

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Whistling Ridge Energy, LLC’s September 13, 2023 Request to Extend the Term of the 2012 Site Certification Agreement for the Whistling Ridge Energy Project

FRIENDS OF THE COLUMBIA GORGE
AND SAVE OUR SCENIC AREA’S
APPLICATION FOR AN ADJUDICATIVE
PROCEEDING

In the Matter of Whistling Ridge Energy, LLC’s September 13, 2023 Application to Transfer the 2012 Site Certification Agreement for the Whistling Ridge Energy Project to Twin Creeks Timber, LLC as the New Parent of Whistling Ridge Energy, LLC

I. INTRODUCTION

Pursuant to RCW 34.05.413, Friends of the Columbia Gorge (“Friends”) and Save Our Scenic Area (“SOSA”) respectfully file this Application for an Adjudicative Proceeding (“Application”) requesting that the Council commence an adjudicative proceeding in the above-captioned matters.¹

II. APPLICABLE AUTHORITY

This Application requests an adjudicative proceeding on two separate grounds, one under RCW 34.05.413(1) and the other under RCW 34.05.413(2), two subsections of the Washington Administrative Procedures Act (“WAPA”).

First, RCW 34.05.413(2) states that “[w]hen required by law or constitutional right, and upon the timely application of any person, an agency *shall* commence an adjudicative proceeding” (emphasis added). This is the mandatory path for an adjudication.

¹ On September 18, 2023, Friends moved the Council to consolidate the above-captioned matters, except that the hearings for each matter must be held separately. On April 16, 2024, Friends formally renewed that motion, which remains pending. The instant Application requests an adjudicative proceeding in both of these matters, whether or not they are consolidated.

1 Second, RCW 34.05.413(1) states that “[w]ithin the scope of its authority, an agency *may*
2 commence an adjudicative proceeding at any time with respect to a matter within the agency’s
3 jurisdiction” (emphasis added). This is the discretionary path for an adjudication.

4 Here, the Council *must* commence an adjudicative proceeding (or proceedings, if the
5 matters are not consolidated) pursuant to RCW 34.05.413(2), and also *should* commence an
6 adjudicative proceeding (or proceedings) pursuant to RCW 34.05.413(1). Friends and SOSA
7 request that the Council enter an Order determining under both statutory subsections to
8 commence an adjudication (or adjudications).

9 III. PROCEDURES

10 The WAPA authorizes any person to file an application for an adjudicative proceeding.
11 RCW 34.05.413, .419.²

12 The Council has thirty days from receipt of this Application to “examine the application,
13 notify the applicant of any obvious errors or omissions, request any additional information the
14 agency wishes to obtain and is permitted by law to require, and notify the applicant of the name,
15 mailing address, and telephone number of an office that may be contacted regarding the
16 application.” RCW 34.05.419(2).

17 The Council then has another sixty days (*i.e.*, ninety days from receipt of the Application)
18 to commence an adjudicative proceeding pursuant to the WAPA, or to decide not to conduct an
19 adjudication. RCW 34.05.419(1)(b), (1)(c).

20 Commencing an adjudicative proceeding merely requires “notif[y]ing] a party ‘that’ a stage
21 of an adjudicative proceeding will be conducted, not ‘when’ it will be conducted.” *All Natural*
22

23
24 ² For purposes of the provisions of the WAPA and EFSEC Rules cited herein, an
25 “adjudicative proceeding” means an adjudicative proceeding under WAPA and WAC Chapter
26 463-30, *not* an open public meeting or hearing under the Open Public Meetings Act (“OPMA”).
27 *See Johnson v. Wash. State Conservation Comm’n*, 16 Wn. App. 2d 265, 290–91, 480 P.3d 502,
28 515–16 (2021) (noting that pursuant to RCW 42.30.140(3), the WAPA controls over OPMA);
29 RCW 34.05.010(1) (WAPA definition of “adjudicative proceeding”), 34.05.410–.494 (WAPA
provisions governing adjudicative proceedings); WAC 463-30-010 (“The purpose of this chapter
is to set forth procedures by which adjudicative proceedings are to be conducted before the
[C]ouncil under chapter 34.05 RCW.”).

1 *Herbs, LLC v. Wash. State Liquor & Cannabis Bd.*, 17 Wn. App. 2d 1072, 2021 WL 2327709, at
2 *11 (June 8, 2021) (unpublished); RCW 34.05.413(5) (“An adjudicative proceeding commences
3 when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or
4 other stage of an adjudicative proceeding will be conducted.”); *but see* WAC 463-30-080
5 (“Adjudicative proceedings [conducted by EFSEC] shall commence upon issuance of a formal
6 notice of hearing or prehearing conference.”).

7 “If an agency decides not to conduct an adjudicative proceeding in response to an
8 application, the agency shall furnish the applicant a copy of its decision in writing, with a brief
9 statement of the agency’s reasons and of any administrative review available to the applicant.”
10 RCW 34.05.416.

11 Courts will reverse agency decisions to not conduct adjudicative proceedings that are made
12 in error, in violation of applicable law, or in violation of a party’s rights. *See, e.g., Seattle Bldg.*
13 *& Constr. Trades Council v. Apprenticeship & Training Council* (“*Seattle Bldg.*”), 129 Wn.2d
14 787, 790, 798–804, 920 P.2d 581 (1996) (“The APA does not allow discretion to forego required
15 formal adjudicatory proceedings on the grounds that another system is alleged to be adequate.”);
16 *Johnson*, 16 Wn. App. 2d at 284–91, 295, 480 P.3d at 512–16, 518; *Kadlec Reg’l Med. Ctr.*
17 *Nonprofit Corp. v Dep’t of Health*, 177 Wn. App. 171, 310 P.3d 876 (2013); *see also Residents*
18 *Opposed to Kittitas Turbines v. EFSEC* (“*ROKT v. EFSEC*”), 165 Wn.2d 275, 304, 197 P.3d
19 1153, 1168 (2008) (judicial review of EFSEC decisions includes review of “the process used” by
20 EFSEC).
21

22 **IV. RELEVANT FACTS**

23 Both of the above-captioned pending matters involve the Whistling Ridge Energy Project
24 (“WREP” or “Project”), one of the most controversial, problematic, and environmentally
25 consequential wind energy projects ever reviewed by EFSEC. The Project was proposed to be
26 located entirely within forested wildlife habitat, including within a designated Special Emphasis
27 Area for the federally listed Northern Spotted Owl. The Project was proposed within three miles
28 of the Lewis and Clark National Historic Trail, the Oregon Pioneer National Historic Trail, the
29

1 Historic Columbia River Highway (designated as a National Historic District on the National
2 Register of Historic Places, as well as a National Historic Landmark), and the Ice Age Floods
3 National Geological Trail. The Project site was surrounded by recreational resources in every
4 direction. The Project garnered multiple adverse comments from other agencies, including the
5 United States Forest Service and the National Park Service, both of whom recommended that
6 EFSEC and the Governor should make substantial modifications to the Project (not all of which
7 were made by EFSEC’s recommendation and the Governor’s decision). The Project would have
8 caused significant adverse impacts in both Washington and Oregon. And last, but certainly not
9 least, the Project would have caused significant adverse impacts to the federally designated
10 Columbia River Gorge National Scenic Area (“National Scenic Area”).

11 The Project was proposed along the boundary of the National Scenic Area. The immense,
12 430-foot-tall turbines would have loomed over the Gorge horizon and would have been visible
13 for many miles in every direction. The Project would have permanently altered the scenic
14 landscape within the Columbia River Gorge and Cascade Mountain Range, in an area that is
15 visited by tourists from all over the world for its unique qualities, including dramatic mountain
16 vistas, steep cliffs, pastoral lands, and the Columbia River. By diminishing Gorge scenic
17 resources, the Project would also have harmed the local tourism economy and negatively
18 affected property values in surrounding communities. It would also have caused substantial
19 traffic and road damage along local roads during construction.

21 The Project would have harmed wildlife by permanently removing hundreds of acres of
22 forested habitat, including land within a designated Northern Spotted Owl Special Emphasis
23 Area. The Columbia River Gorge provides habitat for hundreds of bird species, and it is a major
24 stopover for many migratory bird species. The site also provides habitat for multiple species of
25 bats. Several Washington state and federally listed mammal and bird species would have been
26 affected by the Project, including the western gray squirrel, northern spotted owl, northern
27 goshawk, bald eagle, pileated woodpecker, and numerous migratory bird species. The site was
28

1 never surveyed for birds during key migratory periods, and many of the surveys that were
2 performed are now more than fifteen years old, making them stale and outdated today.

3 Hundreds of written and oral comments regarding the Project were submitted during
4 EFSEC's review, and eighty-six percent of these public comments opposed or expressed
5 concerns about the Project. Concerns were raised by several public resource management
6 agencies, tourism groups, and environmental organizations, including the National Park Service,
7 the U.S. Forest Service, the Washington Department of Natural Resources, the Washington
8 Counsel for the Environment, the Skamania County Agri-Tourism Association, Sustainable
9 Travel International, Friends of the Historic Columbia River Highway, Seattle Audubon Society,
10 Vancouver Audubon Society, Kittitas Audubon Society, Columbia Gorge Audubon Society,
11 American Bird Conservancy, Conservation Northwest, and the Gifford Pinchot Task Force (now
12 the Cascade Forest Conservancy).

13 Whistling Ridge Energy, LLC ("WRE") filed the application for a site certification for
14 the Project on March 10, 2009, and amended that application on October 12, 2009. After a
15 complex and lengthy adjudication (during which both SOSA and Friends fully participated as
16 parties), Governor Gregoire approved the Project and issued the Site Certification Agreement
17 ("SCA") on March 5, 2012. As part of the SCA, immediately above her signature, the Governor
18 stated that the SCA was "[d]ated and *effective* this 5th day of March, 2012" (emphasis added).
19

20 At all relevant times, EFSEC's Rules have stated that "construction [of a project] may
21 start any time within ten years of the *effective* date of the site certification agreement." WAC
22 463-68-030 (emphasis added). Moreover, EFSEC's Rules require (and have required) that "[i]f
23 the certificate holder does not start or restart construction within ten years of the *effective* date of
24 the site certification agreement, or has canceled the project, the site certification agreement shall
25 expire." WAC 463-68-080(1) (emphasis added). And "[i]f commercial operations have not
26 commenced within ten years of the *effective* date of the site certification agreement, the site
27 certification agreement expires unless the certificate holder requests, and the council approves,
28
29

1 an extension of the term of the site certification agreement.” WAC 463-68-080(2) (emphasis
2 added).

3 Accordingly, on November 16, 2018, Friends and SOSA advised EFSEC in a letter,
4 copied to the full WREP adjudication service list, including WRE, that “the SCA will expire on
5 March 5, 2022 unless WRE seeks and receives an extension of the deadline pursuant to WAC
6 463-68-080.” Thus, WRE was put on notice that it would need to request and receive an
7 extension prior to the expiration deadline. No such extension has been granted. As a result, the
8 SCA expired by operation of law on March 5, 2022.

9 Well before Governor Gregoire issued the SCA in March 2012, WRE was fatalistically
10 announcing that the 35-turbine version of the Whistling Ridge Energy Project that the Governor
11 would ultimately approve in the SCA would be dead on arrival. In an October 2011 Petition for
12 Reconsideration of EFSEC’s recommendation to the Governor, WRE declared that the Project as
13 recommended by EFSEC (and as ultimately approved by the Governor) “is *not* economically
14 viable” and that the EFSEC recommendation “kills the project.” (Applicant’s Pet. for Recons. of
15 Council Order No. 868 and Council Order No. 869 at 2 (Oct. 27, 2011) (emphasis in original).)

16 Within the same pleading, WRE explained that two of the approved turbine corridors
17 “likely are not viable if turbines larger than 2 MW are used” and that “thirty 2.5-MW turbines
18 cannot physically be sited in [the] remaining turbine corridors.” (*Id.*) Thus, WRE publicly
19 recognized even before the Governor’s decision that it had zero interest in actually pursuing the
20 Project as approved by the Governor.
21

22 WRE continued thereafter to announce that it was declining to pursue construction and
23 operation of the Project, specifically because it was not economically viable. For example, in a
24 statement published in *The Oregonian* on March 5, 2012 (the same day the Governor approved
25 the Project and issued the SCA), WRE President Jason Spadaro stated that the Project was being
26 immediately placed on hold because it was not currently feasible: “We’re not abandoning the
27 project, but in the current environment of great uncertainty for renewable energy, the project is
28 unlikely to move forward.”
29

1 In the twelve years since making these public statements, WRE has done absolutely
2 nothing to pursue the construction and operation of the Project, or even to pursue modifications
3 to the Project as approved. WRE has failed to prepare the numerous site plans and review studies
4 required for the Project, has not applied for any of the various permits needed for the Project,
5 never entered into any power purchase agreements, has allowed any Large Generator
6 Interconnection Agreements (if there ever was one) to lapse (and thereby lost the WREP's
7 position in Bonneville Power Administration's queue for interconnection to the energy grid), and
8 has fallen out of compliance with the terms and conditions of the SCA. Furthermore, WRE never
9 announced any desired construction start date for the Project any earlier than the March 5, 2022
10 expiration date of the SCA prescribed by WAC 463-68-080(1).

11 Pursuant to WAC 463-68-060, WRE was obligated to submit a five-year status report for
12 the Project no later than December 5, 2016 (ninety days prior to five years after the effective date
13 of the SCA). WRE failed to meet that mandatory deadline, and instead submitted a letter to
14 EFSEC dated October 25, 2018, nearly two years after the deadline.

15 After receiving WRE's October 25, 2018 letter, the Council never adopted any findings
16 "that no changes or amendments to the site certification agreement, regulatory permits, or
17 project-related environmental documents are necessary or appropriate," all of which are a
18 necessary prerequisite to starting construction of the Project pursuant to WAC 463-68-080. Nor,
19 apparently, did WRE ever request any such findings to that effect from the Council.

20 On September 13, 2023—more than eleven years after the effective date of the SCA, and
21 more than eighteen months after the SCA expired by operation of law—EFSEC received a
22 Request from WRE to extend the term of the SCA (hereinafter "Extension Request").³

23 In the September 13, 2023 Extension Request, WRE requested that EFSEC extend the
24 term of the SCA to November 1, 2026.⁴ (Extension Request at 1.) Later in the Extension
25

26
27
28
29 ³ In March 2022, WRE submitted what it later referred to as a "draft" extension request. In the draft request, WRE requested an "extension of the term of the [SCA] to November 2025." (Draft Extension Request at 1.) The draft request, however, was later superseded by the September 12, 2023 Extension Request that is currently pending before the Council.

1 Request, WRE states that in the future it will “undertake due diligence work for the facility, and .
2 . . . update essential natural resource and other studies.” (*Id.* at 4.)

3 Within the Extension Request, WRE acknowledged that EFSC must hold one or more
4 public hearing sessions on the Extension Request, and stated that “[i]n seeking this request,
5 [WRE] will utilize this time to consider commercial viability and to update environmental
6 information and engage with stakeholders.” (*Id.*) Since filing the Extension Request more than
7 six months ago, WRE has made no further statements on those topics, nor is there any public
8 evidence that WRE has engaged with stakeholders.

9 The Extension Request discloses that extending the term of the SCA to November 1,
10 2026 “will allow Whistling Ridge Energy to review and if feasible to propose the installation of
11 fewer^[5] but taller^[6] wind turbine generators and associated facilities within the designated and
12 approved micro-siting corridors.” (*Id.* at 5.)

13 Finally, the Extension Request includes an Attachment A, which the Applicant describes
14 as “outlin[ing] what the Applicant considers to be related and necessary actions,” including
15 dozens of additional studies and reports necessary to “complete” the SCA modification request.
16 (Extension Request at 5.) WRE also proposes to update its environmental impact analyses,
17 including natural resource studies, to gather and prepare “season-specific data (e.g. avian nesting
18 surveys) and new visual simulations from key viewing areas (KVAs) within the Columbia River
19 Gorge [National] Scenic Area,” as well as to consult with the Washington Department of Fish
20

21
22 ⁴ The Extension Request ambiguously requests an extension “to November 2026.”
23 (Extension Request at 1.) Because WRE did not list a date certain for the requested extension,
24 and because the Extension Request requests an extension “to November 2026,” rather than
25 “through November 2026” (emphasis added), the requested extension would be to November 1,
26 2026, rather than through November 30, 2026.

27 ⁵ This statement contemplating using “fewer” turbines is at odds with WRE’s prior
28 representations that “[t]he number of wind turbines in the Project Area has already been
29 minimized to the extent practicable in light of the Applicant’s objectives.” (Applicant’s Pet. for
Recons. of Council Order No. 868 and Council Order No. 869 at 2 (Oct. 27, 2011).)

⁶ This statement contemplating using “taller” turbines is at odds with WRE’s prior
representations that certain “turbine corridors likely are not viable if turbines larger than 2 MW
are used.” (Applicant’s Pet. for Recons. of Council Order No. 868 and Council Order No. 869 at
2 (Oct. 27, 2011).)

1 and Wildlife, local Tribes, and other agencies. (*Id.*) Within Attachment A, WRE discloses that if
2 this Extension Request is granted, WRE would subsequently file yet *another* request to modify
3 the SCA. (*Id.* at Attach. A.)

4 Also on September 13, 2023, EFSEC received an Application from WRE to transfer the
5 SCA from SDS Lumber Co. (“SDS”)⁷ to Twin Creeks Timber, LLC (“TCT”) as the “new
6 Parent” of WRE (hereinafter “Transfer Application”). But the Transfer Application makes it
7 clear that this transfer *already had occurred*, although it does not say when: “TCT is *now* the
8 sole owner of the Applicant.” (Transfer Application at 1 (emphasis added).) Upon information
9 and belief, without waiting for EFSEC’s review of the Transfer Application—and indeed, long
10 before the Transfer Application was even filed—SDS proceeded to transfer everything (the WRE
11 company, the Project site, the SCA, and all rights to the Project) to TCT.

12
13 At the April 17, 2024 EFSEC meeting, EFSEC staff announced that public hearings on
14 the Extension Request and Transfer Request are “tentatively” scheduled for May 16, 2024. It is
15 unclear exactly who might make this scheduling decision—whether the EFSEC Director, an
16 EFSEC Site Specialist or other Staff, the full Council, the EFSEC Chair, or an administrative law
17 judge or hearing officer. But as Friends and SOSA understand it, these public hearings are only
18 intended to constitute public meetings under OPMA, and not adjudicative proceedings under the
19 WAPA and Council Rules.

20 ///

21 ///

22 ///

23
24 ⁷ The Transfer Application does not explain whether, when, and how ownership of WRE
25 was transferred from S.D.S. Co. LLC to SDS Lumber Co., which are (or were) two different
26 corporations. According to numerous representations made by WRE during the site certification
27 proceedings, WRE was a wholly owned subsidiary of S.D.S. Co. LLC, *not* of SDS Lumber Co.
28 The Council’s Order No. 869 reflects that ownership status: “Whistling Ridge Energy, LLC is
29 owned by S.D.[S]. Co., LLC, which is also considered to be a Site Certificate Holder as defined
in the Site Certificate Agreement, SCA, Sec. III.A.1.” (Order No. 869 at 12.) This discrepancy in
the Transfer Application is one of many issues for which an adjudicative proceeding, complete
with discovery rights, is necessary and required by law. For purposes of this Application only,
“SDS” will be used to refer to either or both of S.D.S. Co. LLC and SDS Lumber Co.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

V. REQUESTED RELIEF

Friends and SOSA request that the Council commence a consolidated adjudicative proceeding on the Extension Request and Transfer Application (or separate adjudicative proceedings if the matters are not consolidated).

VI. ARGUMENT

A. The Council must hold an adjudicative proceeding pursuant to RCW 34.05.413(2).

The Council must hold an adjudicative proceeding pursuant to RCW 34.05.413(2): “When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding.” Here, applicable law requires an adjudicative proceeding on both the Extension Request and the Transfer Application for several reasons.

First, an adjudicative proceeding is required on the Extension Request and Transfer Application because both would modify the SCA, which is a license to construct and operate a wind energy project. RCW 34.05.422(1)(c) provides, in pertinent part, that “[a]n agency may not . . . modify a license unless the agency gives notice of an opportunity for an appropriate adjudicative proceeding in accordance with this chapter or other statute.” *See Conway v. Wash. State Dep’t of Soc. & Health Servs.*, 131 Wn. App. 406, 417, 120 P.3d 130, 135 (2005) (“WAPA expressly requires an adjudicative proceeding for . . . modification of a license.”) (citing RCW 34.05.422(1)(c)); *Len v. Off. Superintendent Pub. Instr.*, 188 Wn. App. 1040, 2015 WL 4094079, at *10 (July 7, 2015) (unpublished) (observing that hearings required by RCW 34.05.422(1)(c) are “formal APA ‘adjudicative proceeding[s]’”); *Gligor v. State of Wash. Dep’t of Soc. & Health Servs.*, 184 Wn. App. 1008, 2014 WL 5338817, at *3 (Oct. 20, 2014) (unpublished) (“The APA requires an adjudicative proceeding for . . . modification of a license.”) (citing RCW 34.05.422(1)(c)).

Under the Energy Facilities Site Locations Act (“EFSLA”), Chapter 80.50 RCW, a site certification agreement (like the WREP SCA) is a “license.” *Friends of the Columbia Gorge, Inc. v. EFSEC*, 178 Wn.2d 320, 333, 310 P.3d 780 (2013); *ROKT v. EFSEC*, 165 Wn.2d at 304.

1 Because both the Extension Request and the Transfer Application propose to modify the SCA,
2 an adjudicative proceeding must be held on both of them.

3 The Extension Request proposes to “extend the term of the Site Certificate” past its
4 expiration date. (Extension Request at 4.) This request is, by definition, a modification of the
5 SCA, because extending the term (*i.e.*, duration) of the SCA and inserting the proposed new
6 November 1, 2026 date as requested necessarily involves modifying it. *See* WAC 463-68-080
7 (authorizing EFSEC review of “a request to extend the term of the site certification agreement”).
8 Furthermore, WRE concedes that it is requesting an amendment to the SCA and that the request
9 is governed by WAC 463-66-030 (entitled “Request for amendment”). (Extension Request at 5.)
10 Because WRE seeks a decision from the Council that would modify a license, an adjudicative
11 proceeding is mandatory pursuant to RCW 34.05.422(1)(c) and RCW 34.05.413(2).
12

13 Second, the SCA provides that “[i]f the Certificate Holder does not begin construction of
14 the Project within ten (10) years of the execution of the SCA, all rights under this SCA will
15 cease.” (WREP SCA at p. 8, § I.B.) The SCA was executed and made effective by Governor
16 Gregoire on March 5, 2012, and was later signed by Jason Spadaro, WRE President, on
17 November 18, 2013. (SCA WREP at 42.) Even if the latter date were used as the date of
18 “execution of the SCA,” this means that under the plain language of the SCA, all rights under the
19 SCA ceased on November 18, 2023. That outcome leaves WRE with no remaining rights under
20 the SCA, and therefore no ability to seek any transfer or extension of the SCA. But setting those
21 facts aside for purposes of this Application, and assuming *arguendo* that WRE retains any
22 standing or ability to pursue the Extension Request after WRE’s rights have expired, it is
23 undeniable that the Extension Request necessarily requires (and implicitly seeks) a modification
24 of this term, in order to restore rights under the SCA to WRE. This is yet another example of
25 how the Extension Request would “modify a license,” which legally triggers a requirement for
26 EFSEC to commence an adjudicative proceeding pursuant to RCW 34.05.422(1)(c) and RCW
27 34.05.413(2).
28

29 ///

1 Third, the SCA provides that the construction and operation of the Project are “subject to
2 the terms and conditions set forth in Council Order No. 869, Council Order Recommending Site
3 Certification on Condition (Attachment 4 to this Agreement).” (WREP SCA at p. 8, § I.B.)
4 Order No. 869, in turn, states that “Whistling Ridge Energy, LLC is owned by S.D.[S]. Co.,
5 LLC, which is also considered to be a Site Certificate Holder as defined in the Site Certificate
6 Agreement, SCA, Sec. III.A.1.” (Order No. 869 at 12.) The Transfer Application proposes to
7 change the identity of this Site Certificate Holder (transferring this status from SDS to TCT),
8 which necessarily modifies the terms and conditions of the SCA.

9 Fourth, in addition to the provisions of the WAPA discussed above requiring an
10 adjudicative proceeding here for the Transfer Application and Extension Request, the WAPA’s
11 very definition of “adjudicative proceeding” also mandates such a proceeding here.

12 The WAPA defines “adjudicative proceeding” in pertinent part as “a proceeding before
13 an agency in which an opportunity for hearing before that agency is required by statute . . .
14 before or after the entry of an order by the agency.” RCW 34.05.010(1). As discussed above,
15 both the Transfer Application and Extension Request would modify the SCA (a license), and
16 they therefore require an adjudicative proceeding pursuant to RCW 34.05.422(1)(c). Since an
17 adjudicative proceeding is “required by statute,” RCW 34.05.010(1), and since EFSEC has
18 before it two requests to modify a license, an “adjudicative proceeding” as that term is used
19 within the WAPA is required.

20 Fifth, the WAPA’s definition of “adjudicative proceeding” also states that “[a]djudicative
21 proceedings also include all cases . . . in which . . . a license is . . . modified” RCW
22 34.05.010(1). This is yet another reason why an adjudicative proceeding is required to review the
23 proposed modifications of the WREP SCA, which is a license. *See Prestige Stations, Inc. v.*
24 *Wash. Liquor Control Bd.*, 33 Wn. App. 669, 673, 657 P.2d 322, 325 (1982) (noting that the
25 “plain meaning” of the then-applicable WAPA definition of “contested case,” which was then
26 worded similarly to the current definition of “adjudicative proceeding,” “is to include in the
27 definition of a ‘contested case’ an application for . . . modification . . . [of] a . . . permit”).
28
29

1 Sixth, the WAPA’s definition of “adjudicative proceeding” goes on to state that
2 “[a]djudicative proceedings also include all cases . . . in which the granting of an application is
3 contested by a person having standing to contest under the law.” RCW 34.05.010(1); *see also W.*
4 *Wash. Operating Eng’rs Apprenticeship Comm. v. Wash. State Apprenticeship & Training*
5 *Council*, 144 Wn. App. 145, 159, 190 P.3d 506, 513 (2008) (citing RCW 34.05.010(1)). Both the
6 Transfer Application and the Extension Request are applications that are currently pending
7 before EFSEC and that are subject to various standards, criteria, and procedures⁸; Friends and
8 SOSA have standing to contest the granting of these applications; and Friends and SOSA do in
9 fact contest the granting of both applications and are hereby applying for an adjudicative
10 proceeding on them. Accordingly, the Council’s review of the Transfer Application and
11 Extension Request constitutes an “adjudicative proceeding” pursuant to RCW 34.05.010(1) (or
12 two separate adjudicative proceedings, but if so, Friends and SOSA hereby request that these
13 proceedings should be consolidated into a single adjudicative proceeding, so long as separate
14 public hearings on the two applications are also held). The Council must review and resolve all
15 contested issues presented by the Transfer Application and Extension Request by commencing
16 an adjudicative proceeding pursuant to WAPA and the EFSEC Rules.

17
18 Finally, as discussed above, although WRE failed to timely submit the report required by
19 WAC 463-68-060 at the five-year mark of the SCA’s term, WRE belatedly attempted to submit
20 that required report, and EFSEC has never adopted any of the findings required by WAC 463-68-
21 070 before construction may start after the five-year mark. In addition, the requirements of WAC
22 463-68-060 and -070 are made express terms and conditions of the SCA, including a provision in
23 the SCA that says “[c]onstruction may begin only upon prior Council authorization and approval
24 of such certifications.” (WREP SCA at p. 8, § I.B.) The absence of any of the Council findings
25 required by WAC 463-68-070 are yet another bar to the start of construction of the Project, and
26

27
28 ⁸ For example, the Extension Request is subject to WAC 463-66-030, -040, -050, -060, -
29 070, -080, 463-68-010, -020, -030, -060, -070, -080, and other EFSEC Rules. The Transfer
Application is subject to WAC 463-66-030, -040, -050, -060, -070, -080, -100, and other EFSEC
Rules.

1 the Extension Request must therefore be regarded as inherently seeking the findings required by
2 WAC 463-68-070. Otherwise, WRE will be unable to construct the Project. All of this is yet
3 another reason why the Council’s review of the Extension Request must be treated as a “case[] .
4 . . in which . . . the granting of an application is contested by a person having standing to contest
5 under the law,” which qualifies this matter as an “adjudicative proceeding” as that term is
6 defined at RCW 34.05.010(1).

7 For all these reasons, an adjudicative proceeding is mandated here for the Council’s
8 review of the Extension Request and Transfer Application pursuant to the WAPA (particularly
9 RCW 35.05.010(1), 34.05.413(2), 34.05.422(1)(c)) and the EFSEC Rules. The Council must
10 commence an adjudicative proceeding.

11 **B. The Council should hold an adjudicative proceeding pursuant to RCW 34.05.413(1).**

12 The Council should hold an adjudicative proceeding pursuant to its discretionary
13 authority under RCW 34.05.413(1): “Within the scope of its authority, an agency may
14 commence an adjudicative proceeding at any time with respect to a matter within the agency’s
15 jurisdiction.” Here, the Council certainly has jurisdiction and authority to hold an adjudicative
16 proceeding on the pending Transfer Application and Extension Request. Friends and SOSA
17 request that, pursuant to RCW 34.05.413(1), the Council commence an adjudicative proceeding
18 on these pending proposals to modify the SCA.

19 The Council should commence an adjudicative proceeding, which will allow the
20 numerous disputed evidentiary, legal, and policy issues in these matters to be fully vetted and
21 resolved by the Council (with the assistance of an administrative law judge), in the formal
22 context of a trial-like proceeding, rather than merely holding basic OPMA hearings (where each
23 person would only get a limited amount of time to speak) and then abdicating many of the
24 disputed issues to the appellate courts to resolve on first impression on appeal. Furthermore, an
25 adjudicative proceeding is needed to allow Friends and SOSA to seek from WRE and its
26 affiliates discoverable information likely to bear on compliance with the applicable laws and
27
28
29

1 rules; unless an adjudicative proceeding is held, we have no other means of obtaining such
2 information and presenting it to the Council.

3 Friends and SOSA recognize that it is rare for the Council to hold an adjudicative
4 proceeding on proposed amendments to site certification agreements. However, these pending
5 requests for the WREP are extraordinary and unprecedented. As far as Friends and SOSA are
6 aware, no other certificate holder has ever before asked the Council to extend the term of a site
7 certification agreement *after* it has already expired, and never before has a certificate holder
8 asked for such an extension solely to allow the certificate holder an opportunity to consider the
9 possibility of pursuing a substantially different version of the previously proposed project. One
10 wonders why the EFSEC Staff have not already recommended that the Council dismiss the
11 pending requests outright, given the expiration of the SCA, WRE's obvious failures to pursue
12 development of the Project for twelve years and running, and the ability of WRE and/or TCT to
13 simply file a new application for a new site certificate for whichever new manifestation of the
14 Project they may desire to pursue in the future. In the event that EFSEC staff continue to process
15 the Extension Request and Transfer Application, the Council should hold an adjudication to
16 allow the parties and ultimately the Council to resolve the numerous unique and heavily disputed
17 issues involving this controversial Project.
18

19 Following is a preliminary, non-exclusive list of some of the many issues that can and
20 should be resolved through an adjudicative proceeding in these matters.

21
22 **Procedural Issues**

- 23 • Whether Council review of the two pending proposals to modify the SCA (the
24 Extension Request and Transfer Application) should be consolidated, and under
25 what conditions.
- 26 • Whether the Council must hold two separate public hearings on the two proposals.
- 27 • Who may, and who will, determine the schedule for any public hearings.
28
29

- 1 • Whether EFSEC is required to send any public notices to its EFSC-compiled
2 mailing lists and e-mail lists for the Whistling Ridge Energy Project, and if so,
3 which lists to use.
4

5 **SCA Expiration**

- 6 • Whether applicable law established an expiration deadline for the SCA, and if so,
7 what that deadline was.
8
- 9 • What actions and steps, if any, WRE took to actively pursue site review,
10 permitting, and development of the Project over the past twelve years.
11
- 12 • Whether WRE has applied for any of the many permits needed prior to construction
13 and/or operation of the Project.
14
- 15 • Whether WRE ever entered into any power purchase agreements.
16
- 17 • Whether WRE ever secured a Large Generator Interconnection Agreement with the
18 Bonneville Power Administration; if it did, whether such Agreement is still in
19 effect; and, if it did not, the status of any request(s) for such an Agreement.
20
- 21 • Whether WRE is impermissibly pursuing “site banking” via the Extension Request
22 by seeking an extension of site certification for a project that WRE has neither the
23 intentions nor wherewithal to actually build, whether in the form approved by the
24 SCA or in *any* form.
25
- 26 • Whether, by seeking the requested extension of the term of the SCA, WRE should
27 be allowed to continue indefinitely delaying the zoning by Skamania County of the
28 Project site and underlying parcels, which at this point are the only privately owned
29 lands left in Skamania County that remain “Unmapped” (*i.e.*, unzoned), where no
zoning restrictions apply.
- Whether the certificate holder ever provided the plans and specifications required
by the SCA to the Council for approval per WAC 463-68-050.
- Whether construction ever started under the SCA per WAC 463-68-040 and -050.

- 1 • Whether any applicable deadlines have been tolled for any reason.
- 2 • Whether the WREP Site Certification Agreement has expired by operation of law
- 3 and/or by operation of the terms and conditions of the SCA itself.
- 4 • Whether all rights under the SCA have ceased.
- 5 • If expiration and/or the cessation of all rights under the SCA has occurred, whether
- 6 any further proceedings are necessary.
- 7 • Whether EFSEC’s rules allow for the ten-year period for start of construction to be
- 8 extended, as distinguished from an extension of the ten-year period for
- 9 commencement of commercial operations, given that WAC 463-68-080(2)
- 10 provides authority for “an extension of the term of the site certificate agreement,”
- 11 while WAC 463-68-080(1) provides no such authority.
- 12 • Whether the SCA must or should be terminated by amendment pursuant to WAC
- 13 463-66-020 and -090.
- 14
- 15

16 **Status of and Compliance with the SCA**

- 17 • Whether WRE is in full compliance with all terms and conditions of the SCA and
- 18 all EFSEC Orders associated with the WREP.
- 19 • Whether WRE’s October 25, 2018 letter was sufficient to meet the procedural and
- 20 substantive requirements of WAC 463-68-060.
- 21 • Whether and how the factors at WAC 463-68-060 must or should be applied to the
- 22 Council’s review of the pending proposals to modify the SCA, including “[t]he
- 23 nature and degree of any changes to the following since the effective date of the
- 24 site certification agreement,” “[p]roject design,” “[p]roject-related environmental
- 25 conditions,” and “[w]hether any new information or changed conditions indicate
- 26 the existence of probable significant adverse environmental impacts that were not
- 27 covered in any project-related environmental documents.”
- 28
- 29

- Whether applicable statutes and rules have changed over the past twelve years since the 2012 certification of the Project by Governor Gregoire.
- Whether the Council ever made any of the findings required by WAC 463-68-070.
- Whether the Council must or should make any of the findings required by WAC 463-68-070 before construction of the Project may start, including as part of the review of the pending Extension Request.
- Whether the Council should “retain an independent consultant, at the certificate holder’s expense, to evaluate and make recommendations about whether changes to the site certification agreement, regulatory permits, or project-related environmental documents are necessary or appropriate,” including “verification of project-related environmental conditions, regulatory requirements, or appropriate technology,” pursuant to WAC 463-68-070.
- Whether any “changes or amendments” to the SCA are “necessary or appropriate” per WAC 463-68-070.

SCA Transfer Issues

- Who is/are the Site Certificate Holder(s) under the WREP SCA?
- Whether the Transfer Application complies with the requirement to “file a written consent from the current certification holder, or a certified copy of an order or judgment of a court of competent jurisdiction, attesting to [TCT’s] right, subject to the provisions of chapter 80.50 RCW et seq. and the rules of this chapter, to possession of the energy facility involved” under WAC 463-66-100(3), or whether these requirements are instead, as the Transfer Application suggests, “[n]ot applicable” here (Transfer Application at 4).
- Whether parent ownership of WREP, ownership of the Project site, ownership of the SCA, and ownership of all rights under the SCA have already been transferred to TCT, and if so, by whom, on what date(s), and by what means of conveyance?

- 1 • Whether any violations of WAC 463-66-100 have occurred, including the language
2 providing that “[n]o site certification agreement, any portion of a site certification
3 agreement, nor any legal or equitable interest in such an agreement issued under
4 this chapter shall be transferred, assigned, or in any manner disposed of (including
5 abandonment), either voluntarily or involuntarily, directly or indirectly, through
6 transfer of control of the certification agreement or the site certification agreement
7 owner or project sponsor without express council approval of such action.”
8
- 9 • Whether the Site Certificate Holder(s) under the WREP SCA have lost the standing
10 or ability to apply for a transfer of ownership rights by prematurely effecting such a
11 transfer prior to seeking and obtaining Council review and express approval
12 thereof.
- 13 • Whether the Transfer Application “demonstrate[s] the transferee’s organizational,
14 financial, managerial, and technical capability to comply with the terms and
15 conditions of the original site certification agreement including council approved
16 plans for termination of the plant and site restoration,” as required by WAC 463-
17 66-100(1), as well as full compliance with WAC 463-60-015, 463-60-075, and
18 463-66-100(4)(a).
- 19 • Whether TCT is “entitled to possession of the energy facility described in the
20 certification agreement” as required by WAC 463-66-100(4)(b).
- 21 • Whether TCT “has demonstrated it has the organizational, financial, managerial,
22 and technical capability and is willing and able to comply with the terms and
23 conditions of the certification agreement being transferred,” as required by WAC
24 463-66-100(4)(c).
- 25 • With respect to this Project, the exact status and nature of the corporate
26 relationships between WRE, SDS, TCT, and the other companies mentioned in the
27 Transfer Application, including Silver Creek Advisory Partners LLC, Green
28
29

1 Diamond Resource Company, Navitas Development, Steelhead Americas,
2 Steelhead Development, and Vestas.

- 3
- 4 • If the proposed transfer of the SCA is approved, whether the Council should “place
5 conditions on the transfer of the certification agreement including provisions that
6 reserve liability for the site in the original certification holder,” as authorized by
7 WAC 463-66-100(1).

8

9 **Review of the Pending Proposals to Modify the SCA**

- 10 • Whether the Extension Request and Transfer Application are complete.
- 11 • Whether, as promised on page 4 of the Extension Request, WRE has been
12 “utiliz[ing] this time to consider commercial viability and to update environmental
13 information and engage with stakeholders,” and if so, what information regarding
14 these efforts will be produced publicly or should be produced via discovery.
- 15 • Whether, by conceding that it requests the proposed modifications to the SCA in
16 order to “review and if feasible to propose the installation of fewer but taller wind
17 turbine generators and associated facilities” within the site (Extension Request at
18 5), WRE “is seeking an alternative disposition of a certificated site” within the
19 meaning of WAC 463-66-100(2), and if so, whether WRE “must describe the
20 operational and environmental effects of the alternative use of the site on the
21 certified facility,” *id.*, and whether the Council should “reject the [contemplated]
22 alternative use of the site,” *id.*
- 23 • Whether the pending proposals to modify the SCA are consistent with the criteria
24 in WAC 463-66-040, including “[t]he intention of the original SCA,” “[a]pplicable
25 laws and rules” (including any changes thereto), and “[t]he public health, safety,
26 and welfare.”
- 27 • Whether the pending proposals to modify the SCA are consistent with the factors
28 required by WAC 463-66-050 for evaluating whether the proposals to modify the
29

1 SCA are “consistent with the public health, safety, and welfare,” including “the
2 short-term and long-term environmental impacts of the proposal,” “reasonable
3 alternative means by which the purpose of the proposal[s] might be achieved,” and
4 “the availability of funding to implement the proposal[s].”

- 5 • Whether the Extension Request seeks an extension of the term of the SCA to
6 November 1, 2026, or some other date.
- 7 • Whether review by the Governor of the pending Extension Request and/or Transfer
8 Application is required per WAC 463-66-070 and -080.
- 9 • Whether this pending Extension Request is different from a routine requested
10 extension sought well in advance of an expiration deadline, in that now that the ten-
11 year deadlines for the WREP have passed, an extension of the term of the SCA is
12 necessary for the Project to be constructed and operated, which will under a “but-
13 for” analysis necessarily result in all the same “significant detrimental effect[s]
14 upon the environment” as that term is used in WAC 463-66-070, and as reviewed
15 in the prior adjudicative proceeding and decision-making processes prior to the
16 issuance of the SCA.
- 17 • Whether the Council should “accept the [requested] amendment[s]; reject the
18 amendment[s]; or reject the amendment[s], and state conditions or terms under
19 which the amendment[s] will be reconsidered,” per WAC 463-66-050.
20

21
22 An adjudicative proceeding is needed to allow Friends and SOSA to pursue discovery on
23 these issues, to submit new evidence (including sworn expert witness testimony as well as
24 potential evidence that could be obtained from WRE via discovery), and to cross-examine
25 WRE’s expert witnesses in a formal, adversarial, adjudicative setting on the above-listed and
26 many other known and potentially disputed issues in these matters. Otherwise, none of these
27 accoutrements of an adjudicative proceeding will be available to Friends and SOSA, which will
28 severely disadvantage us and other potentially interested parties, thereby violate Washington’s
29

1 appearance of fairness doctrine,⁹ and deprive the Council itself of a fully informed decision-
2 making process.

3 In Washington, “[i]t is axiomatic that, whenever the law requires a hearing of any sort as
4 a condition precedent to the power to proceed, it means a fair hearing, a hearing not only fair in
5 substance, but fair in appearance as well.” *Smith v. Skagit County*, 75 Wn.2d 715, 739, 453 P.2d
6 832, 846 (1969). The right to cross-examine opposing experts is critical to this right to a fair
7 hearing, and has been deemed a “component” of the appearance of fairness doctrine for any
8 quasi-judicial proceeding. *Earle M. Jorgensen Co. v. City of Seattle*, 99 Wn.2d 861, 867, 665
9 P.2d 1328, 1332 (1983).

10 Further, the Washington Supreme Court discussed the vital importance of cross-
11 examination as part of any quasi-judicial hearing in *Chrobuck v. Snohomish County*, in which the
12 Court reversed a Snohomish County rezone action. In that case, where the rezone was in
13 furtherance of a proposed oil refinery, the court spoke to the specific need for cross-examination
14 in contested proceedings on technical matters, and warned of the results if and when this vital
15 right is taken away:
16

17 Generally speaking, in the ordinary zoning or rezoning hearing before a planning
18 commission the cross-examination of persons expressing their views may not be
19 appropriate or contribute anything of value to the fact-finding process. Where, as
20 here, however, the hearing assumes distinctly adversary proportions, the
21 proponents and opponents are represented by counsel, expert witnesses are called,
22 and complex, technical and disputed factors, revolving about such matters as oil
23 refinery processes, air pollution, noise levels, visual impact, water and vegetation
24 contamination, shipping and dockage operations, oil spillage control, tidal currents
25 and fishery preservation, are involved, *it would appear particularly pertinent to an*
objective factual evaluation of the testimony presented to permit cross-examination
in a reasonable degree. Otherwise, it is possible that matters of vital significance to
the factfinding tribunal may be glossed over, obscured or omitted in a recital-like
presentation of technical subjects and expert opinion.

26 ///

27 ///

28 ⁹ See *ROKT v. EFSEC*, 165 Wn.2d at 313–17, 197 P.3d at 1172–74 (confirming that
29 Washington’s appearance of fairness doctrine applies to EFSEC’s proceedings).

1 78 Wn.2d 858, 870–71, 480 P.2d 489, 496 (1971) (emphasis added). Based on the failure to
2 allow cross-examination and for other reasons, *Chrobuck* held that the appearance of fairness
3 doctrine had been violated. 78 Wn.2d at 867, 871; 480 P.2d at 495–96.

4 Like the administrative hearing at issue in *Chrobuck*, the pending proposals to modify the
5 WRE SCA have already taken on a distinctly adversarial posture, where the proponents and
6 opponents are represented by counsel, multiple expert witnesses have already been employed by
7 the parties, and many of the dispositive issues are likely to turn on complex technical issues
8 pertaining to energy siting, administrative procedures, environmental impacts, financial and
9 managerial capabilities, and corporate relationships.

10 It is critical for Friends and SOSA, including our experts, to understand the full factual,
11 scientific, and legal bases for the representations made in the Transfer Application and Extension
12 Request, and for any forthcoming testimony and submissions by WRE in these proceedings. That
13 can only be accomplished through discovery and cross-examination, whereby we might probe
14 WRE’s experts directly, requiring them both to provide the foundation for their opinions and to
15 explain their analyses. In addition, as the Washington Supreme Court has recognized, “oral cross
16 examination can be used to test credibility, and can be shaped to elicit and develop testimony as
17 the cross examination progresses.” *Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 34, 873 P.2d
18 498, 502 (1994).

19 The appellate courts have repeatedly discussed the dangers and pitfalls of denying parties
20 the important safeguards available through formal adjudicative proceedings under the WAPA.

21 For example, in *Seattle Building*, the court reversed the agency’s decision, concluding that

22 Appellants were deprived of significant procedural safeguards available in formal
23 adjudicatory proceedings, including testimony taken under oath, the opportunity for
24 structured cross-examination, and an agency order containing requisite findings,
25 conclusions, and the reasons therefor. Absent compliance with these and other
26 procedural requirements, judicial review of the merits of agency action is
27 significantly hampered and may even be effectively foreclosed. This matter must be
remanded for a formal adjudicatory hearing.

28 129 Wn.2d at 804, 920 P.2d at 581 (citations omitted).

29 ///

1 Similarly, the Washington Court of Appeals has held that in situations where “assessment
2 of veracity and credibility [are] key, safeguards of the subpoena power, oral testimony, and
3 cross-examination [are] critical.” *Arishi v. Wash. State Univ.*, 196 Wn. App. 878, 905, 385 P.3d
4 251, 264 (2016). Here, the Transfer Application and Extension Request are authored and signed
5 by an attorney rather than a real party in interest, and the vague and uncertain statements and
6 evidence therein are unsworn, unsponsored, and as a result inherently unreliable. Holding an
7 adjudicative proceeding under the APA would solve this problem, because “[a]ll testimony of
8 parties and witnesses shall be made under oath or affirmation.” RCW 34.05.452(3).

9 As the Washington Court of Appeals has explained, “the administration of an oath is
10 significant in arriving at the truth.” *Nirk v. City of Kent Civil Serv. Comm’n*, 30 Wn. App. 214,
11 218, 633 P.2d 118, 121 (1981). “The primary function of requiring witnesses to be sworn is to
12 add an additional security for credibility by impressing upon them their duty to tell the truth, and
13 to provide a basis for a charge of perjury.” *Id.*; see also *In re Interests of M.B. et al.*, 101 Wn.
14 App. 425, 472, 3 P.3d 780, 805 (2000) (“The oath requirement is important to the truth-finding
15 process.”). Yet, if only OPMA meetings or hearings are held on the pending requests to modify
16 the SCA, none of the testimony therein will need to be under oath. Using and relying on WRE’s
17 unsworn filings would be prejudicial to Friends and SOSA. See *Interests of M.B.*, 101 Wn. App.
18 at 470, 3 P.3d at 804 (“As to unsworn testimony . . . there is . . . prejudice.”); *Nirk*, 30 Wn. App.
19 at 221, 633 P.2d at 122 (“Requiring witnesses to be sworn relates to the truth finding process and
20 failure to do so taints the integrity of the entire proceeding.”).

21 In short, Friends and SOSA request that the Council commence an adjudicative proceeding
22 in order to honor and respond to the extraordinary circumstances—unprecedented in the history
23 of EFSEC—under which WRE seeks to modify the SCA. Failure to commence an adjudicative
24 proceeding for the Transfer Application and Extension Request will violate Washington’s
25 appearance of fairness doctrine.
26

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

VI. CONCLUSION

Based on the foregoing, the Council should commence an adjudicative proceeding (or proceedings) to review the pending Transfer Application and Extension Request.

RESPECTFULLY SUBMITTED this 25th day of April, 2024.

FRIENDS OF THE COLUMBIA GORGE, INC.



Nathan J. Baker, WSBA No. 35195
Senior Staff Attorney
(503) 241-3762 x101
nathan@gorgefriends.org
Attorney for Friends of the Columbia Gorge

LAW OFFICES OF J. RICHARD ARAMBURU, PLLC



J. Richard Aramburu, WSBA No. 466
(206) 625-9515
rick@aramburulaw.com
Attorney for Save Our Scenic Area

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date shown below, I served a true and correct copy of the
3 foregoing FRIENDS OF THE COLUMBIA GORGE AND SAVE OUR SCENIC AREA’S
4 APPLICATION FOR AN ADJUDICATIVE PROCEEDING on each of the persons named
5 below via email:

6 Timothy L. McMahan
7 Stoel Rives LLP
8 tim.mcmahan@stoel.com
9 *Attorney for Whistling Ridge Energy, LLC*

10 Greg Corbin, Senior Special Counsel
11 Green Diamond Management Company
12 greg.corbin@greendiamond.com

13 DATED this 25th day of April, 2024.

14 By: s/ Nathan J. Baker
15 Nathan J. Baker, WSBA No. 35195
16 Friends of the Columbia Gorge
17
18
19
20
21
22
23
24
25
26
27
28
29