

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Prehearing Conference
WHISTLING RIDGE ENERGY, LLC.) Pages 1 - 31
WHISTLING RIDGE ENERGY PROJECT)
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A prehearing Conference in the above matter was held on Thursday, June 17, 2010, at the Skamania Lodge at 1131 Skamania Lodge Way S.W., in Stevenson, Washington at 1:30 p.m., before the Energy Facility Site Evaluation Council.

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WHISTLING RIDGE ENERGY, LLC, Tim McMahan, Attorney at Law, Stoel Rives, LLP, 805 Broadway Street, Suite 725, Vancouver, Washington 98660; and Darrel Peeples, Attorney at Law, 325 Washington Street N.E., No. 440, Olympia, Washington 98506.

COUNSEL FOR THE ENVIRONMENT, H. Bruce Marvin, Assistant Attorney General, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100.

REPORTED BY:

SHAUN LINSE, CCR

CCR NO. 2029

1 APPEARANCES (Cont'd):

2 DEPARTMENT OF COMMERCE, Dorothy H. Jaffe,
3 Assistant Attorney General; P.O. Box 40109, Olympia,
4 Washington 98504-0109 and Mark Anderson, Lay Representative,
5 Energy Division, 7121 Clean Water Drive, P.O. Box 43173,
6 Olympia, Washington 98504-3173.

7 FRIENDS OF THE COLUMBIA GORGE, SAVE OUR SCENIC
8 AREA, and SKAMANIA COUNTY AGRI-TOURISM ASSOCIATION, Gary K.
9 Kahn, Attorney at Law, Reeves, Kahn & Hennessy, P.O. Box
10 86100, Portland, Oregon 97286-0100; Nathan Baker, Staff
11 Attorney, 522 West S.W. 5th Avenue, Suite 720, Portland,
12 Oregon 97204-2100.

13 SKAMANIA COUNTY PUBLIC UTILITY DISTRICT NO. 1,
14 Humaria Falkenberg, Project Manager, P.O. Box 500, Carson,
15 Washington 98610.

16 SKAMANIA COUNTY ECONOMIC DEVELOPMENT COUNCIL and
17 PORT OF SKAMANIA COUNTY, Peggy Bryan, Executive Director,
18 167 N.W. 2nd, P.O. Box 436, Stevenson, Washington 98648.

19 SEATTLE AUDUBON SOCIETY, Matt Mega, Director of
20 Conservation, 8050 35th Avenue N.E., Seattle, Washington
21 98115.

22 SAVE OUR SCENIC AREA (SOSA), Thomas Drach, Lay
23 Representative, P.O. Box 41, Underwood, Washington 98651.

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1 APPEARANCES (Cont'd):

2 CONFEDERATED TRIBES and BANDS OF THE YAKAMA
3 NATION, Warren Spencer, Tribal Councilman, and Jessica
4 Lally, Archeologist, P.O. Box 151, Toppenish, Washington
5 98948.

6 * * * * *

7 JUDGE WALLIS: This prehearing conference will
8 please come to order. This is a prehearing conference in
9 the matter of Council Application No. 2009-01 for the
10 Whistling Ridge Energy Project. It's being held in
11 Stevenson, Washington on June 17, 2010 pursuant to due and
12 proper notice to all interested parties before the members
13 of the Washington State Energy Facility Site Evaluation
14 Council.

15 The members are, and I am going to ask you to
16 raise your hand so that all of the people here can identify
17 you. First, EFSEC Chair Jim Luce, the Department of
18 Commerce, Dick Fryhling; the Department of Ecology, Hedia
19 Adelsman, and she is unable to attend today having a higher
20 calling accompanying the Governor of the State of Washington
21 in a different location; the Department of Fish and
22 Wildlife, Jeff Tayer; The Department of Natural Resources,
23 Mary McDonald; the Utilities and Transportation Commission,
24 Dennis Moss; and Skamania County, Judy Wilson.

25 My name is Robert Wallis and I am the

1 Administrative Law Judge for this proceeding. I'd like to
2 begin the proceedings by taking the appearances of counsel
3 who are here today, and I will read the name of the party,
4 and I'm going to ask lead counsel to state your name and the
5 names of any attorneys who are representatives who are
6 accompanying you today beginning with the Whistling Ridge
7 Wind Power Applicant.

8 MR. McMAHAN: Do you want me to use the
9 microphone?

10 JUDGE WALLIS: Yes, let's grab the microphone,
11 please.

12 MR. McMAHAN: Tim McMahan for the Stoel Rives Law
13 Firm on behalf of the Applicant. With me is Mr. Darrel
14 Peeples on behalf of the Applicant, and James Spadaro with
15 SDS Lumber of Whistling Ridge Energy Project, LLC.

16 JUDGE WALLIS: Counsel for the Environment.

17 MR. MARVIN: Bruce Marvin, Assistant Attorney
18 General, appearing as Counsel for the Environment.

19 JUDGE WALLIS: The Department of Commerce?

20 MS. JAFFE: Dorothy Jaffe, Assistant Attorney
21 General for the Department of Commerce.

22 JUDGE WALLIS: Now, there has been a change in
23 counsel and you have filed a notice of appearance. Could
24 you state for our record your contact information, please.

25 MS. JAFFE: Contact information the address is

1 7121 Clean Water Drive, Olympia, Washington 98504. The
2 phone number is 360-586-3158. E-mail address is
3 dorij@atg.wa.gov

4 JUDGE WALLIS: Thank you. Friends of the Columbia
5 Gorge?

6 MR KAHN: Gary Kahn, Reeves, Kahn & Hennessy,
7 Counsel for Friends of the Columbia Gorge. With me is
8 Nathan Baker from Friends of the Gorge, Rick Till from
9 Friends of the Gorge.

10 I am also here appearing in place of Rick Aramburu
11 on behalf of Save Our Scenic Area and with me is Tom Drach,
12 one of the members of Save Our Scenic Area.

13 I'm also substituting for Isa Anne Taylor on
14 behalf of the Skamania County Agri-Tourism Association.
15 Neither of them could make it. They had conflicts on their
16 schedule.

17 JUDGE WALLIS: I'm going to because we have
18 indication that there is at least one call in on the bridge
19 line ask if Mr. Aramburu is present on the bridge line?

20 MR. KAHN: I don't believe he was aware of that
21 option. We just tried to contact him to see if he could
22 call in. He's still in another hearing and his office
23 indicated they would let him know if he gets out early
24 enough to call in. Is there a number to call in on? Do we
25 know what that number is?

1 JUDGE WALLIS: I believe he was notified
2 yesterday.

3 MR. POSNER: He was notified by e-mail.

4 MR. KAHN: Okay. Thank you.

5 JUDGE WALLIS: Skamania County Public Utility
6 District No. 1?

7 MS. FALKENBERG: Right here.

8 JUDGE WALLIS: Could you get the microphone and
9 state your name, please.

10 MS. FALKENBERG: Sure. My is Humaria Falkenberg
11 on behalf of Skamania County Public Utility District No. 1,
12 P.O. Box 500, Carson, Washington 98610. Phone number
13 509-427-5110.

14 JUDGE WALLIS: And your name again is?

15 MS. FALKENBERG: Humaria Falkenberg,
16 H-u-m-a-r-i-a. Falkenberg, F-a-l-k-e-n-b-e-r-g.

17 JUDGE WALLIS: Thank you.

18 The Association of Washington Business?

19 Mr. McCabe spoke with staff earlier and was
20 excused for today's proceedings. He did indicate that he
21 might call in.

22 Seattle Audubon Society?

23 MR. MEGA: Matt Mega filling in for Shawn
24 Cantrell.

25 JUDGE WALLIS: I'm sorry.

1 MR. MEGA: Matt Mega M-a-t-t M-e-g-a for Shawn
2 Cantrell.

3 JUDGE WALLIS: Are you an attorney now
4 representing the group?

5 MR. MEGA: No, I'm not an attorney.

6 JUDGE WALLIS: What's your role?

7 MR. MEGA: I'm Director of Conservation.

8 JUDGE WALLIS: Very well. Columbia River Gorge
9 Commission?

10 Port of Skamania County?

11 City of White Salmon?

12 Klickitat County Public Economic Development
13 Authority?

14 Wilbur Slockish and Jimmy Jackson and the
15 Klickitat and Cascade Tribes of the Yakama Nation?

16 And the Confederated Tribes and Bands of the
17 Yakama Nation?

18 MR. SPENCER: Good afternoon. I'm Warren Spencer
19 representing the Yakama Tribal Council, and I have our
20 archaeologist Jessica Lally also.

21 JUDGE WALLIS: Thank you. Are there any other
22 appearances to be made today?

23 Let the record show that there is --

24 MS. BRYAN: Actually I'm here representing --
25 Peggy Bryan, representing the Skamania County Economic

1 Development Council, P.O. Box 436, Stevenson, Washington
2 98648, and I'm also representing John McSherry for the Port
3 of Skamania.

4 JUDGE WALLIS: Could you speak more slowly,
5 please.

6 MS. BRYAN: I'm also representing John McSherry,
7 Port of Skamania County. He was not able to attend today.

8 JUDGE WALLIS: Very well. Thank you.

9 We indicated a list of items that would be taken
10 up today in the notice, and I would like to go through those
11 items one by one, not necessarily in the order in which they
12 are listed in the conference notice.

13 One of the pieces of information that we have now
14 that we did not then have is a proposed schedule from the
15 Applicant, and I believe that has been distributed to all of
16 the parties by electronic mail and a copy has been placed on
17 each of the places here at the tables for the parties. I'm
18 going to ask the Applicant to introduce this proposed
19 schedule and then ask for comments on that schedule.

20 MR. McMAHAN: Tim McMahan here on behalf of
21 Whistling Ridge Energy. We submitted to EFSEC staff and
22 circulated to all parties a schedule that's referred to it
23 has a June 17 date on it.

24 The way we derived this schedule was consideration
25 of where the project is at this stage of the process and

1 then looking back at a couple prior prehearing orders issued
2 in both the Wild Horse and Kittitas Valley projects. This
3 does reflect the timing of the exchange of written direct
4 testimony and the adjudicative process for those proceedings
5 with one exception. Those other orders gave the Applicant
6 far more time to prepare prefiled testimony, and we have
7 given us very little time to prepare that frankly because
8 that is already underway and we needn't take more than the
9 next couple of weeks to prepare that.

10 So I'm going with the assumption that this
11 proceeding will be conducted as others have with prefiled
12 direct testimony which I think is the standard approach.
13 Also with that assumption in mind that we propose this as at
14 least a starting place for discussion. We think this works
15 well for these proceedings. Thank you.

16 JUDGE WALLIS: We did indicate at the outset that
17 we would be considering the use of prefiled testimony. That
18 has been traditional in Council proceedings. It affords all
19 of the parties an opportunity to examine the testimony of
20 witnesses before it was given and prepare an examination on
21 it so that the hearing is thereby enhanced and the timing of
22 the hearing is also enhanced.

23 I'm going to ask if there is anyone who has
24 objection to that process?

25 Let the record show that there's no response.

1 Now I would like to call for responses for the
2 proposed schedule. Are there any of the parties who wish to
3 make a response?

4 JUDGE WALLIS: Mr. Kahn.

5 MR. KAHN: Is it okay to sit?

6 JUDGE WALLIS: Yes.

7 MR KAHN: We have a number of concerns about the
8 proposed schedule. We believe it unnecessarily rushes
9 things. It's barely six weeks between the issuance of the
10 DEIS and the first step in the process on Mr. McMahan's
11 proposed schedule. In his proposed schedule he referred to
12 two previous EFSEC prehearing orders of Wild Horse and
13 Kittitas Valley projects and this is analogous to that.

14 We've got a little chart prepared which we can
15 hand out that shows that this is significantly different
16 than those two. In the Kittitas Valley one there was almost
17 three years from the issuance of the DEIS to the first
18 submittal. In the Wild Horse Project it was about four
19 months between the issuance of the DEIS and the first
20 submittal. In this project it would be six weeks based on
21 it.

22 Furthermore we think that this project differs
23 significantly from those two as well as many others that
24 EFSEC has been involved for a variety of reasons. Some of
25 this is going to be redundant of testimony you may have

1 heard last night, but this is the only project of three that
2 are here that are indicated forested habitat. The potential
3 for the environmental impacts are significantly greater.
4 This is the only project of the three that Mr. McMahan says
5 it's analogous to which is within the spotted owl special
6 emphasis area which also creates additional potential
7 environmental impacts.

8 This is the only project of the three to our
9 knowledge in which federal agencies, including the Forest
10 Service and the National Park Service, have recommended
11 significant modifications to the project. This is the only
12 project that would have significant adverse impacts in two
13 states, Oregon and Washington. It's the only project within
14 three miles of the Lewis and Clark National Historic Trail
15 and the Oregon Pioneer National Historic Trail also known as
16 the Oregon Trail, and the Historic Columbia River Highway.
17 The other projects unlike this are not surrounded by
18 recreational resources as well as identified cultural
19 resources. And last but not least it's the only project of
20 the three that result in significant adverse impacts to the
21 only Congressional designated National Scenic Area in the
22 Country.

23 We have other reasons why we believe some
24 additional time is necessary, and that's to let everybody do
25 their job. First of all, we believe that there is some

1 severe inadequacies in the Draft EIS. We submitted comments
2 last night. We're going to submit additional comments today
3 orally or tonight, and we will submit extensive written
4 comments by the deadline.

5 At this point EFSEC is just hearing from the
6 public about their concerns about the DEIS, and we have a
7 proposed schedule that calls for the initial submissions
8 even before the comment deadline I believe. The parties
9 simply need more time to review the DEIS to adequately be
10 able to prepare for a hearing. We believe that and we're
11 hopeful that EFSEC will come to the conclusion, this
12 Commission will come to the conclusion that either a
13 Supplemental DEIS or a new Draft EIS needs to be released
14 because we believe that there are a number of inadequacies,
15 and some of these were brought to your attention last night
16 by members of the public. Others will be tonight and then
17 followed by written comments.

18 We would be asked to participate in an
19 adjudicative process without having a final analysis,
20 meaning in the FEIS. Without the FEIS we won't know what
21 the preferred action is, what the final decision is to the
22 proposed action. We won't know what the Commission's
23 analysis of the impact to the resources are, and we think it
24 would be premature to proceed prior to the FEIS. There is
25 also a SEPA rule which EFSEC has adopted through the

1 Washington Administrative Code that requires the appropriate
2 environmental documents to be attached to the process at all
3 times. We think in this case the appropriate environmental
4 document is the Final EIS not the Draft EIS.

5 Discovery. SOSA, Save our Scenic Area, believes
6 that discovery is appropriate here. That will take some
7 time. They would like to undertake depositions and
8 interrogatories and possibly other discovery measures. With
9 a very short circuited schedule that does not lend itself
10 possible. With the nature of this project we think it's
11 very, very important. We also believe there's a problem
12 with your Commission's land use consistency hearing. I
13 don't remember the time. It was approximately a year ago
14 you had a land use consistency hearing. On that day
15 Skamania submitted to you a resolution. There's been a lot
16 of controversy over what that document is, but they
17 submitted a resolution purporting to be a land use
18 consistency determination on that day.

19 We had no opportunity to review it prior or to
20 present any evidence against it nor to present any evidence
21 after it. Subsequently Skamania County has completely
22 repealed that resolution. They have offered a new one which
23 we don't believe has been submitted to this body, and we
24 have not had an opportunity to make any comments to this
25 body with respect to that. So we think that is another

1 reason why additional time is necessary.

2 The project itself has changed since the first
3 submission. There was an amended application by the
4 Applicant which changed some of the haul routes and the
5 location of I think a maintenance shed or another aspect of
6 the project. That wasn't before you at the time you had
7 your earlier land use consistency hearing, and we think
8 another one should be held in light of the changes to the
9 project.

10 Finally with respect to sort of micro managing,
11 the date that Mr. McMahan has suggested for the hearing in
12 two weeks in mid August the first of those weeks I'm already
13 scheduled for a six-day trial involving five lawyers and
14 nine expert witnesses and two judges who have already
15 cleared their calendars of that week. So regardless of what
16 you do that week it just completely doesn't work for me.

17 In summary, we believe there's a whole host of
18 reasons why this should proceed on a fairer time basis than
19 what is proposed. There's a lot of issues here. As I
20 mentioned, this is the first in many situations, and we
21 don't believe the public, the agency, or anyone else is
22 being served properly by an expedited schedule. Thank you.

23 JUDGE WALLIS: Do you have a proposal for the
24 schedule?

25 MR. KAHN: We have not. We are very flexible on

1 that. We would like significant additional time before the
2 first submissions just because the EIS is hundreds and
3 hundreds and hundreds of pages. We need to be able to hire
4 experts to review parts of it that are beyond our ability,
5 all of which take time.

6 I would be happy to craft one while we're sitting
7 here, but we could be flexible. We just think more time is
8 necessary.

9 JUDGE WALLIS: Do you have a ball park estimate of
10 the time in which you think the schedule should begin,
11 whether it's with the Applicant's prefiled or with other
12 parties' prefiled?

13 MR. KAHN: We think that the time lapse between
14 the steps is probably reasonable except for the initial
15 submissions. We would like to see that process extended by
16 three to four months. In addition, we would like a little
17 bit more time between the Applicant's submittal of prefiled
18 testimony and the second step which would be our submittal
19 just because of the complexity and the controversiality of
20 this project. Obviously once we see their submittals that
21 could change. We can start working on things ahead of time,
22 but much of what we do will be in response to what they do.
23 I believe Mr. McMahan's schedule has about five weeks in
24 there. Again, we think that's a little bit inappropriate
25 given the breadth of this project. Thank you.

1 JUDGE WALLIS: Do any of the parties wish to
2 comment on the Applicant's proposal?

3 Let the record show that there is no response.
4 Mr. McMahan.

5 MR. McMAHAN: Thank you, Mr. Wallis. A few
6 comments on this. Mr. Kahn has reiterated testimony about
7 allegedly all the things that make this project sound
8 challenging. I needn't tell this Council how challenging
9 the KV process was and that a similar schedule worked just
10 fine. In that process there were a number of precedent
11 setting issues in KV. Wild Horse was the first wind project
12 ever reviewed by the Siting Council with a great deal of
13 learning was part of those projects.

14 The FEIS as I recall in both of those projects
15 wasn't an issue until after the adjudicative hearings. So
16 here at least this proposal that the FEIS would be issued
17 prior to the adjudicative proceeding which I think if
18 anything better serves this process and the latter which was
19 done for the prior proceedings. So you know, if anything,
20 that compels for moving right along here, not further
21 protracting or delaying the process.

22 I think we are obviously going to talk about
23 discovery. That is on the notice here in the past and
24 informal discovery has worked well in EFSEC proceedings. I
25 see little reason departing from that and again that is

1 something you'll be taking up here.

2 As to the land use consistency hearing, you know,
3 that by rule is part of the adjudicative process. If
4 there's a dispute about land use consistency it's taken up
5 in the adjudicative process. Here the Council has in fact
6 received the County's supplemental repealed, revised, new,
7 whatever, resolution of finding consistency with local land
8 use. It's in the record, the EFSEC record, and if there
9 needs to be a hearing on land use consistency that could be
10 part of the adjudicative process. We needn't take this off
11 track for that between now and then. So I continue to
12 believe this is a fair and appropriate schedule. Efforts to
13 delay thereby delay these proceedings for a very long time
14 in the future should not be encouraged, and I request this
15 schedule or some reasonable modification of this proceeding.

16 JUDGE WALLIS: Very well. We will take that under
17 advisement and continue along with the list of possible
18 topics.

19 MR. SPENCER: Your Honor?

20 JUDGE WALLIS: Yes.

21 MR. SPENCER: Thank you.

22 JUDGE WALLIS: Your name, please.

23 MR. SPENCER: Warren Spencer, here with Yakama
24 Nation Tribal Council. Just to inform I'm here in an
25 official capacity and we are seeking consultation prior to a

1 final draft. And just for your information the protocol is
2 to go through us, the Tribal Council, through our support
3 staff, and the comments from the Columbia River Chiefs or
4 their position and title are not officially with the Yakama
5 Nation. At this time we would like to let it be known and
6 all formal actions, anything that goes through the cultural
7 resource program of the Yakama Nation to let the tables know
8 that Wilbur and Mr. Jackson were speaking on their own
9 behalf, and we'd like to just let that be known in the
10 effects of consultation needs to take place with the Yakama
11 Nation prior so we could, you know, look at the alternatives
12 of the current design and the project proposals. And that's
13 all I got to say for now.

14 JUDGE WALLIS: Very well. Thank you.

15 Are there any further comments or any responses to
16 comments?

17 Let the record show that there is no response.

18 MR. KAHN: Mr. Chair?

19 JUDGE WALLIS: Mr. Kahn.

20 MR. KAHN: May I make just one very brief response
21 to what Mr. McMahan said? He indicated that he thought that
22 was similar schedule to what was done in Kittitas Valley.
23 Based on the information we have the DEIS was issued in that
24 case on December 12, 2003. The prehearing submittals began
25 June 20, 2006, two and a half years later. We're not asking

1 for any kind of schedule approaching that, but that's simply
2 different than six weeks.

3 JUDGE WALLIS: Mr. McMahan.

4 MR. McMAHAN: Thank you. If I could just correct
5 the record on that. Tim McMahan for the record.

6 As this Council will recall, yes, the original
7 DEIS on a very large project was issued two or three years
8 before the adjudicative proceeding. The Applicant stayed,
9 put on ice the process while it significantly amended the
10 project. A supplemental DEIS and addendum to the DEIS was
11 issued. As I recall, and I haven't gone back to look at the
12 schedule, I think that addendum was issued very shortly
13 before the commencement of the proceedings. That was the
14 relevant environmental documents, not the DEIS issued a
15 couple years before.

16 JUDGE WALLIS: Very well. Let's move on to
17 discovery.

18 Mr. Kahn, you indicated that -- Mr. Marvin.

19 MR. MARVIN: I'm sorry. The microphone.

20 Bruce Marvin, Counsel for the Environment. I do
21 want to express some concern about the overlap of the
22 response to the DEIS and to moving forward with the formal
23 proceedings. This is an issue that is fairly high profile,
24 and I think it would probably benefit the public to have one
25 issue addressed at a time so as not to have people

1 responding to the DEIS, getting their comments, and then at
2 the same time having to develop testimony and having to
3 evaluate and develop testimony in response to the
4 Applicant's materials. I'm not proposing that there be a
5 lengthy extension of this, but it seems to me that it would
6 be nice to have one step completed before we move onto the
7 next.

8 JUDGE WALLIS: Do you have a ball park estimate
9 the time that would be necessary or another way for the
10 Council to judge with more precision what your
11 recommendation is?

12 MR. MARVIN: Right now I believe the comments for
13 the DEIS are due sometime I believe on the 17th of July or
14 somewhere in that ball park, and the way the schedule is
15 proposed right now the Applicants would be submitting their
16 direct testimony on July 2, and I'm afraid that, you know,
17 you got the Fourth of July weekend and you have a bunch of
18 overlap time there. It seems to me that it would be cleaner
19 that if either you hold off for a couple weeks for the
20 submittal of the Applicant's original materials or their
21 prefiled testimony so that the comment period for the DEIS
22 is completed and then we move onto the formal adjudication
23 or perhaps we could provide additional time for the
24 preparation and filing of prefiled testimony for the
25 respondents. So probably a two-week extension. I believe

1 that proposed time would be August 13. So perhaps extend
2 that out an extra couple weeks so that the respondents
3 aren't stuck with kind of double duty during that time
4 frame.

5 JUDGE WALLIS: Mr. McMahan.

6 MR. McMAHAN: I think Mr. Marvin makes a good
7 point. I think it's probably acceptable really to move the
8 initial deadline, just bump the whole thing out past the end
9 of the comment period for the DEIS. I don't have a
10 calendar, but whatever reasonable date on the calendar
11 for -- What is it? -- after the 19th I think of July for
12 the initial Applicant prefiling. I mean that is an
13 acceptable way to go. I think it does really respond to all
14 issues raised today.

15 JUDGE WALLIS: Would that afford the Applicant
16 adequate time to cover in its direct testimony any matters
17 that it might wish to cover based on comments?

18 MR. McMAHAN: Yes.

19 JUDGE WALLIS: Very well.

20 Mr. Kahn.

21 MR. KAHN: Well, we believe that is a start. We
22 think that a two-week extension is just that, a start. We
23 would appreciate something along the lines of 90 days given
24 again the nature of this project and the controversial
25 issues that are raised.

1 JUDGE WALLIS: Very well. Thank you.

2 All right. Now let's move to discovery.

3 Mr. Kahn, you indicated some concerns about discovery, and
4 I'd like you to identify those right now.

5 MR. KAHN: Yes. Again in doing so I'm standing in
6 for Mr. Aramburu on behalf of SOSA. He has indicated that
7 he feels it's appropriate to conduct discovery, specifically
8 interrogatories, request for production, and depositions.
9 He is looking for some background information on any
10 communications between the EIS preparers and the Applicant
11 or its consultants.

12 A big part of the EIS seems to be driven by the
13 economic needs of the project Applicant. Mr. Aramburu has
14 indicated that he would like to be able to conduct discovery
15 to get some background and financial information regarding
16 the Applicant's contention that they need a project of this
17 size and nothing smaller.

18 If the discovery is allowed, I suspect my client
19 will also engage. I don't want to just limit it to SOSA,
20 but Mr. Aramburu is the driving force behind that request,
21 and I'm speaking for him on it. I know Ms. Taylor on behalf
22 of the Agri-Tourism Association would also participate in
23 discovery if it was allowed. I can represent that at least
24 from the three of us -- I can't speak for anybody else
25 here -- three of us will cooperate so that we do not

1 undertake any kind of redundant or duplicative discovery.
2 We could even agree to do a request for production from all
3 three of us whatever reasonable conditions the Board, the
4 Commission were to put on the discovery requests. Thank
5 you.

6 JUDGE WALLIS: Mr. McMahan.

7 MR. McMAHAN: Discovery is open for all, and we
8 would be in too. Unfortunately it's not something that's
9 going to be contained particularly well. Again, I think
10 this Council's precedent in formal discovery requests
11 monitored very extensively by the Hearings Officer has
12 worked well in the past.

13 In fact, it's interesting. This issue about the
14 financial justification for a 75-megawatt project sounds a
15 whole lot like what we adjudicated very heavily in the KV
16 phase on the minimum size of that project, and this Council
17 resisted demands that depositions and other discovery would
18 take place on the financial minimum economic viability of
19 that project.

20 This actually is some precedent on this Council
21 handling it by way of reasonable informal discovery requests
22 and an opportunity to argue the extent to which responses
23 like that need to be provided it was very heavily and
24 successfully policed by the Council. And I think that's the
25 way we ought to proceed here on all issues, but particularly

1 that financial issue we've been there before.

2 JUDGE WALLIS: Any further comments on this area?

3 All right. Any need for us to address motion
4 practice?

5 MR KAHN: This is Gary Kahn. At this point we
6 don't anticipate any, but obviously things may change as
7 issues develop over the course of this.

8 MR. McMAHAN: Tim McMahan again. I actually agree
9 with Mr. Kahn. I think in the past motions have just been
10 dealt with in the framework of the schedule, and if there
11 are standing or as needed prehearing conferences that could
12 be addressed in the schedule.

13 JUDGE WALLIS: Very well. Anything further on
14 motion practice?

15 In the past in some proceedings the Council has
16 scheduled regular or semi-regular status conferences for the
17 parties to communicate progress along the schedule and
18 monitor its proceedings. Do the parties have a view on
19 whether this would be in this proceeding a help or hindrance
20 or any other comments?

21 Mr. McMahan.

22 MR. McMAHAN: Well, as noted I think it would be
23 very helpful. It's been helpful in past proceedings. It
24 has things marching along at a reasonable structure and I
25 think it's very much appropriate.

1 MR. KAHN: We would have no disagreement with
2 that.

3 JUDGE WALLIS: Very well. The next item on our
4 list has to do with site visit. A site visit was held
5 earlier during which the Council Members had the opportunity
6 to view the site. There is one new Council Member at this
7 time, and there may be others before the matter actually
8 goes to hearing. So I am wondering if there is any
9 objection, if the members feel appropriate, or if you have a
10 view, yes or no, on this, if you would like to state it now?

11 MR. KAHN: Gary Kahn. We have no objection. We
12 would like to keep the door open to the possibilities of
13 additional site visits as issues may get raised.

14 JUDGE WALLIS: In the back.

15 MR. SPENCER: Warren Spencer, Yakama Nation Tribal
16 Council again. I don't know if this is appropriate to speak
17 on the site right now, but as I understood that there has
18 been multiple site visits. And to inform the people in here
19 in the room the Yakama people have various family teachings,
20 and we respect the elders' teachings and the ways that we
21 have been introduced to them. And myself, my grandmother is
22 one of the eldest ladies here in the Columbia River Gorge,
23 and I carry a vast knowledge that she has relayed onto me.
24 And from the documents that I've read concerns me very
25 dearly for the fact the site is one of nine sites that only

1 is located here in Washington and some parts of Oregon that
2 have maintained that original aspects around our being as
3 Native Americans.

4 And I have a very strong belief that things are
5 there spiritually, and, yes, the ground has been disturbed,
6 but the whole meaning and purpose as a Native American is
7 still there. And as a matter of my family relayed the
8 family teaches from generation to generation on, and some of
9 the tribal members are not so educated in our traditions and
10 culture, but I am very proud of my grandparents on all four
11 sides because all four of them are very strong in knowledge
12 of the sites along the Columbia River Gorge and throughout
13 federally seated lands and usual customs with the Yakama
14 Nation which a lot of these projects are proposed in. I
15 just want to say that for the record and I appreciate it.
16 Thank you.

17 JUDGE WALLIS: Thank you, Mr. Spencer.

18 Mr. McMahan.

19 MR. McMAHAN: Concerning that response I have
20 nothing to say.

21 JUDGE WALLIS: Concerning the matter of possible
22 site visits?

23 MR. McMAHAN: Thank you. I got a little
24 distracted. I think it's very appropriate, and I would
25 leave that to the Council's discretion.

1 JUDGE WALLIS: Very well. Prefiling schedule we
2 have already discussed. Order of parties' presentations is
3 that something that the parties are willing to address now
4 or would that best wait until after the prefiling?

5 MR. KAHN: We agree with the general order of the
6 presentation in Mr. McMahan's proposed schedule, just not
7 the timing.

8 JUDGE WALLIS: In terms of which party would go
9 those other than the Applicant who would not necessarily
10 take the labor or appear first?

11 MR. KAHN: Oh, in terms of opponents to the
12 application or supporters I don't think it matters that
13 much. I think we are probably Mr. Aramburu, Ms. Taylor, and
14 I are going to probably be the three most involved and we
15 can work that out amongst ourselves.

16 JUDGE WALLIS: Very well. From the sound of
17 things it may be a while before, certainly several weeks
18 before the presentation of prefiled exhibits, but I'm going
19 to suggest a format for identifying those exhibits, and
20 eventually we will group the presentations of each party and
21 the presentations of the parties into what we hope based on
22 the filings again with the assistance of the parties and
23 have each of the parties given a number series. But for
24 present purposes I'm going to suggest that when you identify
25 the exhibit, you identify the name of the party, the name of

1 the witness, and then in order the exhibits of that witness.

2 So if Mr. McMahan has a witness named Mr. Smith,
3 then those exhibits would be designated Mr. Smith prepared
4 testimony Exhibit 1, Mr. Smith supporting Exhibit 2, and so
5 on. And Mr. McMahan's witness numbered Jones would be
6 designated with the name of the party and the name of the
7 witness and the exhibits in order.

8 Is that clear to the parties? Then when we get
9 those filed we'll put them together in the mix master and
10 attempt to organize them as the parties desire to.

11 Scheduling of witnesses.

12 Yes.

13 MR. PEEPLES: Your Honor, are you going to put
14 this out -- this is Darrel Peeples. Are you going to put
15 that out in an order?

16 JUDGE WALLIS: We will follow this prehearing
17 conference with a prehearing conference order and that will
18 be specific. It will be in ample time before the actual
19 presentation of prefiled exhibits.

20 MR. PEEPLES: Similar to the orders that have come
21 out before, the same type of format?

22 JUDGE WALLIS: Yes.

23 MR. PEEPLES: Okay.

24 JUDGE WALLIS: Any other questions, comments?
25 Okay. Timing content of post-hearing submissions my

1 suggestion would be that we postpone discussion of this
2 until certainly closer to the proceeding and perhaps at the
3 conclusion of the actual oral presentations. Are the
4 parties content with that?

5 Very well. Do the parties have any other items
6 that relate to the procedure at the hearing that you would
7 like to discuss today?

8 Let the record show that there is no response. Is
9 there anything further to come before the Council at this
10 time?

11 The Council will be consulting on the comments
12 that have been received today, and we will be preparing an
13 order to govern the procedure based on those comments, and
14 we'll attempt to serve it on the parties at the earliest
15 possible date.

16 Now I do have a request to me. We had some people
17 appear today for the first time, and so that we are sure
18 that we have your information accurately if you are in the
19 room for the first time today and you would write on a piece
20 of paper or provide a business card that has your name, the
21 name of the party that you are representing and your contact
22 information so again we have that.

23 Any questions? Is there anything further to come
24 before the Council at this time?

25 Let the record show that there's no response and

1 this prehearing conference is concluded. I want to thank
2 you all for your participation today and for the assistance
3 that you've given the Council in determining how to
4 structure this proceeding.

5 * * * * *

6 (Whereupon the prehearing conference was adjourned
7 at 2:21 p.m.)

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

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I, Shaun Linse, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on June 17, 2010, in Stevenson, Washington.

Shaun Linse, CCR 2029