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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'S
OBJECTIONS TO HEARINGS PROCESS
AND SCHEDULING MOTION

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

The Energy Facility Site Evaluation Council ("EFSEC") is violating applicable law in numerous ways in the two above-referenced matters, both of which involve pending proposals by Whistling Ridge Energy, LLC ("WRE") to modify the Site Certification Agreement ("SCA") for the Whistling Ridge Energy Project ("WREP" or "Project").¹

First, EFSEC is violating the Open Public Meetings Act ("OPMA"), RCW Chapter 42.30, by scheduling, publicly noticing, and holding "remote" (a.k.a. "virtual only") public hearings. This violates OPMA, which requires EFSEC to allow interested persons to physically attend the hearings in person to testify, listen to, and observe the hearings and the Council's actions.

Second, EFSEC is violating the Council's Rules, Washington's appearance of fairness doctrine, and the Energy Facilities Site Locations Act ("EFSLA"), RCW Chapter 80.50, in failing or refusing to provide *any* public notice regarding the pending proposals, the scheduled

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 filing applies to both of these matters, whether or not they are consolidated.

1 public hearings, and the current opportunities for submitting written comments on these
2 proposals to hundreds of people known by EFSEC to be deeply interested in the Project. These
3 interested persons appear on EFSEC’s own mailing and email lists for the Project and are
4 entitled to notice, plus Friends repeatedly requested in advance that these interested persons
5 continue to receive EFSEC’s notices for the Whistling Ridge Energy Project. Unfortunately,
6 EFSEC has either failed or refused to do so, and instead has only used notification lists that
7 excluded these interested parties, thus leaving them completely in the dark about what is
8 currently proposed for the Project.

9
10 Third, EFSEC is violating the State Environmental Policy Act (“SEPA”), RCW Chapter
11 43.21C, EFSLA, the Council’s Rules, and the appearance of fairness doctrine by scheduling and
12 holding public hearings prior to the preparation by WRE of SEPA environmental checklist(s) for
13 WRE’s proposals to modify the SCA, and prior to the preparation and issuance by the EFSEC
14 Director of SEPA threshold determination(s) on the pending proposals. SEPA requires
15 integration with agencies’ review processes *at the earliest possible time*. EFSEC has had WRE’s
16 proposals in hand for nearly eight months, and yet has apparently not even begun to comply with
17 SEPA. EFSEC’s failures violate the letter and intent of SEPA and its implementing rules.

18 Finally, EFSEC is violating the appearance of fairness doctrine by requiring Friends of the
19 Columbia Gorge (“Friends”) and Save Our Scenic Area (“SOSA”) to submit our evidence and
20 arguments on WRE’s pending proposals now, as part of an OPMA public hearings process,
21 before we know whether the Council will grant our currently pending Application for an
22 Adjudicative Proceeding. This prejudices Friends and SOSA by forcing us to prematurely file all
23 of our arguments and the limited evidence currently available to us, as part of the OPMA
24 process, without being able to obtain and further evaluate this evidence with the benefit of
25 discovery rights and a full adjudication before having to file our arguments and evidence, and
26 without any knowledge as to whether there will or will not be an adjudication (or adjudications)
27 in these matters.

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1 Friends objects to EFSEC’s hearings process in the above-referenced matters and moves
2 the Chair (or the Council) to cancel the scheduled May 16, 2024 hearings and to ensure proper
3 and sufficient public notice of rescheduled in-person or “hybrid” public hearings to EFSEC’s
4 lists of persons interested in the Whistling Ridge Energy Project—after a SEPA environmental
5 checklist and threshold determination(s) are prepared, and after the Council decides Friends and
6 SOSA’s pending Application for an Adjudicative Proceeding—in full compliance with OPMA,
7 SEPA, EFSLA, the Council’s Rules, and Washington’s appearance of fairness doctrine.
8

9 II. APPLICABLE AUTHORITY

10 Both of the above-captioned matters involve requests to modify the Whistling Ridge Site
11 Certification Agreement. The first proposal is to extend the term of the Whistling Ridge SCA
12 (hereinafter “Extension Request”). Upon receiving such a request, “[t]he [C]ouncil will consider
13 the request and determine a schedule for action at the next feasible [C]ouncil meeting.” WAC
14 463-66-030. In addition, “[t]he [C]ouncil shall hold one or more public hearing sessions upon the
15 request for amendment at times and places determined by the [C]ouncil.” *Id.*

16 The other above-captioned matter involves an application to transfer the Whistling Ridge
17 SCA to a new owner (hereinafter “Transfer Application”). Upon receipt of such an application,
18 the Council must “hold an informational hearing on the application.” WAC 463-66-100(4). Prior
19 to holding this required public hearing, EFSEC must mail a public notice to “all persons” on
20 EFSEC’s mailing list for the project. *Id.*

21 Both of these required public hearings are subject to OPMA and the Council’s Rules for
22 OPMA public meetings. *See* RCW 42.30.020(4) (defining “meeting” as “meetings at which
23 action is taken”), 42.30.020(3) (defining “action” as “the transaction of the official business of a
24 public agency by a governing body including but not limited to receipt of public testimony,
25 deliberations, discussions, considerations, reviews, evaluations, and final actions”); WAC 463-
26 18-050 (governing EFSEC’s OPMA proceedings).

27 RCW 42.30.080(1) and WAC 463-18-050(3)(a) authorize the Chair or a majority of the
28 voting members of the Council to schedule EFSEC public meetings, including public hearings
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1 that fall within the scope of OPMA. All EFSEC meetings are “special meetings,” rather than
2 “regular meetings.” WAC 463-18-050(2), (3).

3 For EFSEC’s review of proposals involving wind energy projects, EFSLA urges “a public
4 process that is transparent and inclusive to all.” RCW 80.50.010. For all energy projects,
5 including wind energy projects, EFSLA also “encourag[es] meaningful public comment and
6 participation in energy facility decisions.” RCW 80.50.010(6).

7 OPMA prohibits agencies from holding so-called “virtual-only” or “remote” meetings,
8 unless certain exceptions are met. *See* RCW 42.30.030, 42.30.230.

9 Specifically, “[a]ll meetings of the governing body of a public agency shall be open and
10 public and all persons shall be permitted to attend any meeting of the governing body of a public
11 agency, except as otherwise provided in this chapter.” RCW 42.20.030(1). As interpreted by the
12 Washington Attorney General,
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14 permitting “all persons . . . to attend” a meeting [of an agency’s governing body]
15 requires the meeting to occur at a physical location where interested persons can be
16 present to listen to and observe the governing body’s actions. This reading is
17 consistent with the purpose of the OPMA “to permit the public to observe the steps
18 employed to reach a governmental decision.” *West v. Washington Ass’n of County*
Officials, 162 Wn. App. 120, 131, 252 P.3d 406 (2011) (citing *Eugster v. City of*
Spokane, 128 Wn. App. 1, 7, 114 P.3d 1200 (2005)).

19 AGO 2017 No. 4 at 8 (Mar. 21, 2017).

20 In 2022, in the wake of the COVID-19 pandemic, the Washington Legislature revised
21 OPMA to make key changes pertinent here. As an alternative to holding strictly in-person public
22 meetings as contemplated by RCW 42.20.030(1), agencies may also hold what are often called
23 “hybrid” public meetings, which allow interested persons to either physically attend the meetings
24 in person or “through real-time telephonic, electronic, internet, or other readily available means
25 of remote access that do not require an additional cost to access the meeting.” RCW
26 42.20.030(2).

27 However, in contrast with hybrid meetings, so-called “remote” or “virtual only” meetings,
28 described in the statute as “a remote meeting of the governing body without a physical location,
29 RCW 42.30.230(1)(a), as well as “limited” meetings, described as “a meeting of the governing

1 body at which the physical attendance by some or all members of the public is limited due to a
2 declared emergency,” RCW 42.30.230(1)(b), may be held only under specific exceptions.

3 First, a remote or limited meeting may only be held “after the declaration of an emergency
4 by a local or state government or agency, or by the federal government,” and only if the “agency
5 determines that it cannot hold a meeting of the governing body with members or public
6 attendance in person with reasonable safety because of the emergency.” RCW 42.30.230(1).

7 Second, a remote or limited meeting may be held by any “agency which held some of its regular
8 meetings remotely prior to March 1, 2020.” RCW 42.30.230(6). EFSC does not hold, and has
9 never held, regular meetings. WAC 463-18-050(2).

10 Any action taken in violation of OPMA (including failure to take such action “in a meeting
11 open to the public” or a failure to provide proper public notice) “shall be null and void.” RCW
12 42.30.060(1); *see also* AGO 2017 No. 4 at 9–10 (“[A]ctions taken by a governing body are ‘null
13 and void’ unless the meeting is open to the public and proper notice has been given.”) (quoting
14 RCW 42.20.060(1)).

15 Pursuant to the Council’s SEPA Rules, the decisionmaker is the Council, while the SEPA
16 responsible official is the EFSEC Director (referenced in these Rules by her former title, the
17 EFSEC Manager). WAC 463-47-050, -051.

18 As the SEPA responsible official, the EFSEC Director is responsible for “[c]oordinating
19 activities to comply with SEPA and encouraging consistency in SEPA compliance,” “[p]roviding
20 information and guidance on SEPA . . . to [the] council” and the public, “maintaining the files
21 for . . . SEPA matters,” “[w]riting and/or coordinating EIS preparation,” and “[f]ulfilling the
22 council’s other general responsibilities under SEPA and the SEPA rules.” WAC 463-47-140.

23 The Council’s SEPA Rules, including general SEPA rules adopted by incorporation by the
24 Council (*see* WAC 463-47-020) require applicants such as WRE to prepare and submit an
25 environmental checklist, WAC 197-11-060(2)(b), -100(1), -315, 463-47-060(1), unless the
26 EFSEC Director prepares the checklist herself, WAC 197-11-315(4). The applicable SEPA
27 Rules also require the EFSEC Director to issue a SEPA threshold determination on any proposed
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1 action that is not categorically exempt from SEPA review, WAC 197-11-060(2)(b), -100(2), -
2 310, -330, -335, 463-47-070(1).

3 Pursuant to applicable SEPA Rules, “[t]he SEPA process shall be integrated with agency
4 activities at the earliest possible time to ensure that planning and decisions reflect environmental
5 values, to avoid delays later in the process, and to seek to resolve potential problems,” WAC
6 197-11-055(1), “[a] proposal exists when an agency is presented with an application or has a
7 goal and is actively preparing to make a decision on one or more alternative means of
8 accomplishing that goal *and* the environmental effects can be meaningfully evaluated.” WAC
9 197-11-055(2)(a), “[a]t the latest, the lead agency shall begin environmental review, if required,
10 when an application is complete,” WAC 197-11-055(3)(a), “[t]he lead agency shall prepare its
11 threshold determination and environmental impact statement (EIS), if required, at the earliest
12 possible point in the planning and decision-making process, when the principal features of a
13 proposal and its environmental impacts can be reasonably identified,” WAC 197-11-055(2), and
14 “[t]he fact that proposals may require future agency approvals or environmental review shall not
15 preclude current consideration, as long as proposed future activities are specific enough to allow
16 some evaluation of their probable environmental impacts.” WAC 197-11-055(2)(a)(i).

17 Washington’s appearance of fairness doctrine applies to EFSEC’s proceedings. *Residents*
18 *Opposed to Kittitas Turbines v. EFSEC* (“*ROKT v. EFSEC*”), 165 Wn.2d 275, 313–17, 197 P.3d
19 1153 (2008). Under this doctrine, “[i]t is axiomatic that, whenever the law requires a hearing of
20 any sort as a condition precedent to the power to proceed, it means a fair hearing, a hearing not
21 only fair in substance, but fair in appearance as well.” *Smith v. Skagit County*, 75 Wn.2d 715,
22 739, 453 P.2d 832 (1969).

23 EFSEC decisions are subject to judicial review of “the process used” in arriving at the
24 challenged decision. *ROKT v. EFSEC*, 165 Wn.2d at 304.

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1 **III. EVIDENCE RELIED UPON**

2 These Objections and Scheduling Motion rely upon the accompanying Declaration of
3 Nathan J. Baker (“Baker Declaration”) and Exhibits attached thereto, and on the pleadings and
4 filings in the above-captioned matters.

5 **IV. RELEVANT FACTS**

6 Both of the above-captioned pending matters involve the Whistling Ridge Energy
7 Project, one of the most controversial, problematic, and environmentally consequential wind
8 energy projects ever reviewed by EFSEC.

9 Over the course of approximately three years—from 2009 to 2012—hundreds of
10 interested persons and entities participated in EFSEC’s review of, and submitted written and oral
11 comments and testimony regarding, the Project. Eighty-six percent of these public comments
12 opposed or expressed concerns about the Project. Concerns were raised by hundreds of
13 individual citizens, and by several public resource management agencies, tourism groups, and
14 environmental organizations, including the National Park Service, the U.S. Forest Service, the
15 Washington Department of Natural Resources, the Washington Counsel for the Environment, the
16 Skamania County Agri-Tourism Association, Sustainable Travel International, Friends of the
17 Historic Columbia River Highway, Seattle Audubon Society (now Birds Connect Seattle),
18 Vancouver Audubon Society, Kittitas Audubon Society, Columbia Gorge Audubon Society,
19 American Bird Conservancy, Conservation Northwest, and the Gifford Pinchot Task Force (now
20 the Cascade Forest Conservancy).
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22 During its review process from 2009 to 2012, EFSEC developed and compiled multiple
23 lists of persons known to EFSEC to be interested in the Whistling Ridge Energy Project,
24 including hundreds of people who submitted comments on the Project. Throughout its
25 proceedings during that three-year period, EFSEC consistently provided notice of its hearings
26 and actions to these lists by both postal mail and email. (Baker Decl. at ¶ 6 & Exs. A, B.) EFSEC
27 retains these lists of interested persons today. (*Id.* at ¶ 6 & Exs. A, B.)

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1 On April 25, 2024, Friends and SOSA filed an Application for an Adjudicative
2 Proceeding in the above-captioned matters. In this Application, Friends and SOSA are applying,
3 pursuant to RCW 34.05.413(1) and (2), for the Council to conduct an adjudicative proceeding (or
4 proceedings) for both the Extension Request and Transfer Application.

5 The next day after Friends and SOSA filed the Application for an Adjudicative
6 Proceeding, *i.e.*, on April 26, 2024, EFSEC issued a “Notice of Public Hearings and
7 Opportunities for Public Comment” (hereinafter “Hearing Notice”). The Hearing Notice
8 announces separate public hearings on the pending Transfer Application and Extension Request,
9 both to be held on the evening of May 16, 2024.² The Hearing Notice indicates that “EFSEC
10 proposes to hold two virtual public hearings on the evening of May 16, 2024” and further states
11 that the Council “will hold two separate, but consecutive, virtual public hearings [on that
12 evening] to provide an opportunity for citizens, stakeholders, and interested persons or
13 organizations to receive information and to provide comments on each of the two requests.”
14 (Hearing Notice at 1.) Finally, the Hearing Notice describes the hearings as “remote meetings”
15 and indicates that “[t]hese hearings are being held remotely and may be attended virtually via
16 Microsoft Teams online or via telephone.” (*Id.* at 2.) The Hearing Notice provides no option for
17 in-person attendance at a physical location.
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19 Although EFSEC retains its mailing and email lists for the WREP compiled in 2009 to
20 2012, it has not used these lists for notifying interested persons about the pending Transfer
21 Application and Extension Request, nor to send the Hearing Notice or otherwise announce the
22 public hearings. (Baker Decl. at ¶¶ 4–9 & Exs. A, B.) Over the past several months, Friends has
23 repeatedly asked EFSEC to use these lists for providing notice, but EFSEC has either failed or is
24 unwilling to do so. (*Id.* at ¶¶ 10–17 & Exs. A–E.) As a result, hundreds of people whom the
25 agency knows have deep interests in the Whistling Ridge Energy Project are being kept
26 completely in the dark about the pending proposals regarding the Project, the upcoming
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28 ² It has not been publicly stated who made the decision to schedule the May 16, 2024
29 public hearings. Friends will assume for purposes of this filing that the hearings were scheduled
by the Council Chair in accordance with WAC 463-18-050(3)(a).

1 scheduled public hearings, and the current opportunities for submitting written comments. As
2 explained in the accompanying Baker Declaration, “approximately 99% of the people known to
3 be interested in the Project have not been receiving EFSEC’s notifications regarding the Project
4 in 2023 and 2024.” (*Id.* at ¶ 9.)

5 The Hearing Notice indicates that EFSEC will accept written comments on the Extension
6 Request and Transfer Application, but it is unclear whether the record(s) will be kept open for
7 such written comments after the public hearings. Although the Hearing Notice states that
8 comments may be submitted via email and by postal mail, no deadline is stated by which any
9 email must be sent or by which any postal mail must be postmarked. The Hearing Notice also
10 states that comments may be submitted via EFSEC’s online commenting portal at
11 <https://comments.efsec.wa.gov/>, but only during each public hearing. The Hearing Notice
12 possibly implies that written comments *might* be accepted after the conclusion of the public
13 hearings, but perhaps only in the event that oral comments exceed the allotted time periods for
14 the public hearings: “Speakers may have limited minutes to provide [oral] comments, and any
15 additional comments will be directed to be submitted online or by postal mail.” (Hearing Notice
16 at 2.)

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18 Based on these facts, and in the absence of any clarifications from EFSEC, the most
19 cautious interpretation regarding the pending Transfer Application and Extension Request is that
20 EFSEC intends for all comments submitted via email and via EFSEC’s online commenting
21 portal to be submitted prior to the close of the respective May 16, 2024 public hearings, and for
22 all comments submitted via postal mail to be postmarked by May 16, 2024. Thereafter, written
23 public comment opportunities would only be available if and when EFSEC schedules any action
24 item(s) involving the Whistling Ridge Energy Project.³

25 Both the Extension Request and the Transfer Application were submitted to EFSEC on
26 September 13, 2023. As far as Friends is aware, neither application has been revised,
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29 ³ See, e.g., Baker Decl. at ¶ 24 & Ex. G (various EFSEC public notifications regarding
the Desert Claim Wind Power Project posted and/or disseminated by EFSEC in 2023.)

1 supplemented, replaced, or superseded since its filing nearly eight months ago. If any such
2 filings have been made, they have not yet been released to the public.

3 It is unclear whether the Extension Request and Transfer Application have been deemed
4 complete by EFSEC staff. At the same time, there is no evidence that EFSEC staff have deemed
5 these applications *incomplete* in the nearly eight months since they were submitted. (*See Baker*
6 *Decl.* at ¶ 22.)

7 Under applicable law, the term of the Whistling Ridge SCA expired on March 5, 2022 (ten
8 years after the “effective date” of the SCA), because WRE neither started construction nor began
9 commercial operation by that deadline. WAC 463-68-030, -080(1), -080(2) (“within ten years of
10 the effective date”). Furthermore, WRE lost “all rights” under the SCA at the latest on November
11 18, 2023, ten years after the SCA was fully executed. (WREP SCA at p. 8, § I.B (“within ten
12 (10) years of the execution of the SCA”).) Thus, the Project cannot be constructed and
13 operated—and its significant environmental impacts cannot and will not occur—unless the
14 Council decides to approve the pending Extension Request and Transfer Application.⁴

15 In addition, WRE’s Extension Request discloses that extending the term of the SCA to
16 November 2026 would allow WRE “to propose the installation of fewer but taller wind turbine
17 generators and associated facilities within the designated and approved micro-siting corridors.”
18 (Extension Request at 5.)

19 As far as Friends and SOSA are aware, WRE has not prepared or submitted any SEPA
20 environmental checklist(s) for the Extension Request or Transfer Application. Nor has the
21 EFSEC Director (EFSEC’s SEPA responsible official) issued any threshold determination(s) or
22 any other SEPA decision on either proposal. If any of these materials exist, they have not been
23 made available to the public or released to Friends in response to various public records requests.
24 (*See Baker Decl.* at ¶ 23.)

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⁴ There are numerous disputed legal issues in these matters involving whether the Council has the authority to revive an expired SCA under which all rights have been lost, and to do so as “amendments” to the SCA. These issues will need to be resolved by the Council, hopefully sooner rather than later.

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V. REQUESTED RELIEF

WAC 463-18-050(3)(a) gives the Council Chair (and/or the Council) authority over the scheduling of EFSEC’s special meetings, including the public hearings in these matters.

Friends requests that the Council Chair (or the Council) cancel the scheduled May 16, 2024 public hearings and the comment deadline associated therewith.

Friends also requests that the Chair (or the Council) ensure proper and sufficient public notice in the future—*after* SEPA environmental checklist(s) and threshold determination(s) are prepared for WRE’s pending proposals, and *after* the Council decides whether to grant Friends’ and SOSA’s pending Application for an Adjudicative Proceeding—to EFSEC’s full mailing and email lists for persons known to be interested in the Whistling Ridge Energy Project—of rescheduled in-person or “hybrid” public hearings in full compliance with OPMA, SEPA, the Council’s Rules, and Washington’s appearance of fairness doctrine.

VI. ARGUMENT

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A. EFSEC is violating OPMA by scheduling, publicly noticing, and holding “remote” (a.k.a. “virtual-only”) public hearings.

As discussed above, OPMA requires that EFSEC’s meetings must be “open and public and all persons shall be permitted to attend any meeting” of the Council. RCW 42.30.030(1). This means that “interested persons” must be given the ability to attend the meetings at a “physical location” in order to “be present to listen to and observe the governing body’s actions.” AGO 2017 No. 4 at 8 (citing RCW 42.30.030(1)).

EFSEC may hold an entirely in-person meeting pursuant to RCW 42.30.030(1), or a “hybrid” meeting pursuant to RCW 42.30.030(2). But the agency *cannot* hold a “remote” (a.k.a. “virtual-only”) meeting. *See* RCW 42.30.020, .230.

Although RCW 42.30.230 provides exceptions that allow agencies to hold remote (virtual-only) or limited meetings, none of these exceptions apply here. First, there is currently no declared emergency that would allow for a remote or limited meeting pursuant to RCW 42.30.230(1). Although Governor Inslee previously declared a public health emergency during the COVID-19 pandemic, that state of emergency expired on October 31, 2022, and even prior to

1 that, the Governor’s temporary waivers of certain provisions of OPMA expired and were
2 terminated at 12:01 a.m. on June 1, 2022. (Baker Decl. at ¶¶ 25, 26 & Exs. H, I.) For its part, the
3 federal government’s declaration of a public health emergency ended on May 11, 2023. (*Id.* at ¶
4 27 & Ex. J.) Friends is unaware of any EFSEC declaration of any emergency; nor is EFSEC
5 authorized and qualified to declare a statewide public health emergency caused by an infection
6 disease within the meaning of RCW 42.30.230(1). OPMA’s exceptions for declared emergencies
7 under RCW 42.30.230(1) are not applicable here.

8 Nor is the other exception under RCW 42.30.230(6) available here. The Council does not
9 hold “regular meetings.” WAC 463-18-050(2), (3). Nor did the Council hold any regular
10 meetings as remote meetings prior to March 1, 2020. For both reasons, the Council is not eligible
11 to hold remote (virtual-only) or limited meetings pursuant to RCW 42.30.230(6).

12 Despite the requirements of OPMA to hold either in-person or hybrid public meetings,
13 EFSEC has scheduled, publicly noticed, and intends to conduct “virtual only” or “remote” public
14 hearings for these matters. The Hearing Notice repeatedly describes the May 16, 2024 hearings
15 as “virtual public hearings” and “remote meetings,” and fails to provide or describe any ability
16 for the public to physically attend the hearings in person. EFSEC is violating OPMA by
17 withholding from “interested persons” the ability to arrive at a “physical location” in order to “be
18 present to listen to and observe the governing body’s actions.” AGO 2017 No. 4 at 8 (citing
19 RCW 42.30.030(1)).
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21 The Council Chair (or the full Council) must cancel the scheduled May 16, 2024
22 hearings, and should subsequently schedule in-person or hybrid hearings in these matters
23 pursuant to RCW 42.30.030(1) or (2), respectively. Failure to do so will violate OPMA’s open
24 public meeting and notice requirements, and will render the public hearings “null and void,”
25 RCW 42.30.060(1), which will further taint these proceedings and will, at a minimum, result in
26 the need to conduct new hearings.

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1 EFSEC should cure these errors immediately without further tainting the proceedings.
2 The May 16, 2024 hearings must be canceled, subject to rescheduling as in-person or hybrid
3 hearings at a later date.⁵

4 **B. EFSEC is violating the Council’s Rules, the appearance of fairness doctrine, and**
5 **EFSLA by failing or refusing to use its mailing and email lists for the Project to notify**
6 **interested persons about the pending proposals, the current opportunities for written**
7 **comments, and the scheduled public hearings.**

8 Over the past several months, Friends has repeatedly asked EFSEC to use its own email
9 and mailing lists for the Whistling Ridge Energy Project compiled by the agency in 2009 through
10 2012—when EFSEC received comments and testimony in opposition to the Project from
11 hundreds of concerned citizens, organizations, and other agencies—to provide public notice of
12 the pending matters involving the Project. (Baker Decl. at ¶¶ 6–16 & Exs. A–E.) By not using its
13 own Whistling Ridge lists that the agency has itself compiled, EFSEC is depriving these
14 hundreds of interested persons from any knowledge of the current proceedings, despite the fact
15 that they have publicly self-identified themselves to EFSEC as persons interested in the Project.
16 (*Id.* at ¶¶ 6–16 & Exs. A–E.)

17 The reason(s) for EFSEC failing or refusing to provide notice to its Whistling Ridge lists
18 are unclear, but whatever the reasons may be, they are not acceptable. EFSEC itself compiled
19 these lists, and it still has the lists in its possession. (*Id.* at ¶ 6, 10, 13 & Exs. A, B.) EFSEC is
20 required by its own rules to mail a public notice to “all persons on its mailing list.” WAC 463-
21 66-100(4). EFSEC is utterly failing to comply with its own rules, has no valid excuse for this
22 failure, and cannot plead ignorance given Friends’ repeated requests on this topic.

23 EFSEC’s failures here not only violate the Council’s Rules, but also the appearance of
24 fairness doctrine. EFSEC is knowingly keeping hundreds of concerned citizens in the dark about
25 the ongoing proceedings, including the fact that WRE has filed the Transfer Application and
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28 ⁵ The Chair or Council should consider scheduling the public hearings to be held “in the
29 county of the proposed site” and “in the general proximity of the proposed project” in order to be
consistent with RCW 80.50.090(1) and WAC 463-26-025(3), respectively.

1 Extension Request, the fact that a comment deadline for written comments is currently looming,
2 and the fact that public hearings have been scheduled and are imminent.

3 As held by the *Smith* court, “a fair and impartial hearing . . . means an opportunity for
4 interested persons to appear and express their views.” 75 Wn.2d at 739–40. “[T]he public
5 hearing must, to be valid, meet the test of fundamental fairness, for the right to be heard imports
6 a reasonable expectation of being heeded. Just as a hearing fair in appearance but unfair in
7 substance is no fair hearing, so neither is a hearing fair in substance but appearing to be unfair.”
8 *Id.* at 740. The court further held that “in public hearings conducted by law on matters of public
9 interest,” a principal feature of the test for whether the agency’s process satisfies the doctrine “is
10 whether a fair-minded person in attendance at all of the meetings on a given issue, could, at the
11 conclusion thereof, in good conscience say that everyone had been heard who, in all fairness,
12 should have been heard.” *Id.* at 741.

13 Thus, it violated the appearance of fairness doctrine when, in *Smith*, the governing body
14 of the decision-making agency knowingly excluded opponents of the proposed action from a
15 hearing session. *Id.* at 743. At that point, “the hearing lost one of its most basic requisites—the
16 appearance of elemental fairness,” which rendered the agency action “invalid” because the
17 required hearings “were so wanting in apparent fairness as to vitiate the [agency action]
18 emerging from them.” *Id.* The *Smith* court also noted that voiding an agency action is a typical
19 and appropriate outcome when the agency took action “without sufficient public notice” or after
20 departing from “norms prescribed for such notice.” *Id.* (citing Annot., 96 A.L.R.2d 449 (1964)).

21 Here, EFSEC is already making similar mistakes as made by the agency in *Smith* (which,
22 again, resulted in a voiding of that agency action). *See* 75 Wn.2d at 739–744, 746. EFSEC is
23 knowingly and willfully declining to provide notice to hundreds of people who have already
24 expressed their interest in the Project and are therefore known to EFSEC, and who already
25 appear on EFSEC’s self-compiled mailing and email lists for the Project. These interested
26 persons are entitled to receive notice and are entitled to be heard regarding the pending proposals
27 for this Project.
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1 EFSEC itself has described the purpose of its public hearings as “to provide an
2 opportunity for citizens, stakeholders, and interested persons or organizations to receive
3 information and to provide comments on each of the two requests.” (Hearing Notice at 1.) Yet
4 the agency is knowingly refusing or declining to provide *any* notice of these hearings to
5 hundreds of known “citizens, stakeholders, and interested persons or organizations,” and is thus
6 depriving them of the opportunity to “receive information and to provide comments on each of
7 the two requests.” (*Id.*) EFSEC is utterly failing to live up to its own stated purposes for the
8 hearings.

9 “One purpose of specific statutory requirements for public notice of an impending land
10 use decision is to ensure that the decision makers receive enough information from those who
11 may be affected by the action to make an intelligent decision.” *Prekeges v. King County*, 98 Wn.
12 App. 275, 281, 990 P.2d 405 (1999). “[D]efective notice undermines the information-gathering
13 process.” *Prosser Hill Coal. v. Spokane County*, 176 Wn. App. 280, 291, 309 P.3d 1202 (2013).
14 Known and potentially interested persons such as “neighboring landowner[s] should be afforded
15 a fair opportunity to be heard.” *Id.* (citing *Gardner v. Pierce Cnty. Bd. of Comm’rs*, 27 Wn. App.
16 241, 243–44, 617 P.2d 743 (1980)).

17 In addition, the Washington Legislature has adopted as state energy siting policies that
18 EFSEC should provide “a public process that is transparent and inclusive to all,” RCW
19 80.50.010, and should allow for “meaningful public comment and participation in energy facility
20 decisions,” RCW 80.50.010(6). EFSEC is directly thwarting these policies by declining to
21 provide notice of the pending proposals to hundreds of known interested persons.
22

23 EFSEC is obligated by EFSLA, SEPA, and other applicable laws to serve the welfare of
24 the entire affected community (*see, e.g.*, RCW 43.21C.020, 80.50.030)—not just to serve WRE
25 and the small number of people interested in the Project who may have happened to learn about
26 or receive notice of the pending proposals. By failing to notify persons who have already made
27 themselves known as interested persons who are part of the affected community, EFSEC is
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1 violating these obligations by failing to invite comments from these known interested persons,
2 and is therefore acting arbitrarily and capriciously:

3 Where the potential exists that a [proposed] action will cause a serious
4 environmental effect outside jurisdictional borders, the [administrative agency]
5 must serve the welfare of the entire affected community. *If it does not do so it acts*
6 *in an arbitrary and capricious manner.* The precise boundaries of the affected
7 community cannot be determined until the potential environmental effects are
understood. It includes all areas where a serious impact on the environment would
be caused by the proposed action.

8 *Save a Valuable Environment v. City of Bothell*, 89 Wn. 2d 862, 869, 576 P.2d 401 (1978)
9 (emphasis added).

10 “The purpose of . . . notice [requirements] is to fairly and sufficiently apprise those who
11 may be affected by the proposed action of the nature and character of the [proposed action] so
12 that they may intelligently prepare for the hearing.” *Barrie v. Kitsap County*, 84 Wn.2d 579,
13 584–85, 527 P.2d 1377 (1974) (citing *Glaspey Sons, Inc. v. Conrad*, 83 Wn.2d 707, 711, 521
14 P.2d 1173 (1974)). Notice is “defective” where it “conceivably deprive[s] . . . affected parties . . .
15 of their opportunity to be heard.” *Id.* at 585–86.

16 Here, by failing to provide *any* notice to hundreds of people who appear on EFSEC’s
17 own lists of persons and entities interested in the Project, EFSEC is violating its own rules, the
18 appearance of fairness doctrine, and the State of Washington’s stated policies for energy siting
19 decisions and disclosure of potential environmental impacts—let alone due process
20 requirements. Simply put, EFSEC is knowingly withholding public notice to—and is therefore
21 neither informing, nor will it hear back from—hundreds of affected persons entitled to such
22 notice.

23
24 To remedy these violations, two things must occur. First, the public hearings scheduled
25 for May 16, 2024 and the associated deadline for written public comments must be canceled.
26 And second, EFSEC must provide proper notice to all persons on its WREP lists of the pending
27 proposals and of any rescheduled public hearings and comment opportunities. Failure to pursue
28 these steps will only further exacerbate the agency’s violations and will run a grave risk of
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1 voiding the May 16, 2024 hearings, as well as whichever final action(s) the Council may
2 ultimately take in these matters.

3 **C. EFSEC is violating SEPA, the Council’s Rules, and the appearance of fairness**
4 **doctrine by scheduling and holding public hearings prior to WRE’s preparation and**
5 **submission of environmental checklist(s), and prior to the preparation and issuance**
6 **by the EFSEC Director of SEPA threshold determination(s) on the pending**
7 **proposals.**

8 Despite the fact that the Project cannot be constructed and operated, and its significant
9 environmental impacts cannot and will not occur, without Council approval of WRE’s Extension
10 Request and Transfer Application, and despite the fact that the Extension Request announces an
11 intention to modify the Project to use taller wind turbines than were approved by Governor
12 Gregoire (*see supra* Part IV), WRE has apparently not submitted any SEPA environmental
13 checklist(s) for its pending proposals to modify the SCA (*see* Baker Decl. at ¶ 23). Nor,
14 apparently, has EFSEC’s SEPA responsible official, the EFSEC Director, made or issued any
15 SEPA threshold determinations or any other SEPA decisions in these matters. (*See* Baker Decl.
16 at ¶ 23.)

17 Both WRE and the EFSEC Director are thus not in compliance with SEPA’s procedural
18 and timing requirements, which require integration of SEPA review into the Council’s decision-
19 making process *at the earliest possible stage*, and which specifically require a SEPA
20 environmental checklist and threshold determination upon the submission of an application,
21 which in these matters were submitted nearly eight months ago. If the Council moves forward
22 with holding public hearings on the pending proposals before compliance with SEPA is
23 achieved, it will thwart the purposes and standards of SEPA and will violate the appearance of
24 fairness doctrine, because EFSEC will be proceeding with the review of WRE’s proposals in the
25 absence of required information about their probable environmental impacts.

26 Applicable SEPA Rules require an applicant such as WRE to prepare and submit an
27 environmental checklist, WAC 197-11-060(2)(b), -100(1), -315, 463-47-060(1), unless the
28 EFSEC Director prepares the checklist herself, WAC 197-11-315(4). An environmental checklist
29 “assist[s] in making threshold determinations for proposals,” WAC 197-11-315(1), and is

1 necessary for “deciding whether an EIS is required,” WAC 197-11-060(2)(b). “Agencies shall
2 use the environmental checklist substantially in the form found in WAC 197-11-960 to assist in
3 making threshold determinations for proposals.” WAC 197-11-315(1).

4 When EFSEC receives an application, the EFSEC Director must “determine . . . whether
5 the proposal is an ‘action’ and, if so, whether it is ‘categorically exempt’ from SEPA.” WAC
6 463-47-060(1). The EFSEC Director is required to issue a SEPA threshold determination on any
7 proposed action that is not categorically exempt from SEPA review, WAC 197-11-060(2)(b), -
8 100(2), -310, -330, -335, 463-47-070(1).

9 “Actions” are defined at WAC 197-11-704, and include “[n]ew and continuing activities
10 (including projects and programs) entirely or partly financed, assisted, conducted, regulated,
11 licensed, or approved by agencies,” WAC 197-11-704(1)(a), including “[p]roject actions,” which
12 are defined to mean “a decision on a specific project, such as a construction or management
13 activity located in a defined geographic area,” WAC 197-11-704(2)(a), which further include
14 “agency decisions to . . . “[l]icense . . . any activity that will directly modify the environment,”
15 WAC 197-11-704(2)(a), (2)(a)(i).

16 The pending proposals (the Extension Request and Transfer Application) are proposals to
17 modify the Project’s SCA, which is a license. *Friends of the Columbia Gorge, Inc. v. EFSEC*,
18 178 Wn.2d 320, 333, 310 P.3d 780 (2013) (site certification agreements are “licenses”); *ROKT v.*
19 *EFSEC*, 165 Wn.2d at 304 (same); *see also* WAC 197-11-760 (SEPA rule defining “license” in
20 pertinent part as “any form of written permission given to any person, organization, or agency to
21 engage in any activity, as required by law or agency rule”). WRE in effect proposes agency
22 decisions involving the licensing of a specific industrial-scale wind energy project; the proposals
23 thus constitute “actions” as defined at WAC 197-11-704.

24 Furthermore, the proposed actions are not categorically exempt from SEPA review, since
25 they do not meet any of the categorical exemptions listed in the SEPA Rules or statute. Nor has
26 the EFSEC Director apparently requested an environmental checklist from WRE pursuant to
27 WAC 463-47-060(1) or any other applicable authority, nor made any SEPA decisions in these
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1 matters, such as decisions whether the proposals constitute “actions,” whether they are
2 categorically exempt from SEPA review, or any SEPA threshold determinations. (*See Baker*
3 *Decl.* at ¶ 23.)

4 WRE and the EFSEC Director are thus in violation of the above-discussed SEPA Rules
5 requiring an environmental checklist and threshold determination. Moreover, these violations are
6 further violating applicable law regarding the timing of SEPA review. For example, “[t]he SEPA
7 process shall be integrated with agency activities *at the earliest possible time* to ensure that
8 planning and decisions reflect environmental values, to avoid delays later in the process, and to
9 seek to resolve potential problems,” WAC 197-11-055(1) (emphasis added), and “[t]he lead
10 agency shall prepare its threshold determination and environmental impact statement (EIS), if
11 required, *at the earliest possible point in the planning and decision-making process*, when the
12 principal features of a proposal and its environmental impacts can be reasonably identified,”
13 WAC 197-11-055(2) (emphasis added).

14
15 In a helpful summary of the various subsections of WAC 197-11-055, the Washington
16 Pollution Control Hearings Board recently explained that

17 [t]he purpose of these SEPA requirements is to ensure consideration of
18 environmental factors beginning at the earliest possible stage to allow decisions to
19 be made on complete disclosure of environmental consequences. *See Klickitat*
20 *Cnty. Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 640,
21 860 P.2d 390 (1993) (citing WAC 197-11-055(2)); *Quinault Indian Nation v.*
22 *Imperium Terminal Servs., LLC*, 190 Wn. App. 696, 709, 360 P.3d 949 (2015)
23 (reversed on other grounds by *Quinault Indian Nation v. Imperium Terminal Servs.,*
24 *LLC*, 187 Wn.2d 460, 387 P.3d 670 (2017)); *Spokane County v. E. Wash. Growth*
25 *Mgmt. Hr’gs Bd.*, 176 Wn. App. 555, 579, 309 P.3d 673 (2013) (purpose of the
26 SEPA checklist is to ensure agency, at earliest possible stage, fully discloses and
27 carefully considers a proposal’s environmental impact before adopting it).

28
29 *Nisqually Delta Ass’n v. Wash. State Dep’t of Ecology*, PCHB No. 22-057, 2024 WL 402504, at
*13 (slip op. at 25) (Pollution Control Hr’gs Bd. Jan. 29, 2024).

Here, EFSEC is failing to integrate SEPA into its planning and decision-making
processes *at all*—and certainly not at the earliest possible time, considering that WRE submitted

1 its Extension Request and Transfer Application to EFSEC on September 13, 2023, nearly eight
2 months ago.

3 Under the SEPA Rules, “[a] proposal exists when an agency is presented with an
4 application or has a goal and is actively preparing to make a decision on one or more alternative
5 means of accomplishing that goal *and* the environmental effects can be meaningfully evaluated.”
6 WAC 197-11-055(2)(a). “At the latest, the lead agency shall begin environmental review, if
7 required, when an application is complete.” WAC 197-11-055(3)(a).

8 Moreover, the threshold determination “shall be made as close as possible to the time an
9 agency . . . is presented with a proposal,” WAC 197-11-310(2), and in any event,” “[t]he
10 responsible official shall make a threshold determination no later than ninety days after the
11 application and supporting documentation are determined to be complete,” WAC 197-11-310(3).

12 Again, WRE submitted its applications nearly eight months ago, and there is no
13 indication that EFSEC’s staff has rejected these applications or deemed them incomplete.⁶ Thus,
14 EFSEC’s SEPA review of the proposals should have begun more than seven months ago, and the
15 EFSEC Director should have made a threshold determination more than four months ago. Yet
16 there is no indication that *any* SEPA review has occurred.

17 Friends recognizes that its concerns with these violations of SEPA’s timing and
18 procedural requirements are best targeted to the EFSEC Director, who serves as the agency’s
19 SEPA responsible official per WAC 463-47-051.

20 However, it must be noted to the Council that these violations of SEPA’s requirements
21 are, in turn, disrupting the processes for review by the Council and the public of WRE’s pending
22 proposals and their probable environmental impacts. These SEPA disruptions are having very
23 real consequences, in part because many of the procedural and substantive review standards
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29 ⁶ To the extent that EFSEC staff implicitly or explicitly deemed the Extension Request
and Transfer Application complete, Friends does not agree that either of these applications is in
fact complete. Friends reserves the right to challenge the completeness and adequacy of these
applications in these proceedings, including in any adjudicative proceeding(s).

1 applicable in these matters involve potential environmental impacts,⁷ thus necessitating
2 integration with the SEPA process for fully informed public review and agency decision making.

3 Under these rules and others, it is imperative for the reviewing public, as well as the
4 Council (acting as the agency decision maker for these matters), to have thorough and accurate
5 information about WRE's proposals and their environmental impacts. Indeed, it is nearly
6 impossible for Friends to evaluate WRE's proposals under many of the applicable standards
7 without a thorough SEPA review, partly because the Project is proposed on private property to
8 which Friends lacks access.⁸

9 It may be debatable whether the Council has authority to order the EFSEC Director to
10 comply with SEPA. But Friends is not asking for such a remedy here.

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13 ⁷ For example, WAC 463-68-060 requires the Council to consider “[t]he nature and
14 degree of any changes to the following since the effective date of the site certification
15 agreement,” “[p]roject design,” “[p]roject-related environmental conditions,” and “[w]hether any
16 new information or changed conditions indicate the existence of probable significant adverse
17 environmental impacts that were not covered in any project-related environmental documents.”

18 Similarly, WAC 463-68-070 requires the Council to find, before construction may start,
19 “that no changes or amendments to the site certification agreement, regulatory permits, or
20 project-related environmental documents are necessary or appropriate, or upon the [C]ouncil's
21 approval of any necessary or appropriate changes or amendments.” Furthermore, the Council has
22 the authority to “retain an independent consultant, at the certificate holder's expense, to evaluate
23 and make recommendations about whether changes to the site certification agreement, regulatory
24 permits, or project-related environmental documents are necessary or appropriate. This work
25 may include, but is not limited to, verification of project-related environmental conditions,
26 regulatory requirements, or appropriate technology.” WAC 463-68-070.

27 When reviewing any proposed amendment to an SCA, WAC 463-66-040 requires the
28 Council to “consider whether the proposal is consistent with . . . [t]he intention of the original
29 SCA,” “[a]pplicable laws and rules,” “[t]he public health, safety, and welfare,” and other factors.
WAC 463-66-050 requires the Council to “consider the short-term and long-term environmental
impacts of the proposal,” and to consider in pertinent part “[r]easonable alternative means by
which the purpose of the proposal might be achieved.”

WAC 463-66-070 in pertinent part requires EFSEC to determine whether WRE's
pending proposals would “have a significant detrimental effect upon the environment,” which in
turn dictates whether the Council has authority to approve the proposals, or whether approval can
be made only by the Governor. *See also* WAC 463-66-080 (describing review by the Governor).

⁸ The only other way for Friends to obtain and use the types of information discussed
herein would be through an adjudicative proceeding with discovery rights. Those considerations
are discussed further below, *infra* § V.D.

1 Rather, Friends asks the Council (or the Chair on behalf of the Council) to simply
2 acknowledge that the SEPA review process must be integrated with the Council’s review process
3 at the earliest possible stage, and respond appropriately. Here, because there has not yet been any
4 SEPA environmental checklist or threshold determination produced in these matters, this means
5 the Council should postpone any public hearing and written comment deadline until after
6 compliance with SEPA is achieved. Proceeding with the upcoming public hearings and
7 associated deadline for written comments in the absence of the required SEPA checklist and
8 threshold determination will further violate SEPA, EFSEC’s statutory obligations, and the
9 appearance of fairness doctrine by depriving Friends of the Columbia Gorge, the public at large,
10 and the Council of the complete and accurate disclosures of potential environmental impacts
11 required under SEPA. The Chair (or the Council) should cancel the May 16, 2024 hearings and
12 the associated deadline for written comments until SEPA compliance is achieved.
13

14 **D. EFSEC is prejudicing Friends and SOSA and violating the appearance of fairness**
15 **doctrine by requiring us to submit all of our arguments and limited evidence**
16 **currently available to us regarding WRE’s pending proposals now, as part of an**
17 **OPMA public hearings process, before we know whether the Council will grant our**
18 **currently pending Application for an Adjudicative Proceeding.**

19 On April 10, 2024, Friends notified counsel for EFSEC by telephone that Friends
20 intended to file an application for an adjudicative proceeding in these matters. (Baker Decl. at ¶
21 20; *see also id.* at ¶ 19.) On April 16, 2024, Friends reiterated this notification, this time by
22 email. (*Id.* at ¶ 21.) Both times, Friends requested that EFSEC refrain from scheduling any public
23 hearings in these matters, in order to allow sufficient time for Friends’ application for an
24 adjudicative proceeding to be heard first. (*Id.* at ¶¶ 20, 21.)

25 On April 25, 2024, Friends and SOSA followed through on these previously announced
26 intentions, by filing our Application for an Adjudicative Proceeding in the above-captioned
27 matters.

28 The next day, April 26, 2024, EFSEC issued the Hearing Notice, announcing that public
29 hearings in these matters have been scheduled for May 16, 2024.

1 Friends and SOSA’s Application for an Adjudicative Proceeding remains pending.
2 Pursuant to RCW 34.05.419(1), EFSEC has ninety days from receipt of the Application (until
3 July 24, 2024) to decide whether to conduct an adjudicative proceeding.

4 As discussed above, *supra* Part IV, although it is not entirely clear what the intended
5 deadline is for submitting written public comments to EFSEC regarding WRE’s Transfer
6 Application and Extension Request, the most cautious deadline (and perhaps the likely intended
7 deadline) is May 16, 2024.

8 The Council is not scheduled to meet again until its monthly meeting on the afternoon of
9 May 15, 2024.

10 Unless the Council decides at its May 15, 2024 meeting to grant Friends and SOSA’s
11 Application for an Adjudicative Proceeding and conduct an adjudicative proceeding (or
12 proceedings) in these matters, Friends and SOSA will not know during the May 16, 2024 public
13 hearings, nor by the May 16, 2024 deadline for submitting written comments, whether there will
14 be an adjudicative proceeding (or proceedings).

15 This precarious situation will likely force Friends and SOSA to submit for the record of
16 the OPMA proceedings all of our arguments and the limited evidence currently available
17 regarding WRE’s pending proposals by May 16, 2024, even without knowing whether there will
18 be an adjudicative proceeding. Evidence submitted as part of the OPMA process will be of a
19 very different form and substance than evidence submitted in a formal adjudication, and it will
20 not be informed by the adjudication, including through discovery of pertinent information from
21 WRE and its affiliates and witnesses. Moreover, Friends and SOSA will be forced to “show our
22 hand” by filing all of our arguments and evidence now as part of the OPMA process, and without
23 being able to further evaluate and vet this material with the benefit of an adjudication, before
24 unveiling it.

25
26 In short, we do not currently know which processes will ultimately be allowed in these
27 matters, so we are forced to proceed as if the May 16, 2024 OPMA hearings and associated
28 deadline for written public comments will be the only processes. Even if EFSEC later decides to
29

1 grant an adjudicative hearing (or hearings), it will be impossible to “un-ring the bell,” in terms of
2 Friends and SOSA being forced to prematurely file (and thereby unveil) all of our arguments and
3 available evidence by May 16, 2024.

4 This precarious situation violates appearance of fairness principles, and it was created by
5 EFSEC’s decision to schedule the public hearings for May 16, 2024 and the agency’s apparent
6 intentions to end the deadline for written public comments on that same date.

7 To avoid further prejudice to Friends and SOSA, the Chair (or the Council) should
8 immediately cancel the May 16, 2024 public hearings and the associated deadline for submitting
9 written public comments, and should wait to reschedule the public hearings and set a new
10 deadline for written comments in the OPMA proceedings until after the Council decides Friends
11 and SOSA’s pending Application for an Adjudicative Proceeding. Failure to take these steps will
12 only further prejudice Friends and SOSA, and will thereby further violate the appearance of
13 fairness doctrine.
14

15 VI. CONCLUSION

16 Based on the foregoing, the Chair (or the Council) should immediately cancel the May
17 16, 2024 public hearings and the associated deadline for submitting written public comments.

18 After SEPA environmental checklist(s) and threshold determination(s) are prepared and
19 filed, and after the Council decides Friends and SOSA’s pending Application for an Adjudicative
20 Proceeding, the Chair (or the Council) should then schedule public hearings, to be conducted as
21 either in-person or hybrid public meetings under OPMA, and should provide notice of WRE’s
22 Extension Request and Transfer Application, any public hearings, and any opportunities for
23 submitting written comments regarding these matters to all persons on EFSEC’s lists for the
24 Whistling Ridge Energy Project.

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1 Failure to take these steps will further violate applicable law and the appearance of
2 fairness doctrine.

3
4 RESPECTFULLY SUBMITTED this 6th day of May, 2024.

5 FRIENDS OF THE COLUMBIA GORGE, INC.

6 

7
8 _____
9 Nathan J. Baker, WSBA No. 35195

10 Senior Staff Attorney

11 (503) 241-3762 x101

12 nathan@gorgefriends.org

13 *Attorney for Friends of the Columbia Gorge*

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’S OBJECTIONS TO HEARINGS
4 PROCESS AND SCHEDULING MOTION on each of the persons named below via email:

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

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

12 DATED this 6th day of May, 2024.

13 By: s/ Nathan J. Baker
14 Nathan J. Baker, WSBA No. 35195
15 Friends of the Columbia Gorge
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