



FRIENDS OF THE COLUMBIA GORGE

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

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Andrew M. Montaña, Environmental Protection Specialist
Bonneville Power Administration
P.O. Box 3621, KEC-4
105 NE 11th Avenue
Portland, OR 97208-3621

Al Wright, Manager
Washington Energy Facility Site Evaluation Council
P.O. Box 43172
1300 S. Evergreen Park Dr. S.W.
Olympia, WA 98504-3172

Re: Environmental Review of the Proposed Whistling Ridge Energy Project

Dear Messrs. Montaña and Wright:

Friends of the Columbia Gorge requests that the Bonneville Power Administration (“BPA”) and the Washington Energy Facility Site Evaluation Council (“EFSEC”) supplement or revise the Final Environmental Impact Statement (“FEIS”) for the Whistling Ridge Energy Project, which was issued on August 12, 2011. The requested action is necessary in light of new information and analysis demonstrating the likely significant impacts of the proposed project on wildlife, aesthetic, heritage, and cultural resources, as discussed below.

The documents discussed herein constitute significant new information under both the National Environmental Policy Act (“NEPA”) and the Washington State Environmental Policy Act (“SEPA”).¹ Under NEPA, an agency must supplement an EIS when “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 CF.R. § 1502.9(c)(1)(ii). SEPA likewise requires supplementation when “[t]here is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts.” WAC 197-11-405(4)(b).

¹ Under the Council’s rules, Mr. Wright is the SEPA Responsible Official for EFSEC. WAC 463-47-051.

1. The U.S. Fish and Wildlife Service’s revised recovery plan for the northern spotted owl

On June 28, 2011, the United States Fish and Wildlife Service (USFWS) issued its Revised Recovery Plan for the Northern Spotted Owl (“Revised Plan”), attached hereto as Attachment A. The USFWS issued its Revised Plan after the 2008 Final Recovery Plan (“2008 Plan”) was challenged in court and after the Department of Interior concluded that the 2008 Plan resulted from inappropriate political influence. Attach. A at I-2.

The FEIS fails to even mention the Revised Plan. Instead, the FEIS relies on the 2008 Plan to analyze the Project’s impacts on spotted owls. *See* FEIS at 3-55. For example, the FEIS emphasizes the Managed Owl Conservation Area (“MOCA”) system previously found to be “sufficient to achieve the recovery” of northern spotted owls. *Id.* (quoting 73 Fed. Reg. at 47, 328). Under the 2008 Plan, the MOCA system recommended use of federal lands, not state or private lands, for the recovery of the Northern Spotted Owl. In contrast, the Revised Plan “represents the most comprehensive and up-to-date evaluation of spotted owl science, conservation needs and management alternative,” and explicitly rejects the 2008 Plan’s reliance on the MOCA system. Attach. A at I-3, I-9 (“The 2008 Recovery Plan recommended establishing Managed Owl Conservation Areas (MOCAs) on federal lands to provide the important habitat needed for the species to recover over the long-term. *The Service is not making this recommendation in this Revised Recovery Plan.*”) (emphasis added). The Revised Plan places a greater reliance on private lands for the protection and recovery of the spotted owl, such as the lands proposed for the Whistling Ridge Energy Project. *See* Attach. A at III-51, III-56.

It is unclear why the FEIS relies upon the outdated 2008 Recovery Plan, given that the Revised Plan was issued more than a month prior to the FEIS. BPA and EFSEC should review the Revised Plan and incorporate its recommendations into the FEIS through revisions or supplementation.

2. The EFSEC Council’s analysis of aesthetic and cultural heritage impacts of the proposed wind turbines

On October 6, 2011, the EFSEC Council issued the two attached orders regarding the Whistling Ridge Energy Project. *See* Atts. A and B.² The Council’s Orders contain important determinations regarding the aesthetic and cultural heritage impacts of the proposed wind turbines that bear directly on the accuracy and completeness of the visual impact analysis in the FEIS. The Council made its determinations after reviewing substantial testimony (much of which was not part of the NEPA/SEPA process), conducting an independent site tour, and preparing an independent View Site Analysis.

First, the Council determined that the Applicant’s consultant miscalculated the Project’s visual impacts in the Application. *See* Attach. B at 20; Attach. C at 7. The Council determined

² Attachment B is Council Order No. 868 (Whistling Ridge Order No. 23), the Council’s Adjudicative Order Resolving Contested Issues in the Whistling Ridge Adjudication. Attachment C is Council Order No. 869 (Whistling Ridge Order No. 24), the Council’s Order and Report to the Governor Recommending Approval of Site Certification in Part, on Condition.

there were serious flaws in the Applicant’s visual impact assessment, which found only “moderate” visual impacts from multiple viewpoints.³ The Council’s independent review concluded that the consultant “inappropriately discounted” the natural features surrounding the Project, and that visual impacts from several viewpoints would be “high.” Attach. B at 37; Attach. C at 14. Thus, the Council’s review indicates that the Project will result in significant aesthetic and cultural heritage impacts.⁴

The same conclusions by the Applicant’s consultant, now discredited by the Council’s Orders, are adopted by and included within the agencies’ FEIS. *See* FEIS at 3-182, table 3.9-2. The Council’s Orders are new information requiring supplementation or revision of the FEIS to correct the identified deficiencies.

Second, the Council determined that the project depicted in the application would violate state law, including RCW 80.50.010 and WAC 463-14-020 (requiring protection of aesthetic and recreational resources). *See* Attach. C at 13–14; Attach. B at 22. Under NEPA, a project may cause significant impacts if that project “threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.” 40 C.F.R. § 1508.27(b)(10). Similarly, SEPA regulations caution that “[a] proposal may to a significant degree. . . [c]onflict with local, state, or federal laws or requirements for the protection of the environment.” WAC 197-11-330(2)(e)(iii). Here, by finding noncompliance with state environmental law, the Council’s decisions are significant new information requiring revision or supplementation of the EIS.

Third, the Council determined that fifteen specified turbines must be eliminated from the Project to protect scenic and heritage resources. *See* Attach. C at 13–14.⁵ The FEIS fails to evaluate the Council’s determination, nor any other alternative to the proposed fifty-turbine Project. *See* FEIS at 2-21 (“The number of wind turbines in the Project Area has already been minimized to the extent practicable in light of the Applicant’s objectives.”). The failure of the FEIS to evaluate all reasonable alternatives, including the current proposal to scale the Project back to 35 turbines, violates SEPA and NEPA. *See* WAC 197-11-440(5)(b)(v) (An EIS shall “[d]evote sufficiently detailed analysis to each reasonable alternative to permit a comparative evaluation.”) (emphasis added); *see also* 40 C.F.R. § 1502.14(a). As a result, the FEIS does not “provide policymakers and the public with sufficient information to ‘make an informed comparison of the alternatives.’” *See SEACC v. Alaska*, No. 09-35551, ___ F.3d ___, ___, (9th Cir. May 4, 2011) (quoting *Animal Def. Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988)). Nor does the FEIS give Governor Gregoire or BPA Administrator Wright sufficient information

³ These viewpoints include Viewpoint 3 (Husum, Highway 141 North); Viewpoint 4 (Ausplund Road, Cook-Underwood Road); Viewpoint 5 (Willard); Viewpoint 12 (Koberg Park); Viewpoint 15 (Frankton Road); and Viewpoint 23 (Ausplund Road End). Other viewpoints from which the FEIS found potential moderate impacts include Viewpoint 1 (State Highway 141/Pucker Huddle); Viewpoint 7 (Mill A); Viewpoint 11 (I-84 Westbound); and Viewpoint 13 (I-84 Eastbound).

⁴ Under SEPA, “‘Significant’ . . . means a reasonable likelihood of more than a moderate adverse impact on environmental quality.” WAC 197-11-794(1).

⁵ The fifteen turbines are numbered A1 through A7 and C1 through C8. *See* FEIS at 2-3, fig. 2-1.

to weigh the reasonable alternatives for the Project, such as the Council's Viewing Site Analysis. *See* Attach. B at 23.⁶

In light of the Council's Orders, conclusions, and View Site Analysis, BPA and EFSEC should supplement or revise section 3.9 of the FEIS to address the points identified by the Council.

3. Archeological discovery on Chemawa Hill

Attachments D and E are two letters from the Yakama Nation describing an important archeological object recently discovered on Chemawa Hill, the location of turbines A1 through A7 as depicted in the FEIS. The object was discovered on May 2, 2011 and reported to EFSEC on June 8, 2011. *See* Attach. D at 1. The attached letters correctly point out that the FEIS does not address this recent archeological finding nor attempt to evaluate its significance. *Id.* The recent discovery demonstrates the archaeological importance of Chemawa Hill, where seven wind turbines are proposed in the Application and FEIS. The FEIS is neither current nor accurate for informing the decision makers and the public of the Project's likely impacts on Native American cultural resources. BPA and EFSEC should review the attached letters and supplement or revise the FEIS accordingly.

Conclusion

For the reasons stated above, Friends requests that the BPA and EFSEC supplement or revise the FEIS for the proposed Whistling Ridge Energy Project.

Sincerely,



Nathan Baker
Staff Attorney

Attachments

- A: U.S. Fish & Wildlife Service, Revised Recovery Plan for the Northern Spotted Owl
- B: EFSEC Order No. 868 (Whistling Ridge Adjudicative Order)
- C: EFSEC Order No. 869 (Whistling Ridge Recommendation Order)
- D: September 7, 2011 Letter and Attachments from Yakama Nation to BPA & EFSEC
- E: October 4, 2011 Letter from Yakama Nation to BPA & EFSEC

⁶ The Ninth Circuit has recently held that selection of a new alternative not discussed in the FEIS may necessitate a supplemental EIS even if that alternative reduces environmental impacts. *See Russell County Sportsmen v. U.S. Forest Serv.*, No. 10-35623, ___ F.3d ___, ___ (9th Cir. Oct. 12, 2011); *see also* 40 C.F.R. § 1502.9(c)(1)(i) (supplementation required when “[t]he agency makes substantial changes in the final proposed action that are relevant to environmental concerns.”). For example, supplementation may be required when the new alternative alters the “overall cost-benefit analysis of the proposed action.” *Russell County*, ___ F.3d at ___. Here, BPA must take a “hard look” at the new alternative identified by the Council. *See Headwaters, Inc. v. Bureau of Land Mgmt.*, 914 F.3d 1174, 1177 (9th Cir. 1990).