

*SUBMITTED VIA EMAIL ONLY*

May 15, 2024

Energy Facility Site Evaluation Council  
*Via email to comments@efsec.wa.gov*

**Re: Whistling Ridge Energy, LLC's Request to Extend the Ten-Year Term of the 2012 Site Certification Agreement for the Whistling Ridge Energy Project by 4.66 Additional Years, from March 5, 2012, to November 1, 2026**

Dear Chair Drew and Members of the Council:

Pursuant to RCW chapter 80.50 and WAC chapters 463-66 and -68, Friends of the Columbia Gorge ("Friends") submits the following comments regarding the September 13, 2023 request filed by Whistling Ridge Energy LLC ("WRE") to extend the term of the March 5, 2012 Site Certification Agreement ("SCA") for the Whistling Ridge Energy Project ("Whistling Ridge" or "WREP" or "Project") (hereinafter "Extension Request"). Friends is a nonprofit organization with approximately 4,500 members dedicated to protecting and enhancing the resources of the Columbia River Gorge, and with strong interests in responsible energy generation and the proper implementation of state law governing the approval, construction, and modification of large energy facilities in Washington.

The Whistling Ridge SCA expired by operation of law on March 5, 2022. The Council should confirm the expiration of the SCA, which moots all other issues. However, in the unlikely event that the Council fails or declines to confirm that the SCA has expired, the Council should consider the following comments regarding the merits of the Extension Request.

In the Extension Request, WRE seeks to extend the ten-year term of the SCA by 4.66 additional years, *i.e.*, from March 5, 2012, to November 1, 2026, for a total of 14.66 years. The Council should deny the Extension Request, especially for the reason that WRE has no intentions of actually building and operating the Project as approved by Governor Gregoire in 2012, and in fact, WRE has from the very start (in 2012) publicly and candidly disclosed that it has *never* intended to build and operate the Project as approved by Governor Gregoire in 2012. WRE's approach of requesting an extension of the term of the SCA is contrary to EFSEC's policies and decisional law. The merits of the Extension Request strongly warrant denial by the Council.

EFSEC has long had a policy against allowing projects with “unlimited build windows” or that are “not shovel ready” to remain on the books indefinitely.<sup>1</sup> In fact, in deciding a recent case based upon a similar set of facts, the Council held that

an unlimited “build window” for a proposed project is not appropriate as, over time, technology or mitigation measures presented in an application may no longer be protective of environmental standards and conditions at the time the facility is constructed.

Council Resolution No. 348 (*Grays Harbor*) at 8 (Dec. 15, 2020) (attached as Ex. B) (quoting Council Order No. 860 at 13 (Dec. 21, 2010)).

In the Grays Harbor initial amendment request, the applicant applied for four combustion units and was granted that amount by EFSEC and the Governor. *Grays Harbor* at 9. Subsequently, the applicant built the first two combustion units and then sought an extension of the SCA term for the final two units, stating that there was not sufficient demand to construct them at the time. *Id.* The Council determined that, based upon the applicant’s request for more time for a project that was not currently economically viable, the applicant was, in effect, seeking an “unlimited build window,” and the Council accordingly denied the amendment request. *Id.*

An “unlimited build window” for a project that is not feasible is exactly what WRE is attempting to get here. WRE has always been candid about the fact that it has never had any intentions to build the Project as approved by Governor Gregoire (with the 35-turbine layout recommended by the Council and approved by the Governor).

For example, in its Petition for Reconsideration filed with EFSEC in 2011 (even before the ten-year term of the SCA began), WRE emphatically claimed that the reduction from 50 to 35 wind turbines rendered the entire Whistling Ridge Project economically unviable. *See Applicant’s Pet. for Recons. of Council Order No. 868 and Council Order No. 869 (“WRE’s 2011 Pet. for Recons.”)* (Oct. 27, 2011). This included the following statements from WRE:

- “In fact, extensive testimony in the record evidences that the recommended Project [with the deleted turbine strings] likely is *not* economically viable.” *Id.* at 2 (emphasis in original).
- In reference to the Council’s decision to eliminate specific turbine strings, WRE said, “[t]he A1–A7 turbine corridor has a robust wind resource, and eliminating it and the C1–C8 turbine corridor ‘kills the project.’” *Id.*
- “In sum, the Project size was selected to optimize Project energy output and economic feasibility. A smaller wind turbine facility would be unlikely to offset Project

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<sup>1</sup> The practice of “banking” or “locking up” sites with certifications or approvals, yet with no immediate plans to build and operate projects on those sites, and to the exclusion of other beneficial uses on the same sites during the same time periods, is sometimes called “site banking.” The same term is used to denote the banking of sites without specific project approvals. EFSEC does not allow either type of site banking.

development costs. A larger project would require additional infrastructure capacity and transmission capacity.” *Id.* at 2–3.

- WRE concluded by stating that “an economically unviable project results in no project.” *Id.* at 3.

WRE also made numerous public statements that the project is not economically viable (*See Ex. D*):

- “The proponents maintain that the proposed elimination of 15 turbines would effectively kill the project, making it economically unviable.” *Groups want new decision on Whistling Ridge wind farm*, Skamania County Pioneer (Nov. 2, 2011).
- “SDS President Jason Spadaro said the project was not currently feasible. . . . Spadaro said the state’s decision to scale back the project undermined its economics.” “[T]he project is unlikely to move forward,” Spadaro said.” *Gov. Chris Gregoire approves Whistling Ridge wind farm outside Columbia River Gorge in Washington, but project on hold*, The Oregonian (Mar. 5, 2012).
- “Jason Spadaro, president of SDS Lumber, said the scaled-back project may not be economically feasible.” *Governor approves wind project*, Skamania County Pioneer (Mar. 7, 2012).
- “Jason Spadaro, president of Whistling Ridge Energy Partners, LLC, said . . . that the 75-megawatt Whistling Ridge Energy Project is not being abandoned, ‘but we will need a better environment for renewable energy development in the region. . . . [T]he EFSEC recommendation, and the Governor’s approval, have still reduced the project size and hampered its economics.’” *Whistling Ridge gets Governor’s OK*, The Enterprise (Mar. 8, 2012).
- “Following notice of the turbine reduction, SDS President Jason Spadaro of Whistling Ridge LLC told Ted Sickinger of The Oregonian that the project was not currently financially viable.” *Whistling Ridge decision contested*, Hood River News (Apr. 7, 2012).

The Project’s meager economic prospects are likely why WRE did not even bother to file its five-year status report in a timely manner. Under WAC 463-68-060, if construction has not begun on a project five years after the effective date of the SCA, then “at least ninety days prior to the end of the five-year period, the certificate holder shall report to the [C]ouncil its intention to proceed or not to proceed with the project.” The effective date for the WREP SCA was March 5, 2012, as expressly indicated by Governor Gregoire above her signature. Thus, the five-year status report was due by December 5, 2016. Yet SDS Lumber Company did not file its five-year status report until nearly two years after the deadline,<sup>2</sup> and even then it failed to “report to the [C]ouncil its intention to proceed or not proceed with the project,” as required by WAC 463-68-

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<sup>2</sup> The incomplete status update was filed late, even if WRE’s preferred effective date for the SCA of November 18, 2013 were used.

060. *See* 2018 Status Update, Jason Spadaro, SDS Lumber Co. WRE’s chronic delays do not seem like the actions of an entity that is reasonably moving toward Project construction and completion.

In addition, according to the agency’s notes from a July 26, 2023 meeting between EFSEC staff and WRE, WRE anticipates seeking *yet another* extension request to construct the Project, even if the 4.66-year extension is granted:

[EFSEC Staff] raised the issue of, at the end of the [requested] extension, WRE will still need to submit to the Council another extension request, this time for construction of the facility. [WRE] acknowledged this fact and stated WRE will submit another request if the environmental and economic feasibility studies find the project should proceed. WRE desires to keep the present window of opportunity open to proceed with the project if the project is viable given current and future environmental and market conditions.

Ex. A at 2.

At the same time, WRE has not signed any power purchase agreements, and either never signed any interconnection agreement with the Bonneville Power Administration, or has allowed any such agreement to lapse:

[EFSEC Staff] inquired if WRE has any signed power purchase agreements. [WRE] replied they do not and any LGIA’s (large generation interconnection agreements) have lapsed. They intend to look at renewing these with BPA as part of their economic feasibility studies.

*Id.*

Again, these are not the actions of an entity that is actively attempting to build a project, but rather the actions of an entity that wants an “unlimited build window.”

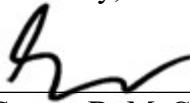
The Council has already determined in multiple, recent precedential rulings that “an unlimited ‘build window’ is not appropriate, and this is why EFSEC rules provide a presumptive ten year term for site certification agreements,” and the Council has accordingly refused to extend timeframes when projects were not shovel-ready. Council Resolution No. 353 (*Desert Claim*) at 4 (Oct. 18, 2023) (footnote omitted) (attached as Ex. C); *Grays Harbor* at 9.

According to WRE itself, from even before the ten-year term of the SCA started, the Whistling Ridge Project has never been economically viable as approved by Governor Gregoire. Furthermore, WRE currently admits that no on-the-ground work would occur in the next three years, even if the requested extension were granted. In WRE’s own words, “an economically unviable project results in no project.” WRE’s 2011 Pet. for Recons. at 3.

**Friends asks the Council to recognize that the WREP is not a real project, to determine that an unlimited build window for this economically unviable Project is improper, and to therefore deny the Extension Request.**

Thank you very much for the opportunity to comment on the proposed Extension Request for the Whistling Ridge Energy Project.

Sincerely,



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- Exhibits:
- A. EFSEC/WRE Meeting Notes, July 26, 2023.
  - B. EFSEC, Resolution No. 348, Amendment No. 6 to the Grays Harbor Energy Site Certification Agreement, Dec. 15, 2020.
  - C. EFSEC, Resolution No. 353, Amendment No. 2 to the Desert Claim Wind Power Project Site Certification Agreement.
  - D. Five newspaper articles (2011–2012).

# Exhibit A

EFSEC/WRE Meeting Notes,  
July 26, 2023.

1<sup>st</sup> Mtg with WRE

7/26/23 @ 4 pm

Ami Hafkemeyer

Greg Corbin

Jonathan Thompson

Tim McMahan

Sean Green

Lance Caputo

A meeting to discuss WRE's requests for amending their SCA. Two requests were submitted in draft form: Extension of their SCA for three years; and Transfer of ownership. WRE's draft requests were reviewed.

Tim opened the meeting by explaining the need for the requests to amend the SCA; primarily to provide time to investigate the environmental and economic changes that have occurred since the legal challenges ended and ownership transferred.

Lance mentioned the matter of transferring ownership of the SCA without prior Council approval as stipulated in the SCA is an issue the Council will address.

Jonathan mentioned we do not know how the Council will respond to this request. Issue of when the SCA was "executed".

Ami stated EFSEC will look into the Council's calendar, which is full, and schedule a hearing date before the possible expiration of the SCA on November 18, 2023.

Ami mentioned EFSEC has been billing TCT for staff time. Lance mentioned in a meeting we had with our Admin Team, it was revealed the \$50k deposit made by SDS Lumber Co. was rolled over to TCT.

Lance asked if SDS Lumber Co still exists. Greg replied no, WRE is now owned by Twin Creek Timber. TCT is owner of and applicant for WRE and is behind the land management.

Lance mentioned confusion on the submission dates for both draft requests. Tim stated he will resubmit the requests with an official date of August 1, 2023.

Lance asked for clarification of the role of Steelhead Americas and other parties associated with the project. Greg replied TCT is entering into a memorandum of understanding with Steelhead to provide development services and potentially take a controlling interest in the project. Sean Bell will work with Steelhead on this project. Silver Creek is the fiduciary manager. Green Diamond Resource Company is an investor in TCT. Green Diamond Management Company is responsible for day-to-day operations of TCT.

Lance suggested if Steelhead is to acquire controlling interest in WRE, it will be convenient for the Council and WRE to request this in the present amendment petition rather than come back in the future with another amendment request. Tim agreed but stated at this time, WRE is only looking at the possibility of Steelhead acquiring controlling interest.

Lance asked what is meant by "due diligence work" in the request for a three-year extension. Tim explained the environmental studies needing to be updated, with possible appeals by project opponents,

and another look at the economic feasibility of proceeding with the project. WRE realizes the possibility of the addendum to the Final E.I.S. maybe be extensive and take the three full years.

Sean was asked if three years will be sufficient. Sean thought it should be depending on the scope of changes to the original project. It was noted WRE might consider reducing the number of wind turbines by increasing their heights. This could be a significant alteration of the project. We cannot say if this is significant until we look at WRE's conclusions.

Lance referenced WAC 463-66-070 which states amendment requests that do not substantially alter the substance of the SCA, or which is determined not to have a significant detrimental effect upon the environment, may be approved by the Council in the form of a resolution. Section 080 states an amendment request which is determined to have a significant impact on the environment will require and extra 60 days beyond the Council's recommendation for the Governor's review and possible signature. Tim replied WRE is aware of this and will plan accordingly for the Governor's review period.

Lance inquired if WRE has any signed power purchase agreements. Greg replied they do not and any LGIA's (large generation interconnection agreements) have lapsed. They intend to look at renewing these with BPA as part of their economic feasibility studies.

Lance raised the issue of, at the end of the three-year extension, WRE will still need to submit to the Council another extension request, this time for construction of the facility. Greg acknowledged this fact and stated WRE will submit another request if the environmental and economic feasibility studies find the project should proceed. WRE desires to keep the present window of opportunity open to proceed with the project if the project is viable given current and future environmental and market conditions.

Jonathan expressed open skepticism on various aspects of the amendment requests. He mentioned we cannot determine if the Council will approve the present amendment requests nor any future amendment requests.

Ami stated we will work with the Council to determine when the Council can review WRE's requests.

Tim said he will resubmit final petitions for amending the SCA by August 1, 2023.

Lance asked for clarity with the project's managerial and fiduciary partners so it can be clearly explained to the Council.



## Exhibit B

EFSEC, Resolution No. 348  
Amendment No. 6 to the Grays  
Harbor Energy Site  
Certification Agreement, Dec.  
15, 2020.



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

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**WASHINGTON STATE**  
**ENERGY FACILITY SITE EVALUATION COUNCIL**  
**RESOLUTION NO. 348**  
***AMENDMENT NO. 6 TO THE***  
***GRAYS HARBOR ENERGY SITE CERTIFICATION AGREEMENT***

### **Nature of Action**

On August 18, 2020, the Washington Energy Facility Site Evaluation Council (EFSEC) received a written request from the certificate holder, Grays Harbor Energy LLC (GHE), to amend the current Grays Harbor Energy Center Site Certification Agreement (SCA). The amendment request consists of two distinct revisions to the SCA.

The first of the two proposed SCA revisions would authorize the installation of General Electric's Advanced Gas Path (AGP) package in the operational combustion turbines in Units 1 and 2.

The second proposed revision is a request for EFSEC to extend the start of construction deadline in for Units 3 and 4, which obtained site certification under SCA Amendment No. 5, but have not yet been constructed.

GHE's SCA amendment request would change the following in the Grays Harbor Energy Center SCA:

- Increase combustion turbine output to 181.2 MW from the current 175 MW for operating units 1 and 2.
- Extend the start of construction date for Units 3 and 4 to be no later than February 18, 2028. This would extend by seven years the February 18, 2021, deadline to begin construction for units 3 and 4, which is 10 years from the date of execution of SCA Amendment 5.

### **Background**

The Grays Harbor Energy Center is located on a 22-acre site within the 1,600-acre Satsop Development Park. In 1976, the initial SCA authorized construction of Nuclear Projects No. 3 and No. 5, which were never completed. In 1996, the SCA was amended to authorize construction of a natural gas-fired combined cycle generating facility, and in 1999, the terms relating to the nuclear projects were removed.

In the decade that followed, EFSEC amended the SCA several times to reflect changes in the project ownership, from Energy Northwest to Duke Energy and then to GHE, and to reflect changes in the equipment proposed for Units 1 and 2. Units 1 and 2 were eventually constructed and put into operation in April 2008.

In 2011, the SCA was amended to authorize an expansion of the facility. This SCA amendment authorized a doubling of the facility's output, with the construction of two additional combustion turbine

units, heat recovery steam generators and a steam turbine generator. The SCA refers to this expansion as Units 3 and 4. Construction on Units 3 and 4 has not yet begun.

### **Procedural Status**

EFSEC's SCA amendment procedure is governed by chapter 80.50 RCW and chapter 463-66 WAC.

GHE and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing on August 17, 2020.
- At its monthly meeting on September 15, 2020 the Council determined a schedule for action on the amendment request as follows: EFSEC conducted a public informational hearing on the GHE amendment request on October 6, 2020. Due to COVID-19 public health and safety concerns EFSEC held the public informational hearing virtually. Though not required by its rules EFSEC invited public comment via US mail or online submittal from September 24, 2020 through midnight October 6, 2020.
- Pursuant to WAC 463-66-030, notice of a public hearing was distributed to the GHE project distribution list. The public notice issued by EFSEC advised that GHE had requested an amendment to the SCA, and that a public informational hearing to consider the matter would be conducted on October 6, 2020. The public notice for the EFSEC virtual public informational hearing stated that public comments would be heard at the public hearing and could also be submitted online or via US mail to EFSEC from September 24, 2020 through midnight October 6, 2020.
- EFSEC conducted a virtual public informational hearing session in which the public was provided an opportunity to comment on this matter on October 6, 2020.
- No public comments were received.
- At the Council's November 17<sup>th</sup>, 2020, monthly meeting EFSEC Manager Sonia Bumpus discussed the status of EFSEC's SEPA review and staff's recommendation with regard to the GHE SCA amendment request:
  - Sonia Bumpus proposed that the Council bifurcate the GHE SCA Amendment request Council decision. Separate draft SEPA Addendums were presented and discussed by EFSEC staff at the meeting. Copies of the SEPA Addendum for GHE Units 1 and 2 and GHE Units 3 and 4 were provided in Council member packets and made available on EFSEC's website.
  - EFSEC Siting Specialist Kyle Overton discussed the content of two supporting SEPA staff memos to the EFSEC SEPA Addendum documents. Copies of the SEPA staff memo for GHE Units 1 and 2 and for Units 3 and 4 were included in EFSEC Council member packets and made available on EFSEC's website.
  - At the meeting the Council resolved to bifurcate its decision for the GHE SCA Amendment request. The Council directed EFSEC staff to draft a resolution for Council review consistent with the staff recommendation.
- The Council considered information in GHE's SCA amendment request, the proposed amendments to the Amended GHE SCA, the SEPA Addendums and supporting SEPA Staff Memos, and a draft of this Resolution No. 348 at the December 15, 2020 Council meeting.

## **Discussion**

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA. In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare; and
4. The provisions of chapter 463-72 WAC.

At its November 17, 2020, meeting, the Council resolved to review the equipment upgrade and the extension request separately.

As noted above, GHE has requested two unrelated changes to its SCA. The first requested change would authorize equipment and software changes to existing Units 1 and 2. The second change would extend by seven years the existing ten year expiration date of SCA Amendment 5, which authorized the construction of two new generating units (Units 3 and 4) by February 18, 2021.

Under these circumstances, the Council concludes it is reasonable to bifurcate and give separate consideration to GHE's request for an extension of the ten year construction authorization expiration date set out in SCA Amendment 5, apart from the equipment upgrade request.

### **1. Advanced Gas Path Package/Increase in Authorized Generating Capacity**

The Council first reviews just those proposed changes to the SCA that are necessary to authorize installation of the Advanced Gas Path Package in the existing combustion turbines, Units 1 and 2, under the criteria in WAC 463-66-040.

#### **a. Consistency with intention of the original SCA**

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA. In general, the intention of every SCA is to grant State authorization to a certificate holder to construct and operate an energy facility that has been determined to be in the interest of the State of Washington because the facility will produce a net benefit after balancing need for the facility against impacts on the broad public interest, including human welfare and environmental stewardship. An SCA provides a "license" and GHE as the certificate holder, in-turn, commits itself to comply with the terms and conditions of the SCA.

The intent of the SCA authorizes "electrical generation facilities at the Satsop site, first the nuclear facility, then a natural gas-fired 2x1 combined-cycle combustion turbine facility, and then a second 2x1 combined-cycle combustion turbine addition to the facility (which has not been built)." (Grays Harbor Energy Center Request to Amend the Site Certification Agreement, letter dated August 17, 2020) The Advanced Gas Path Package is an equipment and software improvement to combustion turbine units 1 and 2, which is expected to increase operation efficiency and output. Currently each turbine is nominally rated at 175 megawatts and the upgrade is expected to increase the output of each turbine to approximately 181 MW. While some minor impacts to air and water are anticipated, they are addressed within the existing SCA and/or air and water permit requirements. An application for a minor modification to the Prevention of Significant Deterioration (PSD) permit will address the technical changes to operation without requiring an increase to existing PSD permits limits. The Council finds that installation of the Advanced Gas Path Package for efficient gas-fired electrical generation is consistent with the intent of the SCA.

**b. Consistency with applicable laws and rules**

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including chapter 80.50 RCW, chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and EPA rules), WAC 463-66-070 through -080, and the construction and operation standards for energy facilities in WAC 463-62.

**i. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC)**

The Council is charged with the responsibility to review proposed projects under SEPA, RCW 43.21C and chapter 197-11 WAC. That law provides for the consideration of probable adverse environmental impacts and possible mitigation measures. Pursuant to WAC 463-47-140, EFSEC is the lead agency for environmental review of projects under the jurisdiction of RCW 80.50; the Council Manager is the SEPA responsible official, per WAC 463-47-051.

GHE submitted an amendment request and SEPA Checklist which EFSEC staff reviewed along with the other materials submitted to EFSEC. EFSEC reviewed the SEPA Determination of Significance/Adoption for the Satsop Combustion Turbine Project; adoption of the NEPA Bonneville Power Administration's 11/1995 EIS document; which is the SEPA document being added for this proposal. An Addendum under SEPA, Per WAC 197-11-600(3), for DNSs and EISs, preparation of a new threshold determination or supplemental EIS is required if there are:

- (i) Substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts (or lack of significant adverse impacts, if a Determination of Significance (DS) is being withdrawn); or
- (ii) New information indicating a proposal's probable significant adverse environmental impacts (this includes discovery of misrepresentation or lack of material disclosure). A new threshold determination or Supplemental EIS (SEIS) is not required if probably significant adverse environmental impacts are covered by the range of alternatives and impacts analysis in the existing environmental documents.

If it is determined that new information and analysis does not substantially change the analysis of significant impacts and alternatives in the existing environmental document (WAC 197-11-600 (4)(c)) then an addendum is appropriate for documenting this review under SEPA.

As no substantial changes to the proposal or new information indicating probable significant adverse impacts were identified, EFSEC's SEPA responsible official determined that an Addendum to the SEPA EIS prepared by the Washington State Thermal Power Plant Site Evaluation Council is appropriate. EFSEC's SEPA responsible official considered all of the information in the above referenced documents for the installation of the Advanced Gas Path Package in turbine units 1 and 2. The SEPA Addendum for Units 1 and 2 identified resource impacts but no new or significant unavoidable impacts were identified. The SEPA staff memo dated November 17, 2020, and the Final SEPA Addendum for Units 1 and 2 discusses impacts and mitigation which are consistent with existing mitigation and permit requirements in the SCA.

EFSEC invited public comment on the GHE SCA Amendment request at a virtual public hearing session held on October 6, 2020. EFSEC also invited public comment via US mail or through online submittal from Thursday, September 24, 2020 through midnight on October 6, 2020. No substantive comments were submitted for the SCA amendment request. The Council finds that installation of the Advanced Gas

Path Package for efficient gas-fired electrical generation is consistent and in compliance with SEPA laws and rules in chapter 43.21 C RCW and chapter 197-11 WAC.

**ii. Consistency with WAC 463-66-070: Approval by Council Action and -080: Approval by governor**

WAC 463-66-070 and -080 discuss the two options available to the Council for approval of a request for amendment to an EFSEC site certification agreement.

WAC 463-66-080 provides:

An [SCA] amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor.

On the other hand, WAC 463-66-070 provides:

An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution.

The Council considered whether the SCA Amendment request related to the Advance Gas Path Package would result in, “significant detrimental effects” on the environment. EFSEC relied upon its SEPA review to identify potential significant adverse impacts. If potential significant unavoidable adverse impacts were identified, these would be categorically characterized as “significant detrimental effects.” No new significant adverse impacts from the installation of the Advance Gas Path Package on GHE Units 1 and 2 were identified in EFSEC’s SEPA review.

The Council therefore concludes that this amendment may be approved by Council resolution pursuant to WAC 463-66-070.

**iii. Consistency with WAC 463-62 Construction and Operation Standards for Energy Facilities**

Chapter 463-62 WAC implements EFSEC’s policy and intent outlined in RCW 80.50.010. Performance standards and mitigation requirements that address seismicity, noise limits, fish and wildlife, wetlands, water quality, and air quality are identified in the rule.

Within the existing terms of the SCA, the proposed SCA amendments pertaining to installation of the Advanced Gas Path Package demonstrate compliance with the construction and operation conditions outlined in WAC 463-62.

Seismicity:

No new seismicity issues are anticipated for installation of the Advanced Gas Path Package.

Noise:

Installation of the Advanced Gas Path would occur during the annual maintenance outage which will be 45 days in 2021. Noise levels are expected to remain within existing operating limits established in the SCA and permits; no new concerns related to noise were identified.

Fish and wildlife habitat and function:

No issues related to wildlife and function were identified.

Wetland impacts and mitigation:

No issues related to wetland and mitigation impacts were identified.

Water quality:

Due to higher firing temperatures from the Advanced Gas Path, the facility's water consumption drawn from the Chehalis River could increase, but by no more than 3%. There are several variables that determine the actual amount of water consumption at the facility, which results in a range of water consumption over time. The current SCA includes a water withdrawal authorization that does not require any change as part of this amendment request (2010 SCA Attachment III). Additionally, EFSEC consulted Ecology regarding the potential increase in water withdrawal from the Chehalis River. Ecology confirmed that the GHE amendment request does not change the amount of water GHE is already approved to withdraw for Units 1 and 2 (Ecology email 10/20/2020). No new concerns related to environmental impacts to water or from withdrawal from the Chehalis River are identified. GHE's current NPDES permit is expected to adequately address water quality.

Air quality:

Following installation of the Advanced Gas Path Package, the turbines "will continue to meet all hourly and annual emission limits. Combustion turbines may have greater emissions with the Advanced Gas Path Package." (GHE Amendment Request II.C.1.). "There will be an increase of NO<sub>x</sub> and CO but will still comply with the BACT limits already set." (GHE SEPA Checklist B.2.). EFSEC received a PSD minor permit modification application which will be processed. Proposed updates to the PSD permit are expected to address any potential air quality impacts from the addition of the Advanced Gas Path package and no increase in PSD permit limits are anticipated. No new concerns related to environmental impacts to air quality were identified.

Based on the results of the SEPA environmental review conducted by EFSEC, and within the terms of the SCA as proposed for amendment to authorize installation of the Advance Gas Path Package on Units 1 and 2, the Council hereby concludes that the standards for construction and operation in chapter 463-62 WAC are satisfied. Therefore, the Council determines that the SCA Amendment pertaining to installation of the Advance Gas Path Package is consistent with WAC 463-62.

**c. Consistency with public health, safety, and welfare**

Under WAC 463-66-040(3) and -050, the Council must consider whether the SCA Amendment request would be consistent with public health, safety, and welfare. In considering whether a proposed amendment is consistent with the public health, safety and welfare, WAC 463-66-050 requires the Council to consider the long-term environmental impacts of the proposal, and further requires a consideration of "reasonable alternative means by which the purpose of the proposal might be achieved" along with the "availability of funding to implement the proposal."

Installation of the Advanced Gas Path package will occur during the annual maintenance outage which will be for 45 days in 2021. This equipment upgrade will occur within the existing and approved facility footprint with no change to the site boundary. Increased turbine generation output to approximately 181 MW at 100% load is expected. A minor PSD permit modification will address any potential air quality impacts from the addition of the Advanced Gas Path package, within existing PSD permit limits. Increased water consumption is anticipated with this upgrade and the GHE SCA already includes a water withdrawal authorization that does not require any change as part of this amendment request (2010 SCA

Attachment III). EFSEC coordinated with Ecology during its SEPA review of the SCA amendment request regarding the potential increase in water withdrawal from the Chehalis River, and Ecology confirmed that the Advanced Gas Path Package upgrade will not change the amount of water GHE is already authorized to withdraw for Units 1 and 2 (Ecology email 10/20/2020).

The proposed equipment upgrade will involve the use of more de minimis amounts of toxic or hazardous chemicals already addressed in GHE's existing site Spill Prevention, Control, and Countermeasure Plan and Dangerous Waste Management Procedures.

As with the previous environmental resources discussed above, greenhouse gas emissions were evaluated in previous SEPA documents that EFSEC reviewed. The GHE facility has an approved Greenhouse Gas Mitigation Plan which generally requires the certificate holder to mitigate potential carbon dioxide emissions from the facility that exceed a rate of 0.675 lb/kWh. Potential greenhouse gas emissions resulting from the equipment upgrade will be addressed by updating the greenhouse gas emissions mitigation payment calculations at startup post construction (EFSEC SEPA Addendum GHE Units 1 and 2).

GHE will continue to implement the purpose of the original project, though with slightly increased generating capacity. The Advanced Gas Path Package installation will not result in potential significant adverse impacts on public health and safety. Consequently, as supported by the documentation in the SEPA Addendum for GHE Units 1 and 2, and the Amended SCA, this equipment upgrade is consistent with the public health, safety and welfare.

**d. Consistency with WAC 463-72**

WAC 463-72-020 provides that site restoration or preservation plans shall be prepared in sufficient detail to identify, evaluate, and resolve all major environmental and public health and safety issues, to include provisions for funding or bonding and monitoring.

The Council has already approved a site restoration plan for the Grays Harbor Energy Center. The requested amendment does not propose any change to that approved plan or to the SCA's site restoration conditions.

The Council concludes that this amendment is consistent pursuant to WAC 463-72.

**Conclusion regarding Advanced Gas Path Package**

The Council concludes as follows with regard to the proposed SCA revisions to authorize installation of the Advanced Gas Path Package. That portion of the proposed amendment that is necessary to authorize installation of the Advance Gas Path Package on Units 1 and 2 is consistent with: (1) the intent of the Original Project SCA; (2) the public health, safety, and welfare; (3) all applicable laws (including SEPA); and (4) the provisions of WAC 463-72.

The Council hereby determines that it is appropriate to approve Amendment 6 to the Grays Harbor Energy Center SCA, as necessary to reflect the proposed Advance Gas Path Package upgrade to Units 1 and 2.

**2. Units 3 and 4 Construction Start Deadline Extension**

The Council turns now to review GHE's request to extend, to February 18, 2028, the SCA's requirement to begin construction of Units 3 and 4 by February 18, 2021.



As discussed above, the first criterion for the Council's review of a request to amend an SCA is whether the proposed amendment is consistent with "the intention of the original SCA." WAC 463-66-040(1).

A key consideration under this criterion is whether the SCA term the certificate holder proposes to change was fundamental to the Council and the Governor's approval of the original SCA. If the term was fundamental to approval of the original SCA, but the reasons the certificate holder provides for the requested change are not compelling or do not adequately address the fundamental issue that led to the inclusion of that term in the original SCA, then the Council may deny the request.

For purposes of the Council's review of the extension request, Amendment 5 (Feb. 18, 2011) to GHE's SCA is the "original SCA." The Council reviewed GHE's October 2009 application for certification of Units 3 and 4 using the same procedural steps that are required for a new application for site certification. The Council issued a mitigated determination of non-significance under SEPA, determined the project would be consistent and in compliance with land use plans and zoning ordinances, and granted expedited processing. The Council ultimately prepared a recommendation to the Governor to approve certification of Units 3 and 4, subject to conditions to mitigate the adverse environmental effects of the project.

Amendment 5, Art. II.B.2, pp. 4-5, includes the following requirements concerning start of construction:

*This Site Certification Agreement authorizes the Certificate Holders to begin construction of Units 3 and 4 within ten (10) years of the execution of Amendment No. 5. If construction of Units 3 and 4's major components has not been commenced within ten (10) years of the execution of Amendment No. 5, all rights under this Site Certification Agreement to construction and operation of Units 3 and 4 will cease.*

If the Certificate Holders do not begin construction of Units 3 and 4 within five (5) years of the execution of Amendment No. 5, the Certificate Holders will report to the Council their intention to continue and will certify that the representations in the application, environmental conditions, pertinent technology and regulatory conditions remain current and applicable, or identify any changes and propose appropriate revisions in the Site Certification Agreement to address changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate, or upon the effective date of any necessary or appropriate changes to the Site Certification Agreement.

Further, if the Certificate Holders do not begin construction of Units 3 and 4 within five (5) years of the execution of Amendment No. 5 and the Council has adopted by rule changes to the standards governing "construction and operation for energy facilities" specified in WAC chapter 463-62, the construction and operation of Units 3 and 4 will be governed by the regulations in effect at the time the Council authorizes construction to proceed.

(Italics added.) When explaining this provision in its recommendation to the Governor, the Council stated that although "there is a benefit to the public to have permitted facilities ready to be constructed whenever it becomes known that more generation capacity is needed," the Council nonetheless recognized "that an unlimited 'build window' for a proposed project is not appropriate as, over time, technology or mitigation measures presented in an application may no longer be protective of environmental standards and conditions at the time the facility is constructed." Council Order No. 860, p. 13.

The Council's recommendation that the Governor approve certification of Units 3 and 4 was based on its weighing of the need for the project against the project's environmental impacts at the proposed location.

The Council stated that, in reviewing a request for site certification, it “must consider whether an energy facility at a particular site will produce a net benefit after balancing the legislative directive to provide for abundant energy at a reasonable cost with the impact to the environment and the broad interests of the public.” *Id.* at p. 15. The Council did not merely assume a need for the project, but instead specifically found that:

[T]he evidence in the record supports the conclusion that the region needs to continue to add electrical generation capacity. The Project will contribute to the diversification and reliability of the state’s electrical generation capacity, and will therefore support the legislative intent to provide abundant energy at a reasonable cost.

Based on the Council’s recommendation, the Governor approved the request.

The Council’s evaluation of the evidence of need for Units 3 and 4 followed the approach the Council had taken in its 1996 order regarding authorization of Units 1 and 2 at Satsop. Council Order No. 694 (Modified April 15, 1996). In that order, the Council declined the applicant’s request to exclude the issue of project need, reasoning that it is impossible to balance need and the public interest without evaluating the urgency of the need for a particular facility at a particular location.

GHE is now requesting that the Council amend the SCA to extend the deadline for commencing construction of Units 3 and 4 by seven years, from February 2020 to February 2028. GHE’s request states that “[a]lthough market conditions do not currently support construction of Units 3 and 4, GHE believes that they may by 2028, given the planned [coal plant] baseload retirements.”

GHE admits that market demand currently is not sufficient to support construction. In addition, GHE does not explain how its prediction of possible future need squares with recent changes in state law regarding transition away from fossil fuel by Washington utilities, which could have a bearing on the Council’s analysis of need for the facility. Under the 2019 Clean Energy Transformation Act (Laws of 2019, ch. 288; RCW 19.405), utilities must eliminate coal-fired electricity from their state portfolios by 2025 (RCW 19.405.030), and by 2030 a greenhouse neutral standard will apply, which means utilities have flexibility to use limited amounts of electricity from natural gas if it is offset by other actions (RCW 19.405.040). By 2045, utilities must supply Washington customers with electricity that is 100% renewable or non-emitting, with no provision for offsets (*Id.*).

In summary, in recommending certification of Units 3 and 4, the Council stated it did not believe an “unlimited build window” would be appropriate. The Council also considered the applicant’s evidence of need for the project to be a necessary part of its recommendation of approval. As such, GHE’s extension request is not only inconsistent with the intention of the original SCA, it also fails to provide a compelling demonstration of need to justify changing the ten year expiration of Amendment 5 to the SCA.

The Council concludes that the proposed SCA Amendment is inconsistent with the intent of SCA Amendment No. 5. Consequently, it is unnecessary to review GHE’s extension request under the other three criteria.

### **Conclusion regarding Units 3 and 4 Construction Extension**

Because it is inconsistent with the intent of the original SCA, and GHE has not put forth a compelling reason for the proposed extension of the construction start deadline for Units 3 and 4, GHE’s proposed amendment to SCA Amendment 5 should be denied. Denial of this request should be without prejudice to GHE’s ability to submit a new application for certification of additional generating units in the future, should need arise.

## RESOLUTIONS

For the foregoing reasons, the Council:

Grants Grays Harbor Energy's request to amend its SCA to allow GHE to install the Advanced Gas Package. The Council's approval is memorialized in the attached SCA Amendment.

Denies Grays Harbor Energy's request to amend SCA Amendment 5 to extend the construction start deadline for Units 3 and 4.

Assuming that GHE has not commenced construction, Amendment 5 will expire by its own terms on February 18, 2021. This expiration will be without prejudice to GHE's ability to submit an application to build new generating units in the future. If market conditions eventually change to support construction of new generating units, GHE may submit a new application to be reviewed in the same manner as its 2009 request.

The approved SCA changes are shown in the Amended SCA.

The supporting SEPA review documentation is set out in attachment 1 to this resolution.

### Appeals:

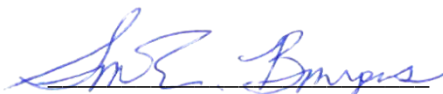
A request for judicial review of the SCA amendment is subject to the requirements of the Administrative Procedures Act, Chapter 34.05 RCW.

DATED at Lacey, Washington and effective on December 15, 2020

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL



Kathleen Drew, EFSEC Chair



Sonia E. Bumpus, EFSEC Manager

# Exhibit C

EFSEC, Resolution No. 353  
Amendment No. 2 to the Desert  
Claim Wind Power Project Site  
Certification Agreement.

**WASHINGTON STATE**  
**ENERGY FACILITY SITE EVALUATION COUNCIL**  
**RESOLUTION NO. 353**  
***AMENDMENT NO. 2 TO THE***  
***DESERT CLAIM WIND POWER PROJECT SITE CERTIFICATION AGREEMENT***  
***EXTENSION OF TERM***

**Nature of Action**

On May 5, 2023, the Washington Energy Facility Site Evaluation Council (EFSEC or Council) received a written request from the certificate holder, Desert Claim Wind Power LLC (Desert Claim), to extend the deadline for substantial completion by five years to November 13, 2028.

According to the certificate holder's request, "The proposed amendment would allow additional time for the company to secure a long-term power purchase commitment, which is necessary to proceed with financing construction of the project."

**Background**

Governor Gregoire executed the Desert Claim Site Certification Agreement (SCA) in February 2010 based on the Council's recommendation following an adjudicative hearing and an environmental impact statement. The original February 2010 SCA authorized Desert Claim to construct and operate a wind power facility consisting of a maximum of 95 wind turbines on tubular steel towers. The 2010 SCA permitted an output capacity of 190 total megawatts (MW) and a tower height not to exceed a maximum of 410 feet, within an approximately 5,200-acre project site. The project was located north and west of Ellensburg near the intersection of U.S. Route 97 and Smithson Road.

Having not yet started construction, in February 2018 Desert Claim requested that the Council amend its SCA to allow for the reconfiguration of its site boundary and the installation of fewer, but larger turbines than were originally authorized. Following a public hearing in Ellensburg and an addendum to the original SEPA environmental impact statement, the Council granted Desert Claim's request to amend its SCA in Resolution No. 343, dated November 13, 2018.

The resulting SCA Amendment No. 1 reconfigured the project and its boundaries, reducing the project area to approximately 4,400 acres by removing 1,271 acres located east of Reecer Creek and adding approximately 370 acres to the west and south of the original project area. The number of authorized wind turbines was reduced to a maximum of 31 three-bladed turbines on tubular steel towers, not to exceed a maximum height of 150 meters (492 feet), with a capacity ranging from 2.0 to 4.2 megawatts (MW). The total capacity for the reconfigured project is not to exceed 100 MW. Primary site access during construction and operation was changed from Reecer Creek Road to Smithson Road (accessed from U.S. Route 97). All turbines are to be located at least 2,500 feet from all residences to mitigate the possibility of residents experiencing shadow flicker.

SCA Amendment No. 1 also extended the original SCA's deadline for commencement of commercial operations (also referred to as "Substantial Completion") by three years, to November 13, 2023. The original SCA's deadline for beginning construction was eliminated.

## **Procedural Status**

EFSEC's SCA amendment procedure is governed by chapter 80.50 RCW and chapter 463-66 WAC.

Desert Claim and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, Desert Claim submitted its request for amendment of the SCA and a State Environmental Policy Act (SEPA) Environmental Checklist in writing on May 5, 2023.
- At the Council's monthly meeting on May 17, 2023, EFSEC staff announced that a public hearing session had been scheduled for the proposed SCA amendment consistent with WAC 463-66-030.
- Pursuant to WAC 463-66-030, notice of a virtual public special meeting was distributed on July 7, 2023G to the Desert Claim project distribution list. The notice advised that the certificate holder had requested an amendment to the SCA, and that a public hearing session to consider the matter would be conducted on July 13, 2023. The notice stated that public comments would be heard from 5:00pm to 7:00pm or until the last speaker, whichever comes first, and that written comments could also be submitted online or via U.S. mail.
- The public hearing session was held on July 13, 2023, as a virtual public special meeting on the Microsoft Teams meeting platform and via a conference telephone number.
- An online public comment database was open during the July 13, 2023, public hearing session for submission of written comments.
- The certificate holder gave a presentation on the proposed amendment to the SCA at the July 13, 2023, hearing session.
- One written comment was submitted to the record as a result of the public comment opportunity. The comment was from Neil Caulkins, Deputy Prosecuting Attorney representing Kittitas County and was in opposition to the request on the grounds that the failure of the certificate holder to secure a contract for the purchase of the power demonstrates a lack of need for the power.<sup>1</sup>
- At the Council's September 20, 2023, monthly meeting Amí Hafkemeyer, Director of Siting and Compliance, proposed that the Council approve the SCA amendment request subject to conditions. The Council considered information in the Desert Claim's SCA amendment request, advice from legal counsel, and the EFSEC staff recommendation and

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<sup>1</sup> Mr. Caulkins stated that "If the power is not needed by Washington state, then amending this site certification agreement to keep this apparently failed venture going does not accomplish EFSEC's statutory charge of providing for the state's energy needs - this particular need is simply absent."

directed staff to draft a resolution for Council review consistent with the staff recommendation.

## Discussion

The current SCA for the Desert Claim Wind Facility, as amended by Amendment No. 1 in 2018, states:

This Site Certification Agreement authorizes the Certificate Holder to construct the Project *such that Substantial Completion<sup>2</sup> is achieved no later than five (5) years from the date that Amendment No. 1 is approved by the Council*; provided, however, that such construction is not delayed by a force majeure event,<sup>3</sup> and that the construction schedule that the Certificate Holder submits pursuant to Article IV.K of this Agreement demonstrates its intention and good faith basis to believe that construction shall be completed within eighteen (18) months of beginning Construction.

[Emphasis and footnotes added.] The SCA’s terms are clear that Substantial Completion must be achieved no later than five years from the date of Amendment No. 1—i.e., by November 13, 2023. The SCA does not indicate a deadline by which construction must start. However, it appears that the Council simply chose to remove or suspend any deadline for the start of construction, and instead only imposed a deadline for the delivery of energy to the electrical grid (i.e., Substantial Completion).

The certificate holder requests a five year extension of the current deadline for Substantial Completion of the Project.

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend an SCA. That rule provides that in reviewing any proposed amendment, the Council shall consider whether the proposal is consistent with:

- (1) The intention of the original SCA;
- (2) Applicable laws and rules;
- (3) The public health, safety, and welfare; and
- (4) The provisions of chapter **463-72** WAC.

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<sup>2</sup> Desert Claim SCA Art. II.34 states: “‘Substantial Completion’ means the Project is generating and delivering energy to the electric power grid.”

<sup>3</sup> SCA Art II.21 states: “‘Force Majeure Event’ means any event beyond the control of the Party affected that directly prevents or delays the performance by that Party of any obligation arising under this Agreement, including an event that is within one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; tornado; hurricane; tsunami; flood; lightning; earthquake; fire; explosion; epidemic; quarantine; war (declared or undeclared), terrorism or other armed conflict; material physical damage to the Project caused by third parties; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and, actions of a governmental authority other than EFSEC.”

Because the requested amendment only concerns the SCA’s termination date, it would not affect the intention of the original SCA, except in regard to that narrow issue. In addition, the provisions of 463-72 WAC, which are concerned with site restoration requirements at the end of a project’s useful life and financial assurances for that purpose, is in no way implicated by the request. The certificate holder proposes no changes to the SCA’s requirements on that topic, and because construction has not commenced, the requirement to provide financial assurance for site restoration has not yet been triggered.

Thus, the chief considerations are whether the proposed extension is consistent with applicable laws and rules, and with the public, health, safety, and welfare. A good starting point for analysis of both of these topics is the language added to RCW 80.50.010 by Laws of 2022, ch. 183, § 1, which states:

It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.

Facilitating the certificate holder’s ability to construct this clean energy facility would align with this policy goal of RCW 80.50.010. However, this is not the only consideration; the Council has indicated previously that an unlimited “build window” is not appropriate,<sup>4</sup> and this is why EFSEC rules provide a presumptive ten year term for site certification agreements.

The policies behind EFSEC’s adoption of a presumptive ten year term for site certification agreements are not insurmountable in this case.

The Project underwent an EFSEC public comment process and EFSEC prepared an addendum to the Supplemental Environmental Impact Statement for the 2018 SCA amendment that authorized the Project’s redesign.

Although the Council’s statutory directive does not include evaluating the financial viability of the specific energy facility proposals that are presented to it for review, the certificate holder represents that it has actively been competing in requests for proposals for power purchase contracts. It also represents that it expects more such requests in the near term, and that it is ready and able to proceed with construction as soon as it is able to secure a power purchase contract.

Whether or not the project ultimately proves financially viable will be demonstrated during the requested extension. If it is not viable, it will not be built. The Council’s charge is “to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable

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<sup>4</sup> Although “there is a benefit to the public to have permitted facilities ready to be constructed whenever it becomes known that more generation capacity is needed . . . an unlimited ‘build window’ for a proposed project is not appropriate as, over time, technology or mitigation measures presented in an application may no longer be protective of environmental standards and conditions at the time the facility is constructed.” Council Order No. 860, Order Recommending Approval of Amendment No. 5 of Site Certification Agreement of the Satsop CT Project (Grays Harbor Energy Center) p. 13. (Dec. 21, 2010).



methods that the location and operation of all energy facilities and certain clean energy product manufacturing facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.” RCW 80.50.010.

Neither staff’s review, nor any public comment indicates the likelihood of any substantial changes in technology or in the site’s environmental conditions since the 2018 SCA amendment that would necessitate a significant new review of the project’s impacts. Since the SCA was last amended, there have been some changes in requirements applicable to wind energy projects, as well as in the requirements imposed on similar projects sited through the EFSEC process, but these changes can be incorporated as conditions of the requested extension.

Under these circumstances, granting the extension subject to protective conditions would be more appropriate than to let the SCA expire by its present terms and thereby require the certificate holder to submit a new application for site certification.

EFSEC staff recommended that the request extension be granted subject to the limitation that no further extension requests be allowed unless construction is reasonably underway, although not yet to point of “Substantial Completion.”

EFSEC staff also recommended that the following changes be included in the SCA:

- Given the new state law requirement, in RCW 70A.550.020, Laws of 2023, ch. 334, § 2, that the project apply to the Federal Aviation Administration (FAA) for approval to install an aircraft detection lighting system (ADLS), there is the potential for additional impacts or permitting considerations associated with this installation. If approved by the FAA, EFSEC shall review the proposed ADLS system prior to installation to determine whether any additional permits and conditions are required.
- The SCA should be amended to require the certificate holder to include in its waste management plan a commitment to recycle project components, both during operation and maintenance and at decommissioning, when recycling opportunities are reasonably available.<sup>5</sup>
- The certificate holder’s most recent site layout included turbines located less than 0.5 miles from seven (7) non-participating residences. The certificate holder should be required to submit, for the Council’s review prior to micro-siting, an analysis of the feasibility of placing all turbines more than 0.5 miles from non-participating residences to avoid dominating views from these sensitive viewing locations.

The Council finds the conditions recommended by EFSEC Staff to appropriate under the circumstances of this extension request, and the certificate holder has indicated that the conditions are acceptable.

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<sup>5</sup> See Laws of 2023, ch. 324, § 1, directed Washington State University extension energy program to “conduct a study on the feasibility of recycling wind turbine blades installed at facilities in Washington that generate electricity for distribution to customers in Washington.”

## RESOLUTION

For the foregoing reasons, the Council:

Grants Desert Claim's request to amend the SCA's expiration date subject to the following conditions:

- Given the new state law requirement, in RCW 70A.550.020, Laws of 2023, ch. 334, § 2, that the project apply to the Federal Aviation Administration (FAA) for approval to install an aircraft detection lighting system (ADLS), there is the potential for additional impacts or permitting considerations associated with this installation. If approved by the FAA, EFSEC shall review the proposed ADLS system prior to installation to determine whether any additional permits and conditions are required.
- The SCA should be amended to require the certificate holder to include in its waste management plan a commitment to recycle project components, both during operation and maintenance and at decommissioning, when recycling opportunities are reasonably available.<sup>6</sup>
- The certificate holder's most recent site layout included turbines located less than 0.5 miles from seven (7) non-participating residences. The certificate holder should be required to submit, for the Council's review prior to micro-siting, an analysis of the feasibility of placing all turbines more than 0.5 miles from non-participating residences to avoid dominating views from these sensitive viewing locations.

The Council's approval is memorialized in the attached SCA Amendment.

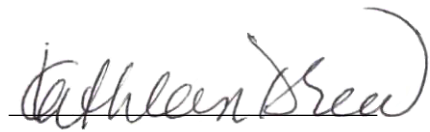
The approved SCA changes are shown in the Amended SCA.

### Appeals:

A request for judicial review of the SCA amendment is subject to the requirements of the Administrative Procedures Act, Chapter 34.05 RCW.

DATED at Lacey, Washington and effective on October 18, 2023

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL



Kathleen Drew, EFSEC Chair



Sonia E. Bumpus, EFSEC Director

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<sup>6</sup> See Laws of 2023, ch. 324, § 1, directed Washington State University extension energy program to “conduct a study on the feasibility of recycling wind turbine blades installed at facilities in Washington that generate electricity for distribution to customers in Washington.”

# Exhibit D

Five News articles

# Groups want new decision on Whistling Ridge wind farm

By The Pioneer

The proponent of the Whistling Ridge windmill facility and three environmental groups have petitioned for reconsideration of the decision to allow the project.

The Energy Facility Site Evaluation Council (EFSEC) decided at its Oct. 6 meeting to recommend that Gov. Christine Gregoire that the windmills can be placed on a ridge near White Salmon. The council eliminated a row of windmills from the proposal, however, stating that would lessen the impact on the "viewscape".

Whistling Ridge Energy LLC, the Seattle Audubon Society, the Friends of the Columbia Gorge, Save Our Scenic Area and the Skamania County and Klickitat County Economic Development Authority have each asked EFSEC to reconsider the recommendation, but for widely different reasons.

The proponents maintain that the proposed elimination of 15 turbines would effectively kill the project, making it economically unviable. They also maintain that the Columbia Gorge Scenic Act specifically states that activities or uses outside the Scenic Area boundaries cannot be limited just because they are adjacent to the scenic area.

The council's decision "is an utterly transparent and ineffective attempt to circumvent Congress's express prohibition against precluding uses outside the Scenic Area for the sole reason that they can be seen from within the Scenic Area."

Attorneys for the environmental group Save Our Scenic Area (SOSA) maintain that the demand for wind-powered energy is not needed to meet projected energy needs of the Pacific Northwest and that it doesn't conform to the county's Comprehensive Plan. However, the document erroneously cites the state's Growth Management Act as the determining factor, but Skamania County isn't required to plan under GMA regulations.

"In summary, the Whistling Ridge project is contrary to the applicable comprehen-

sive plan and zoning code, is not needed to meet consumer loads and permanently damages the unique resources of the Columbia Gorge," the petition states.

"(The) Friends (of the Columbia Gorge) also continues to urge that the Project be denied," its lawyers state in a 67-page document. "The Applicant did not meet its burden of demonstrating that the Project would avoid and minimize impacts to the environment, further the public interest, and supply abundant energy to the people of Washington State."

The petition for reconsideration maintains EFSEC misinterpreted matters of land use planning in Skamania County, setting "a dangerous precedent that could result in future energy development and other projects being built throughout the unmapped lands", i.e., lands that have not been designated for a specific purpose.

The Friends maintain that EFSEC should reconsider and strike most of its findings and conclusions which support recommending approval of the project.

The Economic Development Authority states that "EFSEC's recommendation exceeds its jurisdictional and statutory authority" in its petition. The organization maintains that EFSEC erred by removing 15 of the 50 turbines in the recommendation. "There is no legal or factual basis for so sweeping a recommendation, particularly when county zoning authorizes the project."

The EDA also agrees with the proponents that rules for the National Scenic Area cannot be applied to lands outside the area.

The Seattle Audubon Society asks for reconsideration based on its assertion that Whistling Ridge Energy LLC failed to provide adequate details regarding the impact the project would have on wildlife.

Any of the petitioners has two weeks from the date the petitions were filed to answer the allegations. It's unclear how long EFSEC has to respond to the petition for reconsideration.



## Gov. Chris Gregoire approves Whistling Ridge wind farm outside Columbia River Gorge in Washington, but project on hold

Published: Monday, March 05, 2012, 5:56 PM Updated: Tuesday, March 06, 2012, 7:11 PM



By **Ted Sickinger, The Oregonian**



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Jamie Francis/The Oregonian/2008

A wind farm near White Salmon just outside the Columbia Gorge National Scenic Area has gotten the approval of Washington Gov. Christine Gregoire. However, the project is on hold because it's not economically viable now, its developers say. The gorge area and eastern Oregon and Washington is a popular for wind farms, including these in Sherman County.

**Washington Gov. Christine Gregoire** on Monday approved a downsized version of the controversial **Whistling Ridge wind farm** in Skamania County, though its developers say the project is on hold because it's not currently economically viable.

Gregoire's approval allows up to 35 wind turbines on the north side of the Columbia River Gorge, near the town of White Salmon.

**Washington's Energy Facility Site Evaluation Council** approved the project last October provided that 15 of the 50 turbines proposed were eliminated to lessen the visual impact within the **Columbia Gorge National Scenic Area**.

Gregoire said in a news release the project would help meet clean energy needs while bringing needed jobs and revenue to Skamania County, "while preserving the aesthetic and recreational benefits of the Gorge."

"This decision is a balanced approach, and one that serves all citizens of the state," Gregoire said.



**SDS Lumber Co. of Bingen** and **Broughton Lumber Co.** of Underwood proposed the \$150 million Whistling Ridge wind farm in 2008. The project comprised 50 turbines on 1,200 acres the companies own just outside the scenic area on the ridges above White Salmon.



The project's 430-foot turbines loomed over the town of Underwood, and several strings were visible from various vantage points within the Columbia Gorge National Scenic Area.

[View full size](#)

SDS President Jason Spadaro said the project was not currently feasible. Uncertainty over the renewal of the federal production tax credit, which expires at the end of 2012, means few new wind projects are going forward. California's new limits on renewable power imports have also slowed development in the Northwest. Finally, Spadaro said the state's decision to scale back the project undermined its economics.

That decision, he believes, is legally questionable because federal protections of the gorge aren't supposed to hamper projects outside the scenic area boundary. But he said the company was unlikely to take on the expensive legal fight to challenge it.

"We're not abandoning the project, but in the current environment of great uncertainty for renewable energy, the project is unlikely to move forward," Spadaro said.

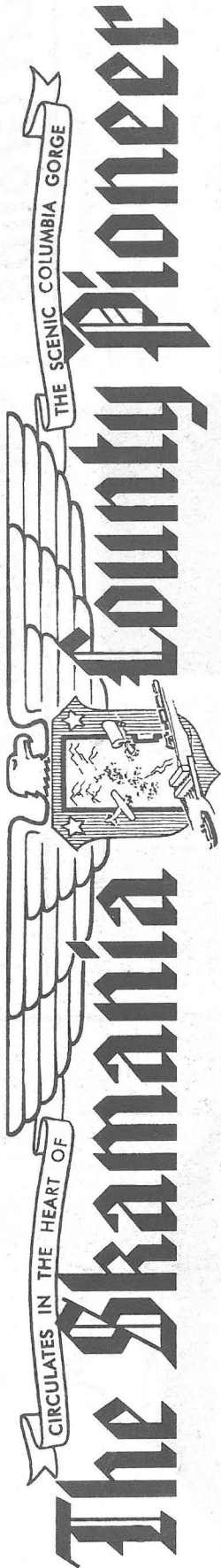
Project opponents had raised a raft of issues with the council's earlier decision, ranging from scenic and wildlife impacts to mitigation measures such as nighttime lighting on the turbine blades.

Opponents, including **Friends of the Columbia Gorge**, have 30 days to appeal the governor's approval in Superior Court. Nathan Baker, an attorney for the group, said an appeal was likely because the site certificate approved was valid for 10 years.

"They have every incentive to pocket the site certificate and see what the future holds," Baker said. "If it's not viable today, it maybe in the future, and that's why the Friends is likely to appeal."

-- **Ted Sickinger**

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Single Copy 50 Cents

Publication No. 497720

Stevenson, Washington

## Governor approves wind project

By The Pioneer

The Whistling Ridge wind project has gained the stamp of approval from Washington State Gov. Chris Gregoire.

But whether the project will ever be constructed is very much up in the air because the plan approved by the governor calls for 15 fewer wind turbines than the proponents originally sought to build.

The Friends of the Columbia Gorge stated in a press release that "The approval may be challenged in Thurston County Superior Court within 30 days of the decision date. Local residents and conservationists, who have opposed the poorly planned project since it was first publicly announced in 2007, are vowing to press on."

Jason Spadaro, president of SDS Lumber, said the scaled-back project may not be economically feasible. The original application called for 50 turbines on the forested ridges of Saddleback Mountain in east Skamania County.

The state Energy Facility Site Evaluation Council (EFSEC), which was tasked with reviewing the project and making a recommendation to Gov. Gregoire, removed 15 turbines from the project to address issues raised by Friends of the Columbia Gorge and other environmental groups.

"We're glad that the governor has not chosen the path the Friends have fought so hard for, which was to deny the project," Spadaro said.

"We're still disappointed with the recommendation of EFSEC. We have had a careful look at it and it's really, really challenging to make it economically feasible on a smaller project."

The project would also include an operation and maintenance facility, underground collector lines and systems, and other outbuildings. The proposed project would cover 1,152 acres and would produce 75 megawatts of power on SDS Lumber Co. forest land.

Al Wright, managing director for EFSEC, said that agency has no further role in the decision process. The next step would be through the courts. He said the final step is for Whistling Ridge LLC, owned by SDS Lumber and Broughton Lumber Co., to sign the site certification agreement. The document includes rules and procedures which the company would have to follow if it moves forward with the project.

"I think it makes us feel really good that the governor reaffirmed the council's decision, which wasn't a light decision," Wright said.

In a news release from Gov. Gregoire, she stated that, "This decision wasn't reached lightly.... A modified project with 35 wind turbines would help meet our need for clean energy and bring needed jobs and revenue to Skamania County, while preserving the esthetic and recreational benefits of the Gorge."

Kevin Gorman, executive  
(continued on p. 6)

## Governor approves...(continued from p. 1)

director of Friends of the Columbia Gorge, said the group wasn't willing to give up on its efforts to stop the project.

"I think we are as opposed to it as before the governor's decision," he said. "We're looking at every option to make sure it doesn't happen because it doesn't make sense."

He said the project would encroach on Northern spotted owl habitat, impact the scenery of the Columbia Gorge, and only produce a marginal amount of electricity which

he claimed would benefit consumers in California, not the Pacific Northwest.

But Spadaro said the Friends need to recognize the basic tenets of the Columbia Gorge National Scenic Act, which states as one of its two primary purposes "to protect and support the economy of the Columbia River Gorge area by encouraging growth to occur in existing urban areas and by allowing future economic development in a manner that is consistent

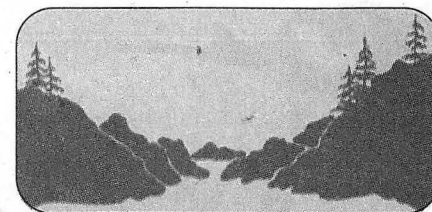
with" the enhancement of the scenic, cultural, recreational, and natural resources of the Columbia River Gorge.

"We're hoping the Friends of the Columbia Gorge respect the Governor's decision and the state council's decision and the need for economic development for our county and its communities," Spadaro said. "They need to realize that this isn't their national park. It's time for them to recognize that the Scenic Act is a balance."



# The Enterprise

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## Whistling Ridge gets Governor's OK

### Future of Skamania County's first wind power project up in the air

By **SVERRE BAKKE**  
The Enterprise

The project that would be Skamania County's first wind power farm got the green light Monday from the Governor's Office but the developers are unsure when, or if, they will proceed with construction.

Jason Spadaro, president of Whistling Ridge Energy Partners, LLC, said Monday that the 75-megawatt Whistling Ridge Energy Project is not being abandoned, "but we will need a better environment for renewable energy development in the region."

Gov. Christine Gregoire approved the Site Certification Agreement for the Whistling Ridge Energy Project per the unanimous recommendation of the state's Energy Facility Site Evaluation Council (EFSEC): a modified project with 35 wind tur-

bines, to be sited on commercial timber land in southeastern Skamania County.

"This decision wasn't reached lightly," Gregoire said in a public statement issued by her office. "I weighed the hundreds of public comments collected by EFSEC. I examined the results of various environmental and land use reviews. And I considered the expert testimony gathered by EFSEC on the impact of new wind turbines. A modified project with 35 wind turbines would help meet our need for clean energy and bring needed jobs and revenue to Skamania County, while preserving the esthetic and recreational benefits of the Gorge. This decision is a balanced approach, and one that serves all citizens of the state."

Whistling Ridge Energy Partners said they appreciated the Governor's decision in their favor,

but were disappointed she did not go beyond the EFSEC's recommendation.

"We are thankful that she has recognized the fact that this project is entirely outside of the (Co-

lumbia River Gorge) National Scenic Area, and the need for economic development in Skamania County," Spadaro said. "However, the EFSEC recommendation, and the Governor's approval, have

still reduced the project size and hampered its economics. Coupled with a poor economic environ-

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# Wind

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ment, weak current demand for energy, and uncertainty over federal tax incentives, the project's ability to move forward at the current time is uncertain."

He added, "We continue to emphasize that EFSEC's environmental impact statement found no negative environmental impacts from the project, only asthetic ones, to which we strenuously object."

Friends of the Columbia Gorge, a Portland, Ore.-based National Scenic Area watchdog group, have fought the project from its inception in 2007 because they say project turbines

"would be visible for many miles within the National Scenic Area" and "highly visible from multiple vantage points, such as the city of White Salmon."

In a news release issued Monday afternoon, the Friends stated they are considering a legal challenge to the Governor's approval of the project. Such a challenge would have to be filed in Thurston County Superior Court within 30 days of March 5. In any event, the Friends "are vowing to press on."

"Friends of the Columbia Gorge supports responsible development of renewable

energy sources, but the Whistling Ridge proposal is not responsible," said Kevin Gorman, executive director for the Friends. "This project, even scaled back to 35 turbines, is not worth sacrificing the unique scenic beauty and wildlife of the Columbia River Gorge."

Nathan Baker, staff attorney for the Friends, said Gov. Gregoire's decision is "vulnerable to legal challenge" because Skamania County did not complete the rezoning of the project site to allow for wind energy development, and EFSEC "failed to acknowledge these violations."



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## Whistling Ridge decision contested

By JULIE RAEFIELD-GOBBO  
News staff writer

In early March, Washington Gov. Christine Gregoire approved the proposed Whistling Ridge wind power project to be sited near White Salmon on land owned by SDS Lumber and Broughton Lumber, paving the way for 35 turbines standing more than 400 feet tall.

On April 5, the nonprofit groups Friends of the Columbia Gorge and Save Our Scenic Area filed a petition for judicial review in the Thurston County Superior Court, challenging Gregoire's approval.

The petition for review lists 32 claims, focusing on zoning and forest practices violations as well as wildlife, scenic, noise and transportation impacts.

The petition asks the Thurston County Superior Court to decide the claims, rather than certifying the case for direct review by the Washington Supreme Court.

A primary focus of the FCG and SOSA petition asserts that the Washington State Energy Facility Site Evaluation Council, who produced the ruling on the project which



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Gregoire signed off on, erred in accepting claims of project compatibility with existing the Skamania County comprehensive plan and zoning laws.

According to FCG staff attorney Nathan Baker, "In 2009, Skamania County abandoned efforts to rezone the project site for wind energy development. Because Skamania County never finished its rezoning for this project, the project is prohibited under the County's rules."

Baker went on to assert that the EFSEC in its recommendation to Gregoire "failed to acknowledge these violations, thus making the governor's decision vulnerable on appeal."

Gregoire had signed off on the EFSEC final order which paved the way for 35 turbines — 15 fewer than originally proposed by Whistling Ridge.

If constructed, the facility would be sited about 7 miles west of White Salmon with turbines in view of Hood River, on privately held lands currently in commercial timber production.

Following notice of the turbine reduction, SDS Pres-

ident Jason Spadaro of Whistling Ridge LLC told Ted Sickinger of The Oregonian that the project was not currently financially viable.

The existing site certificate however, will remain valid for 10 years. With potential changes in the future economy, financial viability may return for the project in the future.

"This project, even scaled back to 35 turbines, is not worth sacrificing the unique scenic beauty and wildlife of the Columbia River Gorge," said Kevin Gorman, executive director for Friends of the Columbia Gorge.

"Friends of the Columbia Gorge supports responsible development of renewable energy sources, but the Whistling Ridge proposal is not responsible," said Gorman.

The governor's approved EFSEC ruling reduced turbine numbers primarily to mitigate visual impacts in sensitive scenic areas within the Gorge. Those 15 were described as "prominently visible" and "intrusive."

In its previously submitted petition, Whistling Ridge LLC had stated that elimination of the 15 denied turbines "kills the project."

If the project were to be constructed, the remaining proposed 426-foot towers would be sited atop several ridgelines visible throughout the Columbia River Gorge National Scenic Act territory.

In a study submitted with the Whistling Ridge application, turbine visibility was noted from White Salmon, Viento State Park, the Historic Columbia River Highway, I-84 in both directions

and Hood River.

"Icons of the Northwest, like the Columbia River Gorge, Mount Rainier and the Olympic Mountains, should be off-limits to large-scale energy development," said Gorman. "We can combat global warming without having to sacrifice our most special places and our core values."