

Special Meeting Regarding Whistling Ridge Energy, LLC
Washington State Energy Facility Site Evaluation Council

December 27, 2011



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STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL
Utilities and Transportation Commission Building
1300 S. Evergreen Park Drive SW, Room 206
Olympia, Washington
Tuesday, December 27, 2011, 10:00 a.m.

SPECIAL MEETING
REGARDING
WHISTLING RIDGE ENERGY, LLC

Verbatim Transcript of Proceeding

REPORTED BY: JOLENE C. HANCA, CCR# 2741

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A P P E A R A N C E S

Councilmembers Present in Attendance:
Jim Luce, EFSEC Chair

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

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

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

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

1 OLYMPIA, WASHINGTON, DECEMBER 27, 2011

2 10:00 A.M.

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

11 Would the clerk please call the roll.

12 THE CLERK: Chair?

13 CHAIR LUCE: Chair is present.

14 THE CLERK: Department of Commerce?

15 Department of Ecology?

16 MR. WRIGHT: Hedia is on.

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

19 CHAIR LUCE: Is the Department of Commerce
20 present?

21 MR. FRYHLING: Yeah. This is Dick.

22 CHAIR LUCE: Thank you.

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

25 CHAIR LUCE: We're going through the roll at

1 this point.

2 MR. WRIGHT: Is your mike on?

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

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

6 THE CLERK: Department of Ecology?

7 CHAIR LUCE: Go ahead.

8 THE CLERK: Department of Fish and Wildlife?
9 Department of Natural Resources?

10 MR. HAYES: Andy Hayes, present.

11 THE CLERK: Utilities and Transportation
12 Commission?

13 MR. MOSS: This is Dennis Moss.

14 THE CLERK: Skamania County?

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

17 THE CLERK: Department of Ecology?

18 Fish and Wildlife?

19 Natural Resources?

20 MR. HAYES: Andy Hayes, here.

21 THE CLERK: Utilities and Transportation
22 Commission?

23 MR. MOSS: Dennis Moss is on the line.

24 THE CLERK: Skamania County?

25 CHAIR LUCE: How many people do we have here?

1 Do we have a quorum?

2 MR. WRIGHT: No.

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

4 CHAIR LUCE: Jeff Tayer. Thank you, Jeff
5 Tayer.

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

7 CHAIR LUCE: All right. So let's reconstruct
8 the members of the Commission that are present. We have
9 Jeff Tayer, correct?

10 MR. TAYER: I'm here.

11 CHAIR LUCE: We have Dick Fryhling.

12 MR. FRYHLING: I'm here.

13 CHAIR LUCE: We have Dennis Moss.

14 MR. MOSS: I am here.

15 CHAIR LUCE: We have Andy Hayes.

16 MR. HAYES: I am here.

17 CHAIR LUCE: All right. Now, have any other
18 councilmembers come on since the beginning of this
19 elaborate roll call?

20 All right. We will begin with four, which
21 constitutes a quorum.

22 I will now ask the people on the phone to
23 please identify themselves. Speak slowly, because we
24 have a new court reporter here and we want to make sure
25 we get it right.

1 MR. McCLURE: David McClure, Klickitat
2 (inaudible.)

3 CHAIR LUCE: Go ahead people on the phone.

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

6 CHAIR LUCE: Thank you, Richard.

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

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

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

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

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

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

21 MR. KARG: Yes, Chair.

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

24 MR. KARG: Thank you, sir.

25 CHAIR LUCE: I would ask staff, Al Wright, to

1 summarize what has been previously provided to and
2 reviewed by the Council. That would be Order No. 870 and
3 Resolution 332, which has been reformatted without a word
4 being changed into a letter format, and those are the two
5 items on which the Council will be acting today.

6 And someone else just came on the phone. If
7 you could --

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

9 CHAIR LUCE: Okay, well.

10 MS. ADELSMAN: Good morning.

11 CHAIR LUCE: Good morning, Hedia. We're moving
12 into the action items at this point in time.

13 MS. ADELSMAN: Sorry, I missed it.

14 MR. FRYHLING: This is Dick Fryhling. Are
15 there any people in the audience that are participants in
16 this?

17 CHAIR LUCE: Yes, there are. Mr. Kahn is here
18 and others. So would the audience members please
19 identify themselves for Councilmember Fryhling?

20 MR. KAHN: Gary Kahn, representing Friends of
21 the Columbia Gorge.

22 MR. BAKER: Nathan Baker, representing Friends
23 of the Columbia Gorge.

24 MR. ANDERSON: Mark Anderson with the State
25 Department of Commerce.

1 PHIL COLLINS: Phil Collins, interested
2 citizen.

3 CHAIR LUCE: All right, thank you. We
4 particularly appreciate interested citizens.

5 The phone keeps beeping, but we will assume we
6 can go forward at this point in time.

7 Would you care to please summarize Order 870,
8 Al?

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

11 (Noise on the speakerphone.)

12 CHAIR LUCE: I agree. Yes.

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

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

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

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

25 We received five petitions and an objection,

1 which we will deal with later today; and then we allowed
2 15 days, which closed on November the 14th, for responses
3 to those petitions, and we had six responses.

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

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

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

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

24 Those are the two that received the most
25 attention. The remaining of the issues, probably the

1 third in order is the avian and wildlife issues.

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

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

10 The Council has considered all petitions for
11 reconsideration as required under RCW 34.05.470 and WAC
12 463-30-335. EFSEC finds and concludes that none of the
13 petitions raises any factual or legal arguments that
14 EFSEC has not already heard during the adjudication and
15 in post-hearing briefs, deliberated upon, and discussed
16 in Orders 868 and 869 and the draft Site Certification
17 Agreement. No basis has been provided to justify any
18 changes in the Council's findings, conclusions, or
19 recommendations.

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

25 Is there a discussion among the councilmembers

1 with respect to Order No. 870?

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

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

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

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

10 CHAIR LUCE: There's a motion and a second.

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

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

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

20 THE CLERK: Chair?

21 CHAIR LUCE: Chair votes aye.

22 THE CLERK: Commerce?

23 MR. FRYHLING: Commerce votes aye.

24 THE CLERK: Ecology?

25 Fish and Wildlife?

1 MR. TAYER: Jeff Tayer votes yes.

2 THE CLERK: Natural Resources?

3 MR. HAYES: Andy Hayes votes yes.

4 THE CLERK: Utilities and Transportation
5 Commission?

6 MR. MOSS: Dennis Moss votes yes.

7 CHAIR LUCE: Coming back to Hedia, are you on
8 the phone?

9 THE CLERK: Ecology?

10 CHAIR LUCE: We will take a pass on Hedia. The
11 clerk will report the vote.

12 MR. WRIGHT: Mr. Chair?

13 CHAIR LUCE: Yes?

14 MR. WRIGHT: You might check to see if Doug
15 Sutherland is on the line by now.

16 CHAIR LUCE: Doug, are you on the phone?

17 MS. ADELSMAN: I'm here, too. I'm sorry. I
18 was on mute and I had to take it off. I vote yes.

19 CHAIR LUCE: You vote yes. Is Mr. Sutherland
20 on the phone? He's not.

21 The clerk will report the vote. The vote is
22 all in favor, unanimous; Doug Sutherland being absent and
23 excused. Thank you very much. That concludes the
24 Council's action on Order 870.

25 The next item for consideration is what was

1 earlier written, drafted as a resolution, and now has
2 been rewritten without any words being changed, with the
3 exception of "whereas," as a letter.

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

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

8 MS. ADELSMAN: No.

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

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

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

15 MS. ADELSMAN: I second.

16 CHAIR LUCE: The motion is seconded.

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

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

21 THE CLERK: Chair?

22 CHAIR LUCE: The Chair votes aye.

23 THE CLERK: Department of Commerce?

24 MR. FRYHLING: Dick Fryhling votes aye.

25 THE CLERK: Ecology?

1 MS. ADELSMAN: Hedia Adelsman, yes. Aye.

2 THE CLERK: Fish and Wildlife?

3 MR. TAYER: Jeff Tayer votes yes.

4 THE CLERK: Natural Resources?

5 MR. HAYES: Andy Hayes votes yes.

6 THE CLERK: Utilities and Transportation
7 Commission?

8 MR. MOSS: Dennis Moss votes yes.

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

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

16 Have councilmembers had a chance to review this
17 letter?

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

22 MS. ADELSMAN: Yes.

23 CHAIR LUCE: Councilmembers, I would request --
24 do you have any comments at this time? I guess I would
25 rephrase that.

1 MR. FRYHLING: Dick Fryhling. I don't have any
2 comments.

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

5 MS. ADELSMAN: No.

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

8 MS. ADELSMAN: Yes.

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

10 MR. HAYES: This is Andy Hayes. Yes.

11 MR. MOSS: Yes.

12 CHAIR LUCE: All right.

13 MS. ADELSMAN: Yes for me.

14 CHAIR LUCE: And yes for the Chair.

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

18 MR. WRIGHT: Yes, sir.

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

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

25 I don't believe Kayce has heard anything back

1 from any of you. If you would take a look at those. If
2 you have any conflicts or problems, let us know, because
3 right after the first of the year we're going to submit
4 these as our official meeting dates for 2012.

5 MR. TAYER: Mr. Chair?

6 MS. ADELSMAN: I'm good with it.

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

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

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

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

20 The letter is dated November 11, 2011, and it
21 asks for that consideration because of three pieces of
22 information that are cited: One is the U.S. Fish and
23 Wildlife Service revised recovery plan for the Northern
24 Spotted Owl; two, the fact that the Council on
25 October 6th adopted an aesthetic and cultural heritage

1 impact description in its order, which is -- which
2 changes the applicant's configuration of turbines; and,
3 three, the archaeological discovery that has been found
4 on Chemawa Hill; and because of those three
5 considerations, they're saying, they contend, that this
6 is new information and therefore requires to either
7 supplement or revise the Environmental Impact Statement.

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

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

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

23 The second contention is that because the
24 Council found under its aesthetic and cultural heritage
25 impacts to change the proposed turbine configuration,

1 that that is a change of conditions and therefore the
2 Council should reopen the final EIS.

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

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

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

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

22 All parties have come to the agreement that the
23 Chemawa Hill area is an important archeological area of
24 consideration. The Council included a proposed
25 protection plan in its draft SCA for the Governor to

1 sign.

2 I think all parties have come to that
3 conclusion, that that's an area that needs to be of
4 archeological concern and protection. So therefore,
5 whether there was a broken arrowhead found on that site
6 or 150 broken arrowheads found on that site, it doesn't
7 change the conclusion and the information that is in the
8 final EIS and in the Council's order, that this is an
9 area of concern and needs protection.

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

13 CHAIR LUCE: Thank you. Anything else from
14 councilmembers?

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

21 UNIDENTIFIED SPEAKER: Yes.

22 MS. ADELSMAN: Yes.

23 UNIDENTIFIED SPEAKER: Yes.

24 MR. SUTHERLAND: Chairman Luce, this is Doug.
25 I agree, also.

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

3 Doug, we had before you came on approved Order
4 870 and the resolution which you had a chance to review.

5 Do you care to be recorded on either of those?

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

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

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

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

19 MR. WRIGHT: No, sir.

20 CHAIR LUCE: Stephen?

21 MR. POSNER: No.

22 CHAIR LUCE: Councilmembers have anything else
23 to raise?

24 MS. ADELSMAN: No.

25 MR. FRYHLING: This is Dick. No.

1 CHAIR LUCE: We will wish you a Happy New Year.

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

8 That being said, this meeting is adjourned.

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

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STATE OF WASHINGTON)
) SS
COUNTY OF KING)

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

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



JOLENE C. HANECA, RPR, CCR

My commission expires:
March 28, 2014