

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. 13
COUNCIL ORDER NO. 857

Prehearing Order Regarding
Hearing Procedure and Logistics

The Washington State Energy Facility Site Evaluation Council convened a prehearing conference in Olympia, Washington on November 5, 2010 before Administrative Law Judge C. Robert Wallis and Council Chair Jim Luce, pursuant to due and proper notice to all interested parties.

Parties appearing at the conference in person or by telephone were the Applicant, Whistling Ridge Energy, LLC, by Tim McMahan and Darrel Peoples; Counsel for the Environment, H. Bruce Marvin; Department of Commerce, by Dorothy H. Jaffe; Friends of the Columbia Gorge, by Gary K. Kahn and Nathan Baker; Save Our Scenic Area (SOSA), by J. Richard Aramburu; Skamania County Public Utility District No. 1, by Ken Woodridge; Seattle Audubon Society, by Shawn Cantrell; Confederated Tribes and Bands of the Yakama Nation, by George Colby; Association of Washington Business, by Christian McCabe.

Parties not appearing were Skamania County Economic Development Council; Skamania Agri-Tourism Association, Columbia River Gorge Commission, The City of White Salmon, Klickitat County Public Economic Development Authority, and The Klickitat and Cascades Tribes of the Yakama Nation, Mr. Johnson and Mr. Slockish.

The following matters were discussed and were resolved as set out herein. **Please note:** review of schedules requires some adjustment to dates, as indicated herein.

Subpoenas: Counsel of record may subpoena witnesses to appear before the Council pursuant to RCW 34.05.446(1). Counsel for the party issuing the subpoena must notify other parties and the Council immediately upon issuing the subpoena. **Note:** If exhibit numbers have not been reserved for such witnesses, the parties' submitted testimony must be

supplemented with the name or position of the proposed witness and likely exhibits within five days after the service date of this order.

EIS process: Council staff member Stephen Posner reported on the status of EIS process. Council and BPA representatives and the Council's independent consultants are working on responses to comments; the group expects to have a first draft of the responses to comments completed by thanksgiving, and edited responses for availability to parties before the Christmas holidays.

New Council member. Council member Doug Sutherland, recently appointed by Skamania County to replace Ms. Wilson, attended the conference and was introduced. Mr. Aramburu indicated the possibility of asking Mr. Sutherland's recusal and filing a motion with the Council for his recusal; we note that this has been done, along with a motion to the Council for Mr. Sutherland's disqualification, and understand that responses are forthcoming.

Timing of filings and need for timely presentation of hard copies. Earlier in the proceeding parties accepted a five-day period for filing objections to prehearing orders. At a later conference that was clarified to provide that weekends or holidays would not be counted

Hearing location. The Council has approval to use facilities for the adjudicative hearing in Stevenson at the Skamania Lodge and has confirmed that reservation. Parties may make accommodation reservations with the hearing location in mind.

Public Comment Sessions. The Council is required by law to receive comments on the proposed application from members of the public. Parties at the conference agreed that two sessions for public testimony, with one in the afternoon and one in the evening, would be appropriate. The sessions will be two to three hours in length; one will be held in Stevenson and one in Underwood. Staff is working to make reservations at facilities in those locations. We anticipate that the notice of hearing for the evidentiary and public sessions will be ready for service and publication shortly.

Opening statements. The Council has asked the parties to present opening statements at the initial hearing session, which will be scheduled to begin at 1:30 p.m. on Monday, January 3. The Council asks parties for a "road map" of their presentations, identifying the points their evidence will show and the witnesses and the principal exhibits in support of their cases. Parties agreed that such statements, not exceeding ten minutes (longer for the applicant, because of the scope of its presentation, and for parties presenting jointly) would be adequate. Parties requested the opportunity to present written statements as well. **Written statements** should not exceed ten pages, or twenty for parties making joint presentations. A short document is likely to be more effective at identifying the parties' principal points than a longer one, and the Council is not asking for briefs at this point. **The deadline for receipt ,**

of digital copies by the Council for distribution to Council members is noon on Tuesday, December 28, 2010. Earlier-delivered presentation of digital documents will be gratefully received and the Council will arrange distribution to Council members.

The Application as Exhibit. The Applicant noted that parts of the Application are being sponsored by different witnesses. The Application will be offered as a single exhibit. Only one objection has been noted to the applicant's direct evidence, and that is posed in part against the portion of the Application sponsored by witness Katy Chaney. Mr. Aramburu and Mr. McMahan agreed to argue the objection at the December 21 prehearing conference.

Order of witnesses and hearing schedule. The parties agreed to convene a meeting to propose a schedule the hearing and for the appearance of witnesses. All witnesses are to be included in the scheduling discussions. The parties agreed to present the proposed schedule to the Council and to the service list by noon on December 20. It appears that that date will be too late to ensure budget and logistical flexibility to provide additional time. **Counsel should assume in preparing the witness schedule that we are restricted to the hearing schedule noted.**

In preparing the schedule of witnesses, parties agreed to and are required to coordinate cross examination to avoid duplication. As noted earlier, the Council expects that the hearing can be concluded without any adverse effect on the parties' opportunities or rights, within the allotted period, and counsel now have the opportunity to work toward accommodating that schedule.

Exhibits on Cross Examination. Please note: Parties must distribute exhibits on cross examination of the direct and answering testimony, in the order they will be used in cross examination, by December 16. Exhibits on cross of rebuttal testimony must be identified in general terms at the December 21 conference and distributed per decisions at that conference. Parties are also required to indicate the order in which cross examination will be conducted. Any party with more than five exhibits on cross that **cannot** meet that schedule **must** advise the administrative law judge no later than the Friday prior to the conference. Parties should provide the documents in sequential packages in advance of the conferences, with priority given to witnesses appearing earliest during the hearing.

References to the EIS documents in the hearing. We understand that there may be reasons for relevant questions on cross examination regarding a limited number of specific documents related to the draft EIS. If the examination can be readily understood without the inclusion of those documents, they need not be provided. If the documents are reasonably necessary to follow or understand the questioning, they must be provided as exhibits on cross examination to avoid extensive reading of material into the record and to enable understanding and review of the material during and after the hearing. This includes long

passages of text (more than one or two small paragraphs of technical information, for example) as well as illustrations. **Please note:** If more than six such documents are likely to be at issue, counsel must advise the administrative law judge at the Dec. 21 prehearing conference, for a consultation.¹ **Also note,** to the extent illustrations are in question, we ask that copies be provided for the record (and for Council members) and also ask that enlargements or projectable documents be available be provided for purposes of the hearing.

Audio-visual equipment. If parties have materials whose presentation would be clearer during testimony or argument if projected, you are asked to have projectable copies available. We are exploring technical resources for availability. Please consult with the administrative law judge or Mr. Wright about the audio-visual equipment that will be available at the hearing.

Objections to prefiled testimony and exhibits on direct and answering testimony will be argued on December 21. **You must advise the parties and the Administrative Law Judge no later than noon on Dec. 20 if you have objections and to which exhibit or exhibits they will be addressed,** so all participants may have them identified and noted prior to the conference.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

Dated at Olympia, Washington and effective this 19th day of November 2010.

/s/

C. Robert Wallis, Administrative Law Judge

¹ We aim to establish a rule of reason, but regret that it is difficult to do so in terms of specific numbers without an understanding of the order of magnitude of such documents that might be anticipated. We also feel obligated to provide guidance in adequate time for counsel to prepare for the hearing.