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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Whistling Ridge Energy, LLC's September 13, 2023 Request to Extend the Term of the 2012 Site Certification Agreement for the Whistling Ridge Energy Project

FRIENDS OF THE COLUMBIA  
GORGE'S SCHEDULING MOTION

In the Matter of Whistling Ridge Energy, LLC's September 13, 2023 Application to Transfer the 2012 Site Certification Agreement for the Whistling Ridge Energy Project to Twin Creeks Timber, LLC as the New Parent of Whistling Ridge Energy, LLC

**I. INTRODUCTION**

Friends of the Columbia Gorge ("Friends") respectfully moves the Council to schedule separate public hearings but otherwise consolidate the above-captioned matters, determine a case schedule, and issue one or more corrected public notices in the above-captioned matters.

**II. APPLICABLE AUTHORITY**

One of the above-captioned matters involves a newly filed request to amend a site certification agreement. Upon receiving such a request, "[t]he [C]ouncil will consider the request and determine a schedule for action at the next feasible [C]ouncil meeting." WAC 463-66-030. In addition, "[t]he [C]ouncil shall hold one or more public *hearing* sessions upon the request for amendment at times and places determined by the [C]ouncil." *Id.* (emphasis added).

The other above-captioned matter involves a newly filed application to transfer a site certification agreement to a new owner. Upon receipt of such a request, the Council must "hold an informational *hearing* on the application" and must mail notice to all persons on EFSEC's mailing list. WAC 463-66-100(4) (emphasis added).

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1 RCW 42.30.080(1) and WAC 463-18-050(3)(a) authorize the Chair or a majority of the  
2 voting members of the Council to schedule EFSEC meetings. WAC 463-18-020(4)(a) authorizes  
3 the EFSEC Director to prepare each meeting’s agenda in consultation with the Chair. WAC 463-  
4 18-020(4)(b) authorizes the Council to modify any meeting agenda.

5 **III. FACTS RELEVANT TO THE MOTION**

6 On September 12, 2023, EFSEC issued by email an “EFSEC Notice of Special  
7 Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request”  
8 (hereinafter “Email Notice”).

9 The next day, on September 13, 2023, EFSEC received a Request from Whistling Ridge  
10 Energy LLC (“WRE”) to extend the term of the March 5, 2012 Site Certification Agreement  
11 (“SCA”) for the Whistling Ridge Energy Project (“Whistling Ridge” or “WREP” or “Project”)  
12 (hereinafter “Extension Request”). Also on September 13, 2023, EFSEC received an Application  
13 from WRE to transfer the Whistling Ridge SCA to Twin Creeks Timber, LLC (“TCT”) as the  
14 new parent of WRE (hereinafter “Transfer Application”).

15 On September 14, 2023, EFSEC issued by email a “REVISED EFSEC Notice of Special  
16 Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request”  
17 (hereinafter “Revised Email Notice”).

18 On September 15, 2023, EFSEC issued by email an “AMENDED EFSEC Notice of  
19 Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment  
20 Request” (hereinafter “Second Revised Email Notice”).

21 Upon receiving each of these Email Notices from EFSEC, Friends realized that the Email  
22 Notices contained errors, inconsistencies, and ambiguities that needed to be fixed. Accordingly,  
23 after receiving each Notice, Friends emailed a letter to the EFSC Director and the assigned Site  
24 Specialist for these matters requesting that EFSEC take various actions, including scheduling a  
25 public hearing for each of the two pending matters and making corrections to EFSEC’s public  
26 notices for these matters and to EFSEC’s Whistling Ridge webpage. Friends’ three letters are  
27 attached to this Motion, and copies of each of the agency’s Email Notices are included therein.  
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1 Friends did not receive any response from EFSEC staff to any of Friends' three letters.  
2 Although a couple of the issues identified in Friends' letters have been corrected, the majority of  
3 the issues have not yet been resolved. This Motion follows.

#### 4 IV. REQUESTED RELIEF

5 Friends requests the following relief:

- 6 • Schedule a separate public hearing on each of the two pending matters (the  
7 Extension Request and the Transfer Application), which may both be heard at the  
8 same special meeting, so long as each matter is heard in a separate public hearing at  
9 that meeting.
- 10 • If the Council intends to hold an informational public meeting prior to the required  
11 public hearings, schedule such a meeting to be held in Skamania County, as close  
12 to the Project site as practicable.
- 13 • Establish a case schedule for the two pending matters, including the dates and times  
14 of any informational public meetings, the date(s) and times for the two required  
15 public hearings, the public comment period for submitting written comments on  
16 each of the two matters, the anticipated date(s) and time(s) of meeting(s) when final  
17 Council action may occur on each proposal, and whether oral comments on the  
18 matters will be accepted at such meeting(s).
- 19 • Determine whether the two matters are consolidated, including for purposes of  
20 keeping a consolidated administrative record.
- 21 • Issue one or more corrected public notices in these matters and make corrections  
22 and updates to EFSEC's Whistling Ridge webpage, as identified below.

#### 23 V. ARGUMENT

24  
25 **A. The Council should schedule two separate public hearings for the two pending**  
26 **matters and should establish a case schedule.**

27 First, regarding the schedule for reviewing at least one of the pending matters, the  
28 Extension Request, EFSEC has jumped the gun. WAC 463-66-030 requires that, only *after*  
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1 receiving a written request to amend a site certification agreement, “[t]he [C]ouncil will consider  
2 the request and determine a schedule for action *at the next feasible [C]ouncil meeting*” (emphasis  
3 added). Despite that clear, step-by-step process required by EFSEC’s own rules, EFSEC staff  
4 disseminated the Email Notice (announcing a public “meeting”) one day before even receiving  
5 the Extension Request and Transfer Application.

6 The agency does not appear to be following its own rules, which require it to determine  
7 the schedule “at the next feasible [C]ouncil meeting,” not before that meeting. Here, the first  
8 Email Notice was sent out on September 12, the Extension Request was received on September  
9 13, and EFSEC’s next monthly meeting will be on September 20. EFSEC should not have  
10 determined any part of the schedule for reviewing the Extension Request until the September 20  
11 meeting, at the earliest.<sup>1</sup>

12 Second, it is unclear whether EFSEC intends to follow its rules, which require public  
13 “hearings” for these matters, and there are already indications that the agency is *not* following its  
14 rules. EFSEC staff announced an “informational public *meeting*” in these matters (emphasis  
15 added), but the agency has not yet announced the public “hearings” required by law.

16 Specifically, EFSEC’s own rules require the agency to “hold one or more public *hearing*  
17 sessions” for any proposed amendments to an SCA. WAC 463-66-030 (emphasis added). In  
18 addition, the EFSEC rules require the agency to hold an “informational *hearing* on the  
19 application” for any proposal to transfer ownership of an SCA. WAC 463-66-100 (emphasis  
20 added).  
21

22 It is unclear whether EFSEC believes that scheduling a single “meeting” for these matters  
23 constitutes the separate “hearings” required by these rules, or whether EFSEC instead intends to  
24 hold the required hearings on one or more later dates after the scheduled October 9, 2023 special  
25 meeting.  
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27 <sup>1</sup> On a related note, because EFSEC prematurely sent out the first Email Notice without  
28 even having received the Extension Request and Transfer Application, EFSEC staff could not  
29 possibly have reviewed these submissions for completeness nor determined whether they are  
ready for agency review, and yet the agency issued the Notice anyway.

1           Regardless, EFSEC must schedule and announce when it will hold the public hearings  
2 required by law for each of these matters. As the public intuitively understands, a “meeting” is  
3 quite different from a “hearing.” EFSEC’s rules expressly require “hearings” for each of the  
4 pending matters.<sup>2</sup> In this context, a “hearing” means, at the very least, that it will be presided  
5 over by a hearing officer or administrative law judge (rather than by the EFSEC Chair), and that  
6 testimony and evidence may be submitted. While a “hearing” is not a full-blown “adjudicative  
7 proceeding” (*i.e.*, contested case) under EFSEC’s rules, it is more than a mere “meeting.” In this  
8 context, “hearings”—not “meetings”—are required.

9           In addition, the two hearings required by the EFSEC rules for these two separate matters  
10 should not, and indeed cannot, be conducted as a single hearing. EFSEC’s rules require different  
11 forms of filings for these two separate proposals, and apply different criteria and procedures to  
12 each proposal. EFSEC is required to process each of the two pending proposals separately under  
13 the rules, standards, and procedures that apply to it, which necessarily includes affording  
14 interested persons the opportunity to testify on each proposal at a public hearing designed  
15 specifically for that proposal. Failure to hold a separate public hearing for each of the two  
16 pending proposals will violate EFSEC’s own rules as well as the due process requirements  
17 articulated in *Barrie v. Kitsap County*, 84 Wn. 2d 579, 527 P.2d 1377 (1974). In sum, the two  
18 proposals are different and each require a separate hearing, each of which must be described as a  
19 separate hearing in any public notices.  
20

21           Although the two matters must be heard in separate hearings, they could both be heard at  
22 the same special meeting, as long as they are duly noticed and conducted as separate hearings. If  
23 EFSC intends to hear both proposals on the same date, Friends suggests scheduling both hearings  
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25           <sup>2</sup> WRE has already conceded that EFSC must hold one or more *hearings*, not simply a  
26 meeting. For example, WRE states in the Extension Request that “Whistling Ridge Energy  
27 understands that the Council would need to conduct review of this request as an amendment to  
28 the Site Certificat[ion] Agreement, including one or more ‘public *hearing* sessions.’” (Extension  
29 Request at 4 (emphasis added); *see also id.* at 5 (underlined text of this requirement as stated in  
EFSEC’s rules.) In addition, the Transfer Application refers to “the hearing” required for review  
of that proposal. (Transfer Application at 5.) And during EFSEC’s June 21, 2023 meeting,  
WRE’s attorney acknowledged that EFSEC will hold a “hearing.”

1 for times certain and conducting the hearing on the Extension Request first (for up to 90  
2 minutes), followed by the hearing on the Transfer Application (for up to 60 minutes).

3 The Email Notices sent so far all refer to an “informational public meeting” rather than  
4 any public “hearing.” If EFSEC intends to hold an informational public meeting, then it should  
5 schedule such a meeting in Skamania County, as close as practicable to the site as possible.  
6 EFSC is required to hold “at least one public informational meeting concerning each application  
7 . . . in the general proximity of the proposed project.” WAC 463-26-025. Thus, if any  
8 “informational public meeting” will be held prior to the required public hearings, then such an  
9 informational meeting should be held in Skamania County (ideally in Underwood or the  
10 vicinity).

11 The Council should also establish a full case schedule for the two pending matters,  
12 including the date(s) and times for any informational meeting(s), the date(s) and times for each  
13 of the two required public hearings, the public comment period for submitting written comments  
14 regarding each of the two matters, and the anticipated date(s) of final Council action on each  
15 proposal.

16 In particular, it is imperative that the Council announce and publicize a schedule for  
17 written public comments on these matters. Despite Friends’ repeated requests for clarification of  
18 that schedule, each of the Email Notices contains the following somewhat cryptic statements  
19 regarding written comments:  
20

21 Speakers may have limited minutes to provide comments, and any  
22 additional comments will be directed to be submitted online or postal mail.

23 \* \* \*

24 \* \* \*

25 \* \* \* Public Comment will be accepted during the Public Information  
26 Meeting. If you are unable to attend this meeting, please send your  
27 comments in writing to [comments@efsec.wa.gov](mailto:comments@efsec.wa.gov) or to the EFSEC office  
28 mailing address below. An online database will also be open during the  
29 meeting at <https://comments.efsec.wa.gov/> for submission of written  
comments.

1           These passages from the Email Notices, taken together, make it sound as if the comment  
2 period for submitting written comments will begin during the public “meeting.” Friends does not  
3 believe that to be true—we believe the record is already open for written comments—but in any  
4 event, the agency should clarify this point. In addition, if there is any intended deadline by which  
5 written comments must be emailed or postmarked, that deadline should be announced.

6           Perhaps the record will be kept open for written comments until final action by the  
7 Council. After all, the newly enacted RCW 42.30.240(1) requires the Council to “provide an  
8 opportunity at or before every regular meeting at which final action is taken for public  
9 comment.” Since the Council is obligated to take comments at or before the final meeting in  
10 these matters, EFSEC should state in its public notices the agency’s intentions and procedures  
11 for receiving such comments.

12           Specifically, the Council should clearly announce a schedule for comments, including  
13 whether written public comments are currently being accepted, whether there is any deadline for  
14 written public comments to be emailed and mailed, whether oral comments will be accepted at  
15 the public meeting(s) at which final action on the pending proposals may be taken, and the  
16 date(s) and time(s) when such meeting(s) are anticipated. When it comes to public participation,  
17 the better the information and instructions the agency can provide, the more meaningful and  
18 productive the experience will be for the public. In this case, the Council’s public notices can and  
19 should be improved to clarify these details.

20           As for the timing of the public review schedule, Friends requests that either the public  
21 hearings should be scheduled for December 2023, or at the very least, the record should be kept  
22 open for written comments until December 2023. As soon as Friends learned that the two  
23 pending proposals had been submitted, Friends filed a series of public records requests with  
24 EFSEC to be able to understand both proposals, the status of the Project, and the agency’s review  
25 of the proposals. The requested information and evidence will be absolutely essential for Friends  
26 to review these matters, especially given the outdated and inaccurate status of EFSEC’s webpage  
27 for Whistling Ridge and the numerous known errors in the Email Notices. EFSEC has already  
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1 indicated that it will need some time to produce the requested records, and Friends will need  
2 some time to review them once produced in order to make meaningful comments. For example,  
3 EFSEC staff estimate that the agency will need until November 13 and 17, 2023, respectively, to  
4 produce the requested public records for two key requests. Following the production of these  
5 records, Friends may need up to three weeks to review them, depending on the volume of the  
6 material.

7 Accordingly, the Council should ensure that the comment period for these matters will  
8 not conclude any sooner than 15 days after EFSEC will produce the public records requested by  
9 Friends. Since EFSEC staff estimate that the records will be produced by November 17, 2023,  
10 that means the record for these matters should be kept open at least until December 4, 2023.

11 Any requests by WRE for a shortened review timeframe should be denied, especially  
12 after all the delay caused by WRE itself. After announcing that it intended to submit these  
13 proposals, WRE dragged its feet for a year and a half before submitting the Extension Request  
14 and Transfer Application. WRE could have submitted these materials much earlier, but chose not  
15 to. Furthermore, WRE's parent company, TCT, "ask[ed] that the Council not take action on  
16 either request until we are prepared to move forward on both." (Mar. 16, 2022, letter from Greg  
17 Corbin, TCT, to Sonia Bumpus, EFSEC (hereinafter "2022 Corbin Letter").)

18 After taking so long to submit the final proposals, WRE should be aware that EFSEC as  
19 well as interested stakeholders will need a reasonable amount of time to review the final  
20 proposals for compliance with the applicable law. A short review period of two to three months  
21 (including any time necessary for the agency to produce, and Friends to review, the requested  
22 public records) is reasonable in light of the ten years that elapsed after the Governor made the  
23 SCA effective,<sup>3</sup> plus the eighteen months that WRE took after the SCA expired<sup>4</sup> to file the  
24 Extension Request and Transfer Application. Moreover, the schedule for reviewing these filings  
25 must be determined by the Council, not dictated by WRE.  
26  
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28 <sup>3</sup> The Whistling Ridge SCA was "effective" on March 5, 2012. (SCA at 42.)

29 <sup>4</sup> The SCA expired on March 5, 2022. *See* WAC 463-68-080(1), (2).



1 For the reasons explained above, the Council should ensure that the record in these  
2 matters is kept open at least until December 4, 2023 for written comments, and until the final  
3 meeting(s) at which action may be taken for oral comments. It is also important for EFSC to  
4 announce the schedule in advance in its public notices, so that the public understands the process  
5 and timing, and thus how and when they may participate in these matters.

6 **B. The Council should consolidate the two matters, with the exception that each matter  
7 must be heard at a separate public hearing.**

8 The Council should determine whether these two matters are consolidated, including for  
9 purposes of compiling an administrative record. In a March 2022 filing, TCT stated that “we  
10 anticipate seeking the Council’s review of both the SCA extension request and the transfer  
11 request in a single process.” (2022 Corbin Letter.) Friends is unaware of any ruling as to whether  
12 the two matters have been consolidated. Friends supports consolidation of the two matters, with  
13 the important exception that the Council must hold separate hearings for each of the two matters,  
14 as discussed above. (*See supra* § V.A.) The Council should rule accordingly.

15 **C. EFSEC should issue one or more corrected public notices in these matters and should  
16 correct and update the agency’s Whistling Ridge webpage.**

17 In the three letters sent to EFSEC staff last week, Friends identified a number of errors in  
18 the Email Notices and on EFSEC’s webpage for the Whistling Ridge Energy Project. Most of  
19 these errors have not yet been corrected. Friends requests the following corrections.

20 First, any public notices for these matters (including any notices disseminated by email)  
21 should clearly refer to, and distinguish between, the two proposed actions. For example, the  
22 subject headings of the Email Notices to date have only referred to a “Whistling Ridge Site  
23 Certification Agreement Amendment Request.” This language seemingly refers to the pending  
24 Extension Request (which seeks one or more amendments to the SCA), but omits any mention of  
25 the pending Transfer Application (which does *not* appear to seek any amendments to the SCA).  
26 Any notices involving both matters should clearly refer to *both* matters in any subject headings  
27 and titles. For email headings, language such as “Whistling Ridge Energy Project – Request to  
28 Extend and Application to Transfer Site Certification Agreement” would suffice.  
29

1 On a related note, EFSEC’s public notices to date have referred to the Transfer  
2 Application as an “amendment request.” But it is not at all clear that the Transfer Application  
3 requests any amendments to the SCA. This should be clarified. If the Transfer Application does  
4 not in fact seek any amendments to the SCA, then it should not be described as such. Rather than  
5 referring to both pending matters as “amendment requests,” wherever they need to be described  
6 together, they could and should be described as “proposed actions.”

7 The public notices also refer to the Extension Request as requesting “a *three-year*  
8 *extension* of the SCA until November 18, 2026” (emphasis added) Yet the SCA expired on  
9 March 5, 2022. An extension until November 18, 2026 would be a four-and-a-half-year  
10 extension. This is a disputed issue in these matters. Even WRE admitted (through its attorney at  
11 EFSEC’s June 21, 2023 meeting) “that there is some debate about the expiration of the site  
12 certificate.” EFSEC’s public notices should not prejudge this vital issue by definitively stating,  
13 or even implying, that an extension until November 18, 2026 would be only a three-year  
14 extension. Rather, any public notices regarding the Extension Request should simply state that  
15 the Extension Request proposes to extend the term of the SCA until November 18, 2026. Such  
16 neutral language is essential for any agency review matter that has yet to go hearing and any  
17 agency decision on disputed issues.  
18

19 All hearing notices should also be corrected to clearly explain the schedule for any  
20 meetings and hearings, and for public comments, as discussed above. But for any special  
21 meetings at which hearings would occur on both matters, the fact that these will be separate  
22 hearings should be clearly stated on any notices, and the start and end times for each hearing  
23 should also be provided. (*See supra* § V.A.) The review schedule should also be posted directly  
24 on EFSEC’s Whistling Ridge webpage at [https://www.efsec.wa.gov/energy-facilities/whistling-  
25 ridge-energy-project](https://www.efsec.wa.gov/energy-facilities/whistling-ridge-energy-project), rather than obscuring that schedule by merely linking to public notices and  
26 only at the bottom of the webpage.

27 When describing the proposed actions, EFSEC’s hearing notices should explain what the  
28 proposed actions “would” do, rather than what they “will” do. As Friends noted in our prior  
29

1 letters to EFSEC staff, using the word “will” implies that the proposals have already been  
2 secretly approved by the Council. Government agency notices of proposed actions should neither  
3 indicate nor imply any bias in favor of the proposed action, including not implying any  
4 preordained conclusions as to the final action or outcome.

5 Accordingly, EFSEC’s notices should delete or modify the language that “[t]he proposed  
6 revisions *will* change the following in the current SCA” (emphasis added), and should change all  
7 such usage of the word “will” to “would.” (That quoted language is also inaccurate for another  
8 reason previously discussed: the Transfer Application does not appear to propose any changes to  
9 the SCA itself.)

10 On a similar note, the EFSEC Whistling Ridge webpage currently refers to a “meeting for  
11 *the Amended SCA*” (emphasis added), as if the SCA has already been amended. This language  
12 should instead refer to a special meeting regarding two pending matters: a request to amend (or  
13 extend) the SCA and an application to transfer the SCA.

14 Finally, EFSEC’s Whistling Ridge webpage is inaccurate and woefully out of date. The  
15 “Status” section on the right side of the webpage, as well as the project description at the top of  
16 the page, have not been updated in fourteen years. While Friends acknowledges that the outdated  
17 status of EFSEC’s webpage implicitly reflects the reality that WRE has never lifted a finger to  
18 actually pursue development of the Project, that does not justify burying the newly filed  
19 proposals for agency action at the bottom of the Whistling Ridge webpage. The page should be  
20 corrected and updated, for example by adding the following language:

21  
22 On March 5, 2012, Governor Gregoire issued a Site Certification  
23 Agreement (“SCA”) for the Project. On September 13, 2023, Whistling  
24 Ridge Energy, LLC (“WRE”) filed a request to extend the term of the SCA  
25 to November 18, 2026 and an application to transfer the SCA to Twin  
26 Creeks Timber, LLC as the new parent of WRE. These two proposed  
27 actions are currently being reviewed by EFSEC and will be heard by the  
28 Council in separate public hearings on [date(s)], with written comments  
accepted until [date(s)], and final Council action anticipated on [date(s)].  
For more information on the pending requests, please see the Special  
Meeting section of this webpage.

29 ///





*SUBMITTED VIA E-MAIL*

September 14, 2023

Sonia Bumpus, Director  
Lance Caputo, Site Specialist  
Washington Energy Facility Site Evaluation Council  
*Via email to [comments@efsec.wa.gov](mailto:comments@efsec.wa.gov)*

**Re: Whistling Ridge Energy Project**

Dear Ms. Bumpus and Mr. Caputo:

This letter is submitted on behalf of Friends of the Columbia Gorge regarding the Whistling Ridge Energy Project (“WREP” or “Project”), a controversial wind energy project that was proposed on March 10, 2009 to be sited in Skamania County, approved in part and denied in part by Governor Christine Gregoire on March 5, 2012, and whose Site Certification Agreement (“SCA”) expired ten years later, on March 5, 2022. Specifically, Friends objects to the flawed and deficient procedures that the Washington Energy Facility Site Evaluation Council (“EFSEC” or “Council”) has begun using to evaluate two separate requests that were apparently submitted earlier this year regarding the expired SCA.

Attached as Exhibit B is a copy of a letter dated nearly five years ago, on November 16, 2018, that Friends submitted to EFSEC and copied to EFSEC’s official adjudication service list for the Whistling Ridge Energy Project. In that letter, we advised the Council and all parties of record to the WREP contested case adjudication (including the certificate holder), nearly four years in advance, that the SCA would expire on March 5, 2022 unless WRE sought and received an extension prior to the deadline as required by WAC 463-68-080.

No such extension request was sought or approved prior to the March 5, 2022 expiration deadline. Nor did the certificate holder start or restart construction by that date. Nor did the certificate holder commence commercial operations by that date. Thus, pursuant to WAC 463-68-080(1) and (2), the Site Certification Agreement has expired by operation of law.

On September 12, 2023, at 5:27 p.m., I received an email from EFSEC with the subject heading “EFSEC Notice of Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request” (hereinafter “Email Notice”). A copy of that email is attached hereto as Exhibit A. Despite the subject heading of the Email Notice referring to a “Request” (singular), the body of the Email Notice appears to refer to two separate requests that have been apparently been received by EFSEC: one request to “[t]ransfer ownership of the SCA from SDS

Lumber Co. to Twin Creek Timber LLC” and a second request to “[e]xtend the current SCA to November 18, 2026, to the following entities for the below site,” with the “entities” apparently defined as “SDS Lumber Co. (original Certificate Holder) and Twin Creek Timber LLC (prospective Certificate Holder).” The Email Notice also appears to indicate that these two separate requests were submitted in April 2023 and June 2023, although the Email Notice does not explain which request was submitted in which month.

If it is indeed correct that two separate requests to revise the expired SSCA were submitted to EFSEC in April 2023 and June 2023, then EFSEC will need to hold two separate public hearings on these two separate requests, which were apparently submitted under different cover, on different dates, possibly by different entities, seeking different things (one of which apparently requests a transfer of the expired SCA to a new certificate holder and the other of which apparently requests an extension of the effective date of the expired SCA), and which are subject to different rules, standards, and procedures. Indeed, EFSEC’s own rules require different forms of filings for these two separate requests: for any request to transfer ownership of an SCA, a “formal application” must be submitted containing specific required information, WAC 463-66-100, while for other proposals to amend an SCA, only a written “request for amendment” need be submitted, WAC 463-66-030. And for any proposal to extend the expiration date of an SCA, the certificate holder must submit a substantial “report” to the Council describing the information required by WAC 463-68-060 as required by WAC 463-68-080(3), and the Council must make certain determinations pursuant to WAC 463-68-070. In short, the two pending requests are very different types of proposals that are governed by different substantive and procedural rules.

EFSEC cannot hear and review these two different proposals at the same hearing. Rather, EFSEC is required to process each of the two pending proposals separately under the rules, standards, and procedures that apply to it, which necessarily includes affording interested persons the opportunity to testify on each proposal at a public hearing designed specifically for that proposal. Failure to hold a separate public hearing for each of the pending proposals will violate EFSEC’s own rules as well as the due process requirements articulated in *Barrie v. Kitsap County*, 84 Wn. 2d 579, 527 P.2d 1377 (1974), which forbids agencies from disseminating misleading public notices that deceive the public into believing that two separate proposed actions will be treated as one action and will be heard together at a single hearing. Here, it would also violate interested persons’ due process rights to consolidate both matters into a single public hearing at which most of the time is taken up by the certificate holder, proposed transferee, and/or any applicant(s) presenting their multiple requests and the EFSEC staff making its own presentations, and then cutting such a hearing short at two hours, as the Email Notice seemingly threatens to do.

It is possible that EFSEC does intend to follow the law and hold two separate public hearings: one for the requested transfer and a second for the requested extension. Indeed, the Email Notice twice mentions a date of September 14, 2023 for a “virtual public special meeting,” and also twice mentions a date of October 9, 2023 for a “special meeting” and an “informational public meeting.” (*See* highlighted dates in attached Exhibit A.) If EFSEC does indeed intend to hold two separate public hearings for the two separate requests, then the agency should clarify which hearing date is for which pending request.

With that said, Friends has serious concerns about the belated nature of the Email Notice. The agency apparently received the two pending requests in April and June 2023, and yet did not disseminate the Email Notice until mid-September 2023, for a “meeting” that would occur only two days later (today), and a second “meeting” that would occur less than a month after that. New dates and times for the two required public hearings must be established and duly announced to the public pursuant to the required procedures.

In addition, the Email Notice fails to describe either of the required public hearings as a public “hearing.” Instead, it describes both hearings as “meetings.” It is important for EFSC to rectify this error, because the applicable law describes the required hearings as “hearings,” and the public need to be made aware that they will be entitled to the rights, privileges, and accoutrements that come with public hearings as required by applicable law.

For example, EFSEC’s own rules require the agency to “hold one or more public **hearing** sessions” for any proposed amendments to an SCA. WAC 463-66-030 (emphasis added). In addition, the EFSEC rules require the agency to hold an “information **hearing** on the application” for any proposal to transfer ownership of an SCA. WAC 463-66-100 (emphasis added). EFSEC cannot hold one or more “meetings” and expect them to constitute the “hearings” required by law. The public understands the differences between hearings and meetings; the agency should not imply that only the latter will be held.

EFSEC has also apparently completely failed to post on its website copies of the two pending proposals discussed in the Email Notice. Specifically, the Email Notice mentions two requests—one received by the agency in April 2023 and the other in June 2023. Yet it is now approximately five months after the first such request was allegedly received, and it is nowhere to be found on EFSEC’s website. Moreover, how does EFSEC expect the public to meaningfully comment on these two proposals without reviewing the proposals? EFSEC staff should provide a public explanation of why they have taken up to five months without posting these materials. In addition, the materials should be immediately posted on EFSEC’s website, notice of such postings should be disseminated to EFSEC’s mailing list for this Project, and a new public comment period should be established in order to facilitate meaningful comments.

On that note, the Email Notice omits any mention of any deadline for submitting written public comments on the two pending proposals. In fact, the Email Notice implies that the period for written public comments will not begin until the public meeting(s) are held, and will continue thereafter to some unspecified date. (“Speakers may have limited minutes to provide comments, and any additional comments will be directed to be submitted online or postal mail.”) When EFSEC schedules the required public hearings on the pending requests, the agency should announce in advance in the form of written public notices to the mailing list for this Project how long after the public hearings the record will be kept open for each matter, and specifically the date(s) by which any written comments to EFSEC must be postmarked and emailed.

We also note other problems with EFSEC’s webpage for the Whistling Ridge Energy Project at <https://www.efsec.wa.gov/energy-facilities/whistling-ridge-energy-project>. That page lists a document entitled “Whistling Ridge SCA Amendment Informational Meeting Notice” that is listed with a “document date” of October 9, 2023, yet the document was apparently posted to

the website on the afternoon of September 13, 2023, yet the file name for the document includes yet another date, September 14, 2023 (“20230914”):

[https://www.efsec.wa.gov/sites/default/files/096000/001/20230914\\_WR\\_SCAInfoMtg\\_Notice.pdf](https://www.efsec.wa.gov/sites/default/files/096000/001/20230914_WR_SCAInfoMtg_Notice.pdf). The true date of this document should be corrected and clarified on the website.

In addition, EFSEC’s WREP webpage supposedly includes a link to an “Application Review Process” elsewhere on the EFSEC website, but clicking that link returns a “Page not found” error. There is also no description of what is currently pending before the Council in 2023 regarding the WREP, other than a vague statement at the very bottom of the page that “The meeting for **the** Amended SCA will be held on October 9, 2023 at 5pm” (emphasis added) (as if there already is an “Amended SCA”).

EFSEC’s webpage for the WREP is not at all helpful in informing the public about the status of the Project and which requests are currently pending before the Council. These deficiencies should be rectified immediately, followed by the mailing of new public notices for the two public hearings required by law and announcing the necessary corrections and updates to the webpage.

On a grammatical note, Friends suggests using the word “would” rather than “will” to describe the potential effects of the pending requests. The use of the word “will” in the Email Notice (as in, “[t]he proposed revisions **will** change the following”) implies that it is a foregone conclusion that the pending requests “will” in fact be approved by the Council and “will” have the described effects. Unless the Council has already secretly decided to approve the pending requests, any public agency statements regarding these requests should be described in terms of what effects they “would” have, rather than what effects they “will have.”

In summary, EFSEC needs to correct and overhaul its WREP webpage, post all materials currently pending before the agency regarding the WREP on this webpage, schedule two separate public hearings on the two separate pending requests, and then mail new public notices announcing the date(s) and times of the public hearings to the full mailing list for the WREP, with clear instructions for participating at the hearings and instructions and deadlines by which written comments must be postmarked and emailed after the hearings. Failure to implement these actions will violate EFSEC’s rules and will continue to confuse the public, discourage public participation, and violate the due process rights of interested stakeholders. We sincerely hope that EFSEC will ensure that the review process for the Whistling Ridge Energy Project comports with the applicable law and facilitates, rather than discourages, public participation.

Thank you for your time and consideration. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Nathan Baker  
Senior Staff Attorney



# **EXHIBIT A**

**Nathan Baker**

---

**From:** Energy Facility Site Evaluation Council <WAEFSEC@public.govdelivery.com>  
**Sent:** Tuesday, September 12, 2023 5:27 PM  
**To:** Nathan Baker  
**Subject:** EFSEC Notice of Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request

Having trouble viewing this email? [View it as a Web page.](#)



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

P.O. Box 43172 · Olympia, Washington 98504-3172

- September 12, 2023 -

Contact: [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov)

**State of Washington  
Energy Facility Site Evaluation Council  
NOTICE OF SPECIAL MEETING AND OPPORTUNITY FOR PUBLIC COMMENT  
FOR AMENDMENTS TO THE SITE CERTIFICATION AGREEMENT FOR  
Whistling Ridge Energy, LLC  
Skamania County WA  
October 9, 2023  
5 PM**

### **Requests to Amend the Whistling Ridge Energy Project Site Certification Agreement**

In April 2023, and June 2023, Twin Creek Timber submitted requests to the Energy Facility Site Evaluation Council (EFSEC or Council) to amend the Site Certification Agreement (SCA) for the Whistling Ridge Energy Project. The first amendment request seeks approval from the Council of a transfer of ownership of the SCA from SDS Lumber Co. to Twin Creek Timber LLC (TCT). The second amendment request seeks a three-year extension of the SCA until November 18, 2026. EFSEC invites you to participate in its consideration of these amendment requests. The Council, as the state agency responsible for regulating Whistling Ridge Energy, will hold a virtual public special meeting on September 14, 2023, to provide an

opportunity for citizens, stakeholders, and interested persons or organizations to receive information and provide comments on the proposed SCA extension.

**The proposed revisions will change the following in the current SCA:**

1. Transfer ownership of the SCA from SDS Lumber Co. to Twin Creek Timber LLC.
2. Extend the current SCA to November 18, 2026, to the following entities for the below site:

**Site:** Whistling Ridge Energy, located approximately seven miles north of the City of White Salmon in Skamania County, Washington.

**Entities:** SDS Lumber Co. (original Certificate Holder) and Twin Creek Timber LLC (prospective Certificate Holder).

**Informational Public Meeting: October 9, 2023, 5 PM – 7 PM or last speaker whichever comes first:** Pursuant to WAC 463-66-030, EFSEC proposes to hold a virtual, public, special meeting on the evening of September 14, 2023. During the special meeting the prospective Certificate Holder will present their amendment requests and the Council will take public comment on the amendment requests for the Council’s consideration. Speakers may have limited minutes to provide comments, and any additional comments will be directed to be submitted online or postal mail. Duration of speaking time will be announced at the meeting, depending on the number of speakers signed up, to allow as many commenters as possible.

**Public Comment:** Public Comment will be accepted during the Public Information Meeting. If you are unable to attend this meeting, please send your comments in writing to [comments@efsec.wa.gov](mailto:comments@efsec.wa.gov) or to the EFSEC office mailing address below. An online database will also be open during the meeting at <https://comments.efsec.wa.gov/> for submission of written comments.

EFSEC  
621 Woodland Square Loop  
PO Box 43172  
Lacey, WA 98503-3172

**Where to review Whistling Ridge Energy’s SCA Amendment Request:**

Copies of the current Site Certification Agreement and the Certificate Holder’s amendment request are available at:

- <https://www.efsec.wa.gov/energy-facilities/whistling-ridge-energy-project>
- EFSEC  
621 Woodland Square Loop  
PO Box 43172  
Lacey, WA 98503-3172

**How to attend EFSEC’s Special Meeting:**

This meeting is being held remotely and may be attended virtually via Microsoft Teams online or via telephone at:

- Microsoft Teams: [https://bit.ly/WR\\_SCA\\_InfoMtg](https://bit.ly/WR_SCA_InfoMtg)

- By telephone: +1 (546) 999-2000 Conference ID: 750 124 217#

To facilitate this remote meeting, EFSEC would like to invite speakers to sign up ahead of the meeting. Anyone wishing to speak during the public meeting should please notify EFSEC by phone at (360) 664-1345 or email at [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov) before 5:00 pm on September 14, 2023.

For more information about the SCA Amendment, contact Lance Caputo at (360)-485-1664 or [lance.caputo@efsec.wa.gov](mailto:lance.caputo@efsec.wa.gov)

To request ADA accommodation or materials in a format for the visually impaired, contact the EFSEC office at (360) 664-1345.

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This email was sent to nathan@gorgefriends.org using govDelivery Communications Cloud on behalf of: State of Washington, Energy Facility Site Evaluation Council · 621 Woodland Square Loop SE · Lacey, WA 98503



# **EXHIBIT B**



# FRIENDS OF THE COLUMBIA GORGE

November 16, 2018

Kathleen Drew, Chair  
Stephen Posner, EFSEC Manager  
Washington Energy Facility Site Evaluation Council  
P.O. Box 47250  
Olympia, WA 98504-7250

**Re: Whistling Ridge Energy Project (Application No. 2009-01)**

Dear Ms. Drew and Mr. Posner:

We write on behalf of Friends of the Columbia Gorge (“Friends”) and Save Our Scenic Area (“SOSA”) to respond to the presentation and packet of documents submitted by Jason Spadaro and Timothy McMahan on behalf of Whistling Ridge Energy LLC (“WRE”) at the November 13, 2018 EFSEC meeting, regarding the Whistling Ridge Energy Project (“Project”), proposed by Whistling Ridge Energy LLC (“WRE”).

## **1. Project Background**

First, we will provide some background on the Project. Of all the wind energy projects that EFSEC has reviewed to date, the Whistling Ridge Energy Project is easily the most controversial and problematic, as well as the project most likely to cause significant environmental impacts. This is the first and only EFSEC-reviewed wind project proposed to be located within forested wildlife habitat. This is the first and only EFSEC-reviewed wind project proposed within a designated Special Emphasis Area for the federally listed Northern Spotted Owl. This is the first and only EFSEC-reviewed wind project proposed within three miles of the Lewis and Clark National Historic Trail, the Oregon Pioneer National Historic Trail, the Historic Columbia River Highway (designated as a National Historic District on the National Register of Historic Places, as well as a National Historic Landmark), and the Ice Age Floods National Geological Trail. This is the first and only EFSEC-reviewed wind project surrounded by recreational resources in every direction. This is the first and only EFSEC-reviewed wind project that would cause significant adverse impacts to Native American cultural resources. This is the first and only EFSEC-reviewed wind project for which multiple other agencies, including the United States Forest Service and the National Park Service, recommended that EFSEC and the Governor make substantial modifications to the project (not all of which were made by EFSEC’s recommendation and the Governor’s decision). This is the first and only EFSEC-reviewed wind

project that would cause significant adverse impacts in two states (not just Washington). And last but certainly not least, this is the first and only EFSEC-reviewed wind project that would cause significant adverse impacts to a National Scenic Area.

The Project was proposed along the boundary of the Columbia River Gorge National Scenic Area. The immense turbines would loom over the Gorge horizon and would be visible for many miles in every direction. The Project would permanently alter the scenic landscape within the Columbia River Gorge and Cascade Mountain Range, in an area that is visited by tourists from all over the world for its unique qualities, including dramatic mountain vistas, steep cliffs, pastoral lands, and the Columbia River. By diminishing Gorge scenic resources, the Project would also harm the local tourism economy and negatively affect property values in surrounding communities. It would also cause substantial traffic and road damage along local roads during construction.

The Project would also harm wildlife by permanently removing hundreds of acres of forested habitat, including land within a designated Northern Spotted Owl Special Emphasis Area. The Columbia River Gorge provides habitat for hundreds of bird species, and it is a major stopover for many migratory bird species. The site also provides habitat for multiple species of bats. Several Washington state or federally listed bird species could be affected by the Project, including the Northern spotted owl, Northern Goshawk, bald eagle, pileated woodpecker, and numerous migratory bird species. The site was never surveyed for birds during key migratory periods, and many of the surveys that were performed are now more than a decade old, making them stale and outdated today.

Hundreds of written and oral comments regarding the Project were submitted during EFSEC's review, and eighty-six percent of these public comments opposed or expressed concerns about the Project. Concerns were raised by several public resource management agencies, tourism groups, and environmental organizations, including the National Park Service, the U.S. Forest Service, the Washington Department of Natural Resources, the Washington Counsel for the Environment, the Skamania County Agri-Tourism Association, Sustainable Travel International, Friends of the Historic Columbia River Highway, Seattle Audubon Society, Vancouver Audubon Society, Kittitas Audubon Society, Columbia Gorge Audubon Society, American Bird Conservancy, Conservation Northwest, and the Gifford Pinchot Task Force (now the Cascade Forest Conservancy).

WRE filed the application for the Project on March 10, 2009, and amended the application on October 12, 2009. After a complex and lengthy adjudication, Governor Gregoire approved the Project and issued the Site Certification Agreement on March 5, 2012.

## **2. Current Project Status**

With that background, we wish to respond to several statements made by the WRE representatives at the November 13, 2018 EFSEC meeting, and in WRE's letter dated October 25, 2018. WRE has stated that it could not market the Project or "move the Project forward" for the past several years because the Project was "tied up" in litigation. This is incorrect. Injunctive

relief was never sought in the prior litigation, and thus nothing prevented WRE from proceeding with the Project.

The real reason the Project has been on hold for many years is because, as stated by Mr. Spadaro to EFSEC and to the media, the project is not economically viable. For example, in a statement made to the *The Oregonian* on March 5, 2012, Mr. Spadaro stated that the Project would be placed on hold because it was not currently feasible: “We’re not abandoning the project, but in the current environment of great uncertainty for renewable energy, the project is unlikely to move forward.”

In the more than six years since Mr. Spadaro’s statement to *The Oregonian*, WRE has attempted to market the Project, but has been unsuccessful at finding a buyer. Finally, even now that the prior litigation has been resolved, WRE has taken no steps to secure the remaining necessary permits and approvals, and has declined to announce a desired construction start date. Nor has WRE executed a Large Generator Interconnection Agreement with the Bonneville Power Administration to allow transmission of energy to the Federal Columbia River Power System. In short, the Project remains on hold even after the prior litigation has been resolved.

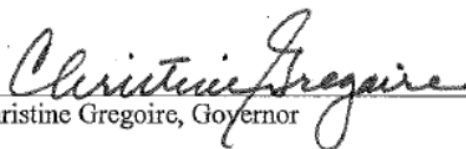
### 3. Five-Year Status Report Deadline

WRE’s letter to EFSEC, dated October 25, 2018, was not timely filed pursuant to WAC 463-68-060. That rule states that “[i]f construction does not both start within five years of the effective date of the site certification agreement and thereupon continue in a reasonably uninterrupted fashion toward project completion, then at least ninety days prior to the end of the five-year period, the certificate holder shall report to the council its intention to proceed or not to proceed with the project.”

Here, the effective date of the site certification agreement is March 5, 2012, the date Governor Gregoire approved EFSEC’s recommendation to approve up to 35 wind turbines, and signed a Site Certification Agreement for the project. The effective date of the SCA is shown on the face of the SCA itself, which states that it is “[d]ated and *effective this 5th day of March, 2012*” (emphasis added), above the Governor’s signature for the State of Washington (shown below).

Dated and effective this 5<sup>th</sup> day of March, 2012.

FOR THE STATE OF WASHINGTON

  
Christine Gregoire, Governor



Furthermore, the “effective date” in WAC 463-68-060 must mean the date the Governor approves a project on behalf of the State of Washington, as indicated by the Governor’s signature. Otherwise, an applicant could control the date for expiration of a site certification agreement under WAC 463-68-080 by indefinitely refusing to sign a Governor-approved SCA until years after the project is approved.

Moreover, the context of the Siting Act and the energy siting rules shows that the intent is to make the Governor’s issuance of a signed SCA the effective date, rather than the date of the applicant’s signature. For example, RCW 80.50.100(3)(a)(i) authorizes the Governor to “[a]pprove the application and execute the draft certification agreement.” Similarly, WAC 463-68-020 requires a certificate holder to comply with “the terms and conditions of the site certification agreement *approved by the governor*” (emphasis added). Accordingly, the same day that Governor Gregoire issued the SCA, she released an approval letter stating that she was “*approv[ing] and executing the enclosed Site Certification Agreement for the Whistling Ridge Wind Energy Project in Skamania County, with the terms and conditions as recommend by the Energy Facility Site Evaluation Council.*” The focus of these rules is the approval by the Governor, not the signature of the Applicant.

In this case, WRE did not sign the SCA for approximately twenty months after the Governor signed it. To extend the effective date of the SCA by this twenty-month period, as proposed by WRE, would reward WRE for its intentional delay in signing the SCA, and could lead to similar delays by other applicants after other projects are approved. It would be absurd and inconsistent with the intent of the law to allow an applicant to take as long as it wants to decide whether to sign a site certification agreement, thus allowing the applicant unilateral control over the expiration deadline of a State-issued SCA.

Here, because the effective date of the SCA for this Project is March 5, 2012, the five-year status report required by WAC 463-68-060 was due by December 5, 2016 (90 days prior to five years after Governor Gregoire issued the SCA). WRE’s October 25, 2018 letter was instead submitted nearly two years after the deadline. WRE failed to provide any explanation as to why it missed this deadline, other than its erroneous statement of the effective date of the Site Certification Agreement.<sup>1</sup>

#### **4. Deadline to Commence Construction**

WRE’s deadline to commence construction is March 5, 2022. That date will be “ten years [from] the effective date of the site certification agreement,” which is the expiration date pursuant to WAC 463-68-030 and -080. Thus, the SCA will expire on March 5, 2022 unless WRE seeks and receives an extension of the deadline pursuant to WAC 463-68-080. We ask the Council to confirm this deadline to commence construction. It is important that WRE adhere to

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<sup>1</sup> Even under WRE’s erroneous interpretation of the effective date of the SCA, WRE submitted its five-year status report more than two months late. Under WRE’s erroneous interpretation of the effective date, the status report would have been due August 20, 2018. WAC 463-68-060 (status report due “at least ninety days prior to the end of the five-year period”).

this deadline, especially given the potential for the environmental impacts posed by this Project to change over time, and given the fact that the wildlife surveys and other baseline data for this Project are already a decade old, and thus stale and outdated.

## **5. Future Permitting Decisions**

Prior to commencing construction, WRE will need to apply for multiple additional permits and provide significant information to EFSEC for new permitting decisions. In its decision on the Project, the Washington Supreme Court held that the submission of WRE's application was only "the starting point of a longer process and [that] more specific decisions are addressed throughout the process." The Court also held that EFSEC's decisional standards in WAC 463-62 did not apply to the review of the Project prior to the Governor's decision; rather, the Court held that these standards will apply to future decisions, as construction and operation standards. The Court also endorsed EFSEC's approach of deferring review of and decisions on the Project's forest practices components to a later date. Finally, the Court noted that "the final size and location of the site is not known . . . , making a full discussion of specific mitigation measures" premature until Project details are finalized.

In sum, the Court held that multiple issues—including the final project details and impacts, compliance with the standards in WAC 463-62, forest practices, and appropriate mitigation—remain unresolved and undecided. The Court also held that these issues were not yet "ripe" for judicial review. The Court also acknowledged EFSEC's and the Governor's arguments that the public will be allowed to participate in the decision-making process for unresolved and deferred issues.

After the issuance of the Washington Supreme Court decision, Mr. Posner wrote to us on March 26, 2014 "to reassure you that Friends and SOSA will be afforded the same opportunities as any other interested members of the public, or public interest organizations, as EFSEC carries out its responsibilities with respect to this SCA going forward. You will continue to be apprised of any public process in this regard and we welcome your participation." Friends and SOSA remain interested in participating in EFSEC's future review of and decision-making processes for this Project, and reiterate our request to be included in any announcements or discussions regarding these issues.

## **6. Visual Simulations**

Finally, we wish to comment on the visual simulations of the Project submitted by WRE at the November 13, 2018 EFSEC meeting. These simulations, showing the view of the Project from Viewpoint 13 (Interstate 84 Eastbound), appear to have been cherry-picked by WRE in order to show fewer aesthetic impacts for the approved Project than as viewed from other viewpoints.

In addition, Mr. Spadaro stated at the November 13 meeting that the visual simulations in WRE's packet are "from the EIS." This is inaccurate. The page in WRE's packet showing visual simulations is a new document never previously submitted to EFSEC. It purports to show the Project as permitted by EFSEC. This is the first time WRE has ever released such a simulation.

Previously, WRE refused to release simulations showing less than the 50 turbines proposed in the application, and WRE's counsel instead urged the Council members to "just simply look at the visual simulations if you want and imagine a lot less turbines, and that's sufficient information for consideration of the project."

Moreover, the undated simulations provided at the November 13 meeting do not contain the wirelines, bearings, field of view, distance, turbine dimensions, and numbers of hubs and tips visible, all of which were provided in the simulations in the FEIS. *See* Whistling Ridge FEIS, fig. 3.9-10 (Viewpoint 13).

Finally, it should be noted that the Council rejected the visual simulations in the FEIS because they were not at the correct focal length, and requested that WRE prepare and submit new simulations (*see* EFSEC Order No. 859 at 3), which WRE did in December 2010 (*see* Applicant's Adjudication Exhibit 8.08r). Like the rejected simulations in the FEIS, the undated simulations provided in WRE's packet also appear to be simulated at an incorrect focal length and are neither displayed nor printed on an appropriate paper size. For those and other reasons, the undated simulations provided at the November 13 meeting fail to accurately portray the scale and visual impacts of the Project as viewed from Viewpoint 13.

## 7. Conclusion

Thank you for your time and consideration. If you have any questions or comments, please do not hesitate to contact us.

Sincerely yours,

Reeves, Kahn, Hennessy & Elkins



Gary K. Kahn  
Attorney for Friends of the Columbia Gorge

Friends of the Columbia Gorge



Nathan Baker  
Senior Staff Attorney

Aramburu & Eustis, LLP



J. Richard Aramburu  
Attorney for SOSA

cc: Ann Essko, EFSEC Senior Counsel  
EFSEC Service List, Whistling Ridge Energy Project



*SUBMITTED VIA E-MAIL*

September 14, 2023

Sonia Bumpus, Director  
Lance Caputo, Site Specialist  
Washington Energy Facility Site Evaluation Council  
*Via email to comments@efsec.wa.gov*

**Re: Whistling Ridge Energy Project**

Dear Ms. Bumpus and Mr. Caputo:

This morning at 9:58 a.m., approximately fourteen minutes after I submitted my earlier correspondence addressed to your attention, I received another email from EFSEC with the subject heading “REVISED EFSEC Notice of Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request” (hereinafter “Revised Email Notice”). A copy of the Revised Email Notice is attached hereto as Exhibit A.

The Revised Email Notice suffers from all of the same defects as the original Email Notice. The Revised Email Notice appears to refer to only a single “Request” in the subject heading. The Revised Email Notice is at best unclear about whether two separate public hearings are scheduled (as required by EFSEC’s rules and due process considerations), and whether these will indeed be public hearings or just public “meetings.” The Revised Hearing Notice continues to state two different days for these “meetings” (hearings?), September 14, 2023 (today), and October 9, 2023. The Revised Email Notice continues to omit any mention of the comment deadlines, including specifically the date(s) by which any written comments to EFSEC must be postmarked and emailed. The Revised Email Notice continues to be grammatically phrased as if the requested changes to the Site Certification Agreement (“SCA”) have already been approved by the Council, for example by stating that the proposed changes “**will** change the following in the current SCA.”

Friends of the Columbia Gorge reiterates our request to remedy these deficiencies immediately by scheduling two separate public hearing date(s) and times for the two pending matters, and then mail and email new public notices (correcting the errors discussed in Friends’ comments of today), announcing the date(s) and times of the public hearings to the full mailing list(s) for the WREP, with clear instructions for participating at the hearings and instructions and deadlines by which written comments must be postmarked and emailed after the hearings.

Also attached for the record as Exhibit B is a copy of EFSEC's deficient webpage for the Whistling Ridge Energy Project as it appeared at 10:20 a.m. this morning. I have been unable to access most pages on the EFSEC website most of the morning today, which is a cause for concern given that EFSEC has never posted many of the materials needed for Friends of the Columbia Gorge and the rest of the interested public to review the pending requests and provide meaningful comments. Please advise when the website will be accessible and when the Whistling Ridge Energy Project webpage specifically has been updated to correct the errors and deficiencies discussed in my prior letter of today.

Finally, as discussed above, the Revised Email Notice still references a "meeting" date of today, September 14, 2023. Please register me to speak at this "meeting" on behalf of Friends of the Columbia Gorge.

Thank you for your time and consideration. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Nathan Baker". The signature is written in a cursive, slightly slanted style.

Nathan Baker  
Senior Staff Attorney

# **EXHIBIT A**

**Nathan Baker**

---

**From:** Energy Facility Site Evaluation Council <WAEFSEC@public.govdelivery.com>  
**Sent:** Thursday, September 14, 2023 9:58 AM  
**To:** Nathan Baker  
**Subject:** REVISED EFSEC Notice of Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request

Having trouble viewing this email? [View it as a Web page.](#)



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

P.O. Box 43172 · Olympia, Washington 98504-3172

- September 12, 2023 -

Contact: [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov)

**State of Washington  
Energy Facility Site Evaluation Council  
NOTICE OF SPECIAL MEETING AND OPPORTUNITY FOR PUBLIC COMMENT  
FOR AMENDMENTS TO THE SITE CERTIFICATION AGREEMENT FOR  
Whistling Ridge Energy, LLC  
Skamania County WA  
October 9, 2023  
5 PM**

### **Requests to Amend the Whistling Ridge Energy Project Site Certification Agreement**

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opportunity for citizens, stakeholders, and interested persons or organizations to receive information and provide comments on the proposed SCA extension.

**The proposed revisions will change the following in the current SCA:**

1. Transfer ownership of the SCA from SDS Lumber Co. to Twin Creek Timber LLC.
2. Extend the current SCA to November 18, 2026, to the following entities for the below site:

**Site:** Whistling Ridge Energy, located approximately seven miles northeast of the City of White Salmon in Skamania County, Washington.

**Entities:**

SDS Lumber Co. (original Certificate Holder) and Twin Creek Timber LLC (prospective Certificate Holder).

**Informational Public Meeting: Monday, October 9, 2023, 5 PM – 7 PM or last speaker whichever comes first:** Pursuant to WAC 463-66-030, EFSEC proposes to hold a virtual, public, special meeting on the evening of **September 14, 2023**. During the special meeting the prospective Certificate Holder will present their amendment requests and the Council will take public comment on the amendment requests for the Council’s consideration. Speakers may have limited minutes to provide comments, and any additional comments will be directed to be submitted online or postal mail. Duration of speaking time will be announced at the meeting, depending on the number of speakers signed up, to allow as many commenters as possible.

**Public Comment:** Public Comment will be accepted during the Public Information Meeting. If you are unable to attend this meeting, please send your comments in writing to [comments@efsec.wa.gov](mailto:comments@efsec.wa.gov) or to the EFSEC office mailing address below. An online database will also be open during the meeting at <https://comments.efsec.wa.gov/> for submission of written comments.

EFSEC  
621 Woodland Square Loop  
PO Box 43172  
Lacey, WA 98503-3172

**Where to review Whistling Ridge Energy’s SCA Amendment Request:**

Copies of the current Site Certification Agreement and the Certificate Holder’s amendment request are available at:

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- EFSEC  
621 Woodland Square Loop  
PO Box 43172  
Lacey, WA 98503-3172

**How to attend EFSEC’s Special Meeting:**

This meeting is being held remotely and may be attended virtually via Microsoft Teams online or via telephone at:



- Microsoft Teams: [https://bit.ly/WR\\_SCA\\_InfoMtg](https://bit.ly/WR_SCA_InfoMtg)
- By telephone: +1 (546) 999-2000 Conference ID: 750 124 217#

To facilitate this remote meeting, EFSEC would like to invite speakers to sign up ahead of the meeting. Anyone wishing to speak during the public meeting should please notify EFSEC by phone at (360) 664-1345 or email at [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov) before 5:00 pm on October 9, 2023.

For more information about the SCA Amendment, contact Lance Caputo at (360)-485-1664 or [lance.caputo@efsec.wa.gov](mailto:lance.caputo@efsec.wa.gov)

To request ADA accommodation or materials in a format for the visually impaired, contact the EFSEC office at (360) 664-1345.

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# **EXHIBIT B**



# State of Washington Energy Facility Site Evaluation Council

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**[Whistling Ridge Energy Project \(/energy-facilities/whistling-ridge-energy-project\)](/energy-facilities/whistling-ridge-energy-project)**

[Whistling Ridge Energy Project Application \(/energy-facilities/whistling-ridge-energy-project/whistling-ridge-energy-project-application\)](/energy-facilities/whistling-ridge-energy-project/whistling-ridge-energy-project-application)

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[Whistling Ridge Energy Project SEPA \(/energy-facilities/whistling-ridge-energy-project/whistling-ridge-energy-project-sepa\)](/energy-facilities/whistling-ridge-energy-project/whistling-ridge-energy-project-sepa)

[Whistling Ridge Energy Project Site Certification Agreement \(SCA\) \(/energy-facilities/whistling-ridge-energy-project/whistling-ridge-energy-project-sca\)](/energy-facilities/whistling-ridge-energy-project/whistling-ridge-energy-project-sca)

[Wild Horse Wind Power Project \(/energy-facilities/wild-horse-wind-power-project\)](/energy-facilities/wild-horse-wind-power-project)

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## Whistling Ridge Energy Project

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Assigned Site Specialist  
**Lance Caputo**

**Applicant:** Whistling Ridge Energy LLC  
PO Box 266  
Bingen, WA 98605  
(509) 493-6103

**Facility:** 75 MW wind power project

**Location:** Skamania County, Washington, approximately 7

## General Information:

- Adjudicative Proceeding - EFSEC held an adjudicative proceeding on the Whistling Ridge Energy Project under Chapter 34.05 RCW, the Administrative Procedure Act and has commenced the adjudicative hearing related to Application No. 2009-01 in accordance with the procedural requirements found in Chapter 463-30 WAC and Chapter 34.05 RCW. See the Adjudication page for information, motions, orders, and filings related to EFSEC adjudicative proceedings of the Whistling Ridge Energy Project.
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- Land Use Consistency - On May 7, 2006 EFSEC held a Land Use Consistency hearing in Skamania County.

Whistling Ridge Orders

## SCA Amendment Special Meeting

The meeting for the Amended SCA will be held on October 9, 2023 at 5pm.

Special Meeting Documents

### SCA Meeting 2023

**Document Title (/energy-facilities/whistling-ridge-energy-project?order=field\_doc\_friendly\_name&sort=asc)**

Whistling Ridge SCA Amendment Informational Meeting Notice  
 ([https://www.efsec.wa.gov/sites/default/files/096000/001/20230914\\_WR\\_](https://www.efsec.wa.gov/sites/default/files/096000/001/20230914_WR_)

## Email Updates

To sign up for updates or to access your subscriber preferences, please enter your contact information below.

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miles northwest of White Salmon, Washington. Site Location Figure

**Status:** The EFSEC Council has prepared a recommendation order to the Governor. Review the recommendation process Amended Application submitted on Oct. 12, 2009, application review continuing. Adjudicative Proceeding initiated, Notice for intervention issued on June 25, 2009. Application review initiated. Land Use Consistency hearing held on May 7, 2009.

Recent Activity

10/09/2023 - Whistling Ridge SCA Amendment Informational Meeting Notice

(<https://www.efsec.wa.gov/sites/c>

03/24/2022 - SCA Transfer Request Green Diamond  
 (<https://www.efsec.wa.gov/sites/c>

03/02/2022 - SCA Extension Request 2022  
 (<https://www.efsec.wa.gov/sites/c>  
 2-2022\_1.pdf)

11/18/2013 - Site Certification Agreement  
 (<https://www.efsec.wa.gov/sites/c>

04/03/2012 - April 3, 2012 Superior Court Petition of Judicial Review

(<https://www.efsec.wa.gov/sites/c>

03/05/2012 - Governor's approval letter  
 (<https://www.efsec.wa.gov/sites/c>

Submit

01/06/2012 - 871 Order Denying  
FCG and SOSA motion  
(<https://www.efsec.wa.gov/sites/c>

01/04/2012 - EFSEC's  
Recommendation to the  
Governor Letter  
(<https://www.efsec.wa.gov/sites/c>

12/27/2011 - 870 Order Denying  
Petitions for Reconsideration of  
Orders 868 & 869  
(<https://www.efsec.wa.gov/sites/c>

12/27/2011 - Special Meeting  
(<https://www.efsec.wa.gov/sites/c>

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*SUBMITTED VIA E-MAIL*

September 15, 2023

Sonia Bumpus, Director  
Lance Caputo, Site Specialist  
Washington Energy Facility Site Evaluation Council  
*Via email to comments@efsec.wa.gov*

**Re: Whistling Ridge Energy Project**

Dear Ms. Bumpus and Mr. Caputo:

This afternoon (at approximately 3:19 p.m.), EFSEC disseminated yet another revised email notice regarding the Whistling Ridge Energy Project (“WREP” or “Project”). The subject heading is “AMENDED EFSEC Notice of Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request” (hereinafter “Second Revised Email Notice”). A copy of the Second Revised Email Notice is attached hereto as Exhibit A.

The Second Revised Email Notice suffers from many of the same defects as the original Email Notice and the Revised Email Notice. The Second Revised Email Notice appears to refer to only a single “Request” in the subject heading. The Second Revised Email Notice is at best unclear about whether two separate public hearings are scheduled (as required by EFSEC’s rules and due process considerations), and whether these will indeed be public hearings or just public “meetings.” The Revised Email Notice continues to omit any mention of the comment deadlines, including specifically the date(s) by which any written comments to EFSEC must be postmarked and emailed. The Revised Email Notice continues to be grammatically phrased as if the requested changes to the Site Certification Agreement (“SCA”) have already been approved by the Council, for example by stating that the proposed changes “will change the following in the current SCA.

Also, this afternoon, EFSEC posted two documents on its Whistling Ridge webpage: a September 13, 2023 request to extend the term of the expired SCA (“Extension Request”), and a September 13, 2023 application to transfer the SCA to a new owner (“Transfer Application”).

It is unclear whether EFSEC staff have gone through any sort of process to determine whether the Extension Request and Transfer Application are complete and include all the information required by applicable law. In fact, we know that the original Email Notice announcing a public “meeting” on the Extension Request and Transfer Application was disseminated by EFSEC staff on September 12, 2023, **one day before** the Extension Request and

Transfer Application were received by EFSEC. Thus, it appears that EFSEC staff decided to schedule a public “meeting” on Extension Request and Transfer Application without even having seen these documents. It would seem that in this instance, the cart was put before the horse. The EFSEC staff should publicly explain what steps were taken to review the Extension Request and Transfer Application for completeness.

This week, as soon as Friends of the Columbia Gorge learned that there is new activity regarding the WREP (after nearly 12 years of the site certificate holder, Whistling Ridge Energy, LLC (“WRE”), sitting on its proverbial hands and not taking a single step to pursue development of the project), Friends filed a series of public records requests with EFSEC to learn more about the status of the Project, the nature of the pending requested actions, and any communications that has occurred regarding these matters. Although EFSEC staff are diligently working to fulfill Friends’ records requests, EFSEC staff estimates that it could be a couple of months before the records will be available.

Specifically, EFSEC staff estimates for Public Records Request (“PRR”) #R000199-091523 that the records may not be available until November 17, 2023, and for PRR # R000195-091423 that the records may not be available until November 13, 2023. These records are absolutely essential for Friend and its members and supporters to understand the proposals now pending before the Council, especially given the scarce and internally conflicting information posted on EFSEC’s Whistling Ridge webpage and the cryptic and confusing nature of EFSEC’s Email Notices. Furthermore, Friends’ public records requests were made in good faith and on a timely basis. We requested the records within two days of when the Extension Request and Transfer Application were submitted to EFSEC.

EFSEC should not conclude its public process for the pending proposed actions without first producing the requested public records, which, again, are essential for Friends and the public at large to understand the proposed actions, their potential impacts on the environment, and whether they comply with the applicable law.

Regarding EFSEC’s Whistling Ridge webpage, it remains woefully out of date and confusing to the public. For example, the webpage currently states the following for the “[s]tatus” of the Project:

**Status:** The EFSEC Council has prepared a recommendation order to the Governor. Review the recommendation process Amended Application submitted on Oct. 12, 2009, application review continuing. Adjudicative Proceeding initiated, Notice for intervention issued on June 25, 2009. Application review initiated. Land Use Consistency hearing held on May 7, 2009.

Obviously, this “status” is more than fourteen years out of date. As a result, EFSEC’s webpage, which EFSEC is directing people to in its official notices for the Project, fails to inform the public about the Project’s true status, and instead, misleads and confuses the public with inaccurate, erroneous, and outdated information.



Given the many problems so far with EFSEC's process for reviewing the pending proposals, many of which still have not yet been rectified, and the fact that the requested public records relevant to these matters may not be produced until mid-November, 2023, Friends requests that the agency schedule the public hearings on these matters for December 2023. At the very least, the records for written comments on these matters should be kept open until December 2023.

This is an eminently reasonable request, especially in light of the fact that this Project sat dormant for so many years before the SCA expired, and that there was very little activity thereafter as well. As a reminder, the SCA was issued and made "effective" by Governor Gregoire on March 5, 2012—eleven and a half years ago. During all that time, the site certificate holder, Whistling Ridge Energy, LLC ("WRE"), never took a single step to pursue development of the project, and instead let the SCA expire on March 5, 2022 (despite being warned by Friends in advance of that potential outcome). Furthermore, in 2021, WRE's parent company, SDS Lumber Co., divested itself of WRE and of the Project site to a new owner, washing its hands of this controversial Project. And even though a new company has owned the site for nearly two years, WRE waited until this week (in September 2023) to submit the Transfer Application and Extension Request. Given these very lengthy delays on the part of WRE, it is reasonable for EFSEC staff to ensure full public participation by ensuring that the public process on the pending proposed actions remains open at least until EFSEC staff have had sufficient time to produce the requested public records.

Friends of the Columbia Gorge reiterates our request to remedy these deficiencies immediately by scheduling public hearing date(s) and times for the two pending matters (both of which should be scheduled for December 2023 as discussed above), and then mailing and emailing new public notices (correcting the errors discussed in Friends' written comments to date), announcing the date(s) and times of the public hearings to the full mailing list(s) for the WREP, with clear instructions for participating at the hearings and instructions and deadlines by which written comments must be postmarked and emailed after the hearings.

Friends restates our sincere hope that EFSEC will ensure that the review process for the Whistling Ridge Energy Project is fair, comports with the applicable law, and facilitates, rather than discourages, public participation.

Thank you for your time and consideration. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Nathan Baker  
Senior Staff Attorney

# **EXHIBIT A**

**Nathan Baker**

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**From:** Energy Facility Site Evaluation Council <WAEFSEC@public.govdelivery.com>  
**Sent:** Friday, September 15, 2023 3:19 PM  
**To:** Nathan Baker  
**Subject:** AMENDED EFSEC Notice of Special Informational Meeting for Whistling Ridge Site Certification Agreement Amendment Request

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STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

P.O. Box 43172 · Olympia, Washington 98504-3172

- September 15, 2023 -

Contact: [efsec@efsec.wa.gov](mailto:efsec@efsec.wa.gov)

**State of Washington  
Energy Facility Site Evaluation Council  
NOTICE OF SPECIAL MEETING AND OPPORTUNITY FOR PUBLIC COMMENT  
FOR AMENDMENTS TO THE SITE CERTIFICATION AGREEMENT FOR  
Whistling Ridge Energy, LLC  
Skamania County WA  
October 9, 2023  
5 PM**

**Notice Issued: September 15, 2023**

**Requests to Amend the Whistling Ridge Energy Project Site Certification Agreement**

In September 2023, Twin Creek Timber submitted requests to the Energy Facility Site Evaluation Council (EFSEC or Council) to amend the Site Certification Agreement (SCA) for the Whistling Ridge Energy Project. The first amendment request seeks approval from the Council of a transfer of ownership of the SCA from SDS Lumber Co. to Twin Creek Timber LLC (TCT). The second amendment request seeks a three-year extension of the SCA until November 18, 2026. EFSEC invites you to participate in its consideration of these amendment requests. The Council, as the state agency responsible for regulating Whistling Ridge Energy, will hold a virtual public special meeting on October 9, 2023, to provide an opportunity

for citizens, stakeholders, and interested persons or organizations to receive information and provide comments on the proposed SCA extension.

**The proposed revisions will change the following in the current SCA:**

1. Transfer ownership of the SCA from SDS Lumber Co. to Twin Creek Timber LLC.
2. Extend the current SCA to November 18, 2026, to the following entities for the below site:

**Site:** Whistling Ridge Energy, located approximately seven miles north of the City of White Salmon in Skamania County, Washington.

**Entities:** SDS Lumber Co. (original Certificate Holder) and Twin Creek Timber LLC (prospective Certificate Holder).

**Informational Public Meeting: October 9, 2023, 5 PM – 7 PM or last speaker whichever comes first:** Pursuant to WAC 463-66-030, EFSEC proposes to hold a virtual, public, special meeting on the evening of October 9, 2023. During the special meeting the prospective Certificate Holder will present their amendment requests and the Council will take public comment on the amendment requests for the Council’s consideration. Speakers may have limited minutes to provide comments, and any additional comments will be directed to be submitted online or postal mail. Duration of speaking time will be announced at the meeting, depending on the number of speakers signed up, to allow as many commenters as possible.

**Public Comment:** Public Comment will be accepted during the Public Information Meeting. If you are unable to attend this meeting, please send your comments in writing to [comments@efsec.wa.gov](mailto:comments@efsec.wa.gov) or to the EFSEC office mailing address below. An online database will also be open during the meeting at <https://comments.efsec.wa.gov/> for submission of written comments.

EFSEC  
621 Woodland Square Loop  
PO Box 43172  
Lacey, WA 98503-3172

**Where to review Whistling Ridge Energy’s SCA Amendment Request:**

Copies of the current Site Certification Agreement and the Certificate Holder’s amendment request are available at:

- <https://www.efsec.wa.gov/energy-facilities/whistling-ridge-energy-project>
- EFSEC  
621 Woodland Square Loop  
PO Box 43172  
Lacey, WA 98503-3172

**How to attend EFSEC’s Special Meeting:**

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- Microsoft Teams: [https://bit.ly/WR\\_SCA\\_InfoMtg](https://bit.ly/WR_SCA_InfoMtg)

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# **EXHIBIT B**



State of Washington

# Energy Facility Site Evaluation Council

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## ENERGY FACILITIES (/ENERGY-FACILITIES)

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Assigned Site Specialist

**Lance Caputo**

**Applicant:** Whistling Ridge Energy LLC  
PO Box 266  
Bingen, WA 98605  
(509) 493-6103

**Facility:** 75 MW wind power project



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### General Information:

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**Location:** Skamania County, Washington, approximately 7 miles northwest of White Salmon, Washington. Site Location Figure

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Whistling Ridge Orders

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Special Meeting Documents

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★ **Email Address**

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#### Recent Activity

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09/13/2023 - Whistling Ridge SCA Transfer Request (<https://www.efsec.wa.gov/sites/default/files/096000/001/Whistling%20Ridge%20Transfer%20%2809-23%29.pdf>)

09/13/2023 - Whistling Ridge SCA Extension Request (<https://www.efsec.wa.gov/sites/default/files/096000/001/WRE%20Project%20Request%29%20%28005%29.pdf>)

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03/02/2022 - SCA Extension Request 2022

([https://www.efsec.wa.gov/sites/default/files/096000/02572/Whistling%20Ridge%20Energy%](https://www.efsec.wa.gov/sites/default/files/096000/02572/Whistling%20Ridge%20Energy%20)

11/18/2013 - Site Certification Agreement

([https://www.efsec.wa.gov/sites/default/files/096000/02570/20131118\\_SCA\\_Updated.pdf](https://www.efsec.wa.gov/sites/default/files/096000/02570/20131118_SCA_Updated.pdf))

04/03/2012 - April 3, 2012 Superior Court Petition of Judicial Review

([https://www.efsec.wa.gov/sites/default/files/096000/02562/20120403\\_Appeal.pdf](https://www.efsec.wa.gov/sites/default/files/096000/02562/20120403_Appeal.pdf))

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([https://www.efsec.wa.gov/sites/default/files/096000/02565/20120305\\_GovAprvLtr.pdf](https://www.efsec.wa.gov/sites/default/files/096000/02565/20120305_GovAprvLtr.pdf))

01/06/2012 - 871 Order Denying FCG and SOSA motion

([https://www.efsec.wa.gov/sites/default/files/096000/02560/20120106\\_871.pdf](https://www.efsec.wa.gov/sites/default/files/096000/02560/20120106_871.pdf))

01/04/2012 - EFSEC's Recommendation to the Governor Letter

([https://www.efsec.wa.gov/sites/default/files/096000/02565/20120104\\_GovRecLtr.pdf](https://www.efsec.wa.gov/sites/default/files/096000/02565/20120104_GovRecLtr.pdf))

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the date shown below, I served a true and correct copy of the  
3 foregoing FRIENDS OF THE COLUMBIA GORGE’S SCHEDULING MOTION on each of the  
4 persons named below via email:

5 Timothy L. McMahan  
6 Stoel Rives LLP  
7 tim.mcmahan@stoel.com  
8 *Attorney for Whistling Ridge Energy, LLC*

9 Greg Corbin, Senior Special Counsel  
10 Green Diamond Management Company  
11 greg.corbin@greendiamond.com

12 DATED this 18th day of September, 2023.

13 By: s/ Nathan J. Baker  
14 Nathan J. Baker, WSBA No. 35195  
15 Friends of the Columbia Gorge  
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