

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of:
Application No. 2006-02

of

DESERT CLAIM WIND POWER LLC

For

DESERT CLAIM ENERGY PROJECT

PREHEARING ORDER NO. 2

COUNCIL ORDER NO. 840

PREHEARING ORDER
DENYING INTERVENTION;
AMENDING SCHEDULE

On April 29, 2009 the Council entered prehearing Order No. 838 in this matter, reciting events at the initial prehearing conference, establishing a litigation schedule, and authorizing a late-filed petition for intervention by Roger Overbeck, who appeared at the conference and sought orally to intervene.

Petition for Intervention

The Order repeated instructions given Mr. Overbeck at the conference, allowing Mr. Overbeck to file a petition for intervention on condition that he file it with the Council no later than eight days after the prehearing conference, on or before April 30, 2009. He agreed orally to do so. The order made it clear that filing required the Council to receive a document on the date specified.

Mr. Overbeck did not file a petition for intervention on April 30, as required. On May 4 he mailed a document to the Council that it received on May 8, the day after responses would be due following a timely petition.

The document Mr. Overbeck filed did not comply with terms of the order, as it did not address the nature of his own interests or the basis for his entitlement to intervention, nor did it address his ability to fulfill the responsibilities of parties as set out in WAC 463-30. Instead, it made allegations about EFSEC's lack of jurisdiction about the chair's asserted lack of authority to act in a prior proceeding, generalized complaints about governmental bureaucracy and assertions that windmills decrease property values.

We find that the document mailed on May 4 and filed on May 8 failed to satisfy the minimum requirements of law for establishing a right to intervention, and that it failed to meet the time requirements established at the hearing, agreed by the petitioner and reiterated in the written order for filing. On both grounds, the petition is denied.

Correction to published schedule

As noted above, Council Order No. 838 established the schedule for this litigation that Applicant proposed and other parties agreed to. The recitation in the order, however, omitted the date agreed for the Applicant to respond to prefiled evidence of other parties. The corrected schedule is attached to this order as Attachment 1.

The Council is proceeding to reserve facilities and set dates for hearing sessions, within the time frames indicated in Order No. 838, and will by appropriate notice of hearing advise the parties and the public of the times and places set for receiving the parties' evidence and public comments.

Dated at Olympia, Washington and effective this 12th day of May, 2009.

/s/

C. Robert Wallis, Administrative Law Judge

Attachment 1

**Application No. 2006-2
Desert Claim Wind Power LLC**

Corrected Hearing Schedule

HEARING SCHEDULE, DESDERT CLAIM (Revised)

First prehearing conference (Ellensburg)	April 23
Desert Claim files pre-filed testimony and exhibits	May 11
Other parties circulate list of issues	May 11
Deadline for revisions to initial issues lists	May 18
Intervenors file direct answering testimony and exhibits	June 11
Desert Claim files rebuttal testimony	June 30
Prehearing conference (Olympia) for presentation of Proposed settlements and stipulations and Determination of other procedural matters,	week of July 7*
Adjudicative Hearing (Ellensburg),	week of July 13*
Hearing sessions to receive comments from Members of the public Ellensburg,	week of July 13*
Seattle week of	July 13 or 20*
Post-hearing process	
Simultaneous briefs	July 31
Proposed Site Certification Agreement	July 31
Answering briefs August*	

*Specific dates will be established later and provided by notice.

APPLICANT: DESERT CLAIM WIND POWER LLC.
NO. 2006-02

TO; Washington State Energy Site Evaluation Council.

Attn; Allen J. Fiksdal, MGR.
POB 43172
905 Plum Street SE. 3rd floor
Olympia, Wa. 98504-3172

Fm; Roger Overbeck
5160 Lower Green Canyon Rd.
Ellensburg, Wa. 98926

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I have spent the week reviewing all three projects in Kittitas County which includes all litigation-letters exhibits, expert witnesses, news paper articles, etc.

Desert Claim Wind Power LLC. Does stand out to be the most expensive and time consuming loss to taxpayers, in the form of the Governors power struggle to make EFSEC a state agency. The decision making agency. Exhibit-Doc Hastings letter to Governor Gregorire, By not protecting Kittitas County,s elective officials, whom the taxpayers respect for there decisions regarding the applicant and allowing the applicant to proceed under EFSEC.

The Superior court of Washington for Kittitas county made its decision. The Governor of Washington should endorse the decision and not promote EFSEC's existence and its preservation of its power is evident. It is clear that Jim Luce exceeded his scope of authority as Dept. Head of EFSEC, By stating that if EFSEC does not promote this matter it will be "out of business" and will lose the credibility it has as a " state sitting council." Jim Luce's comments were made two years before the adjudicative process, and had tainted that adjudication.

Exhibit: letter from Governor Gregoire to Jim Luce, chair of EFSEC "to thank him and EFSEC for a timely response to my remand of the Kittitas Valley Wind Power project."self explanatory."

Lets revisit Desert Claim Wind Power and remanded to EFSEC , by the Governor for additional public hearing, Jim Luce states "what this case is not about. "local input"

Ref: Superior court of the state of Washington in and for the County of Thurston-Case No. 08-2-2080-0.

This is our Bureaucracy in action!!!

Exhibit: Windmills vs. Property values.

Provided by an expert in the field of real estate in Kittitas County..

Who is Desert Claim Wind Power LLC.?

Agent: Service Co. 6500 Harbor Parkway, Suite 400,Mukiteo, Wa. 98722

Parent Corp. Enxco Service Corp. 63-665 19th St.,Palm Spring Ca. 92258,Phone 760-740-7022

Pres. Tristan Grimbert. Tres. Kelly Loyld-CEO- chief Financial Officer.

Original registration Corp. Delawa ~~llc~~-UBI--A602714614

Owner of the corporations respond to a French company in France for its financing and directives.

Are these corporations solvent? Do any of these Corporations have a vested interest in the state of Washington or Kittitas County with either real of personal property? Where is the corporations P&L statements showing they are liquid in funds for this project.

Does the Applicant address all project impacts:-a healthy environment, air quality, calcium chloride on the roads: kills vegetation and is the most corrosive material found.; fire protection, police response, public road used for ingress and egress to the project.

No contracts have been provided or monies mitigated for its use of the county roads and there resurfacing. The applicant has not provided any documentation as to its need for water: commercial or residential wells. Towers/concrete pads, 95 in number, construction by heavy equipment and the use of explosives for depth in excavation of the earth. No documentation has been provided as to the impact of Aquafirs and damages to existing wells ~~To~~ adjacent property owners. The applicant should bear the cost of damages to existing property owners.

If this project is approved the owners of said properties other than leased land will be impacted to a 50%

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dollar loss on their homes and land values if sold in the future market.

The solution to avert litigation would be the deposit of a Surety Bond in the amount of 32 Million dollars, by both corporations of the wind mill project. The bond shall be held in trust by the Superior Court in Kittitas County in the state of Washington. The monies will be used to settle all judgments rendered against the developers of said project named as defendants.

There will be no assignment by Desert Claim etla. or Enxco Services Corp. and its French Parent Corporation as said assignment and or financing of portions of the project to other parties.

There will be no transfer or sale of any interests by the applicant and no transfer of interest from foreclosures by executing deeds in lieu of foreclosure.

Taxpayers/ property owners should not bear the financial burden or loses. The surety bond will remain in effect for thirty years without any consideration for termination .

All parties served by US mail from Ellensburg, Wa.

Roger Overbeck
Pro Se

CHRISTINE O. GREGOIRE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6780 • www.governor.wa.gov

September 18, 2007

Jim Luce, Chair
Washington Energy Facility Site Evaluation Council
PO Box 43172
Olympia, WA 98502-3172

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RE: Kittitas Valley Wind Power Project
EFSEC Recommendation Letter Dated August 14, 2007

Dear Mr. Luce:

I wish to express my thanks to you and the other members of Washington Energy Facility Site Evaluation Council (EFSEC) for a timely response to my remand of the Kittitas Valley Wind Power Project (Project). I am approving the project.

It is clear that Washington is growing and with that growth our demands for energy resources also increase. It is the clear and compelling policy of the state to prefer new resources that have the least impact on our state's natural environment. Our legislators and our citizens have recently articulated their strong preferences for renewable resources. Those policies are not in doubt and I remain committed to them. To fulfill them, we will have to build infrastructure that broadly benefits our citizens, and may impose burdens on some.

The benefits of this Project are considerable and will accrue to the citizens across our state. The Project will generate renewable energy sufficient to supply power to tens of thousands of homes, by feeding power to the grid that supplies our electricity needs. It will also provide permanent and temporary jobs, millions of dollars of investment and other economic benefits, and increased valuation of the county's real property to support state and local schools and other local purpose districts. Further, these benefits are being secured without contributing to climate change. Projects like these are consistent with Washington's long-standing commitment to clean energy, as expressed by the Legislature and recently by a majority of the state's citizens through I-937.

In this case, the burdens from the Project fall predominantly on a very small number of local landowners who are not participating in it. My remand was an attempt to ensure that mitigation for those affected landowners was looked at again and not to extend EFSEC beyond its statutory authority and into the financial terms of the project. As the Economic Development Council representative to this proceeding put it in the hearing on the issue "Can you have further setbacks and still have the project?" I am satisfied EFSEC has looked thoroughly at this issue and the new requirements for maximizing setback rather than power production, along with the numerous other mitigation conditions, are adequate.

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Jim Luce
September 18, 2007
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I have given careful consideration to this decision and do not exercise my authority lightly. As Governor, I have seen the federal government take and exercise authority that I would have preferred to keep in the state's control, and so I know precisely how local government perceives it when the state does the same thing. Nonetheless, the Legislature has given the Governor the authority to act to ensure that all citizens of the state continue to have access to abundant, affordable and environmentally-preferred power. I find the underlying policy rationale and the benefits compelling in my decision to move forward.

I wish to thank those citizens, particularly those residents of Kittitas County, who took the time and effort to participate in the extensive public process at EFSEC and before the County on this project. The sentiments expressed in their letters and testimony are well-reasoned, well argued, and in the vast majority, respectful of those who hold different views. The record is replete with almost every conceivable position on the project from within the County, and if this decision does not reflect the preferred outcome for some, I assure everyone that their voice was heard and their views considered.

I remain mindful of the cumulative impacts of wind power projects in Kittitas County. I note that the only wind projects that have sought EFSEC approval have been in Kittitas County. For those reasons I commend the Kittitas County Commissioners for recent efforts to pre-identify areas for future development. Other Washington counties have used a similar planning mechanism successfully.

Therefore, I am approving the Project. I am signing the Site Certification Agreement as amended by Order #831, pursuant to applicable state law.

Sincerely,



Christine O. Gregoire
Governor

DOC HASTINGS
4TH DISTRICT, WASHINGTON

**COMMITTEE ON STANDARDS
OF OFFICIAL CONDUCT**
RANKING REPUBLICAN MEMBER

COMMITTEE ON RULES
SUBCOMMITTEE ON RULES
AND ORGANIZATION OF THE HOUSE
RANKING REPUBLICAN MEMBER



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302 EAST CHESTNUT
YAKIMA, WA 98901
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Congress of the United States

House of Representatives

August 17, 2007

The Honorable Christine Gregoire
Governor
P.O. Box 40002
Olympia, WA 98504-0100

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Dear Governor Gregoire:

I write to express my concerns about last week's decision on the Kittitas Valley Wind Power Project by the state agency staff comprising the Energy Facility Site Evaluation Council (EFSEC). As you know, this is the first time in state history that this entity has endorsed siting a power facility over the lawful objections of a locally elected county government.

Let me state clearly that as Central Washington's Congressman, I have no authority or official role in this process. I respect that state law provides you sole decision-making authority as Governor. I am not asking for you to approve or deny the Council's recommendation, as that decision rests fully in your hands. I am simply writing to express my concerns about 1) state preemption of county and local community decision-making, and 2) the long-term implications that this decision could have in our state.

As a supporter of wind energy, I see great potential for its further development in Eastern Washington. A properly developed wind project can be integrated into a community with little controversy and generate new jobs and tax revenues in addition to clean, renewable energy. Of the six wind power farms in our state, every single one is located in Eastern Washington and each was built under appropriate local government jurisdiction.

It is not a matter of deciding whether wind power should be allowed in the county – Kittitas County already hosts the largest single wind project in the state. The question is under what circumstances the State of Washington would overrule the objections of a locally elected county government on a land-use planning issue.

I have great respect for the work of local county leaders to make the best decisions they can under the burden of often excessive and onerous state and federal government regulations. Ignoring or overriding these decisions should not be done lightly, and would send a clear signal that the local process is of no value.

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The Honorable Christine Gregoire
August 17, 2007
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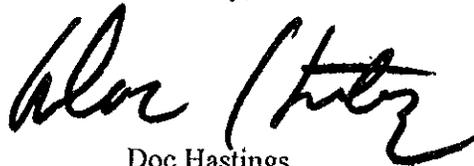
It is argued that the need for new sources of power, and renewable energy in particular, is reason enough to override a county and force construction of the project on the local community. We must be honest about the facts. Wind power projects have been and are being built under county jurisdiction. Wind farm construction is currently happening only in Eastern Washington, which already provides the vast majority of the power consumed by the rest of the state. The recently-passed renewable energy mandate – which came about after the Kittitas Valley Wind Power Project was denied by the Kittitas County commissioners and which was opposed by most voters in nearly every county in Eastern Washington – will inevitably necessitate building more wind generation, almost exclusively on the east side of the Cascades. Similar renewable mandates in California and other western states will only further drive up demand for wind development opportunities in Eastern Washington – and may result in our limited wind energy capacity being sent out of state to benefit others.

It is also true that there are many potential energy resources that may be developed in Washington that do not depend on wind availability and, therefore, could be built closer to urban population centers and reduce the need for transmission capacity. Should the state agency staff's recommendation be approved, I would hope that the same standard would be consistently applied in the future if a power plant was proposed for construction over the objections of a more populous county on the west side of the Cascades.

With a coming wave of wind power proposals, I ask you to give careful consideration to the potential implications of setting aside the lawful policies of locally elected officials – not only for future wind farm development, but also for power project siting in Washington generally.

Thank you for your consideration of my concerns on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Doc Hastings". The signature is fluid and cursive, with a large initial "D" and "H".

Doc Hastings
Member of Congress

WINDMILLS VS PROPERTY VALUES

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About three years ago I was invited to a special meeting introducing the concept of windmills coming to Kittitas Valley. I asked if they had ever brought windmills to a valley as beautiful and diversified as ours. The Zilka representative quickly answered that there are thousands in the hills near Palm Springs. I knew then we were in big trouble for them to think that the Desert Hot Springs area, in the Mojave Desert deserves a comparison to Kittitas Valley. Anything on those hills would be a welcome addition (maybe) without a residential property in site, very similar to Walla Walla.

My discussion is going to focus entirely upon their analysis that concludes that windmills will not affect land values. A group called "Renewable Energy Policy Project" conducted the analysis, certainly biased but it was interesting, comprehensive, and "totally worthless". When I explain the primary elements involved in their study I hope you will see that they have attempted to compare Apples to Thorns. There is absolutely no similarity between the communities they've presented and the Kittitas Valley.

First I need the reader to take a couple of moments to familiarize yourselves with the following recap of their report.

<u>COMMUNITY/AREA</u>	<u># OF TURBINES</u>	<u>POPULATION</u>	<u>MEDIAN VALUE OWNER/OCCUP</u>
Madison Co. NY	20	7800	\$77,100.00
Carson City, TX	80	1200	\$53,150.00
Bennington VT	11	3047	\$117,400.00
Kewancee City, WS	31	3005	\$104,000.00
Somerset, PA	6	18,898	\$61,800.00
Buena Vista, IA	257	18,368	\$68,933.00
Fayette City, PA	10	3854	\$60,200.00
Riverside Co. CA	3067	28,119	\$87,900.00
Kern Co. CA	3569	15,000	\$68,000.00

With the exception of the two California projects the area they've presented as viable evidence of comparison does not provide the densities in regard to the number of machines or in population. Their plans for Kittitas Co are much more aggressive. The number of windmills spread among this number of people would provide nothing more than some passive curiosity. These communities are small and remote with very few windmills.

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The second point you need to understand is their definition of view shed. They are defining it as salable properties within a 5-mile radius of the machines, or 10-mile circle.

Again, compare the number of machines to their view shed population this is not a fair comparison to our community, and no where do we see a study of property values within $\frac{1}{4}$ or $\frac{1}{2}$ mile of the windmills. This is definitely planned for the Kittitas Valley. The other reason they did not present it is that very few salable properties exist close to the towers. In their study it is interesting to note the projects they did not report. There were 20 such locations including Logan Co., Umatilla Or. Weld Co., and Walla Walla WA. The reason they were not reported was "not enough sales" to evaluate and the rest because of insufficient data. Again, the safe assumption is that the salable properties within the view shed hardly exist in these remote locations. The statisticians were creative and the data is probably correct but to compare any of the above to our county is ludicrous.

Now we come to the crux of the argument: "Property Values". Their assumption on land values fly in the face of any Real Estate Professional. Now for last time, let's go to the table above and note the last column. It represents the cost of a single-family home in that region. For example, a saleable 3 bedroom, 1 bath family home in Carson City, TX is \$53,150.00. The cost of a buildable, developed lot without a home in Ellensburg is \$35,000.00 - \$40,000.00 and more expensive in the Upper County, this is for land only. New affordable housing in Ellensburg is \$135,000 - \$140,000 on a 7000 sq ft lot. And the average building permit for the outside of the city limits is in excess of \$200,000.00. This does not include Suncadia. The point to ponder is this: people living in remote areas are looking for less expensive affordable housing and external influences such as windmills would have less effect on prices than in a community like ours. For example, I grew up very close steel mills as a small child because that was what we could afford - not because it was where we wanted to live. The vast majority of people in Kittitas County wants to and chooses to live here.

You cannot compare the properties above to anything in our valley in regard to cost or investment. I contend they have never brought windmills into an area as valuable as ours. They have never brought towers into an area where the land uses and values are based upon recreation, residential irrigated agriculture and forestland that is all within 2 hours or less of a major metropolitan area.

We forget that the largest industry in Kittitas County is Real Estate and our strength lies in our diversity of land use and our quality of life.

There may be sites worthy of this experiment but not in many of the locations suggested. Some will be placed within a $\frac{1}{4}$ mile of properties with current values in excess of \$250,000.00 representing the plans and hopes of the current owners; their dreams will be

quickly diminished by the presence of the windmills. If this is allowed to happen, it is tantamount to a "taking" as we can prove damages, thus as in any "taking" compensation to the affected property owner should be part of the mitigation costs incurred by the wind companies. Remember our clientele and our property owners are not looking for low-cost housing but their first home, their dream home or their retirement home. Our county residents are more discerning, more sensitive, and more protective of their property and their community. We do not want or need a picket fence around our valley.

We cannot afford them.