

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Whistling Ridge Energy)
Project of:)
)
Extension Request Hearing)

VIDEOCONFERENCE HEARING

May 16, 2024

Taken Remotely via Zoom

PREPARED BY: Michelle D. Elam, RPR, CCR 3335

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APPEARANCES

STAFF AGENCY MEMBERS PRESENT (VIA HYBRID):

Chair - Kathleen Drew
Department of Commerce - Elizabeth Osborne
Department of Wildlife - Mike Livingston
Department of Natural Resources - Lenny Young
Department of Utilities & Transportation
Commission - Stacy Brewster

ASSISTANT ATTORNEY GENERALS PRESENT:

Jon Thompson

ADMINISTRATIVE LAW JUDGE (VIA TEAMS):

Laura Bradley

COUNSEL FOR THE ENVIRONMENT:

Yuriy Korol

STAFF FOR EFSEC:

Sonia Bumpus
Sonia Hafkemeyer
Andrea Grantham
Lance Caputo
Alex Shiley

IN ATTENDANCE:

Tim McMahan - Whistling Ridge, LLC
Greg Corbin - Green Diamond Resource Company

1 BE IT REMEMBERED that on Thursday,
2 May 16, 2024, at 7:00 p.m., before Michelle D. Elam,
3 Certified Court Reporter, RPR, the following Extension
4 Request Hearing, was held, to wit:

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8 CHAIR DREW: Good evening. Kathleen Drew, Chair
9 for the Energy Facility Site Evaluation Council, calling
10 our Whistling Ridge Energy Project Amendment Request
11 Hearing into order for the extension request.

12 We'll go ahead and have Ms. Grantham call the
13 roll of council members.

14 ANDREA GRANTHAM: Certainly.

15 Department of Commerce.

16 ELIZABETH OSBORNE: Elizabeth Osborne. Present.

17 ANDREA GRANTHAM: Department of Ecology.

18 Department of Fish and Wildlife.

19 MIKE LIVINGSTON: Mike Livingston. Present.

20 ANDREA GRANTHAM: Department of Natural

21 Resources.

22 LENNY YOUNG: Lenny Young. Present.

23 ANDREA GRANTHAM: Utilities and Transportation

24 Commission.

25 STACY BREWSTER: Stacy Brewster. Present.

1 ANDREA GRANTHAM: Chair, that is all of the
2 council.

3 Would you like me to call any other roll or just
4 the council?

5 CHAIR DREW: Just the council. Thank you.

6 ANDREA GRANTHAM: There is a quorum.

7 CHAIR DREW: Thank you.

8 We will now move to the Whistling Ridge Energy,
9 LLC, presentation.

10 Mr. McMahan.

11 TIM McMAHAN: Thank you, Chair Drew.

12 For the record, Tim McMahan, and I'm here
13 representing the applicant. I guess it's still called
14 the applicant, TCT.

15 It's not surprising that we've heard some
16 concerns from the community. Concerns is probably not
17 putting it strongly. And I want to just emphasize what
18 we have said in the filings that we made to the council,
19 and that is that first of all, we do believe that at the
20 time we started meeting with EFSEC staff, that the
21 application and the site certificate, in fact, were still
22 very much viable, and in our view, for the reasons I'm
23 going to talk about, are still viable.

24 We also understand that for us to proceed
25 further, we've got a lot of work to do. In fact, that's

1 the reason for this request, is for us to have the
2 opportunity to conduct some diligence work to really make
3 a strong decision, well-informed decision. And the kind
4 of information, frankly, that the public is providing is
5 some of that input. So some very strong inputs on what
6 our next step should be for the project.

7 So fundamentally what we've asked for is time, a
8 relatively short amount of time to conduct studies and to
9 determine where we should go and what we should do next.

10 But I do want to emphasize that in our view, at
11 the time that we started working on these -- on this
12 amendment, it was done in tandem and very much in
13 consultation with EFSEC staff, with the understanding
14 that we received time to conduct this work.

15 So let me just kind of walk through the
16 presentation here. And I hope to provide some
17 information about that the kind of work that TCT intends
18 to conduct during what we hope to be a three-year
19 extension site certification.

20 So first of all, Whistling Ridge is not
21 proposing any changes to the facility. There is no new
22 information or change conditions that might indicate the
23 existence of any probable significant, adverse
24 environmental impacts that were not previously addressed
25 in the EFSEC environmental impact statement, which was

1 conducted for this project and was appealed to the
2 Washington Supreme Court and resulted in a 9-0 decision
3 by the Washington State Supreme Court.

4 So we are not relitigating the Supreme Court's
5 decision nor are we relitigating the decision of the
6 Ninth Circuit Court of Appeals that was filed and
7 unsuccessfully filed by the Friends of the Gorge.

8 So Whistling Ridge is not proposing any changes,
9 modifications, or amendments to the Site Certification
10 Agreement or any regulatory permits. It is possible that
11 such changes could be proposed in the future.

12 So I want to walk through the project history to
13 explain really why we're here and what's happened,
14 because there have been reasonable questions about what
15 have we been doing and has this project been abandoned.

16 Could you skip to Slide No. 18. Keep going.
17 Keep going. These are pages from the Environmental
18 Impact Statement. Okay. One more, please.

19 All right. So this is the history of the
20 project. And many have asked why we're doing what we're
21 doing, so I want to just walk through this.

22 The Site Certificate Application, as indicated
23 by members of the public, was in 3/10 of '09.

24 The Site Certificate Agreement recommendation
25 was submitted to the governor on January 5th of 2012.

1 And the governor signed and approved the final
2 order in March of '12.

3 After appeal by opposition, the Washington State
4 Supreme Court issued a unanimous decision denying the
5 appeal.

6 Now, Mr. Spadaro, who was the project manager
7 and with SDS Lumber, signed the site certificate on
8 November 18, 2013, a few months after the decision by the
9 supreme court.

10 And the reason for that decision was knowledge
11 that we had already undergone a considerable amount of
12 litigation on the project. And a concern that by signing
13 the application on the day the governor signed the
14 application was essentially inviting additional appeals
15 and litigation.

16 And Jason Spadaro decided to -- before signing
17 the Site Certificate Agreement, to take the time to see
18 if any further appeals or litigation occurred. He
19 believed there was not such an outcome, although that was
20 proven to be wrong later on.

21 So from 2013 to 2015, during that period,
22 Bonneville worked on the Final Environmental Impact
23 Statement supplement. This was a combined NEPA and SEPA
24 document, working with Bonneville.

25 Can you go to the next slide, please.

1 So in September 2015, the project, in fact, did
2 file another appeal with the United States Ninth Circuit
3 Court of Appeals. They challenged Bonneville's Final
4 Environmental Impact Statement, which was done in
5 coordination with the Washington State SEPA Environmental
6 Impact Statement. So the appeal was over project
7 interconnection to the federal transmission system.

8 The Ninth Circuit Court issued a memorandum
9 decision denying the appeal. So the Supreme Court denied
10 the appeal. In 2018, the Ninth Circuit Court of Appeals
11 denied the appeal.

12 So in July of 2018, following a petition by
13 project opponents for a rehearing, the full Ninth Circuit
14 then, on request or demand from Friends of the Gorge and
15 others, denied additional rehearing. And that denial,
16 finally in 2018, concluded all of the opposition
17 litigation.

18 So in October of '18, Whistling Ridge then filed
19 its five-year report. Came to Olympia. Met the siting
20 council, and the five-year report is part -- really part
21 of the process to ensure that the siting council
22 understands that a project is still proceeding and the
23 report was filed.

24 So if you could go to the next slide, please.

25 At that five-year -- at that five-year hearing,

1 a presentation was made to the siting council. And at
2 that proceeding, we confirmed our understanding of the
3 effective date of the site certificate, which was after.
4 Which was, as I indicated before -- I just want to make
5 sure I'm getting this right and absolutely correct
6 here -- yes, it confirmed our understanding of the
7 effective date of the site certificate, which I'll get to
8 in a few moments here.

9 So in 2021, SDS Lumber, the parent company, as
10 many of you know, underwent protracted internal conflict,
11 ultimately resulting in the dissolution of SDS Lumber
12 Company and related entities.

13 And in 2021 to 2022, Twin Creeks Timber, and you
14 met Mr. Corbin here tonight, acquired a substantial
15 portion of the assets, including the Whistling Ridge
16 Energy, LLC. And it is still called Whistling Ridge,
17 LLC, by virtue of transferring the LLC to TCT.

18 So in 2022, the applicant -- or excuse me, TCT
19 began working diligently with EFSEC staff to determine
20 and decide whether to file both the transfer requests and
21 the amendment request.

22 So next slide please.

23 So here's the thing that's really important to
24 us and understanding where we're at.

25 It was not until 2018 that the appeals of all of

1 the state and federal permits were exhausted. So the
2 essential reason for the latitude for construction in the
3 EFSEC rules is that, frankly, no project facing fierce
4 multiyear litigation can secure financing, can proceed
5 until appeals are exhausted. That would actually
6 jeopardize construction of a project. No prudent
7 developer would proceed under those circumstances.

8 And it is that fundamental risk that stops
9 projects during appeals, which I think was calculated
10 here, including the appeal -- including appeals that have
11 little or no merit.

12 Next slide, please.

13 All right. So -- and I am largely reading these
14 slides. I hate doing that, but I just want to make sure
15 that I'm being very precise. So that's what I'm going to
16 do. So I appreciate your patience.

17 So the effective date of Site Certificate
18 Agreement occurred at the time that the two parties, both
19 the governor and the applicant, had executed the Site
20 Certificate Agreement.

21 The term of the construction commenced 10 years
22 after the effective date of the Site Certificate
23 Agreement. So that date -- that date is key to
24 understanding where the project is now.

25 So subject to conditions of the certification

1 agreement, construction can start at any time within 10
2 years of the effective date of the site certificate. And
3 very importantly, Site Certificate Agreement Article 1.B
4 states: This Site Certification Agreement authorizes the
5 certificate holder to construct the project such that
6 substantial completion is achieved no later than 10 years
7 from all final state and federal permits necessary to
8 construct and operate" -- sorry for the typo -- "the
9 project are obtained and associated appeals have been
10 exhausted."

11 And appeals in this matter were not exhausted
12 until 2018.

13 Next slide.

14 So this is the rule for a request for extension
15 of the site certificate. Upon a request to extend the
16 term of the Site Certification Agreement, the council may
17 conduct review consistent with the requirements of the
18 WACs -- that those of you who are in the room can see --
19 and the other applicable legal requirements.

20 So that is the right that we have on our view of
21 an unexpired site certificate to conduct review and seek
22 an amendment.

23 Next slide.

24 So the request for amendment. This is where we
25 are now. Council shall hold one or more public hearing

1 sessions upon the request for amendment at times and
2 places determined by the council.

3 Next slide.

4 All right. Amendment review.

5 "In reviewing any proposed amendment, the
6 council shall consider whether the proposal is consistent
7 with: The intention of the original Site Certificate
8 Agreement; applicable laws and rules; public health,
9 safety, and welfare; and the provisions which concern
10 site restoration.

11 So that's -- you know, that's what ties the
12 request for amendment to the transfer request.

13 Next slide.

14 So Whistling Ridge proposes -- this is what we
15 are asking for.

16 Whistling Ridge proposes to update natural
17 resource studies, including season-specific data and new
18 visual simulations and other natural resource reviews and
19 studies, including key viewing areas within the Columbia
20 River Gorge scenic area.

21 Now, that was done previously with the
22 Environmental Impact Statement. So we are asking for the
23 opportunity to come back in with an amendment that gives
24 us the time to evaluate these resources and make a final
25 determination on moving forward.

1 We only ask for a three-year extension because
2 we did not wish to draw this out. And we want the
3 opportunity to move forward with an authorized facility
4 in hand.

5 All right. So next slide, please.

6 I'm sorry. For those of you out there who can't
7 see this slide, but the slide -- the following slides
8 here, Matters to be Addressed in the Amendment to the
9 ASC, are in the filing, the petition for extension
10 filing. That is a matter of public record, and you can
11 find these documents easily, especially through
12 Mr. Baker.

13 So our intention that -- we put timelines on
14 these milestones to move the project along -- is to
15 conduct baseline and environmental work, contact wildlife
16 consultants, develop scopes of work, and move forward on
17 a current evaluation of the project and what changes
18 might be needed and what studies might be required.

19 Next slide, please.

20 Visual simulation updates.

21 We clearly understand that to move this project
22 forward, it will be necessary to undertake these studies
23 to freshen them up and to have a full evaluation of the
24 potential impacts to the project that may have -- and
25 issues that may have changed since the issuance of the

1 Final Environmental Impact Statement.

2 Next slide.

3 Noise studies, I talked about.

4 Next slide.

5 So we are proposing to complete all study work
6 needed for the site certificate and develop a schedule to
7 complete that work needed for -- needed for the site
8 certificate.

9 Next slide.

10 We have listed here agency meetings that we
11 intend to undertake, involvement with EFSEC staff and
12 members of the public. And we would pose undertaking
13 those studies for approximately 20 months after the
14 transfer approval has been hopefully issued by the
15 counsel.

16 Next slide.

17 This summarizes the studies and the process that
18 we would anticipate to move forward, should the council
19 authorize the extension.

20 Next slide.

21 All right. I want to just take a moment here to
22 talk about specifically the effective date issue. So I'm
23 going to walk through this as quickly as I can.

24 So on March 5th, 2012, as we indicated, Governor
25 Gregoire signed the Site Certificate Agreement. And by

1 law, under the definitions in RCW 80.50.020, a Site
2 Certification Agreement is a binding contract. It's an
3 agreement. It's a binding contract. It's not a blend of
4 a contract and a permit. It's a contract.

5 So the effective date. Whistling Ridge signs
6 the site certificate, final effective date of the Site
7 Certificate Agreement. The concern for ongoing
8 litigation caused delay in executing the contract.

9 The EFSEC page -- web page itself states that
10 the effective date is November 18, 2013. And than is the
11 date that is noted on the web page and handwritten on the
12 face of the March 5th, 2012, letter from Governor
13 Gregoire. So it is a matter of public record, both
14 confirming the five-year reporting. And based upon what
15 the site certificate itself says, that the effective date
16 is November 18, 2013.

17 So "certification" means a binding agreement
18 under RCW 80.50.020. A binding agreement between the
19 applicant and the state which embodies compliance with
20 the siting guidelines in effect as of the date of the
21 certification, which have been adopted, pursuant to
22 RCW 80.50.040, as may be further amended.

23 Litigation was, in fact, filed and pursued for
24 years with this project. The Ninth Circuit Court of
25 Appeals litigation was only resolved in July of 2018.

1 Litigation existed and occurred from 2011 to
2 2018. And 2018 was when the appeals were finally
3 concluded.

4 The effective date of the site certificate is
5 November 18, 2018. And that, as testified by Jason
6 Spadaro at the five-year hearing, quote, that was the
7 date I executed a Site Certificate Agreement after
8 conclusion of the Supreme Court appeal. Further
9 opposition litigation followed the execution of the SCA,
10 with the Ninth Circuit Court of Appeals challenges fully
11 exhausted in July of that year.

12 Due to the uncertainties associated with the
13 appeals, it simply wasn't possible to move forward with
14 the project at that time.

15 So there was no dispute by the siting council at
16 the five-year meeting on the effective date of the
17 facility.

18 So speeding up to where we are now -- I'll wrap
19 this up quickly.

20 On March 2nd, 2022, TCT filed a request for
21 extension to the site certificate with EFSEC, seeking a
22 three-year extension from the date the request would be
23 granted.

24 We worked with siting council staff from that
25 point forward to discuss and evaluate how we would

1 proceed, if we should proceed, and what kind of a filing
2 we would make.

3 So March 16th, 2022, a letter from Twin Creeks
4 Timber, formally notified Ms. Bumpus that TCT had
5 acquired the project as part of a larger acquisition that
6 occurred in November of '21.

7 April of '23, another letter to Ms. Bumpus that
8 attached a draft transfer request for discussion with
9 EFSEC staff.

10 So in twenty -- September 13th, 2023, Whistling
11 Ridge filed its formal request -- a formal request. We
12 had already filed a request, but we filed a formal
13 request that we asked be set forward to the siting
14 council for review.

15 Many of you know what happened during the ~~city~~ EFSEC
16 council in the autumn of last year. We were all very
17 much underwater with the Horse Heaven project. And staff
18 preferred that we schedule the hearing at a later date
19 due to the time needed for EFSEC to complete that
20 project's review, including adjudication and the SEPA
21 process.

22 TCT didn't object to that request, and we
23 deferred to EFSEC on scheduling. It was understood that
24 further activity on the project was stayed at the date
25 that we filed the request for extension in 2022.

1 That means that there is actually still time on
2 the Site Certificate Agreement. And we have provided
3 information in the petition itself saying that.

4 So we concurred with staff that staying the
5 request until EFSEC had the capacity to review the
6 project was acceptable, principally, allowing completion
7 of the adjudication that occurred through the fall.

8 So all told, the appeals took six years to
9 resolve. And by contract and by equity, we believe that
10 technically, we probably actually have four additional
11 years to construct the project due to the protracted
12 appeals.

13 However, rather than relying solely on Site
14 Certificate Agreement Article 1.B that I read earlier,
15 staying the exhaustion of all state and federal appeals,
16 we seek a formal extension rather than risking further
17 litigation by relying on our luck in staying the appeals
18 and drawing further litigation on that strategy.

19 I do want to say that this is obviously a
20 challenging project. A number of us have a lot of skin
21 in this one. We went through a lot of battles to get to
22 where we are, and we believe that this project has the
23 capability of being successful and proceeding,
24 particularly with fresh review, which is what we're
25 asking for. We are simply asking for the time to

1 complete this. And we believe that we are fully entitled
2 by right to a project that still is within its effective
3 date.

4 That's a lot. I'm sure some are confused, but
5 that's -- that is where we are with this project, and I
6 do appreciate your time.

7 CHAIR DREW: Thank you.

8 TIM McMAHAN: Thank you.

9 ALJ BRADLEY: All right. This is Judge Bradley.
10 Chair Drew, is it now time to move on to the
11 public comment section?

12 CHAIR DREW: Yes.

13 ALJ BRADLEY: All right. And, Ms. Grantham, who
14 is our first speaker.

15 ANDREA GRANTHAM: The first speaker we have is
16 Nathan Baker.

17 ALJ BRADLEY: All right. And, Mr. Baker, please
18 spell your first and last name for the record, please.

19 NATHAN BAKER: Thank you.

20 Nathan, B-a-t-h-a-n, Baker, B-a-k-e-r.

21 ALJ BRADLEY: Thank you. You may proceed.

22 NATHAN BAKER: Thank you.

23 For the record, this is Nathan Baker, senior
24 staff attorney with Friends of the Columbia Gorge.

25 And because this is a different hearing, I just

1 wanted to note that regarding our process objections,
2 more than 900 people in EFSEC's official list of people
3 interested in the Whistling Ridge project have not been
4 notified about the pending matters or these hearings.

5 So I would like to reiterate and expand on the
6 expiration issues because it truly is a threshold,
7 dispositive issue. It resolves everything.

8 The Site Certification Agreement has expired.
9 There are two possible dates that apply here, and it's
10 expired under both of them. A Site Certification
11 Agreement absolutely is both a permit and a contract.
12 And the applicable law -- in the sense that it's a
13 permit, the applicable law uses terms like the issuance
14 date, the effective date, and the approval date.

15 When Governor Gregoire issued the Site
16 Certification Agreement on March 5th, 2012, she signed a
17 two-page statement approving the Site Certification
18 Agreement. And she used that word. She said she was
19 approving it. So in that sense it is a permit.

20 She also, again, indicated right above her
21 signature, that the Site Certification Agreement was
22 effective on March 5th, 2012. She used that word,
23 "effective." That was the effective date.

24 The other date that has been discussed was
25 November 18th, 2013. That was the date that Jason

1 Spadaro, president of Whistling Ridge Energy, signed the
2 Site Certification Agreement. He withheld his signature
3 for 20 months.

4 When he signed it, that was the last possible
5 day for the binding day, or the execution day, in the
6 sense that the Site Certification Agreement is a
7 contract. And, again, the applicable law uses those
8 terms with the words "binding" and "execution."

9 It is now more than 10 years after both of those
10 dates. It's expired under both concepts. It's expired
11 as a permit. It's expired as a contract.

12 And after -- the last time that Whistling Ridge
13 Energy was before you was November 2018. That was what
14 they called their five-year update. It was actually
15 nearly two years late. It was due December of 2016.
16 They were in front of you in November 2018.

17 After that, three years and four months went by
18 with nary a word about Whistling Ridge at all at any of
19 the council meetings. No updates. Nothing.

20 And then suddenly in April '22, a month after
21 the Site Certification Agreement expired, it came back.
22 And several council members were very astutely picking up
23 on that something is really wrong here.

24 Councilmember Young used the word "mothball,"
25 and he asked, why has this matter been mothballed for so

1 long?

2 Chair Drew pointed out that the litigation had
3 been resolved in 2018 and that nothing had happened since
4 then.

5 Councilmember Kelly remembered that another
6 matter had -- the Site Certification Agreement had
7 expired 10 years after the issuance and wondered why
8 didn't that happen here and wondered what's different
9 about this one. I'm not sure which other project she was
10 referring to, but she was right. That was the exact way
11 of looking at it.

12 And that's what happened here; the Site
13 Certification Agreement has expired, both as a permit and
14 as a contract.

15 I was surprised to hear Mr. McMahan point to a
16 provision of the Site Certification Agreement that says
17 that the 10 years doesn't begin to run until all permits
18 have been obtained and any appeals thereof have been
19 exhausted.

20 That's ridiculous. That would mean that the 10
21 years hasn't yet started because they haven't gotten all
22 of their permits. For example, ~~fourth~~ ^{forest} practice
23 conversion permits. But, you don't have to worry about
24 that because it says in the Site Certification Agreement
25 that EFSEC's rules preempt and supersede the provisions

1 of the SCA.

2 What we ask the council to do is to do the same
3 thing that it has done in past matters, including the
4 Cowlitz Cogeneration project in 2004.

5 Adopt a resolution confirming that a site
6 certification agreement has expired by operation of law
7 and by its own terms. That's the only possible outcome
8 here. But it's also the right thing to do. It's the
9 quick and easy way to end these proceedings and it will
10 moot everything else.

11 Thank you.

12 ALJ BRADLEY: All right. Thank you.

13 Next on our list, Ms. Grantham.

14 ANDREA GRANTHAM: Next I have Rick Aramburu.

15 ALJ BRADLEY: And, Mr. Aramburu, are you there?

16 RICK ARAMBURU: I am here. Yes, indeed.

17 ALJ BRADLEY: All right. And please spell your
18 first and last name for the record.

19 RICK ARAMBURU: First name is Rick, R-i-c-k.
20 Last name is Aramburu, A-r-a-m-b-u-r-u, and I'm here
21 tonight representing SOSA, Save Our Scenic Area. And as
22 indicated previously, I've been involved in this project
23 for at least 15 years.

24 And as a part of that, I did listen to Tim's
25 comments tonight, but he didn't mention what he told the

1 EFSEC council in October of 2011, almost 12 years ago,
2 when he objected to the council's decision to remove
3 certain turbines.

4 And he said, and I'm quoting here, in fact
5 extensive testimony in the record evidences that the
6 recommended project is likely not economically viable.
7 The A1-A7 turbine corridor has a robust wind resource.
8 And eliminating it and the C1-C8 turbine corridors kills
9 the project. Kills the project. He's never indicated
10 any of those statements were incorrect. The project has
11 died of its own weight and did so 12 years ago.

12 Now, there's indication here that one of the
13 reasons we need the extension is to do more economic
14 investigation. But the record shows, and my letter to
15 you, shows that the metadata, the economic data for this
16 project, has been studied in detail since 2003, more than
17 20 years.

18 Pacific Core looked at the project, passed on it
19 in 2003. PSE, the state's biggest IOU, looked at the
20 project in 2008; passed on it. And SDS has now passed on
21 the project. It's not a viable project, and I'm
22 disappointed in Mr. McMahan not to admit that.

23 So the project, while he says that we're going
24 to develop the project as it is presently stated, the one
25 that's dead and has been killed by the council, one of

1 the jobs that they are going to undertake is develop a
2 schedule to complete the Site Certificate Amendment
3 application. They know that they are not going to move
4 forward with this. They have to amend the Site
5 Certificate Application to bring this anything close to
6 an economic project.

7 And the simple answer here is just to start
8 over. That's the appropriate -- that's the appropriate
9 thing to do.

10 We look back, and I listened carefully to the
11 council's deliberations on the Desert Claim Project. And
12 there was an extension request by them. But the council
13 carefully noted that that was a shovel-ready project;
14 that the work had been done. There wasn't any changes in
15 the project that were necessary. But the applicant there
16 was lacking a Power Purchase Agreement with the utility
17 and needed some more time to work that out. There wasn't
18 any changes in the project that were going to be
19 undertaken, no further review. And the council
20 appropriately approved that.

21 But that's not -- that's not the case here.

22 This applicant says that they have to conduct
23 economic evaluation, meteorological evaluation, resource
24 evaluation, when, in fact, all of those issues have been
25 studied to death.

1 TCT is hoping at some time in the future for a
2 Hail Mary for the sun to rise and set on their project,
3 and so that they will get lucky with something in the
4 future.

5 It is not and should not be the business of the
6 council to engage in such speculation on projects.
7 Nothing stops TCT from filing a new application with this
8 council.

9 And finally, one more -- one additional comment.
10 And I certainly adopt Nathan's comments and other
11 comments about the expiration of the Site Certification
12 Agreement.

13 But as I indicated in my prior comments, the
14 Site Certificate Agreement terminated by its own course
15 when the -- when SDS, the timber company, liquidated its
16 holdings, including this project, sold it without
17 submitting an application to this council. And that
18 happened in September of 2021. And the project at that
19 point had expired.

20 The council, it seems to me, appropriately
21 should deny the request for extension without prejudice
22 to the applicant moving forward with a new application,
23 new data, new information that can be developed over a
24 period of time, subject to new adjudication and review.

25 Thank you very much for your attention.

1 Councilmembers, if you have questions for me, I
2 am happy to answer them.

3 ALJ BRADLEY: Thank you, Mr. Aramburu.

4 Ms. Grantham, our next speaker, please.

5 ANDREA GRANTHAM: Next is Vince Ready.

6 ALJ BRADLEY: All right. And, Mr. Ready, can
7 you hear me?

8 VINCE READY: I can.

9 ALJ BRADLEY: And, again, please spell your
10 first and last name and then you may proceed.

11 VINCE READY: Sure.

12 It's Vince Ready, V-i-n-c-e, R-e-a-d-y.

13 ALJ BRADLEY: Thank you.

14 VINCE READY: All right. So thank you. I
15 appreciate the opportunity to provide comments here this
16 evening.

17 As I said, my name is Vince Ready. I live in
18 the heart of the Columbia River Gorge National Scenic
19 Area, and I want to just restate this for the record
20 since it's a separate matter.

21 My home is located less than 2 miles from the
22 proposed site of the Whistling Ridge Energy project. I
23 can see the ridgeline where these wind towers would go up
24 when I look out my window. So this is deeply personal
25 and very important to me.

1 I'm here this evening as a concerned citizen to
2 provide comments on the requested extension of the
3 state-issued permit for this project.

4 I gave public comments on the Whistling Ridge
5 project prior to the issuance of its original site
6 certification and have been a strong opponent of this
7 project ever since.

8 The Whistling Ridge site certification ceased to
9 be viable when it expired on March 5th, 2022. As others
10 have already stated, there is no plausible or credible
11 basis to assert that the SCA is still valid. The permit
12 and contract should be seen as effectively terminated by
13 the force of law purely on the basis of the passage of
14 time. And it has been over two years since it expired.

15 That expired certificate was issued over a
16 decade ago and much has changed since then. Part of the
17 reason that site certificates are time-bound and finite
18 is that leaving it open-ended doesn't allow for
19 reevaluation of the project by the then current council
20 and the current environmental guidelines and regulations,
21 and with the input of the public who may not have been
22 involved or affected 12 years ago when this first came
23 about. So if anything is to move forward, it needs to
24 start from the beginning with a fresh look.

25 Mr. McMahan stated that the siting council has

1 the sole discretion to make this decision. But there is
2 no need for discretion here. The status of this permit
3 is clear.

4 By every conceivable definition or measure, it
5 has expired, and it has been for over two years. The
6 council should adhere to the rules and deny both of the
7 requests on the agenda this evening.

8 There has been strong opposition from the
9 community members ever since this project was initially
10 proposed by people who care about protecting the national
11 scenic beauty of the Columbia Gorge. And, unfortunately,
12 the short notice for the hearing this evening and the
13 lack of timely notice to interested parties who
14 registered with EFSEC, means that some people who would
15 be here tonight probably are not, to provide comments at
16 this evening's proceedings.

17 The environmental impact studies are stale and
18 out of date. So everything that underpins the original
19 SCA needs a fresh look.

20 Granting an extension would bypass the
21 appropriate reevaluation processes that would happen if
22 the applicant were to submit a new application for the
23 project.

24 I would also like to add that it should not
25 matter whether the applicant does or does not intend to

1 make material changes to the design and the scope of the
2 project. The permit is expired and any new development
3 should be undertaken through a new application process.

4 Rather than conducting updated environmental or
5 visual impact studies voluntarily, as was mentioned, the
6 applicant should be held to the normal review and
7 decision-making process of any other new development
8 project.

9 The most important thing that I want to
10 emphasize tonight is that the Site Certification
11 Agreement is expired. And that means that it has ceased
12 to be valid and can no longer be considered for either a
13 transfer or an extension.

14 So I urge the council to uphold your duty to
15 confirm the expiration of the site certificate and
16 disallow this request for an unmerited transfer renewal
17 or extension.

18 Thank you.

19 ALJ BRADLEY: All right. Thank you.

20 Ms. Grantham, our next speaker.

21 ANDREA GRANTHAM: Next is Bryan Telegin.

22 ALJ BRADLEY: Okay. Mr. Telegin, can you hear
23 me?

24 BRYAN TELEGIN: Yes.

25 Can you hear me, Judge Bradley?

1 ALJ BRADLEY: Yes, I can.

2 Can you please spell your first and last name
3 for the record, please.

4 BRYAN TELEGIN: Yes.

5 Bryan, B-r-y-a-n, Telegin, T-e-l-e-g-i-n.

6 ALJ BRADLEY: Thank you.

7 And you can proceed with your comments.

8 BRYAN TELEGIN: Thank you, Judge Bradley.

9 I represent, again, Friends of the Columbia
10 Gorge. And, again, I'm going to be speaking on the SEPA
11 issue, as I did in the transfer request hearing.

12 When Friends of the Columbia Gorge submitted
13 their objections to the hearing process, like with the
14 transfer application, we argued that the extension
15 request is an action that requires SEPA review. And the
16 underlying premise, I think is pretty intuitive.

17 The project can't move forward unless the SCA is
18 extended. You're therefore allowing this project to go
19 forward when it otherwise couldn't. That's an action
20 that needs to be evaluated under SEPA.

21 Mr. McMahan, in his response to that objection,
22 said -- is sort of echoing what he said here, that that's
23 not the case. And the rationale that he cited was that
24 the SCA extension is categorically exempt. And he
25 specifically cited WAC 197.11.800, Subsection 17. And

1 that is a categorical exemption that basically allows
2 what's referred to as basic data collection and research.
3 The idea is that if all you're doing is studying the
4 environment, you don't need to undergo SEPA review,
5 right.

6 It's only when you're seeking approval to modify
7 the environment do you have to undergo SEPA review. You
8 don't need SEPA review just to perform various studies.

9 And that's what Mr. McMahan was here again today
10 saying. That, you know, they want to extend the SCA so
11 they can do a bunch of studies on wildlife, visual
12 impacts, all sorts of things for a project that they
13 have -- a new project that they have admitted in their
14 pleadings before you will require a supplemental
15 environmental impact statement, that you won't be able to
16 rely upon the old one.

17 And, frankly, we agree with Mr. McMahan that he
18 doesn't need -- his client doesn't need -- the applicant
19 doesn't need to do SEPA review to go out and do a bunch
20 of studies to engage in, you know, conceptually coming up
21 with a new project. He doesn't need to do SEPA review.
22 He also doesn't need an extension to do any of that.

23 He and his client can go out and study the
24 environmental and do all the visual impact studies they
25 want. They can study birds and impacts on wildlife and

1 cutting down trees and whatever else they want to study.
2 None of that requires either SEPA or an SCA extension.

3 What he wants to do and what the applicant wants
4 to do is keep this dead project alive so they can come up
5 with a different project. That's the plan; is to go and
6 study and keep this one alive to come up with a new one.

7 But that strategy requires the SCA to be
8 extended. Which means it requires an affirmative
9 decision by the council, giving them the right to build
10 this project over the next three years, the one that
11 we're talking about right now.

12 And that is giving them authority, if they so
13 choose, to build this particular project. That is an
14 action. He doesn't need it to do studies, but that's
15 what he's asking for.

16 And so the thing he's actually asking for does
17 require SEPA review, which must be undertaken before the
18 council or the agency as a whole were to take any action
19 to this proposal.

20 But I guess I would just like to say, you know,
21 not only is this a dead project and not only has the SCA
22 expired, the irony is that the applicant doesn't even
23 need what they are asking for. They don't need to do any
24 of it. They can just go out there, come up with a new
25 project, do all of their studies, and come back and seek

1 approval for a project which they openly admit will
2 require a new supplemental environmental impact study.

3 So I would ask -- first of all, again,
4 reiterating that the council should just take the simple,
5 logical legal path forward and adopt a resolution,
6 recognizing that the SCA has already expired.

7 But if not, then you need to take seriously what
8 the applicant is asking for, and that is the right to
9 build a project that they don't have right now. And that
10 requires the agency to go back and think about whether
11 the old 13-year-old FEIS is still adequate, what needs to
12 be done. It's a complicated matter, and it requires more
13 than Mr. McMahan's say so that there are no changed
14 condition or new information.

15 The agency itself actually has to evaluate that
16 issue, make a SEPA threshold determination.

17 So thank you very much.

18 ALJ BRADLEY: Thank you.

19 Our next speaker, Ms. Grantham.

20 ANDREA GRANTHAM: The next speaker is Shawn
21 Smallwood.

22 ALJ BRADLEY: Okay.

23 SHAWN SMALLWOOD: I'm sorry.

24 ALJ BRADLEY: That's okay.

25 Mr. Smallwood, could you spell your first and

1 last name, please.

2 SHAWN SMALLWOOD: Will do.

3 My name is Shawn, S-h-a-w-n, Smallwood,

4 S-m-a-l-l-w-o-o-d.

5 ALJ BRADLEY: Thank you. And you can proceed
6 with your comments.

7 SHAWN SMALLWOOD: Thank you.

8 I worked on issues of wind and wildlife for 25
9 years, having performed research in the issues to the
10 Altamont Pass wind resource area, which is the world's
11 most notorious wind resource area regarding impacts to
12 wildlife.

13 I also served on the Sundit Review Committee.
14 It was tasked with more accurately estimating collision
15 mortality and with finding solutions to the problems in
16 the Altamont Pass.

17 I'm addressing you today because I was retained
18 as an expert witness by Friends of the Columbia Gorge and
19 Save Our Scenic Area, who asked me to review the proposed
20 extension request for Whistling Ridge.

21 I'm going to highlight what appears in my
22 written declaration, which you are welcome to review for
23 more details. It has been submitted.

24 Regardless of whether the project is built as
25 approved in 2012 or with taller wind turbines, the

1 project would result in significant impacts to birds and
2 bats and other wildlife.

3 Based on wildlife collision mortality, the data
4 from other forested and wind energy projects in the
5 United States, I predict Whistling Ridge would kill 29
6 birds and 69 bats per megawatt per year.

7 But perspective, these mortality rates would
8 exceed those of the notorious Altamont Pass by 33 percent
9 for birds and by more than 12-fold for bats.

10 I will also note that up through 2012, we didn't
11 have mortality estimates from forested environments. Now
12 we do.

13 If the project is built to 75 megawatts as
14 proposed, it would destroy nearly 2200 birds and 5200
15 bats per year. Many of these fatalities would be members
16 of special species. And many would leave chicks in the
17 nest and young dependent bats in the roost. In other
18 words, the impact would be much greater than the numbers
19 we often bandy about.

20 These losses would be important ecologically,
21 economically, and culturally. The environmental review
22 information that contributes to the 2012 approval was,
23 frankly, flawed at the time but now is grossly outdated.

24 The metric of collision mortality at Whistling
25 Ridge has since been found to have been plagued by

1 insufficient survey effort and by substantial biases due
2 to poor implementation -- detecting trials used to
3 estimate the number of fatalities that are not found
4 during routine fatality searches.

5 Metrics of predictive variables, such as use
6 rates and the exposure index, which appear in the earlier
7 project documentation, has since been found to be
8 unproductive of collision mortality. It had nothing to
9 do with it. Patterns of behavior are more predictive.

10 Our study methods and technologies have advanced
11 considerably since 2012. For example, these days we use
12 thermal imaging to see nocturnal activity with bats and
13 birds. We use scent-detection dogs to search for
14 fatalities, which are much more effective than human
15 searchers, which is the old method of doing searches.

16 With larger turbines on taller towers, more bats
17 and nocturnally migratory songbirds are likely to be
18 killed. And there must be more construction grading to
19 accommodate the large turbines; hence more habitat loss.

20 Based on my experience working the Altamont
21 Pass, the project would industrialize the project site,
22 increase of frequency of fires, and reduce the abundance
23 and diversity of wildlife. These outcomes would be
24 contrary to protecting public health, safety, and
25 welfare.

1 To protect public health, safety, and welfare, I
2 recommend updated and simple analyses of potential
3 project impacts and not relying on the old documentation.

4 I suggest a reasonable alternative -- request an
5 extension, is to require Whistling Ridge to submit a new
6 application for a new Site Certification Agreement. This
7 way, the appropriate data can be collected and analyzed
8 using modern methods to more accurately predict potential
9 impacts and to appropriately formulate mitigation
10 measures.

11 It would also help the committee to see
12 qualified experts to assist with these steps going
13 forward. A committee of this nature worked very well in
14 the Altamont Pass and should be used on a project like
15 this.

16 Thank you.

17 ALJ BRADLEY: All right. Thank you.

18 Our next speaker, Ms. Grantham.

19 ANDREA GRANTHAM: Next I have Eric Kloster.

20 ALJ BRADLEY: All right. Mr. Kloster, please
21 spell your first and last name.

22 ERIC KLOSTER: Hello. My name is Eric Kloster.
23 E-r-i-c, K-l-o-s-t-e-r.

24 ALJ BRADLEY: Thank you. And you can proceed.

25 ERIC KLOSTER: Thank you.

1 I would like to make a small correction from the
2 last public comment that I made on the transfer.

3 I had said that the Western Gray Squirrel was
4 not extant within Skamania County, but upon further
5 review of Shane Smallwood's document, it says that they
6 are likely in the area.

7 So in addition to being in Klickitat County, it
8 appears that they are likely on site as well. So in
9 addition to the Northern Spotted Owl, there's another
10 state-endangered species that we should be concerned
11 about within the site.

12 Additionally, I would like to mention that no
13 one has brought up Indigenous sites or potential
14 Indigenous issues with this region.

15 I know with Horse Heaven, the council liaison
16 with the Yakima Tribe, but I haven't seen any evidence of
17 that here in this case.

18 Moving on to more legal issues, though, EFSEC
19 should discourage unlimited build windows for sites.
20 Whistling Ridge Energy should file a new application for
21 a permit rather than asking for a transfer or an
22 extension, whether that is done by Whistling Ridge Energy
23 or by TCT.

24 I would also like to bring up that the effective
25 date that the permit was ended was March 5th, 2012, which

1 is 10 years after the beginning of the permit, which was
2 signed by the governor in 2012. The binding date also
3 has expired. That was expired November 18th, 2023.

4 I would like to mention that in addition to not
5 being able to transfer the site, Whistling Ridge Energy
6 cannot extend an invalid permit. EFSEC cannot legally
7 extend a permit which does not currently exist.

8 And this is a dispositive issue. This issue is
9 a legal issue. And unfortunately for Whistling Ridge
10 Energy, the council lacks the authority to amend the Site
11 Certification Agreement that has expired.

12 In the Cowlitz Generation project in 2004, the
13 council declined an extension and said that the project
14 had died of its own accord. To quote Allen Fiksdal, from
15 the -- the EFSEC manager at the meetings for the
16 February 17th, 2004, EFSEC meetings, he said, quote, so I
17 think at the next meeting, what we propose is that
18 council have some resolution memorializing that the SCA
19 died of its own accord and officially render it under.

20 Here, EFSEC should similarly render this issue
21 under. This issue has expired both under the effective
22 date and the binding date.

23 In addition to the problems with the Western
24 Gray Squirrel, which is likely within this area and has
25 recently been uplisted, and the emphasis area being set

1 for the Northern Spotted Owl, which is a federally listed
2 species as endangered, the EFSEC council should legally
3 declare, and they must, that the west -- that the Site
4 Certification Agreement has expired per the agreement and
5 legally, according to the statutory rules.

6 Here, Western [sic] Ridge Energy asked the EFSEC
7 council to perform a revivification miracle. But unlike
8 the resurrection of Lazarus in Bethany, this is a
9 sickness unto death.

10 Thank you very much.

11 ALJ BRADLEY: Thank you.

12 Ms. Grantham, our next speaker.

13 ANDREA GRANTHAM: Next is Dean Apostol.

14 ALJ BRADLEY: Mr. Apostol, can you spell your
15 first and last name for the record, please.

16 DEAN APOSTOL: Yeah.

17 Can you hear me okay?

18 ALJ BRADLEY: Yes. Thank you.

19 DEAN APOSTOL: Great.

20 Dean Apostol, D-e-a-n, A-p-o-s-t-o-l.

21 ALJ BRADLEY: Thank you.

22 DEAN APOSTOL: And I live in Damascus, Oregon.

23 I'm a semiretired landscape architect and natural

24 resource consultant and visual resource expert.

25 I've been asked to help on this project by

1 Friends of the Columbia Gorge and I think it's called
2 Save our Scenic Area. And so I'm going to provide a
3 little bit of review just on the scenic issues only.

4 In my opinion, the project will likely result in
5 significant impacts to scenic resources. And that's
6 regardless of whether the project is built as approved in
7 2012 or whether, as is more likely, there's a revised
8 application with larger wind turbines.

9 Wind turbine sizes increased quite a bit since
10 2012. I think 56 percent on average. And so it's hard
11 to believe they would move forward with the project with
12 the smaller turbines that people were building in 2012.
13 So you've got to assume they are probably going to have
14 larger turbines.

15 The visual impact, announced from the prior
16 approval which was for smaller turbines, is flawed and
17 incomplete.

18 There's new experience and techniques with
19 analysis and visual impacts from wind facilities. A lot
20 has happened since 2011. We have much better simulation
21 techniques and standards and much better visibility
22 mapping than we had back then.

23 The site conditions are probably quite a bit
24 different now than they were in 2011. That's forested
25 area, and trees grow pretty fast in this part of the

1 world. Douglas Fir trees grow three feet a year. So I
2 don't know. You know, in comparison, it probably looks
3 quite a bit different than it did 12 or 13 years ago.

4 View distances from the key viewing areas in the
5 Columbia Gorge to the project are only one to eight
6 miles. And there's a paper by Robert Sullivan of the
7 Oregon Lab that came out in 2012, just after this project
8 was approved, that looked at visibility of turbines from
9 varying distances. And they were trying to determine
10 visibility of turbines and dominance.

11 And what Robert Sullivan and this paper found
12 was that turbines are visible -- clearly visible in
13 western landscapes at distances of up to 36 miles. Blade
14 movement can be detected at 24 miles. And turbines are
15 visually typically dominant at 12 miles.

16 So we're looking at view distances 1 to 8 miles.
17 We can expect visual dominance at 12 miles. And visual
18 dominance is very -- you start to get into large impacts
19 on scenery, is when you have a dominance element.

20 The turbine sizes, like I said, were smaller
21 than they probably would be today. That would
22 increase -- larger turbines would increase visibility.
23 Taller turbines are seen from farther away and they are
24 seen from more places because they are not hidden by the
25 terrain like smaller turbines can be.

1 And so visual analysis, you have key view points
2 that have high sensitivity, you have visual dominance of
3 the project. You're going to have high impacts.

4 And I just think that EFSEC should realize that
5 things have changed, systems of analysis are much better.
6 And allowing this project to just kind of go ahead with
7 some kind of minimal analysis is, I think, highly risky.

8 I've been involved in a project over in Horse
9 Heaven Hills. I think some of you probably heard me
10 testify in that one. And I believe that in that one, the
11 proposed turbines are 411 feet to the hub and up to 670
12 feet to the blade tip. So that's much bigger turbines
13 than what we have -- had in 2011 or 2012.

14 And that's all I have to say. Just a note of
15 caution about moving ahead with this project without
16 requiring better and more detailed analysis.

17 Thank you.

18 ALJ BRADLEY: Thank you.

19 Ms. Grantham, who is our next speaker?

20 ANDREA GRANTHAM: Next we have Dan Rawley.

21 And I know that he is on the phone, but it shows
22 he is muted.

23 So, Mr. Rawley, if you are trying to unmute, you
24 can use pound 6 or star 6.

25 ALJ BRADLEY: Are you there, Mr. Rawley?

1 DANIEL RAWLEY: Can you hear me?

2 ALJ BRADLEY: Yes. Thank you.

3 Can you spell your first and last name, please.

4 DANIEL RAWLEY: Daniel Rawley, D-a-n-i-e-l.

5 Rawley, R-a-w-l-e-y.

6 I live on Underwood Mountain. And like one of
7 the previous speakers, I can look out my window and see
8 where the project was going to be. So it has a direct
9 impact on myself as well as pretty much anybody that
10 lives on Underwood Mountain.

11 Now, before I bring up some other points, I do
12 want to make the issue that I don't think that the
13 interested parties were properly informed. I've been
14 doing a lot of calling myself when I -- since I found out
15 that this project was being, I guess, brought back to
16 life. And most people didn't really -- or hadn't heard
17 of it.

18 So I'm concerned that the proper notifications
19 weren't made, and that is an issue that I would like on
20 the record.

21 As previously noted by Nathan Baker, whether you
22 pick the date of March 5th, 2022, or November 18th, 2023,
23 the Site Certification Agreement is expired. So this
24 really makes this project dead on arrival. So I'm not
25 sure why we're even discussing the process of an

1 extension of something that shouldn't -- that has already
2 been dead, and I'm very concerned that this is even being
3 brought up.

4 I know Mr. McMahan was able to, I guess I would
5 call it spin the dates quite well. Almost made me feel
6 like going to law school. Not really.

7 But I want -- you know, when you have a
8 contract, it's a binding contract and it should be
9 upheld. And I think that -- I urge the council to deny
10 the permit and transfer as well as any extension, which
11 shouldn't actually be considered.

12 If they are really serious about this project, I
13 think that they should apply a new application because
14 previously, this project was financially not viable. And
15 to make it viable, they are going to have to change some
16 of the -- they are going to have to modify the project
17 whether that be as previously noted with power windmills,
18 different blades, different profiles. And that's going
19 to significantly change the impact on the environment.

20 And if they really are trying to make this work,
21 a new application process should be done.

22 So I appreciate you taking my comments tonight.

23 Thank you.

24 ALJ BRADLEY: Thank you.

25 Our next speaker, Ms. Grantham.

1 ANDREA GRANTHAM: Next is Mary Repar.

2 ALJ BRADLEY: All right. Are you there
3 Ms. Repar?

4 MARY REPAR: Oh, I am. Thank you. Sorry. Too
5 many mute buttons here.

6 Can you hear me?

7 ALJ BRADLEY: Yes, I can.

8 Can you spell your first and last name, please.

9 MARY REPAR: My name is Mary, M-a-r-y, Repar,
10 R-e-p-a-r. I live in Stevenson, Washington.

11 And many years ago I was involved in this
12 project. It's almost 15 years for me because we started
13 the project with the DEIS and then the FEIS, of course.

14 And I am many moons older. I had my 72nd
15 birthday just a few days back and my hair is a lot
16 grayer. And as many of you know, none of us gets
17 younger.

18 And neither do projects. Projects get old. The
19 data gets stale and eventually they have to be buried and
20 staked and new ideas be birthed.

21 So I urge you all to put paint to this project
22 once and for all.

23 I have two boxes of data upstairs in my attic
24 about this project. I would like to eventually, before I
25 pass this mortal coil, get rid of them and not have to

1 worry about them being resurrected.

2 So I oppose the transfer, and I oppose the
3 extension of the SCA, the expiration date to
4 November 2026. It is time to let this project go.

5 When SDS was liquidated, this project should
6 have been liquidated with it, the permit, at any rate,
7 and the site certificate also.

8 Projects have a due date for a reason. New
9 technologies come along. New environmental rules and
10 regulations come along. And they are not getting easier.
11 They are getting tougher and tougher because we have now
12 a new thing, 12 years, 15 years later, called climate
13 change, especially in the Gorge where fire danger is even
14 greater today than it was 15 years ago.

15 So I urge you all to deny this request. It's
16 just time to get past it.

17 I really do not think that an organization that
18 we know nothing about, comes in and asks for the site
19 certificate to be extended, and we don't know their
20 qualifications and why they are actually doing this.

21 If you want to do a project, start from scratch
22 and I'll show up. I'll just be grayer when I do. But I
23 really think that some of the information that I sent to
24 you in my letter about old NEPAs, which is what they are
25 called. Even though this was a SEPA, the NEPA

1 information or the NEPA, SEPA, the environmental
2 information still is relevant.

3 And if NEPA thinks that DEISs and FEISs get old,
4 then I think EFSEC should too. Things get aged. They
5 need to be renewed. And this permit and the SCA need to
6 finally have a death.

7 So it is very troubling to me that Twin Creeks
8 is doing this now. There was a lot of time for them to
9 do it when they first started looking at SDS, and SDS
10 could have done something.

11 But this project is not feasible. It is not
12 economic, and it is environmentally dangerous for our
13 national scenic area and for the entire Gorge.

14 There are new technologies coming that will help
15 us with our energy and having bigger turbines is just not
16 it.

17 And I just put something -- I know you're not
18 taking -- this is not an environmental review, however,
19 something that came up in my research was the fact about
20 the impact of taller turbines on airplanes.

21 And as you know, we have contrail -- like, 15 of
22 them during the summer coming over our area. We have the
23 PDX stuff, National Guard folks going up and down the
24 river to the range, military range down -- upstream. And
25 there are affects. I've included the documentation from

1 the Department of Defense in my filing, and I hope that
2 that gets into the record.

3 So thank you very much for holding these
4 hearings. And please deny the Site Certification
5 Agreement extension and also the transfer. It is time
6 for this project to die a timely death and we can move on
7 with our lives. Too many hours and years have been
8 dedicated to this permit already.

9 Thank you very much.

10 ALJ BRADLEY: All right. Thank you.

11 Ms. Grantham, our next speaker.

12 ANDREA GRANTHAM: Next I have Steve McCoy.

13 ALJ BRADLEY: All right. Mr. McCoy, can you
14 hear me?

15 STEVEN MCCOY: Yes.

16 Can you hear me?

17 ALJ BRADLEY: Yes.

18 Can you spell your first and last name for the
19 record, please.

20 STEVEN MCCOY: Sure.

21 Let's go with Steven, S-t-e-v-e-n, McCoy,
22 M-c-C-o-y.

23 ALJ BRADLEY: Thank you.

24 You may proceed.

25 STEVEN MCCOY: Good evening, Chair Drew, and

1 members of the council.

2 Again, I am Steve McCoy and representing Friends
3 of the Columbia Gorge.

4 As you've heard from others tonight, the
5 Whistling Ridge SCA expired by operation of law on
6 March 5th, 2022.

7 Council should confirm the expiration of the SCA
8 which would resolve their issues. However, if the
9 council declines to confirm that the SCA has expired, the
10 council should deny the extension request on the merits.
11 Especially since WRE has, from the very start in 2012,
12 publicly and candidly disclosed that it has never
13 intended to build and operate the project, as approved by
14 the governor in 2012.

15 EFSEC has long had a policy against allowing
16 projects with unlimited build windows to remain on the
17 books indefinitely. In fact, in deciding a recent case
18 based upon a similar set of facts, the council held
19 that -- and I'm quoting the council resolution on Grays
20 Harbor here -- and unlimited build window for a proposed
21 project is not appropriate, as over time, technology or
22 litigation measures presented in the application may no
23 longer be protected in the environmental standards and
24 conditions at the time the facility is constructed, end
25 quote.

1 In the Grays Harbor decision here, the applicant
2 sought an extension of the SCA term while citing there
3 was not sufficient demand to construct the facility at
4 the time.

5 The council determined that based upon the
6 applicant's request for more time per project, that was
7 not currently economically viable. The applicant was, in
8 effect, seeking an unlimited build window. And the
9 council accordingly denied the amendment request.

10 An unlimited build window for a project that is
11 not feasible is exactly where WRE is intended to get
12 here.

13 In its petition for reconsideration filed with
14 EFSEC in 2011, even before the tenure term of the SCA
15 began, WRE, in fact, emphatically claimed that the
16 reduction from 50 to 35 wind turbines rendered the entire
17 Whistling Ridge Project economically unviable.

18 This included the following statements from WRE:
19 The recommended project like this is not economically
20 viable.

21 The council's decision to eliminate specific
22 turbine strips kills the project.

23 The approved wind turbine facility would be
24 unlikely to offset project development costs.

25 And they concluded by stating that their

1 economically unviable project is no profit.

2 They were also candid in the press that the
3 project isn't viable -- is unviable. And you can look to
4 our written comments for some of those.

5 In fact, there's been so little activity on the
6 project that in ~~2013~~²⁰²³, the council had to be briefed on
7 what the project proposal was because it had been
8 inactive for so long. That led Counselor Young to ask if
9 the project had been mothballed for 11 years, and
10 Chair Drew to ask if there had been any further activity
11 on the project.

12 Staff replied that there had been no further
13 activity either before or after any appeals were
14 resolved.

15 Today, the proposed project is no less
16 mothballed than it was two years ago. And Friends'
17 written testimony details how WRE's delays do not seem
18 like the actions of an entity that is reasonably moving
19 toward project construction completion.

20 In addition, according to the agency's notes
21 from a July 26th, 2023, meeting between EFSEC staff and
22 WRE, WRE said it anticipates seeking yet another
23 extension request to construct the project, even if the
24 4.66 extension is granted.

25 At the same time, WRE has not signed any prior

1 purchase agreements and does not have an interconnection
2 agreement with the ~~EPA~~^{BPA}. These inactions are not normal
3 for an entity actively attempting to build a project.
4 But are rather the actions of an entity that wants an
5 unlimited build window.

6 WRE currently admits that no on-the-ground work
7 would occur in the next three years, even if the request
8 extension were granted.

9 However, Friends asks the council to recognize
10 the project is not a real project; to determine that an
11 unlimited build window for this economically unviable
12 project isn't proper; and therefore to deny the extension
13 request.

14 Thank you for the opportunity to make these
15 comments.

16 ALJ BRADLEY: Thank you very much.

17 Our next speaker, Ms. Grantham.

18 ANDREA GRANTHAM: Next is Rudy Salakory.

19 ALJ BRADLEY: All right.

20 RUDY SALAKORY: Can you hear me?

21 ALJ BRADLEY: Yes, I can hear you.

22 Can you please spell your first and last name.

23 RUDY SALAKORY: Of course.

24 Rudy Salakory, R-u-d-y, S-a-l-a-k-o-r-y.

25 Good evening.

1 ALJ BRADLEY: Good evening.

2 RUDY SALAKORY: You're welcome.

3 Once again, my name is Rudy Salakory. I'm the
4 conservation director for Friends of the Columbia Gorge.
5 I am a long-time resident of Washington State, living in
6 Vancouver, and I'm here speaking on my own behalf. As
7 before, I will be brief.

8 As you heard repeatedly and through -- as Nathan
9 Baker had said earlier, voluminous script, we have been
10 working on the Whistling Ridge Energy project for
11 decades. And we're curious, again, why, despite having
12 10 years to complete the project, it did not move
13 forward.

14 We heard a story about anticipating lawsuits,
15 best business practices, but there were plenty of years
16 remaining to begin implementing this project in earnest,
17 far more time than they are asking for now.

18 Again, I would like to take this opportunity to
19 remind folks that this project permit has expired. We've
20 approached that date and those dates in several different
21 ways. But I think by any measure, we can say that this
22 permit has expired and should not be allowed to continue
23 to be contemplated to move forward.

24 More than a year after the -- by any measure, at
25 least more than a year after the permit is expired, we're

1 seeing this mothballed project try to spring back to
2 life. Not only is this inappropriate but it has occurred
3 without significant public involvement.

4 To our knowledge, very few, if any of the
5 members of the public who signed up for updates on this
6 project or who were on the mailing list for this project,
7 were given any notice of these proceedings or this
8 effort.

9 Friends staff have repeatedly asked EFSEC to
10 provide public notice of these procedures of processes,
11 despite having nearly eight months or more to do.

12 Government requires transparency and an informed
13 constituency. By and large, the community opposed this
14 project decades ago and likely still does. But you have
15 no way of knowing their feelings without public notice.

16 Again, I'm going to say, I want to remind you
17 that this project permit expired more than two years ago,
18 and that proper public notice was not given, nor were
19 many local residents informed this proposal was
20 attempting to come back to life.

21 I'm asking you to confirm that this permit has
22 expired and that any project proposed through this body
23 follows the proper procedures for a new development.

24 Secondly, I'm asking that this body takes the
25 time to properly inform residents and interested parties

1 of upcoming procedures as per your own guidelines.

2 And finally, I want you to consider that the
3 environmental review and FEIS was prepared well over 13
4 years ago. And a new study or supplemental EIS to take
5 into consideration any time changes or any other changed
6 circumstance is itself reason enough to deny any
7 consideration of an extension of an expired permit.

8 As another speaker had mentioned, climate change
9 is an issue that we are wrapping our heads around more
10 and more every day. Wildfire risks are extreme.

11 Many folks can remember the Eagle Creek Fire not
12 that long ago. And with a state of wildfires --
13 devastating wildfires caused by transmission and power
14 lines, we should be cautious about building any new lines
15 or infrastructure into these delicate and vulnerable
16 hills.

17 I think that's about as much of your time as I'm
18 going to take up. Thank you for the opportunity to
19 speak. Have a good evening.

20 ALJ BRADLEY: Thank you.

21 Our next speaker, Ms. Grantham.

22 ANDREA GRANTHAM: Next is Keith Brown.

23 ALJ BRADLEY: All right.

24 Mr. Brown, can you hear me?

25 KEITH BROWN: Yes, I can.

1 ALJ BRADLEY: Good evening. Please spell your
2 first and last name.

3 KEITH BROWN: My first name is Keith, K-e-i-t-h,
4 Brown, B-r-o-w-n.

5 ALJ BRADLEY: Thank you. You may proceed.

6 KEITH BROWN: My wife and I were notified of
7 these hearings on the transfer and extension only because
8 last fall we happened upon a small article about an
9 October 2023 EFSEC hearing on Whistling Ridge in the
10 Skamania Pioneer Newspaper.

11 Although we have been intricately involved in
12 all of Whistling Ridge hearings and adjudicative
13 procedures during 2009 through 2011, we had not been
14 notified of the October 2023 hearing either by mail or
15 email. We have the same physical and email addresses we
16 had in 2009.

17 We then contacted EFSEC staff to find out how it
18 was we were not notified. And were told to sign up again
19 for notifications.

20 What happened to our long-standing request to be
21 notified about anything Whistling Ridge? Was it simply
22 misplaced or disregarded?

23 This creates a serious question. How many of
24 the hundreds of concerned citizens that participated and
25 commented on the Whistling Ridge proposal in 2009 through

1 2011 were not informed about this 2024 hearing on the
2 requested permit transfer and extension. Therefore, they
3 have lost the opportunity to comment.

4 EFSEC staff should be ashamed for failing to
5 notify all of the previously engaged and concerned
6 citizenry, both by email and mail.

7 These hearings do not meet the spirit nor the
8 letter of what is required to ensure full citizen
9 participation in the process.

10 Whistling Ridge has failed in its attempt to
11 construct industrial wind turbines in this location for
12 going on 22 years. In 2002, Whistling Ridge requested
13 from the Bonneville Power Administration, a 70-megawatt
14 generation interconnection to BPA's energy grid for a new
15 wind energy project.

16 In 2007, Whistling Ridge proposed to build up to
17 85 wind turbines, each of them up to 426 feet tall on
18 prominent ridgelines near the town of White Salmon.

19 In 2008, Skamania County proposed an industrial
20 overlay zone throughout Skamania County, which would have
21 allowed the construction of these wind turbines.

22 Public hearings were held in numerous locations
23 throughout the county, including in Mill A and Underwood.
24 We attended all of these hearings, and there was
25 widespread and overwhelming opposition and concern about

1 the environmental impacts.

2 Despite these well-articulated concerns,
3 Skamania County issued a SEPA determination of
4 nonsignificance, which was appealed by several
5 nongovernmental and nonprofit organizations in October
6 2008.

7 In February 2009, the hearings examiner reversed
8 the determination of nonsignificance and required
9 Skamania County to prepare an Environmental Impact
10 Statement.

11 The county declined to conduct the EIS and
12 directed the project proponent for Whistling Ridge to
13 seek approval from EFSEC.

14 That is how it came to EFSEC. And the permit
15 has now expired. Quoting from our August 20th, 2010,
16 comment letter to EFSEC on the draft EIS, which is as
17 true today as it was 14 years ago. This siting, if it
18 occurs, will set a precedent with troubling and
19 long-standing consequences for not only forested lands in
20 Washington but will also put at risk all other national
21 and state treasures, parks, and scenic areas.

22 Must we blindly go forward and ruin all that has
23 been set aside? Once it is gone, it is gone. Employing
24 wisdom and forethought, if there was ever a time for
25 EFSEC to determine no, the cost is too great, this is it.

1 In our letter, we provided you with a summary of
2 all of the 1,390 EFSEC written comments. 86 percent of
3 those comments expressed concern or opposition.

4 We urge you to take the appropriate action and
5 deny the request to transfer the permit and extend the
6 time frame for what is now an expired permit.

7 This ill-conceived project has loomed over
8 Underwood, Mill A, White Salmon, Bingen, Hood River,
9 Mosier residents, and the Columbia National Scenic Area
10 for 22 years. It's time to recognize it should be dead
11 and buried once and for all.

12 Thank you for your attention.

13 ALJ BRADLEY: Thank you.

14 Our next speaker, Ms. Grantham.

15 ANDREA GRANTHAM: Next is Peter Cornelison.

16 ALJ BRADLEY: Okay. Mr. Cornelison, can you
17 hear me?

18 PETER CORNELISON: I can, yes.

19 My name is Peter Cornelison. P-e-t-e-r, last
20 name is C-o-r-n-e-l-i-s-o-n.

21 ALJ BRADLEY: Thank you. You may proceed.

22 PETER CORNELISON: Dear Chairman Drew and
23 members of the EFSEC council. I live in Hood River, and
24 I would have a view of the proposed Whistling Ridge
25 Energy turbines -- north of our home. I've been opposed

1 to this project since --

2 (Audio cutting in and out.)

3 COURT REPORTER: Judge, I'm sorry. He's cutting
4 out. I'm not getting that down. I can't hear.

5 ALJ BRADLEY: Yeah, Mr. Cornelison, you're
6 breaking up. Can you maybe stay in one place?

7 PETER CORNELISON: I'll try and get closer to
8 the microphone.

9 Is this better?

10 ALJ BRADLEY: I think so. Go ahead.

11 PETER CORNELISON: Basically if you didn't hear
12 me, I live in Hood River right across from the proposed
13 project. I have been opposed to it since its inception.
14 And I was very surprised to find out that there was a
15 hearing on it tonight.

16 I'm curious why I didn't receive adequate notice
17 from EFSEC. It seems to me that you have an obligation
18 to notify people who have been involved in this project
19 previously.

20 I only found out about the hearing by chance.
21 And I know that other people in the Columbia Gorge, in
22 both Oregon and Washington who previously commented,
23 would very much like to weigh in on this project.

24 I believe that this hearing, without adequate
25 public notice, goes against public interest and fairness.

1 And I would like you to either -- consider holding it
2 again.

3 The thing that I prefer is actually you're
4 denying the request for an extension of the Site
5 Certificate Agreement. It's obvious that it is expired
6 by several years, and it's an obvious and direct
7 violation of the law in your own terms.

8 As many other speakers have said, I think you
9 should instead require the applicant to start over again
10 with a new application.

11 And I also think that as a contract between the
12 State of Washington and Whistling Ridge Energy is already
13 under the Whistling Ridge Energy SCA, ceased no later
14 than November 18th, 2023, 10 years after it was fully
15 executed.

16 So I think there's adequate reason to deny both
17 of these requests.

18 Thank you for letting me comment.

19 ALJ BRADLEY: Thank you.

20 Our next speaker, Ms. Grantham.

21 ANDREA GRANTHAM: Our next one, and the last
22 person I have on this list is Dave Sharp.

23 ALJ BRADLEY: All right. Mr. Sharp, can you
24 hear me?

25 DAVE SHARP: I can.

1 Can you hear me?

2 ALJ BRADLEY: Okay. Yes.

3 Can you spell your last -- first and last name,
4 please.

5 DAVE SHARP: Yes.

6 My name is Dave Sharp, D-a-v-e, S-h-a-r-p.

7 And I want to thank the council -- thank
8 Chair Drew and the council for the opportunity to speak.

9 This represents a summary of my public comment.
10 I will submit along with this some detailed comments
11 about some of the items in the body of this comment.

12 The applicant requests and intends to install
13 larger turbines that have higher nameplate capacity.
14 Although they say that the project may be the same
15 project, make no mistake, the only way this project will
16 be viable is to have larger turbines.

17 The original applicant -- application clearly
18 identifies a range of turbine height, nameplate, and
19 prior EFSEC determination that established the maximum
20 number of turbines allowed.

21 An argument that larger turbines would result in
22 the equivalent or less impact to the environment per
23 installed megawatt of nameplate is speculative and must
24 be backed up with a supplemental EIS and analysis.

25 The two major topics of concern are impacted

1 viewshed and impact to avian species.

2 Mr. Apostol and several other previous
3 commenters talked about the viewshed, so I will not
4 elaborate further.

5 The second area I want to -- most concerning to
6 me is impact to avian species.

7 The applicant used in the environmental
8 statement, an index to ascertain avian exposure. That
9 index is a unit list comparative number. It does not
10 represent a rate, an amount, and it should not be
11 conflated with avian collision rates or avian fatalities.

12 If the applicant intends to install larger
13 turbines, and I believe they do, actual avian collision
14 risk associated, should use appropriate parameters such
15 as the rotor-swept area, operating hours per year, the
16 blade cross-sectional area, and load profile and not this
17 simplistic bird exposure index.

18 These new turbine models that are now on the
19 market are a whole different design than they were 10 or
20 12 years ago. They have huge rotor diameters with
21 respect to the heights of the tower. They are meant to
22 start operation with lower wind speeds. And lower wind
23 speeds mean more operating hours, which means more impact
24 to avian species than -- the larger rotor diameters also
25 represent a larger area of exposure to the avian species.

1 So we need to look at this from the standpoint
2 of how many changes have been made to not just the
3 turbines and not just their design philosophy, but to the
4 laws. I mean, the Bald and Golden Eagle Protection Acts
5 has had some significant changes since the original SCA.
6 And the Migratory Bird Protection Act is currently going
7 through some other significant issues about the penalties
8 and fines and fees. So we need to kind of step back and
9 look at what -- how EFSEC approves these projects.

10 The last major project constructed in
11 Washington, which was a Skookumchuck Wind Project,
12 included a collision risk analysis, and it used the U.S.
13 Fish and Wildlife service methodology.

14 Whistling Ridge deserves no less, unless a
15 standardized method is used that is independent of
16 contractors or consultants that are under the payment
17 from the applicant, how can we trust the results? We
18 need to make sure that the results -- they are results we
19 can believe in.

20 In conclusion, I want to say that if a collision
21 risk modeling is performed using industry-accepted
22 collision models with large turbines, I believe it will
23 show that the risk to avian species, if anything, is
24 greater per installed megawatt per year than the smaller
25 turbines.

1 Thank you very much.

2 ALJ BRADLEY: All right. Thank you.

3 Ms. Grantham has anyone else contacted you
4 indicating they want to speak?

5 ANDREA GRANTHAM: I have not received any
6 additional messages or emails.

7 ALJ BRADLEY: Okay. If there is anyone else who
8 would like to speak at this time, you can raise your hand
9 or you can unmute and identify yourself.

10 I see a hand from Emily Schimelphenig. I'm
11 sorry. I'm probably not pronouncing your name correctly
12 at all.

13 EMILY SCHIMELPHENIG: Actually, you did that
14 very well. Yeah, that was perfect.

15 ALJ BRADLEY: Could you spell your first and
16 last name for the court reporter, please.

17 EMILY SCHIMELPHENIG: Yes.

18 My name is Emily Schimelphenig. That's
19 E-m-i-l-y. And then Schimelphenig is
20 S-c-h-i-m-e-l-p-h-e-n-i-g.

21 I'm here tonight with Tim McMahan on behalf of
22 Twin Creeks Timber and Whistling Ridge Energy. And I
23 just wanted to briefly respond to, you know, a few of the
24 comments made tonight.

25 We heard a lot about whether the SCA is expired

1 and what that expiration date is. And, you know, some
2 said that the SCA has not one date but two deadlines or,
3 you know, it's a permit and it's an agreement.

4 But here, there is really only one important
5 date. Here, state law states that the certificate is a
6 binding agreement between the applicant and the state.
7 That's RCW 80.50.26.

8 There are also state law provisions that
9 indicate the effect of a certificate, like the Site
10 Certificate Agreement. Those provisions state the
11 construction and operation are subject only to the
12 conditions set forth in the agreement.

13 As Tim indicated, several provisions in the Site
14 Certification Agreement provide that construction must be
15 started 10 years from the effective date -- or from the
16 day of execution. I'm sorry, which is the date that both
17 parties agree to bind themselves to the agreement. That
18 date is November 18th, 2023.

19 Now, there are provisions that could push that
20 deadline out further, like the provision stating that it
21 is 10 years after all permits are obtained and all
22 appeals have been exhausted. And to the extent that TCT
23 needs to go and seek other permits, as mentioned by
24 Mr. Baker, this deadline should only be extended further.

25 But TCT actually took a conservative approach

1 and filed its application prior to that 10-year deadline
2 of November 18th, 2023.

3 Now, another argument is that, you know, even if
4 the deadline was raised on November 18th, 2023, it's dead
5 because now here we are in May 2024. But the applicant
6 filed their application to extend the deadline agreement
7 on September 13th, 2023, nearly two months prior to that
8 November 18th deadline.

9 And as is common in most proceedings, when a
10 request is filed timely and prior to the deadline,
11 passing the deadline while you're in the proceedings
12 doesn't make that agreement invalid, as a matter of law,
13 even though now we're in May of 2024.

14 And so I just wanted to highlight that there's
15 an extension provision for a reason and recognize that
16 there are unforeseen circumstances that may require some
17 additional time. And that the one proposed by TCT is not
18 long and unwieldy. It's three years. And it will allow
19 for TCT to evaluate, you know, environmental changes and
20 all of the other things that have happened since the
21 project was first issued in 2013.

22 So we have this exemption process for this exact
23 situation.

24 And that was all that I wanted to say. So
25 please let me know if you have any questions.

1 Thank you.

2 ALJ BRADLEY: Thank you.

3 Is there anyone else who wanted to speak? You
4 can raise your hand or unmute and identify yourself.

5 I'm not seeing or hearing from anyone else, so
6 I'll turn it back to you, Chair Drew.

7 CHAIR DREW: Thank you very much, Judge Bradley.

8 Thank you for all of the information everyone
9 has provided to us this evening in both of these
10 hearings. We will carefully consider all of the input,
11 both through these hearings as well as what has been
12 submitted to us about these amendment requests.

13 And with that, have a good rest of your evening
14 and this meeting is adjourned.

15 (Meeting adjourned at 8:38 p.m.)

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C E R T I F I C A T E

I, MICHELLE D. ELAM, Certified Court Reporter in the State of Washington, residing in Mayer, Arizona, reported;

That the foregoing Extension Request Hearing was taken before me and completed on May 16, 2024, and thereafter was transcribed under my direction; that the Transfer Request Hearing is a full, true and complete transcript;

That I am not a relative, employee, attorney or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

That I am herewith securely sealing the said Transfer Request Hearing and promptly delivering the same to EFSEC.

IN WITNESS WHEREOF, I have hereunto set my signature on the 6th day of June, 2024.

/s/MICHELLE D. ELAM, RPR, CCR
State of Washington CCR #3335
My CCR certification expires on 6/12/24