

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of:

APPLICATION NO. 2009-01
of
Whistling Ridge Energy Project, LLC
for
WHISTLING RIDGE ENERGY PROJECT

COUNCIL ORDER No. 869

Whistling Ridge Order No. 24

Order and Report to the Governor
Recommending Approval of Site
Certification in Part, on Condition

Application: Whistling Ridge Energy, LLC, ("Applicant") filed with the Washington Energy Facility Site Evaluation Council (EFSEC or Council) on March 10, 2009 (revised October 12, 2009), Application No. 2009-01 for a Site Certification Agreement (SCA) to construct and operate up to 50 wind turbines, to generate up to 75 megawatts (MW) of energy. It proposes a site of about 115 acres near the community of Underwood, Washington, to build and operate the Whistling Ridge Energy Project ("Project"), consisting of a series of "strings" or lines of turbines, with associated infrastructure.

Recommendation: The Council hereby recommends approval, in part, and denial, in part, of the Whistling Ridge Energy Project in Skamania County. The Council also recommends that certain conditions be imposed insofar as the application is approved, as discussed below.

Parties: Parties to the review of the application appeared and were represented as follows:

Applicant, Whistling Ridge Power Project LLC: Timothy McMahan, attorney, Stoel Rives, Vancouver, Washington and Erin Anderson, attorney, Stoel Rives, Seattle, Washington and Darrell Peeples, attorney, Olympia, Washington.

Counsel for the Environment: Bruce Marvin, Assistant Attorney General, Olympia, Washington.

Department of Commerce: Dorothy H. Jaffe, Assistant Attorney General, Olympia, Washington.

Friends of the Columbia Gorge: Gary K. Kahn, attorney, Reeves, Kahn & Hennessy, Portland, Oregon, and Nathan Baker, attorney, Portland, Oregon.

Save Our Scenic Area: J. Richard Aramburu, attorney, Aramburu & Eustis, LLP, Seattle, Washington.

Skamania County: Susan Drummond, attorney, Seattle, Washington.

Seattle Audubon Society: Shawn Cantrell, Executive Director, Seattle, Washington.

Economic Development Group of Skamania County: Ron Cridlebaugh, Executive

Director, Skamania, Washington.

Skamania County Public Utility District No. 1: Kenneth B Woodrich, attorney, Stevenson, Washington.

Skamania County Economic Development Council: Peggy Bryan-Miller, Stevenson, Washington.

Skamania County Agri-Tourism Association: John Crumpacker, Underwood, Washington.

Association of Washington Business: Chris McCabe, Olympia, Washington.

City of White Salmon: David Poucher, Mayor, White Salmon, Washington.

Klickitat County Public Economic Development Authority: Michael Canon, Executive Director, Goldendale, Washington.

Klickitat and Cascades Tribes of the Yakama Nation: Wilbur Slockish, Jr., Bingen, Washington.

Port of Skamania County: Bradley W. Andersen, attorney, Schwabe, Williamson & Wyatt PC, Vancouver, Washington.

Confederated Tribes and Bands of the Yakama Nation: George Colby, attorney, Toppenish, Washington.

Executive Summary: The Council carefully considered: 1) the statutory policies on need for energy at a reasonable cost and need to minimize environmental impacts; 2) the record, findings and conclusions of the Adjudicative Order; 3) the Final Environmental Impact Statement; 4) commitments of the Applicant made in the Application, at hearings, and in relevant documents; and 5) the draft Site Certification Agreement accompanying this order with proposed restrictions, conditions and requirements relating to construction, operation and mitigation of the proposed Project.

We conclude that the Whistling Ridge Energy Project, with modifications we recommend, will provide the region with energy benefits and will not result in significant, unmitigated adverse environmental impacts. Most significantly, the Council proposes in mitigation a reduced Project footprint to reduce its visibility from and visual intrusion into points within and outside the Columbia Gorge. The result is a Project that is significantly reduced in presence and much less prominently visible. With the recommended mitigation measures, the proposed Project meets the requirements of applicable law and comports with the policy and intent of Chapter 80.50 RCW.

INTRODUCTION

The Applicant and the Project

The Applicant is Whistling Ridge Energy, LLC, wholly owned by S.D.S. Co., LLC. Applicant proposes a renewable energy generation facility with a maximum of 50 wind turbines and a maximum installed nameplate capacity of 75 megawatts (MW). The Project would be constructed in designated corridors on or near ridge tops on the northern rim of the Columbia River Gorge, near the border between Washington and Oregon. The Project would interconnect with Bonneville Power Administration (BPA) transmission lines (which transect the site) through a substation to be constructed.

The proposed Project covers approximately 1,000 acres. About 50 acres are needed for the permanent footprint of the proposed turbines and support facilities, with about 50 additional acres temporarily affected. The Council's Adjudication Order determines that the Project is consistent and in compliance with local land use plans and zoning regulations.¹

The Project would utilize a series of 3-bladed wind turbines on tubular steel towers to generate electricity. Turbines would range from 2.0 MW to 2.5 MW (generator nameplate capacity),² placed on towers up to 425 feet high, including the blade height. The Applicant will select the turbine capacity and manufacturer prior to beginning Project construction. Regardless of which capacity turbine is finally selected for the Project, all construction activities would occur within corridors found acceptable in the Adjudicative Order. Final determination of specific turbine locations ("micrositing") must be conducted within parameters identified in the adjudication order and SCA.

The Council and the EFSEC Review Process

EFSEC was created to advise the Governor in deciding which proposed locations are appropriate for the siting of new large energy facilities. RCW 80.50. The Council's mandate is to balance need for abundant energy at a reasonable cost with the broad interests of the public. RCW 80.50.010; *see also* WAC 463-47-110.

Council representatives participating in this proceeding are James O. Luce, Council Chair; Richard Fryhling, Department of Commerce; Hedia Adelman, Department of Ecology; Jeff Tayer, Department of Fish and Wildlife; Andrew Hayes, Department of Natural Resources; Dennis J. Moss, Washington Utilities and Transportation Commission; and Doug Sutherland, Skamania County.³ C. Robert Wallis, Administrative Law Judge, was retained by the Council to facilitate the adjudicative process.

The Council conducted public and adjudicative hearings pursuant to Chapter 34.05 RCW, as required by RCW 80.50.090(3) and Chapter 463-30 WAC. The Council completed a separate review of environmental factors as set out in the Final Environmental Impact Statement (FEIS) as required by Chapter 43.21C RCW. This Order, considering both Order No. 868 resolving adjudicative issues and the FEIS, recommends that the Governor of the Washington State approve the Application, in part, and deny it, in part, and enter into a SCA with the Applicant authorizing the same production capacity through a smaller number of turbines by excluding towers from the site that are prominently visible from points within the Columbia Gorge.

¹ Adjudicative Order, Conclusion No. 17.

² The Applicant committed in Mr. Spadaro's testimony at hearing (TR I:73) that the minimum turbine size in the project would increase from 1.5 to 2.0 MW, which mitigates the effect of the project by reducing the maximum necessary number of towers from 50 to 38.

³ Mr. Moss, Mr. Hayes and Mr. Sutherland replaced former Council members after this Application was filed, during its review. They have reviewed the portions of the record that occurred before they joined the Council.

Compliance with the State Environmental Policy Act

The State Environmental Policy Act (SEPA), Chapter 43.21C RCW, requires consideration of probable adverse environmental impacts of governmental action and possible mitigation. EFSEC SEPA rules are set out in Chapter 463-47 WAC. The Council complied with SEPA requirements by issuing a Determination of Significance and Scoping Notice on April 21, 2009; conducting scoping hearings on May 6, 2009, in Stevenson and Underwood, Washington; issuing a Draft Environmental Impact Statement (DEIS) for public comment on May 24, 2010; conducting public hearings on the draft on June 16 and 17, 2010 in Underwood and Stevenson, and accepting written comments on the Draft EIS until August 27, 2010 (extended from July 19). The Council's SEPA responsible official, the Council Manager, issued a Final EIS (FEIS) containing responses to comments, on August 12, 2011.

The Adjudicative Order, pursuant to RCW 34.05.461(4), confined its scope to the matters of record and did not consider the SEPA process. Council members were familiar with the SEPA process from its beginning, however, attending scoping and comment meetings for the DEIS, and have received and reviewed the DEIS and the FEIS.

The adjudicative and SEPA records are now both before the Council. There is a considerable overlap in topics, issues and substance between the FEIS and the adjudicative record. The specific content differs between the records and the details are sometimes different, allowing the FEIS to populate or confirm specific conditions in the SCA. Our evaluation differs from the FEIS conclusion relating to aesthetics and heritage, for reasons we specified in the Adjudication Order and identify below. On balance, however, we accept the FEIS as complete, generally consistent with the adjudicative record, and a proper basis for our Recommendation.

Land Use Consistency

The Council held a public hearing on May 7, 2009 to determine whether the Project's use of the proposed site is consistent with local or regional land use plans and zoning ordinances in effect at the time the Application was submitted⁴. RCW 80.50.090, WAC 463-14-030. Additional material was received without objection in the adjudication. The Council determined the Project to be consistent with Skamania County land use plans and zoning ordinances.⁵

Adjudicative Proceeding

The Council's adjudicative process, its participants and its result are set out in detail in the Adjudication Order, Order No. 868, Attachment I to this Recommendation. That Order, based only on the adjudicative record, concludes that the Council should recommend approval in part and denial in part, subject to review of the FEIS, completion of this Recommendation Order and preparation of a Site Certification Agreement containing mitigation requirements identified in both Orders. This Recommendation Order will generally cite, rather than restate, Adjudicative

⁴ The Applicant presented a revised application after the hearing, containing minor changes to its support for the land use decision. The May, 2009 record was supplemented, inquiries permitted of witnesses and the parties subsequently briefed land use issues on the complete, corrected record.

⁵ Council Order No. 868, Section III.

Order content, describing the content briefly as needed for understanding and context. The condensed description here does not change the language or substance in the Adjudicative Order.

Public Notice and Comment

EFSEC provided public notices, pursuant to statute or rule, of numerous events: receipt of the Application; public comment meetings; land use hearing; initiation of adjudicative proceedings; notice of opportunity and deadline for filing of petitions for intervention; notice of adjudicative hearing sessions; Determination of Significance and request for comments on scope of the Environmental Impact Statement (EIS); DEIS comment period and public comment hearing. In addition, notice was given of Special EFSEC Meetings regarding the Recommendation to the Governor. The Council provided notices by publication when legally required.

The Council held adjudicative hearing sessions in Underwood and Skamania during the adjudication at which any person could be heard in support of, or in opposition to, the Application. RCW 80.50.090. The Council also provided opportunities for public witnesses to present oral and written comments in those two communities on environmental considerations during the SEPA process and in Underwood on land use consistency.

This proceeding engendered extensive public participation. The Council received more than 1000 written or oral comments from members of the public during the initial, scoping, environmental and adjudicative aspects of this application review. The Council considers the written submissions and oral comments of the witnesses and the topics they addressed as indications of matters significant to the public. The Council expresses its appreciation for these witnesses' testimony and all written comments. The commenters engaged in thoughtful and often extensive preparation.

Council Recommendation to Governor

In accordance with the requirements of 80.50 RCW, the Council on October 6, 2011, at a special meeting in Stevenson, Washington, voted unanimously to recommend to the Governor the approval of the Project in part and denial in part. The Council describes its recommendation in this Order, which is accompanied by Attachments (I) the Council's Adjudicative Order No. 868, Order Resolving Contested Issues in the adjudicative proceeding; (II) the proposed Site Certification Agreement, with its own Attachments; and (III) the FEIS.⁶

Interests of the State as Expressed in RCW 80.50.010

This statute sets out four principal premises for the site selection process, including sufficient operational safeguards, environmental mitigation, provision of abundant energy at reasonable cost, and avoiding duplication in process.

⁶ Because of the volume of the FEIS and its digital availability, that document is not included in the print version of this Order. Persons desiring a copy may view it and download it from the Council website or request a copy on disc.

Sufficient Operational Safeguards: The Council finds that the mitigation measures contained herein, in the Adjudicative Order and in the SCA are adequate to ensure that the Project will operate under stringent criteria designed to protect the public welfare.

Environmental Mitigation: The Final EIS and the Adjudicative Order identify numerous mitigation measures. They are described briefly in this Recommendation Order and specified in the accompanying SCA to ensure that the WR Project is built and operated in a way that preserves and protects the quality of the environment. The Project's environmental studies are in compliance with the Council's requirements and (as pertinent) the standards of the 2009 WDFW Wind Power Guidelines.

The Applicant suggests the dedication of a mitigation parcel chosen to offset impacts to habitat, which has been favorably viewed by WDFW. As noted in the Adjudicative Order, the parcel must be submitted as part of a mitigation plan as the SCA requires. It may be formally proposed in the required Plan if the Applicant desires. The generation of wind power to meet current and future energy demands promotes air cleanliness and helps to meet increasing demand from utility customers and state law⁷ for renewable energy.

Provision of Abundant Energy at Reasonable Cost. The Whistling Ridge Adjudicative Order acknowledges the statutory statement of need for power, RCW 80.50.010. Renewable sources of electrical generation are identified by statute as required to meet future consumption goals to supplant or supplement non-renewable energy.⁸ Power generated by the Whistling Ridge project will be offered to buyers at rates determined by market forces. After reviewing all available information in the record of this decision, the Council finds that the Project will contribute to the availability of abundant energy at reasonable cost.

Avoiding Duplication of the Siting Process. This Application was brought to the Council, with the support of the local jurisdiction, to enable site review when local processes encountered procedural challenges. The Application allowed simultaneous consideration of topics otherwise under different state and local jurisdictions and thereby avoided duplication of the process.

Blending Adjudicative and SEPA Findings and Requirements

This Recommendation draws from both the adjudicative proceeding and the SEPA process. The Council identifies on the following pages, the aspects of each that bear upon its decisions, and points to these resources and to their contribution to the proposed Site Certification Agreement. The Council carefully weighs the results of each process in small as well as large aspects of its decisions. There is a high degree of consistency between the results of the processes – which is to be expected in parallel reviews of the same elements with objective data and standards. And, on matters with widely divergent subjective views, the Council makes necessary recommendations within a record that enables thoughtful decisions by the Governor.

⁷ Initiative I-937, RCW 19.285

⁸ Ibid.

ISSUES

Visual Resources – Aesthetics and Views

The FEIS finds that towers and scenic heritage would coexist with only moderate impact.⁹ The Council, however, considered visual resources extensively in the Adjudicative Order, finding that towers placed on portions of the proposed site would intrude impermissibly into the cultural and scenic heritage of the state and the region. The Council recommends denial of approval for tower construction on those portions.¹⁰

The ability of the Project to enhance “the public’s opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources”¹¹ is inevitably subject to differing views and debate. Construction of fifty wind turbines where none have previously existed, some of them prominently visible, would alter the local visual environment for residents and travelers. There is a plethora of evidence on this topic, including expert testimony, exhibits and extensive public comment.

Using maps and simulations from the adjudicative record, given context by the Council’s two-day’s viewing of the site from many perspectives, the Council finds that turbine placement on certain portions of the proposed site would impermissibly intrude into the heritage view of the Columbia Gorge.¹² These portions should not be approved for development. The Council recommends approval for the remaining portions, which present less intrusive visibility from a majority of studied points inside and outside the National Scenic Area.

The FEIS states that neutral paint and muted lighting (the minimum needed to comply with Federal Aviation Administration rules) would mitigate adequately the visual effects of the Project. FEIS, Sec. 3.9.4. The Council disagrees. Nothing in the FEIS persuades the Council to alter the adjudicative decision on this issue.

Project opponents urge protections similar to NSA standards. It would be improper to apply NSA standards to territory outside the NSA. The unique attributes of the Columbia Gorge, however, are clearly within the meaning of RCW 80.50.010(2) regarding aesthetics and the mandates in RCW 80.50.040(8) to provide site-specific protections. Considering both the adjudicative record and the FEIS, we remain persuaded that the C and southern A corridors intrude impermissibly into the aesthetic, cultural and natural heritage of the state, the region, Native Peoples and the United States, thus requiring denial of use of those portions for tower construction or generation. The remainder of the Project, which is visible much less or not at all from most viewing areas, does not pose a threat to the integrity of the Columbia Gorge aesthetic or heritage values and may be permitted.

9 FEIS, Sec. 3.9.

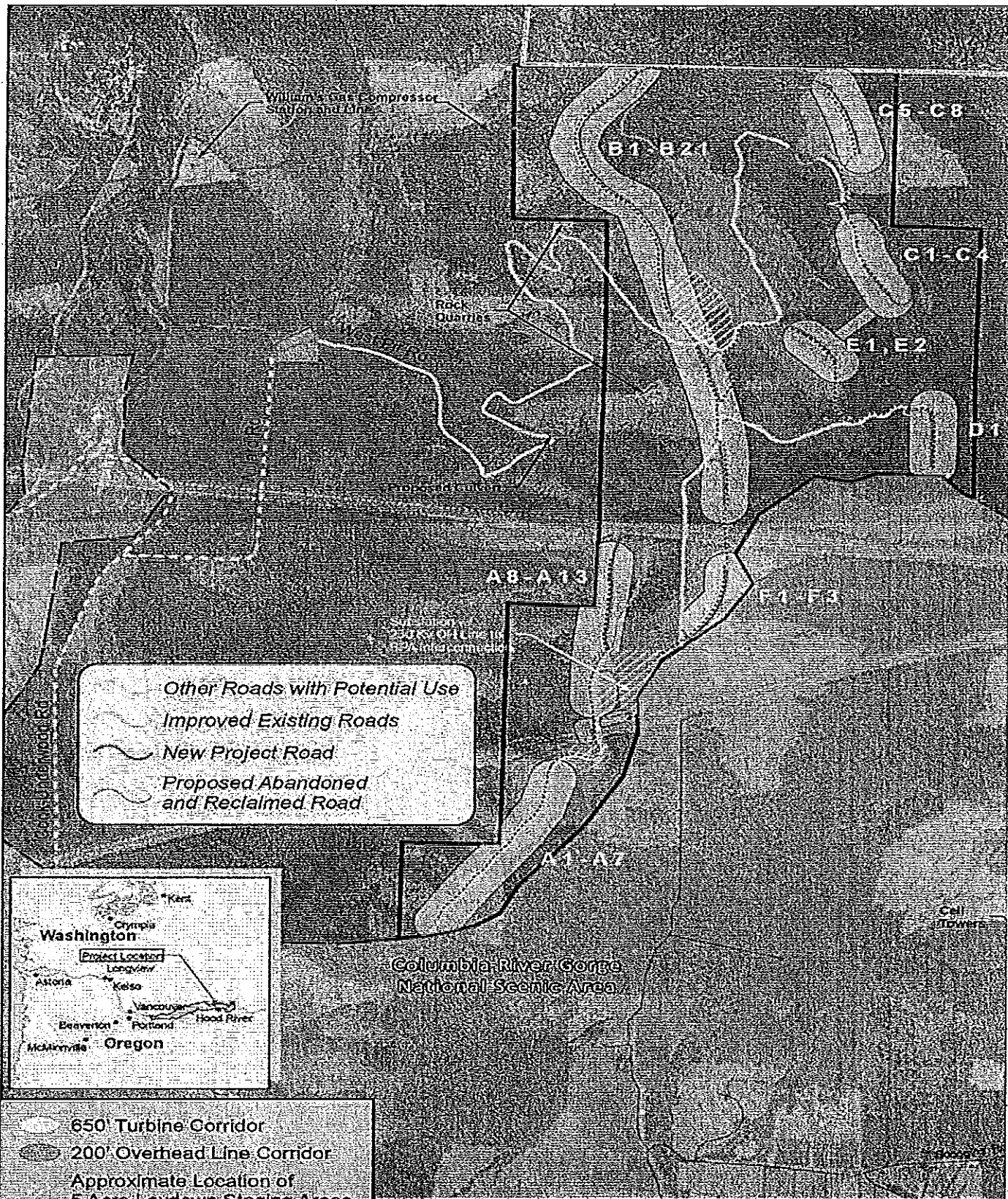
10 Order 868. A diagram of the proposed site, with corridors labeled, is presented below.

11 RCW 80.50.010(2)

12 The Council would exclude the C corridor and the southerly (A-1 through A-7) portion of the A corridor from the site. Our rationale and its basis are set out in detail in the adjudication order, Sec. IV.D.1.

The FEIS identifies Chemewa Hill (the site of the lower "A" corridor)¹³ as being of sensitive Native American cultural and heritage concern. FEIS, Sec. 3.10.2.3, p. 3-216. The Council recognizes those concerns, and Applicant has pledged to work with the Yakama Nation with regard to them. We note that with the elimination of the southern A corridor, there will be no towers or other structures located on Chemewa Hill.

13 The Council in this Order recommends against approval of tower placement in that portion of the Application.



- 650' Turbine Corridor
- 200' Overhead Line Corridor
- Approximate Location of 5 Acre Laydown Staging Areas
- Existing Transmission Lines
- Overhead Line - SDS
- Buried Lines - SDS*
- 5 Acre Substation Plot
- 5 Acre Maintenance Yard
- Alternative Locations
- Site Boundary

*The buried collector lines and project roads both have a 100' study corridor that is not shown.



0 0.25 0.5

Wildlife

Avian and bat mortality. The Adjudicative Order finds that project operation may affect wildlife through collisions with towers or rotor blades or flights through the vortex of turning blades.¹⁴ The FEIS acknowledges that mortality will occur but finds no evidence that it is likely to pose a threat to populations.¹⁵ The FEIS also finds no evidence that mortality to threatened or endangered species is expected. The order requires mitigation measures including compliance with WDFW guidelines and creation of a Technical Advisory Committee ("TAC") to consider ongoing operating experience.¹⁶ In addition, avian flight paths, habitat and locations of food must be considered during micrositeing to minimize risk of injury and death.¹⁷

Habitat. The Applicant is responsible for providing mitigation for habitat disturbance.¹⁸ The majority of the site will remain largely undisturbed by Project operations, with less than 60 acres permanently altered to accommodate the turbine foundations, the substation, roads and the O&M facility. About 100 acres would be affected in all, with about half of that affected only temporarily. The SCA requires Applicant to present a specific habitat mitigation plan.¹⁹

REMAINING SUBSTANTIVE MATTERS

The Council finds substantial consistency between the adjudicative record and the FEIS on the remaining substantive matters. The proposed SCA, taking both the adjudicative record and the FEIS into account, contains numerous provisions that bear on Project safety and environmental impact. We itemize these matters in the findings of fact and conclusions of law below in accordance with RCW 80.50.100 and WAC 463-30-320, with citations to the Adjudicative Order, the FEIS and the Site Certification Agreement ("SCA") to identify and support the recommendation.

CONFORMITY WITH LAW

The Council finds that operational safeguards in the SCA will be at least as stringent as the criteria established by the federal government and will be technically sufficient for welfare and protection of the public.²⁰

The Applicant must agree to construct and operate the Project in accordance with commitments in the Application, commitments by authorized witnesses on the record and commitments made in legal briefing. Applicant's authorized signature on the SCA is an

¹⁴ Adjudicative Order, Finding 28

¹⁵ FEIS, Sec. 3.4.2.1

¹⁶ Adjudicative Order, Conclusion 31.

¹⁷ Adjudication Order, Finding 29; FEIS.citation

¹⁸ 2009 WDFW Guidelines

¹⁹ SCA Art. IV.E.1

²⁰ RCW 80.50.010 (1)

agreement to comply with the SCA that is a condition of State authorization to complete and operate the Project.

Taken together, the required mitigations preserve and protect the quality of the environment. It is the policy of the state of Washington to support the development of wind energy facilities.²¹ This Project will produce electrical energy without generating greenhouse gas emissions.²²

As a renewable energy source wind power generation facility, the Project will contribute to the diversification and reliability of the state's electrical generation capacity.

CONCLUSION

The Council has considered its statutory duties, applicable administrative rules, all of the evidence of record and the contents of the Final Environmental Impact Statement in exercising its duty to balance the state's need for abundant energy at a reasonable cost with the need to protect the environment and the health and safety of the residents of the local area.

One of the Council's principal duties is to ensure that the location of energy facilities will produce minimal adverse effects on the environment. We have considered the adjudicative record, the testimony of expert witnesses and members of the public, and the Draft and Final EIS in determining whether this Project, with its proposed mitigation measures, is appropriate for this location. As limited in geographic scope pursuant to the determination in the Adjudicative Order, and with the proposed mitigation requirements, the Project would have a minimal impact on the environment.

One of the Council's additional duties is to ensure that the supply of energy, at a reasonable cost, is sufficient. The record shows that this Project would contribute to that goal.

The Council considered whether the total package of mitigation measures offset the environmental impacts of the Project. Viewed on balance, with respect to this Project, and in the context of mitigation proposed, the package recommended to the Governor in this Order comports with the legislative policy of Chapter 80.50 RCW.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having discussed in detail above the facts relating to material matters, and the conclusions flowing from those facts, the Council now makes the following summary Findings of Fact and Conclusions of Law and states its Recommendation. Any Finding of Fact that is found to be a Conclusion of Law, and vice-versa, should be treated as appropriate to the context, considering that many Council determinations involve mixed findings and conclusions.

21 RCW 19.285, I-937.

22 RCW 80.50.010 (2).

Nature of the Proceeding

1. This matter involves Application No. 2009-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Whistling Ridge Energy Project (Project), a wind powered energy generation facility with a proposed maximum of 50 wind turbines and a maximum installed nameplate capacity of 75 megawatts (MW). The Project is to be located near the community of Underwood, Washington.

The Applicant and the Application

2. The Applicant, Whistling Ridge Energy LLC, is a Washington Limited Liability Company (LLC) formed to develop, permit, finance, construct, own and operate the Project. Whistling Ridge Energy, LLC is owned by S.D.C. Co., LLC, which is also considered to be a Site Certificate Holder as defined in the Site Certification Agreement, SCA, Sec. III.A.1.

3. Applicant submitted its initial Application for Site Certification on March 10, 2009, and its revised Application on October 12, 2009, seeking certification pursuant to RCW 80.50.060 to construct and operate the Whistling Ridge Energy Project in Skamania County, Washington.

Compliance with the State Environmental Policy Act (SEPA)

4. EFSEC is the lead agency for environmental review of jurisdictional siting projects under the State Environmental Policy Act (SEPA), RCW 43.21C. The Council Manager is the SEPA responsible official. WAC 463-47-051. A necessary element of this Project is a substation to be built by the Bonneville Power Administration (BPA), to transfer Project power to transmission lines for delivery to loads. BPA is the lead agency for compliance with the National Environmental Policy Act (NEPA). EFSEC and BPA conducted a joint review to satisfy both laws; allowed in RCW 80.50.040(10) and encouraged in WAC 463-47-150.

5. The SEPA review was completed on the schedule set out in the body of this order and at length in FEIS, Sec. I.5. On August 12, 2011, the responsible official issued the FEIS.

The Adjudicative Proceeding

6. The Council conducted an adjudicative proceeding and determined by a vote of 7-0 that the adjudicative record supported a grant of the Application, in part, and denial, in part, as set forth in Council Order No. 868. The Adjudicative Order also resolved the issue of Land Use Consistency, ruling that the project is consistent and in compliance with the land use plan and zoning ordinances applicable to the portion of the Project recommended for approval.

7. The Council considered the Final Environmental Impact Statement and the Adjudicative Order, along with a Draft Site Certification Agreement implementing required mitigations and the Applicant's commitments, in this Order of Recommendation to the Governor.

8. On October 6, 2011, the Council voted 7-0 in separate votes, to enter and serve the Adjudicative Order and to issue this Recommendation Order, recommending that the Governor the Washington State approve the Application in part and deny it in part.

Site Characteristics

9. The Project will be constructed across a land area of approximately 1000 acres in Skamania County. About 100 acres will be impacted by temporary construction activities; the permanent facility footprint will be about 50 acres. The Project site and the proposed electric transmission interconnect points lie on privately owned lands.

10. The proposed site is located within Unmapped and FOR/AG-20 land use zoning classifications in Skamania County. The site has been used for commercial forestry for more than a century. Wind turbine towers would be distributed among five turbine corridors, identified as Corridors A through E on Application Revised Fig. 2.3-1.

Visual Resources-Aesthetics

11. The Project is located on the northern rim of the Columbia Gorge. It is outside, but adjacent to, the Columbia Gorge National Scenic Area (NSA). The NSA has strict requirements for construction within its borders, implemented through local regulation such as Skamania County's NSA ordinances. The NSA regulations are effective only within the boundaries of the NSA and have no application to construction outside those boundaries. Adjudicative Order p. 13; Conclusion 25.

12. Apart from the existence of the National Scenic Area, the Columbia Gorge in the region of the proposed Project has a unique spot in the history, heritage, and culture of indigenous inhabitants, American national exploration and development, and current citizens of Washington, Oregon and the entire United States.

13. The Adjudicative Order determined that construction of towers on portions of the Project identified as the lower segment of the A corridor and the C corridor²³ would intrude impermissibly into the aesthetic view, the cultural heritage and the historical significance of the State and the region. Adj. order, Conclusion 25. The Order therefore determined that the lower-A and C corridors should be denied, and should be eliminated from the Project. Adj. Order, Ibid. The FEIS, however, found that the visual effects of the Project were moderate and could be mitigated through the use of flat, neutral gray or light-color paint and the minimum night lighting acceptable to the Federal Aviation Administration. FEIS Sec. 3.9.4.

23 The corridor designations are taken from the map reprinted herein, Rev. Fig. 2.3-1 in the Application, Ex. 20. The Council treats the designations in this illustration as finite descriptions of territory as though they were specifically set out as a legal description for purposes of a land deed. Applicant shall no later than the time for filing petitions for reconsideration file legal descriptions of the affected land for inclusion in the Site Certification Agreement as territory prohibited from use for turbine towers or other Project structures.

14. Considering the adjudicative record and order and the FEIS together, the Council finds that the Adjudicative Order's analysis accurately reflects the Project impacts and appropriately assesses the required mitigation for those impacts.

15. The portion of the Project containing the lower A corridor with suggested turbine sites A-1 through A-7 and the C corridor would, if constructed, be of high impact, appearing starkly and in great contrast with the natural ridge lines of the rim of the Columbia Gorge, attracting attention, disrupting the aesthetics of the Gorge and interfering with the natural, cultural, historical heritage of the scenic vistas. The visual impact of partial tower views as specified in this Order, will be low. Adj Order, Sec. IV.D.1.d.

16. The Project as recommended herein, including those turbines required by the FAA to display aviation warning lights, will not add significant light or glare to the immediate surroundings or unduly detract from scenic values. FEIS, Sec. 3.9.5; SCA Art. IV.J..

Wildlife and Habitat

17. Bird mortality will result from operation of the Project. Adj. Order, finding 28; FEIS Sec. 3.4.4. It is not, however, expected to impact populations. Nor is any mortality to threatened or endangered species expected. *Ibid.*

18. Mitigation measures, including avoidance of placement in flight paths and travel patterns between nesting and feeding areas, will be implemented during micro-siting. Adj Order, findings 30 and 33, Order. The Applicant must develop post-construction wildlife and habitat mitigation plans in consultation with WDFW and Washington Dept. of Natural Resources (DNR). SCA Article IV.E.

19. A Technical Advisory Committee (TAC) will be established to review pertinent monitoring and scientific data and to develop appropriate recommendations for responses to impacts that exceed avian mortality projections made in the Application and FEIS. SCA, Sec. IV.E.7. The TAC will monitor all mitigation measures and recommend whether further mitigation measures would be appropriate. The Council will retain the authority to require additional mitigation measures, including any recommended by the TAC.

20. A habitat mitigation plan (SCA Art. IV.E.1) and a habitat restoration plan, SCA Art. IV.E.6, must be presented for Council approval.

21. The Council finds that the studies and mitigation measures required in the SCA are consistent with WDFW Wind Power Guidelines. The measures in the adjudication order, in this order and in the SCA will mitigate adequately the effects of the Project. The Council further finds that the Project will result in no significant unavoidable adverse impacts to wildlife.

Socioeconomics

22. The Adjudicative Order finds that Project construction and operation would have an economic benefit through employment and tax revenues. Order No. 868, Sec. IV.D.9. Construction and operation would have a limited adverse burden on local resources and would increase the total valuation of real property for tax purposes in Skamania County. The additional revenues would benefit local and state schools, county government, roads and local services. FEIS, Sec. 3-13.

Noise

23. The Project will be designed, constructed and operated in compliance with applicable Washington State Environmental Noise Levels. WAC 463-62-030, WAC 173-60. Order No. 868, Sec. IV.D.3; The Council finds no significant adverse noise impacts from construction or operation of the Project. *Id.*, Sec. IV.D.3.

Air Quality

24. During construction, primary sources of air pollution will be vehicle and equipment exhaust emissions and fugitive dust particles from construction activity. The SCA (Article V.H.) requires preventive measures to minimize dust. Operation of the Project will not result in any direct air emissions. Exhaust emissions and fugitive air emissions from construction and travel on Project roads during operation of the Project sites are exempt from air emission permitting requirements. FEIS, Sec. 3.2.3.

Water Resources

25. Water for construction will be purchased off-site and delivered by truck. During operation, water use will be less than 1,000 gallons per day. This water will be obtained from an exempt well to be installed by a licensed installer consistent with applicable regulation. FEIS, Sec. 3.3.2.1. During construction, sanitary wastewater will be collected in portable tanks, and disposed of off-site at locations permitted to accept such waste. A septic system will be installed for use during operation at the O&M facility, in compliance with local requirements. There will be no significant adverse impacts to water resources or water quality from the Project. FEIS, Sec. 3.3.4.

Geological Resources and Hazards

26. There are no significant impacts on soil, topography, or geology resulting from construction of the Project if risks are mitigated by steps to prevent erosion. Volcanic ash fall could affect the Project, but would be mitigated by turbine design. The Project is located within a relatively active seismic territory and could be affected by earth movement in an earthquake, although there are no known faults within the site. Project buildings, structures, and associated systems shall be designed and constructed consistent with requirements, including seismic standards, of the Uniform Building Code (UBC) or the International Building Code (IBC). FEIS Section 3.1 generally; Sec. 3.1.2.1.

Traffic and Transportation

27. Worker commuting and deliveries of equipment and materials during Project construction will result in a short-term increase of local traffic. Local roads will be blocked for short periods during transportation of long or wide loads. Applicant must coordinate such movements with local officials to avoid impeding school or other peak traffic. Adj Order, Sec. IV.D.5.a. Project operation will increase peak one-hour local traffic by an estimated 275 vehicles, but is expected to have no major unavoidable adverse impacts. FEIS Sec. 3.11.5.

28. Traffic impacts and mitigations are identified in the FEIS, Sec. 3-11. Applicant will comply with construction traffic issues as directed in the SCA, Art. V.F, including presentation of a Construction Traffic Management Plan (SCA, Art. V.F.4) before beginning construction. The Plan must include documentation of pavement conditions before construction begins, allowing Skamania County to monitor any road deterioration associated with the Project. The Applicant will be responsible for correction of any such road damage within a reasonable time after construction. Ex. 20, p. 4.3-24. The Council finds that the required measures will appropriately mitigate construction traffic impacts.

Cultural and Archeological Resources

29. The Adjudicative Order finds that the likelihood of Project impacts to known archaeological sites, or discovery of unidentified sites, is low but that Native American artifacts or indication of habitation may be discovered during site preparation or construction. FEIS Sec. 3.10.3.1. The FEIS (Sec 3.10.2) indicates Yakama Nation interest in Chemewa Hill (the lower A corridor) and acknowledges Applicant's intention to work with the Nation. The Council requires Applicant to work with the Nation regarding those concerns. The Council's decision in the Adjudicative Order, Sec. IV.D.1.d and Conclusion No. 25 to recommend rejection of that portion of the site appears to reduce the concerns. The Site Certification Agreement (Art. IV.H.) requires monitoring and reporting of discoveries and cessation of construction at the site of discovery. Such measures will satisfy the requirements of the National Historic Preservation Act, 16 USC 470. One historical period site is subject to possible effects, according to the FEIS – the Haran homesite – although it appears to be ineligible for the National Register of Historic Places. FEIS, Sec. 3.10.3.1.

30. The Applicant, in consultation with the State Department of Archeology and Historic Preservation (DAHP) and the Yakama Nation, will develop a cultural resources monitoring plan for monitoring construction activities and responding to the discovery of archeological artifacts or buried human remains. SCA, Art. IV.H.

31. With implementation of these mitigation measures and required consultations, construction will have minimum impacts on identified archaeological or historical sites or culturally sensitive areas. Operation of the Project will not impact any of the identified archaeological or historical sites.

Forest Practices Act Compliance

32. The Applicant must prepare a Forest Practices Application Notification coordinated with the Department of Natural Resources (DNR) sixty days prior to construction.

Health and Safety

33. The Applicant must prepare a fire control plan and an emergency plan, coordinated with the Department of Natural Resources (DNR) and other affected state and local agencies, to ensure efficient response to emergency situations. Project site roads will allow access for fire trucks and personnel. The Applicant must enter into a fire protection contract with DNR and other pertinent provider(s) of the service. SCA, Sec. IV.I.3 and Sec. VI.B.3. Compliance with the National Electric Code (NEC) mitigates fire risk in the forested location. FEIS, Art. IV.I.2, 3.

34. Applicant will be required to develop a Construction Emergency Plan for the Project to address emergencies involving medical, construction, fire, extreme weather, earthquake, volcanic eruption, facility blackout, hazardous material spills, blade or tower failure, aircraft impact, terrorism or vandalism, and bomb threat. SCA, Art. IV.I. Preparedness will mitigate the effects of such events. FEIS, Art. 3.6.

35. Unavoidable public health impacts are minimal. FEIS Art. 3.6.4.

Public Services

36. Based on the evidence of record, the FEIS and the adoption of the terms of the SCA, the Project will not have a significant adverse effect on any public services, including law enforcement, fire, water, medical, recreational, or schools. FEIS, Sec. 3.12.2.1.

Decommissioning and Site Restoration

37. Prior to initiating construction activities, the Applicant must post sufficient security to ensure decommissioning²⁴ of the Project and provide the Council with an initial site restoration plan as required by SCA Article IV.D. At the end of the useful life of the facility, the equipment will be removed and the entire area returned to as near its original condition as reasonably possible. *See*, Application Sec. 2.3.7, SCA, Art. VIII.

Cumulative Impacts

38. The FEIS in Sec. 3.14 reviewed cumulative impacts with a wide range of project development. The review indicates, and we find, no significant cumulative impacts when considered with expected development within 20 miles of the Project.

Term of the Site Certification Agreement

39. The Site Certification Agreement will authorize the Certificate Holder to construct the Project such that substantial completion is achieved no later than five (5) years from the date

²⁴ The term "decommissioning" herein means conclusion of operations as an authorized project and completion of site restoration activities.

that all state and federal permits necessary to construct the Project are obtained. The Applicant may seek an additional 5 year extension subject to terms and conditions found in the SCA.

40. Construction of the entire Project shall be completed within eighteen (18) months after beginning construction. SCA, Art. I.B.

Conformance with Law

41. The Applicant proposes to construct the Project in accordance with applicable national and international building codes, in compliance with international design and construction standards, and to implement a comprehensive employee safety plan. The Council finds that operational safeguards will be at least as stringent as the criteria established by the federal government and will be sufficient for welfare and protection of the public. RCW 80.50.010(1).

42. The Applicant has agreed to appropriate environmental mitigation requirements. The mitigation package, whose elements are set out in the Site Certification Agreement, will preserve and protect the quality of the environment. RCW 80.50.010 (2).

43. As a renewable energy source wind power generation facility, the Project will contribute to the diversification of the state's electrical generation capacity and to requirements under Initiative-937 relating to renewable energy. It will therefore support legislative intent to provide abundant energy at a reasonable cost. RCW 80.50.010(3).

44. The Council finds that this course of action will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

CONCLUSIONS OF LAW

Based on the result of the Adjudicative Order, the testimony received, and evidence admitted during the adjudicative and land use hearings, the environmental record including public testimony, Draft Environmental Impact Statement, the Final Environmental Impact Statement and environmental determinations made by the Council, the preceding overall Findings of Fact and the entire record in this matter, the Council makes the following Conclusions of Law:

1. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the persons and the subject matter of Application No. 2009-01, pursuant to Chapter 80.50 RCW.

2. The Council conducted its review of the Whistling Ridge Application 2009-01 in an adjudicative proceeding pursuant to RCW 34.05 as required by RCW 80.50.090(3), in compliance with WAC 463-30, in SEPA proceedings pursuant to RCW 43.21C and WAC 463-47, and a land use hearing pursuant to RCW 80.50.090(2). This order is prepared pursuant to RCW 80.50.100(1) and is in the form designated for recommendation orders in WAC 463-30-320.

3. EFSEC is the lead agency for environmental review of the Whistling Ridge Application pursuant to the requirements of Chapter 43.21C RCW. The Council complied with Chapter 43.21C RCW, Chapter 197-11 WAC, and Chapter 463-47 WAC.

4. The Council is required to determine whether a proposed Project site is consistent with county or regional land use plans or zoning ordinances. RCW 80.50.090; WAC 463-14-030. The Council concludes that the proposed use of the portion of the site recommended herein for approval is consistent and in compliance with Skamania County land use plans and zoning laws.

5. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities and to ensure through available and reasonable methods that the location and operation of such 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.

6. The Council concludes that portions of the Project containing the lower A corridor with suggested turbine sites A-1 through A-7 and the C corridor must be deleted from the Project in mitigation of the aesthetic and visual resource effects of the original proposal. The Council concludes that the certification of the remainder of the Whistling Ridge Project, as described in Application 2009-01 and as limited in scope as described in this Order, will further the legislative intent to provide abundant energy at reasonable cost. The mitigation measures, conditions and requirements of the proposed Site Certification Agreement ensure that through available and reasonable methods, the construction and operation of the Project will produce minimal adverse effects to the human environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

ORDER AND RECOMMENDATION

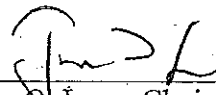
Based on the Findings of Fact and Conclusions of Law in this order, the Draft and Final EIS, the Adjudicative Order and the entire record in this matter, the Council enters the following Order:

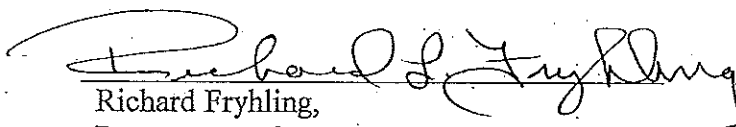
1. The Council recommends that the Governor of the state of Washington approve certification in part, and deny certification in part as specified herein, for the construction and operation of the Whistling Ridge Power Project located in Skamania County, Washington.

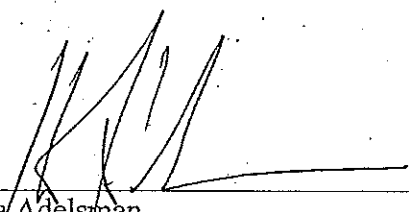
2. The Council orders that its recommendations as embodied in the Findings of Fact, Conclusions of Law and this Order, together with the Adjudicative Order, the Final Environmental Impact Statement and the proposed Site Certification Agreement that are appended to this Order, be reported and forwarded to the Governor of Washington State for review, consideration and action.

SIGNATURES

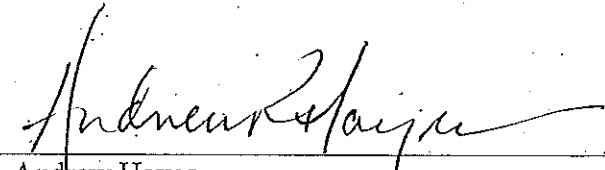
DATED and effective at Olympia, Washington, this sixth day of October, 2011.



James O. Luce, Chair

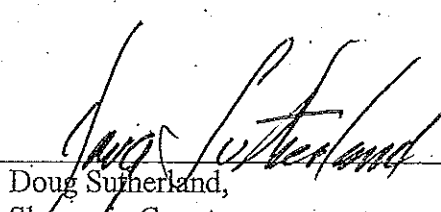

Richard Fryhling,
Department of Commerce


Hedia Adelman,
Department of Ecology


Jeff Tayer,
Department of Fish and Wildlife


Andrew Hayes,
Department of Natural Resources


Dennis Moss,
Utilities and Transportation Commission


Doug Sutherland,
Skamania County

NOTICE TO PARTIES: Administrative relief may be available through a petition for reconsideration, filed within 20 days of the service of the Orders within the Recommendation Package to the Governor. If any such petition for reconsideration is filed, the deadline for answers is 14 days after the date of service of each such petition. Since all Orders contained within the Recommendation Package to the Governor are integral components of the recommendation and served as a package to the parties, the Council requires any request(s) for reconsideration to be filed on the full Recommendation Package, and not on individual elements of the package. The formatting of the petitions shall be governed by WAC 463-30-120 and shall be limited to 50 pages.