: The Chair votes aye.

THE CLERK: Department of Commerce?

MR. FRYHLING: Dick Fryhling votes aye.

THE CLERK: Ecology?

THE CLERK: Fish and Wildlife?

MR. TAYER: Jeff Tayer votes yes.

THE CLERK: Natural Resources?

MR. HAYES: Andy Hayes votes yes.

THE CLERK: Utilities and Transportation Commission?

MR. MOSS: Dennis Moss votes yes.

CHAIR LUCE: All right. The last matter before the Council is a response to a letter regarding SEPA. The letter will be issued by our SEPA designated official, Al Wright.

Councilmembers have been provided a draft of that letter. It does not require Council action, as the action is by our SEPA official.

Have councilmembers had a chance to review this letter?

MR. WRIGHT: Yes, they have. It went out with the packet, including both Resolution 870 in final form -- I mean Order 870 in final form, Resolution 332, and a draft of this letter.

MS. ADELSMAN: Yes.

CHAIR LUCE: Councilmembers, I would request -- do you have any comments at this time? I guess I would rephrase that.
MR. FRYHLING: Dick Fryhling. I don't have any comments.

CHAIR LUCE: All right. Other councilmembers have any comments?

MS. ADELSMAN: No.

CHAIR LUCE: May I take the silence as approval of the letter from the councilmembers' perspective?

MS. ADELSMAN: Yes.

MR. TAYER: This is Jeff Tayer. You may.

MR. HAYES: This is Andy Hayes. Yes.

MR. MOSS: Yes.

CHAIR LUCE: All right.

MS. ADELSMAN: Yes for me.

CHAIR LUCE: And yes for the Chair.

All right. I will assume that that letter will be sent out this afternoon or shortly thereafter by our SEPA official, Mr. Wright.

MR. WRIGHT: Yes, sir.

CHAIR LUCE: Are there any other matters to come before the Council today?

MR. WRIGHT: There are no matters. I would simply point out and remind the Council, since we won't probably speak again until next year, that we presented you at the last meeting with the meeting dates for 2012.

I don't believe Kayce has heard anything back
from any of you. If you would take a look at those. If you have any conflicts or problems, let us know, because right after the first of the year we're going to submit these as our official meeting dates for 2012.

MR. TAYER: Mr. Chair?

MS. ADELSMAN: I'm good with it.

CHAIR LUCE: All right, "Mr. Chair," I heard you first.

MR. TAYER: Yes. On the letter, the SEPA letter, I wonder -- this must be pretty cryptic to most of the people in the audience and on the phone. I wonder if Al could just very quickly summarize what we're talking about.

MR. WRIGHT: Okay. Let me dig it back out.

The letter is a joint letter from Friends and SOSA requesting an either modification to or supplement -- excuse me, either a supplement to or a revision of our final Environmental Impact Statement on the Whistling Ridge Project, dated August 12, 2011.

The letter is dated November 11, 2011, and it asks for that consideration because of three pieces of information that are cited: One is the U.S. Fish and Wildlife Service revised recovery plan for the Northern Spotted Owl; two, the fact that the Council on October 6th adopted an aesthetic and cultural heritage
impact description in its order, which is -- which changes the applicant's configuration of turbines; and, three, the archaeological discovery that has been found on Chemawa Hill; and because of those three considerations, they're saying, they contend, that this is new information and therefore requires to either supplement or revise the Environmental Impact Statement.

We have responded to those three items. First, the Northern Spotted Owl issue is something that is part of our joint SEPA/NEPA process with the Bonneville Power Administration.

The Bonneville Power Administration has been in contact with the U.S. Fish and Wildlife service. U.S. Fish and Wildlife Service on December 9th wrote a letter stating that their position has not changed relative to the Section 7 consultation required under the Endangered Species Act with the Bonneville Power Administration.

And hence, since that letter has not been modified, there basically is no new circumstance or conditions relative to this specific project. So there is no need to or requirement to supplement or revise the final EIS based on the Spotted Owl issue.

The second contention is that because the Council found under its aesthetic and cultural heritage impacts to change the proposed turbine configuration,
that that is a change of conditions and therefore the Council should reopen the final EIS.

The response in the letter is that, while the Council did change the proposed turbine configuration within the application, that is a normal and accustomed process in the Council's proceedings.

The analysis the Council used to come to that conclusion was exactly the same analysis that was used in the final Environmental Impact Statement. There are no new conditions, there are no new information, and there is no new data used in that process.

While the Council may have come to different conclusions than the person who conducted the same process with the same data and the same technique in the EIS, there is basically no change in condition. So Council is finding that there is no, really, reason to reopen or supplement the EIS, because there are no changed conditions.

Lastly, the discovery of the archeological object, which is a broken arrowhead on Chemawa Hill, is somewhat the same consideration.

All parties have come to the agreement that the Chemawa Hill area is an important archeological area of consideration. The Council included a proposed protection plan in its draft SCA for the Governor to
I think all parties have come to that conclusion, that that's an area that needs to be of archeological concern and protection. So therefore, whether there was a broken arrowhead found on that site or 150 broken arrowheads found on that site, it doesn't change the conclusion and the information that is in the final EIS and in the Council's order, that this is an area of concern and needs protection.

Therefore, we found there wasn't any need to supplement or revise the final EIS. So therefore, in conclusion, the consideration is denied.

CHAIR LUCE: Thank you. Anything else from councilmembers?

Going back to what I believe was the earlier question of councilmembers, is there a consensus that the letter as written and reviewed by you, while it will be sent out and Al has the authority to send it out on his own, you have confirmed that the letter meets your expectations and you approve of it?

UNIDENTIFIED SPEAKER: Yes.

MS. ADELSMAN: Yes.

UNIDENTIFIED SPEAKER: Yes.

MR. SUTHERLAND: Chairman Luce, this is Doug.

I agree, also.
CHAIR LUCE: All right, Doug. So I'm hearing unanimity that the letter should be sent out.

Doug, we had before you came on approved Order 870 and the resolution which you had a chance to review.

Do you care to be recorded on either of those?

MR. SUTHERLAND: Chairman Luce, I have reviewed them. Though I could have done some wordsmithing, I think that what was done on both the order and the letter was very good, and I applaud the staff and whoever worked on that for the very well done capturing of the discussion and capturing the intent and purpose, as well as concurring with the outcome.

So if you could add me to as one that would vote in favor of both of those.

CHAIR LUCE: We will so add you, Doug. So the vote is unanimous, all councilmembers.

Is there anything else to come before the Council, Al?

MR. WRIGHT: No, sir.

CHAIR LUCE: Stephen?

MR. POSNER: No.

CHAIR LUCE: Councilmembers have anything else to raise?

MS. ADELSMAN: No.

MR. FRYHLING: This is Dick. No.
CHAIR LUCE: We will wish you a Happy New Year.

And as members of the audience and others are aware, the process from this point forward will be to sign the orders and to forward to the Governor for her review, under appropriate statutes, the recommendation of the Council with respect to the Whistling Ridge Energy Project.

That being said, this meeting is adjourned.

(Whereupon, the meeting was adjourned at 10:23 a.m.)

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CERTIFICATE

STATE OF WASHINGTON  )
                     ) SS
COUNTY OF KING       )

I, JOLENE C. HANECA, a Certified Shorthand Reporter and Notary Public in and for the State of Washington, do hereby certify that the foregoing transcript is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of JANUARY, 2012.

JOLENE C. HANECA, RPR, CCR

My commission expires:
March 28, 2014