

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of

Application No. 2009-01

of

WHISTLING RIDGE ENERGY PROJECT LLC

for

WHISTLING RIDGE ENERGY PROJECT

**PREHEARING ORDER NO.7**

**COUNCIL ORDER NO. 851**

PREHEARING ORDER;

NOTICE OF PREHEARING  
CONFERENCE (Sept. 22, 2010)

**Procedural Setting:**

The Washington State Energy Facility Site Evaluation Council scheduled a prehearing conference in this matter on September 1, 2010 at 10:00 a.m. in Olympia Washington, before Council members Dick Fryhling and Dennis Moss and Administrative Law Judge C. Robert Wallis.

**Participants:**

The following parties appeared and participated in the conference:

Applicant:	Whistling Ridge Energy, LLC, by Darrell Peeples, Attorney, Olympia; Erin Andersen, attorney, Seattle, and Timothy McMahan, attorney, Vancouver, Washington.
Counsel for the Environment:	Bruce H. Marvin, Asst. Attorney General, Olympia
Council Member Agency Appearing as Party:	Dept. of Commerce, by Dorothy H. Jaffe, Asst. Attorney General, Olympia

**Intervenors:**

Friends of the Columbia Gorge	Nathan Baker and Gary K. Kahn, attorneys, Seattle
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Save Our Scenic Areas	J. Richard Aramburu, attorney, Seattle
Skamania County Agri-Tourism Association and Skamania County Economic Development Council	Isa Ann Taylor, attorney, Oregon <sup>1</sup> Peggy Bryan, Executive Director
Seattle Audubon Society	Shawn Cantrell, Executive Director
Klickitat County Public Econ. Devel. Authority	Michael Canon, Executive Director
Wilbur Slockish, Jr., Johnny Jackson and the Klickitat and Cascades Tribes of the Yakama Nation	Wilbur Slockish, Jr. and Johnny Jackson
Yakama Nation/Cultural Resource Program	George Colby, attorney, Toppenish; Jessica Lally, Yakama Nation Archaeologist, Toppenish

Parties who entered no appearance were the Association of Washington Business, the Columbia River Gorge Commission, the Port of Skamania County, and the City of White Salmon.

**Procedural Matters**

1. Schedule.

The Council earlier circulated a proposed schedule allowing for evidentiary hearings in December, 2010. Parties expressed a concern that the schedule would not allow adequate review of information in the environmental impact process prior to the hearing. Parties cited no authority requiring a Washington State agency to issue a final or to release a draft final EIS prior to a hearing on the merits of a project. Nevertheless, the Council deferred scheduling until after the deadline for comments on the Draft Environmental Impact Statement (DEIS) and until a probable review schedule was determined. The Council has in prior proceedings made public a preliminary draft of its final EIS prior to the hearing on an application, and has committed to attempt to do so in this proceeding.

Stephen Posner, Council staff member, attended the conference and stated that after consultations with the Bonneville Power Administration, co-issuer of the DEIS, that the Council's responsible official could likely have a draft FEIS available for public examination by November 24, 2010. He indicated that in light of the number and scope of comments requiring responses, review and accommodation will likely be extensive, but he believes the task to be achievable by late November.

The Council prepared and distributed to parties a possible revised schedule that contemplated availability of a draft final environmental impact statement (DFEIS) prior to the beginning of the adjudicative hearing and that schedules hearings during the first two full weeks of January, 2011. Mr. Aramburu presented a counter proposal that would delay filing of intervenors' testimony and exhibits until after availability of the DFEIS, and which suggests a three-month delay from the original Council-proposed schedule.

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<sup>1</sup> Ms. Taylor announced her withdrawal as counsel for the intervenor but participated on its behalf during the conference, and also participated on behalf of intervenor Skamania County Economic Development Council.

The counter proposal is rejected. The Council's revised proposed schedule anticipates that the DFEIS will be available approximately November 24, 2010 and rebuttal testimony will be filed on December 16, 2010. If the DFEIS issue date slips, there is still a likely opportunity for review of the document prior to the testimony filing deadline. However, the Council does not commit that it will further delay the start of the hearing beyond the January setting. The law appears to require only that the agency's responsible official issue a final EIS before a final decision is made; the EFSEC recommendation and the FEIS are sent to the Governor simultaneously for that final decision.

During the prehearing conference, Mr. Aramburu suggested that SOSA would propose extensive discovery on the draft EIS and the process by which it was developed, and may intend to challenge the EIS in the hearing. That would constitute a marked change in Council processes. The Council noted in the Sixth prehearing order that the processes for the Environmental Impact Statement preparation are separate and distinct, and that they operate under different laws and rules. The Council asks that parties who have a position on the matter of discovery prepare a statement of authorities for filing and service no later than close of business on Monday, September 20, 2010, and be prepared to argue, with no more than 20 minutes per side plus rebuttal if required, at the prehearing conference.

The Council adopts the hearing schedule attached, which provides for evidentiary hearings during the first two weeks in January, 2010 in or near Stevenson, Washington.

## 2. Other procedural matters.

The supplemental agenda for the September 1 conference identified several procedural rules for consideration at the conference. Each of the parties present identified a person (other than the party's attorney) to receive service on behalf of the party, pursuant to WAC 463-30-100. Parties who did not attend are asked to confirm or update the information now of record regarding representation and contacts.

Consistent with WAC 463-30-093, the parties were encouraged to coordinate or consolidate with other parties of similar views to avoid duplication of presentation or cross examination. As the hearing draws closer we will inquire about opportunities for such cooperation.

The Applicant, scheduled to be the first party to file evidence in the proceeding, asked whether the exhibit numbering system used in prior proceedings would be appropriate. Each substantive witness will be assigned a single whole number for her or his exhibits, and that prefiled direct of the first witness be numbered 1.00; the witness's *c.v.* or bio be numbered 1.01, and other exhibits presented by the witness identified in numerical order, in the order to be presented in evidence. Exhibits on cross examination would continue in sequence, but would be identified as cross-examination exhibits by a suffix "c", as 1.93c, and rebuttal with the designation "r". This system facilitates easily understandable filing and retrieval. Numbers should be left vacant for possible rebuttal witnesses, as determined at a later prehearing conference.

Parties were reminded that the Council requires an original plus twelve paper copies of evidence that any party pre-files or offers. In addition, other parties require one copy each of evidence on paper.

The parties engaged in a brief discussion about discovery. SOSA has made an informal discovery request in writing to the Applicant; Applicant has acknowledged the request and intends to respond. Issues may be referred to the administrative law judge.

### NOTICE OF PREHEARING CONFERENCE

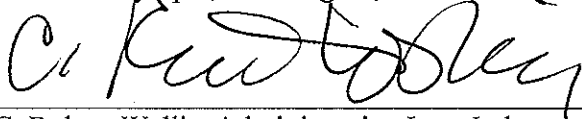
ALL PARTIES PLEASE TAKE NOTICE That the Council hereby sets a prehearing conference in this proceeding as follows:

A Prehearing Conference and Status Conference No. 2 will be convened at 10:00 a.m., on September 22, 2010, Washington PUD Association, 212 Union Ave, 1<sup>st</sup> floor conference room, Olympia, Washington 98501 before Council Members who may attend and Administrative Law Judge C. Robert Wallis.

The purpose of this conference is to review the status of the proceeding and to consider procedural matters, including but not limited to timing of submission of procedural motions, including motions to exclude evidence; timing of objections to prefiled evidence; availability of elements of the development of the EIS process for discovery and introduction into evidence and availability of personnel involved in the process for discovery and cross examination; projected number of proposed witnesses for each party, including identity, if known, and topics to be addressed. Other matters related to the process of the hearing may be added to the agenda. Parties who wish to argue a position on whether the Council can or should allow discovery, cross examination, or rebuttal regarding elements of the environmental impact statement must file a statement of authorities supporting their views. One hour will be allotted to oral presentations, divided equally between proponents and opponents, and among parties by agreement or decision of the bench.

Parties are strongly encouraged to attend in person, but may attend the conference remotely by 1, reserving a bridge line port and 2, calling the bridge line prior to beginning of the conference. You may reserve a port and get call-in instructions by calling Ms. Talburt at 664-1359 or Ms. Michelle at 360-664-1363. Please do not use more ports than you have reserved.

Dated at Olympia, Washington, and effective this 13th day of September, 2010.



C. Robert Wallis, Administrative Law Judge

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

#### Notice to Parties:

Unless modified, this prehearing conference order shall control further proceedings in this matter. We ask that any objections to this order be filed within five days after the date of this order.

EFSEC Application 2009-1  
 Whistling Ridge Energy Project  
 Hearing schedule

September 13, 2010

Event		Schedule
First prehearing/ status conference		September 1, 2010
Applicant prefilng		September 15, 2010
Second prehearing/ status conference		September 22, 2010
Responding prefilng		November 1, 2010
Third prehearing/ status conference		November 5, 2010
Anticipated DFEIS availability		November 24, 2010
Rebuttal deadline		December 16, 2010
Status and Prehearing Conference to mark exhibits, check status		December 21, 2010
Hearing, in or near Stevenson WA		January 5 – January 15, 2011, as needed
Briefing schedule		To be determined