

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. 15  
COUNCIL ORDER NO. 859

Prehearing Order Regarding  
Hearing Procedure and Logistics;

Notice of Hearing (January 3, 2011);

Notice of Prehearing Conferences  
(December 21, 2010 and January 3, 2011)

The Washington State Energy Facility Site Evaluation Council convened a prehearing conference in Olympia, Washington on December 3, 2010 before Administrative Law Judge C. Robert Wallis, Council Chair Jim Luce and members Richard Fryhling, Hedia Adelsman and Andrew Hayes, 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, Erin Anderson and Darrel Peebles; Counsel for the Environment, H. Bruce Marvin; Department of Commerce, by Dorothy H. Jaffe; Friends of the Columbia Gorge (“Friends”), by Gary K. Kahn and Nathan Baker; Save Our Scenic Area (SOSA), by J. Richard Aramburu; and Confederated Tribes and Bands of the Yakama Nation, by George Colby.

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; Seattle Audubon Society, by Shawn Cantrell; Association of Washington Business, by Christian McCabe.

Procedural matters addressed at the conference included the following:<sup>1</sup>

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<sup>1</sup> We indicated at the conference that a memo would result, but opted for an order for most convenient inclusion of formal notices of the prehearing and hearing sessions. Notices of the sessions for public testimony are being provided separately, and include mention of the evidentiary hearing sessions.

**Rebuttal filings:** Several parties intend to present rebuttal. The Applicant: about ten witnesses, of whom five have previously filed testimony; Friends, three witnesses; SOSA, two witnesses, about 25 pages; 5-10 exhibits; Commerce, three witnesses, of whom two have previously filed testimony. No other parties will file rebuttal evidence.

**Exhibits on cross** examination are expected to be relatively few, on the order of low double digits, for any party. Exhibits on cross examination are due at the December 21 conference for cross of the original and answering testimony, and at the January 3 prehearing conference for the rebuttal testimony. Numbers will be assigned based on the order of cross, and the January 3 conference will focus on the earliest scheduled witnesses.

**Corrections to prefiled testimony and exhibits.** If a witness finds it necessary to make a correction to her or his prefiled testimony, it should be done by means of an errata sheet with corrections which will be offered (and ordinarily received) into evidence. It is not necessary to correct obvious typographical errors. Substantive corrections that are extensive or need an explanation should be addressed in the errata sheet with sufficient Q and A to explain the change. Errata sheets should be submitted as early as feasible (not later than the morning of the day the witness is expected to be sworn) so they may be integrated into the hearing books.

**Hearing schedule.** The parties agreed to consult on a topic schedule to permit convenient scheduling of witnesses, some of whom may come from outside the Pacific Northwest. If possible, it should be adequate for preliminary witness scheduling. Scheduling involves making a realistic estimate of hearing time, including estimates of time on cross examination for the witnesses. Parties should note that Council members may have questions of the witnesses, as well. We ask parties not to bunch particularly contentious issues at either end of the hearing because doing so reduces flexibility and could prevent adequate exploration of significant concerns. It is also a concern that all parties have the opportunity for adequate participation.

**Public participation sessions.** The Council has scheduled hearing sessions to receive public testimony for Wednesday afternoon and Thursday evening in Underwood and Stevenson, respectively. Parties suggested a Thursday-Friday schedule, but that would be logistically difficult for hearing participants who will need to check out of local lodging by noon on Friday and may have drives of several hours.

**Public Attendance at adjudicative hearing sessions.** The Council asked that counsel who may be aware of significant public interest that would result in large public attendance at the hearing sessions advise the Council as early as this is known, so adequate arrangements may be made at the facilities.

**Site visits.** The Council has indicated a desire to visit viewscape sites prior to making a decision. In addition, some present Council members have not had the opportunity to visit the proposed facility site and wish to do so. If time and weather conditions permit, this may be done during the hearing schedule with the consent and participation of the parties. If either time or weather conditions prevent meaningful site visits during the scheduled hearing days, the Council expects to propose such site visits at a time following the scheduled sessions. Any such arrangements following the scheduled hearing sessions will be undertaken in consultation with and invited participation of the parties.

**Visual simulations.** Chairman Luce requested that the parties provide both 35mm and 55mm (perhaps meaning 50mm) visual simulations of viewscape effects, and the parties agreed.

**Environmental documents.** Council and BPA staff have been working diligently on responses to comments to meet the Council's intention that at least an initial draft of the responses might be made available to parties before the hearing. This represents a considerable effort on the part of the two agencies involved.

If the document is available prior to the hearing, please bear in mind that the environmental and the adjudicative aspects of this proceeding are topically related, but are on separate tracks. The Council has ruled that the adjudication is not a venue for resolving issues involving the EIS process or documents. In addition, the anticipated document will represent best current, interim efforts on the part of the two agencies but it will not have undergone final review, final editing, or approval, which may result in corrections or changes. Consequently, we will be reluctant to allow references to the document in the record of the hearing.

**NOTICE OF HEARING (January 3, 2011):** The Washington State Energy Facility Site Evaluation Council hereby gives notice that the adjudicative hearing sessions in this matter will begin at 1:30 p.m. on January 3, 2011 at the facilities of the Skamania Lodge, 1131 SW Skamania Lodge Way, Stevenson, Washington, 98468 in a room to be posted. The hearing will continue from time to time until concluded, at places and times specified, by means of notice given to the parties on the record or by electronic or first-class United States mail.

**NOTICE OF PREHEARING CONFERENCE (December 21, 2010):** The Washington State Energy Facility Site Evaluation Council hereby gives notice that a prehearing conference in this matter will begin at 10:00 a.m. on December 21, 2010 in Room 206 of the Hemstad Office Building, Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive SW, Olympia, Washington, 98504. The conference will consider objections, if any, to prefiled exhibits; procedural matters including order of witnesses,

marking of predistributed exhibits, and such other matters as may facilitate the adjudicative hearing. The conference will consider procedural matters previously identified by or for the parties, and such other relevant matters that may be raised, in preparation for the January 3 commencement of the adjudicative hearing sessions. **Please note: the responsible person (attorney or other representative) of every party that is planning to present evidence or to challenge the presentation of another party during the hearing must attend this conference, either in person (preferably) or by telephone. We will be discussing hearing arrangements, schedule and process, so it is necessary that the hearing representative of each active participant attends. Failure to attend may result in rejection of proposed evidence or denial of participation. If you are not planning to participate actively in the hearing, we will not hold space for you at counsel tables.**

**NOTICE OF PREHEARING CONFERENCE (January 3, 2011):** The Washington State Energy Facility Site Evaluation Council hereby gives notice that a prehearing conference in this matter will begin at 10:00 a.m. on January 3, 2011 at the facilities of the Skamania Lodge, 1131 SW Skamania Lodge Way, Stevenson, Washington, 98648 room to be announced. The conference will consider objections, if any, to prefiled exhibits and procedural matters including order of witnesses, marking of predistributed exhibits and such other matters as may facilitate the adjudicative hearing.

**PLEASE NOTE ALSO:** It is likely that further prehearing conferences will be set on the record as the need arises, and no further notice will be provided.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

Dated at Olympia, Washington and effective this 10<sup>th</sup> day of December 2010.

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/s/

C. Robert Wallis, Administrative Law Judge