

**MINUTES  
ENERGY FACILITY SITE EVALUATION  
COUNCIL OF WASHINGTON**

August 25, 2004 Special Meeting  
1700 Canyon Road, Columbia Room  
Ellensburg, Washington, 9:02 a.m.

**ITEM 1: CALL TO ORDER**

JUDGE TOREM: It's now two minutes after nine o'clock in the morning on Wednesday, August 25, 2004. This is Administrative Law Judge Adam Torem convening a special meeting of the Washington State Energy Facility Site Evaluation Council. The Council is meeting today in Ellensburg at the Ellensburg Inn Columbia Room, and we'll now have the roll call.

**ITEM 2: ROLL CALL**

**EFSEC Council Members**

**Community, Trade & Economic Development**  
**Department of Ecology**  
**Department of Fish & Wildlife**  
**Department of Natural Resources**  
**Utilities and Transportation**  
**Kittitas County**  
**Chair**

Richard Fryhling  
Hedia Adelman  
Chris Towne  
Tony Ifie  
Tim Sweeney  
Patti Johnson  
Jim Luce

MR. FIKSDAL: I note that the Chair is here, and there is a quorum.

JUDGE TOREM: Thank you, Mr. Fiksdal.

**OTHERS IN ATTENDANCE**

**EFSEC STAFF AND COUNSEL**

Allen Fiksdal  
Ann Essko, AAG  
Shaun Linse, Court Reporter

Irina Makarow  
Adam Torem, Kittitas ALJ

**EFSEC GUESTS**

Darrel Peoples – Kittitas Valley Wind Power  
Project & Wild Horse Wind Power Project/  
Andrew Young – Zilkha Renewable Resources/  
Ed Garrett – ROKT

Jim Hurson – Deputy Prosecutor for Kittitas  
County  
John Lane – Counsel for the Environment/  
David Steeb – EnXco

### **ITEM NO. 3: WILD HORSE WIND POWER PROJECT**

JUDGE TOREM: The purpose of the special meeting today is to discuss the Wild Horse Wind Power Project and no other projects unless those are brought to the attention of the Council as needing urgent attention today. This is the only matter on the agenda, the Wild Horse Wind Power Project, and the Applicant's letter of August 16, 2004 from Darrel Peeples requesting an extension of the period set to request preemption or resolve land use inconsistency pursuant to Washington Administrative Code Chapter 463, Section 28-040. Mr. Peeples, do you want to address anything more than what was in your letter or just elaborate on that?

MR. PEEPLES: No. The letter I think was pretty straightforward. We just received the decision from Department of Ecology on lead agency status. I haven't even had a chance to review that yet. Jim let me review a hard copy that he had at the meeting last night, but, you know, we need to take a look and deal with the County now, and we'll be trying to meet with the County either next week -- although next week is going to be hard because of the upcoming Labor Day and the rodeo here and getting everybody together and vacation schedules. But at least we will meet if not next week the week after to figure out where we go from here, especially of the effect of the DOE determination of lead agency status. So to me November 1 we should have some clarity between everybody as to where we go.

JUDGE TOREM: You've asked originally we had our original land use meeting on April 22, and we reconvened that on June 7. At that time we gave until August 30; is that correct?

MR. PEEPLES: Yes. I can't remember. I can't remember exactly when. I was assuming it was August 30. I think that's the date, the 90-day date, but I'm not positive.

JUDGE TOREM: The County has two representatives at least here this morning, Mr. Hurson and Mr. White. Do either of you need to speak to the request to extend that deadline?

MR. HURSON: No. Jim Hurson. The only thing I was going to say is I think he asked for November 1.

JUDGE TOREM: That's correct.

MR. HURSON: I don't think we would be able to have it resolved by then. You can have updates, but right now there's two processes that we're working through on consistency. One is essentially asking for a site-specific rezone and comprehensive plan amendment for the wind farm itself. They have to see where it goes with the Draft EIS and setting hearings and all that, but I can't imagine us getting through all that process until the end of the year at the earliest. The other process is they're asking for a text amendment to the comprehensive plan which would change the language that basically says wind farms have to go through the County process unless EFSEC also does that. The comprehensive plan process, my understanding is they have a series of hearings over the next month or so. Those recommendations go to our County Commissioners, and typically our comprehensive plan annual amendment you can only do it once a year, but there are exceptions. Typically that doesn't get signed and approved until the week between Christmas and New Year. So realistically we're looking at maybe resolving it one way or the other by the end of the year possibly. Probably if it's to rezone more into the next year, early next year in January, but by the end of the year we definitely would have I assume schedules and be able to update. So I mean if you want to do November 1, you can. I'm just sort of giving you an update, on November 1 I will probably give a similar update, maybe a little tighter time frame at that point in time.

JUDGE TOREM: Thank you, Mr. Hurson.

MR. PEEPLES: I guess my response is it's up to the Council as to what they would want. I appreciate what Mr. Hurson said. I thought by November we would have clarity and would know where we're at, and we may be coming back for another extension. If you want to put the extension further out today, that's fine. I thought November would be a good check time to come back to the Council. I might note after you asked when the 18th meeting was I noted that we would have to file a second request by I note October 13 to get it on that October 18 meeting, so it's whatever the Council wants. I think November 1 was an arbitrary date that I picked to come back by that time before the Council. If you want to maybe put that ahead, it's up to the Council. I don't care.

JUDGE TOREM: Mr. Peeples, from the Council's perspective if we grant one extension for a longer period of time, if the Applicant determines that the land use inconsistency cannot be resolved at some point during the process that Mr. Hurson laid out, you would still be able to come back at your discretion and make a request for preemption.

MR. PEEPLES: Correct. Yes.

JUDGE TOREM: So is there any harm in recommending to the Council that they go ahead and having heard that the way to solve the inconsistency apparently is getting the comprehensive plan amended here in Kittitas County to accommodate the project and then to look at the zoning text amendment, which sounds like it couldn't be done until the first of the year and some time thereafter, wouldn't a more appropriate date be sometime in January to extend it? And then you still have the discretion if you see otherwise to come back and let us know.

MR. PEEPLES: If the Council wants to do it that way, that's fine. I have no objection to that.

JUDGE TOREM: I think certainly the Council based on past experience would be interested in regular updates at the meetings as to where the process is going, to hear from you and from the County and to see whether or not the inconsistency could be resolved because that's always preferable.

MR. PEEPLES: That's fine.

JUDGE TOREM: One other question, and maybe Mr. Hurson and Mr. White have a viewpoint on this. Has the Applicant considered if it's going down these roads to achieve land use consistency in going through what appears to be a county permitting process, thought at all about a separate application to get all the permits it might need simply from the County, and if those consistencies are achieved, then pursuing the actual process with the County rather than EFSEC, or are you going to choose that fork in the road when you get the land use consistency?

MR. PEEPLES: We would choose that in the future as to which would be the best option. I mean it's clear that there's really a long tortuous appeal process from the County as opposed to EFSEC process.

JUDGE TOREM: I recognize there's different reasons for making your selection on whom the permitting agent would be.

MR. PEEPLES: Right. We will keep all our options open.

JUDGE TOREM: There are a number of other folks here from the public this morning who are parties in the other matter before the Council. There are no parties other than the Applicant and the local county really in the Wild Horse matter this morning. Is there anyone else that needs to comment on the request for an extension on resolving land use consistency? I'm seeing none. Let me look -- Mr. White.

MR. WHITE: Actually I just have one quick comment just to give you guys an update, because I think that's important you guys are updated. Where we're at now is that Zilkha did supply us with an application. Our 30-day comment period which is required for the rezone ends August

30. As always if EFSEC ever needed information on where we're at or we're going to be meeting obviously with the Applicant and no problem giving you guys the schedule on where we're going from here. There's options as there always have been for the Applicant on how they want to proceed. At this point I will be reading the DEIS and making comments by the 10th. But if you guys ever need information, there's always by phone, so it's not difficult to give you guys status updates as to where we're at and this is the process. That's always fine.

JUDGE TOREM: Thank you, Mr. White. I think probably the best way is when we get our project updates at the EFSEC Council meetings to check in at least one a month -- it doesn't have to be every meeting -- to let us know what's coming and what's been achieved and if that's on the schedule that the County's adopted.

MR. WHITE: That's not a problem. That's where we're at now, and after the 30th we'll do something like this when we come back.

JUDGE TOREM: Excellent. Councilmembers, any discussion about the request or an appropriate date, if you wish, to grant it? Chair Luce.

CHAIR LUCE: I have a quick question, Mr. Hurson. Mr. Hurson you said early January you thought these issues might be capable of -- the County might be in a position of knowing whether these issues will be capable of being resolved.

MR. HURSON: Well, part of it has to do with the Draft EIS as far as timing. I just remember in looking at our time frames before we were saying once we had, you know, adequate environmental probably get it through here in the process in four, four a half months. Looking at where it is that probably puts us mid to late January is the four- to four-and-a-half-month time frame. So I'm not saying whether it should be resolved. We should be through our hearings by then assuming that we have the accurate environmental. I'm just trying to project forward right now.

MS. TOWNE: Are you referencing your flow chart that you gave us a month or so ago that had the time? You laid out a graphic.

MR. HURSON: That's some other time frames that we've got. Yes, that's typically about what you're looking at as far as in getting the hearings. You have the Planning Commissioners, Board of County Commissioners and time frames to get the documents. That can vary from project to project. That's sort of generalized. So I mean before then obviously we would be able to get status as to where we are and, yes, we've got a hearing set, or we are already through the planning commission phase; now we're going to go to the commissioners. So I was trying to give you hopefully that could be the actual end time.

CHAIR LUCE: Thank you. You've answered my question.

JUDGE TOREM: One thing I know we have set, Mr. Peeples, is the prehearing conference to discuss petitions for intervention in the Wild Horse Wind Power Project. That's set for Thursday morning, September 30. At that time, Mr. Hurson and Mr. Peeples, where do both of you expect the County land use process to be? Because that very well might influence the Council's decision or maybe it should be postponed on petitions for intervenors.

MR. PEEPLES: We're going ahead with the EFSEC process. When I put November 1, I thought we would have I think, and I really firmly believe we will know before then whether or not we're going to file for preemption. You know, it's unlikely we'll wait until January or sometime like that to file for preemption; although, the flexibility we have that flexibility to do that. We want to go ahead with the EFSEC process, and I believe aim for EFSEC hearings as soon as practicable, and we'll see how the County process goes.

JUDGE TOREM: My expectation from the Applicant would be at the prehearing conference that's set at the end of next month on intervention that we would probably want to add an agenda item as to looking down the road for potential hearing dates, and I will want to know what your view is and what the County's view is as to whether a hearing should take place where in the County land use schedule. If it's after that, we're talking about February or March and waiting for the County to resolve land use inconsistency, or if you foresee that you need to file a request for preemption in this case as you did in the Kittitas Valley Wind Power Project, that may influence where we want to put the hearing or whether we can schedule the hearings if we have to wait for consistency as I think is preferable, or preemption if you believe that there's a strong case for that in this particular project.

MR. PEEPLES: I think it would be good for you to note that my impression of the DOE order puts kind of a significantly different legal view as to how people can proceed legally. We need to sort that out right now.

JUDGE TOREM: Understood.

MR. PEEPLES: Okay.

JUDGE TOREM: Mr. Hurson, anything else to add on this?

MR. HURSON: No.

JUDGE TOREM: Then Councilmembers --

MS. ADELSMAN: I do have a question. What is Ecology's order?

MR. PEEPLES: It was an order with regard to the lead agency status on these two respective applications, one with EFSEC and one with the County.

JUDGE TOREM: That was apparently published late yesterday while the Council was traveling, and it should be circulated to Councilmembers later today. So I think the audience was more informed than the Council.

MS. ADELSMAN: I know.

MS. TOWNE: What's the punch line?

MR. PEEPLES: Well, I haven't read -- Jim gave me a copy. I reviewed it real quick. I haven't had time to study it either, but we need to study that.

JUDGE TOREM: Let me have Mr. White's view on this because Mr. White and Mr. Hurson are the ones that brought up this issue and started that road that the Council asked for a lead agency determination. What was the end of the request?

MR. WHITE: It was a very, very brief response. It basically says that just it would be that for a wind farm or any alternative energy project it is an optional process to go to EFSEC, but when you go to EFSEC, you're required to go to EFSEC. It was a real -- and I haven't had a chance to but it was optional to apply to EFSEC, but once you're at EFSEC, then you're required to have gone to EFSEC.

JUDGE TOREM: So if I understand you correctly, once in this case for an optional project that's not under, it must be at EFSEC. Once the Applicant chooses to come to that body, then they become the lead agency for the SEPA process.

MR. WHITE: Then they're required. So I mean like I'm not even understanding like if the Applicant withdrew from EFSEC whether they could even apply to Kittitas County.

JUDGE TOREM: Okay. So we'll sort that out along the road.

MR. WHITE: That was kind of the gist of it.

MR. PEEPLES: My feelings in reading it real briefly was that EFSEC has sole SEPA jurisdiction, period. Okay? So we all need to study, and we're going to be talking about it and figure out where we go.

JUDGE TOREM: From the Council's point of view then I'm not hearing anyone suggesting that we should put the brakes on the process and have to go to a different governmental body, but that EFSEC should continue with its process both in this case, and any others that are before it.

MR. PEEPLES: That's correct.

JUDGE TOREM: Mr. Hurson, is there any reason that the Council sees a new motion to stay either of the processes on that particular topic as being potentially getting granted by this body? I know you could make one at any time, but what do you predict we might do with this?

MR. HURSON: Well, I'm not saying that. Frankly the reason that issue came up is because, one, is if our application would be considered like a separate application that would give Clay in essence the ability to say, well, I think this would be an MDNS because with an EIS you don't have to go through the full EIS, so you could go down that track. Frankly, that's brought about the issue is because Clay when he got the application sent out the notice of application with the SEPA checklist, and then Ecology says you can't do that; you can only have one agency doing it. And we are hoping to be able to pursue it where we could possibly look at doing an MDNS which could actually speed up the process for the County.

JUDGE TOREM: Okay. I understand that.

MR. HURSON: But Ecology said we can't do that, so we have to wait and look to see what EFSEC comes up with. So that was sort of the driving force of the whole issue.

JUDGE TOREM: Let me bring it back to the issue at hand then, since now the Council is aware at least in part of what Barbara Richie and the Department the Ecology did with the requests and the County's response for a lead agency determination on these projects. The issue before the Council is whether or not the land use inconsistency resolution deadline should be extended from August 30 to as requested November 1 as the Applicant requested or to some later date based on the discussion today. Is there a motion or any discussion before a motion?

CHAIR LUCE: What I have heard is that the Applicant is going to be in a position to know whether it's going to request preemption by November 1 on or about; is that correct?

MR. PEEPLES: We should have a good idea.

CHAIR LUCE: I also understand from Mr. Hurson from the County that they may not be through with their procedures until some later point in time, but I guess I would support the November 1 date because I would like to know whether there's to be a request for preemption. It seems to me like that's a logical check-in, and we can go forward from there and have another extension if that's really critical.

MR. SWEENEY: I would go ahead and move we accept the Applicant's request for preemption extension as stated.

MS. TOWNE: Second.

CHAIR LUCE: There's a motion and a second.

JUDGE TOREM: Let me ask one question of clarification. Mr. Peeples, if you were going to ask for an additional extension, and would it have to be voted upon at the regular meeting on November 1st?

MR. PEEPLES: 18th.

JUDGE TOREM: November 1, if that's the deadline, you would have to know on October 18. Would it be more appropriate to have the Council -- you would know on November 1 and have it brought up at the November 15 meeting?

MR. PEEPLES: That would be fine.

JUDGE TOREM: Is that better for you?

MR. PEEPLES: That would be better, yes.

CHAIR LUCE: You want to amend the motion?

MR. PEEPLES: November 15 would be just fine, and that way we can do the request on the 1st.

JUDGE TOREM: Correct. That's what I was looking at as your notice period to get that done.

MR. PEEPLES: Okay. That's fine.

MR. SWEENEY: I'll amend the extension to November 15.

JUDGE TOREM: Is there a second?

MS. TOWNE: Second.

JUDGE TOREM: All right. So now the motion for the Council is for November 15.

MR. FIKSDAL: What is the date? The 15th is that the next Council meeting?

JUDGE TOREM: Yes, it's two weeks after. So there's a motion for the Council to extend the land use inconsistency resolution deadline to November 15. Any further discussion?

MR. IFIE: Call for the question.

CHAIR LUCE: Question has been called for. All in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR LUCE: Opposed? The ayes have it. The motion is carried.

JUDGE TOREM: Is there any other business before the Council this morning? We just got the camera set up. We could have something.

MR. FIKSDAL: Shall we redo it?

#### **ITEM NO. 4: ADJOURN**

JUDGE TOREM: All right. We don't get an action shot of anybody else doing anything else, so therefore seeing no further business before the Council this special meeting of EFSEC is adjourned.

(Special meeting adjourned at 9:22 a.m.)