

BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of: )  
 Application No. 2003-01 )  
 ) Special Meeting  
 SAGEBRUSH POWER PARTNERS, LLC, )  
 )  
 KITTITAS VALLEY WIND POWER PROJECT ) Pages 1 - 19  
 \_\_\_\_\_ )

A special meeting in the above matter was held in the presence of a court reporter on March 27, 2007, at 7:00 p.m., at Kittitas County Fairgrounds, 512 North Poplar Street, Home Arts Building, in Ellensburg, Washington, before Energy Facility Site Evaluation Councilmembers.

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JUDGE TOREM: Good Evening. It is Tuesday, March 27, 2007. It's now seven o'clock in the evening, and this is an announcement of the Kittitas Valley Wind Power Project final decision and recommendation to Governor Gregoire by the Energy Facility Site Evaluation Council. All of you should have a yellow piece of paper with the agenda in front of it, and you--

AUDIENCE MEMBER: Can you speak up, please.

JUDGE TOREM: Yes. We'll see if we can adjust the sound as well.

You can see the agenda. We plan to call to order. We're going to have the clerk call the roll of the Council and then individual Councilmembers are going to read through selections or excerpts of the highlights or low lights depending on your perspective of the decision

1 and recommendation.

2 After this is done, tonight the  
3 Councilmembers will be signing the order before they  
4 leave. I have the original in front of me. So,  
5 Councilmembers, before you depart tonight please make sure  
6 you sign it, and then we will adjourn the meeting. When  
7 the meeting is adjourned we have copies of the order in  
8 full, as well as the executive summary for those that  
9 don't want to read it. It's a lengthy document. There's  
10 also all kinds of documentation that we have available.  
11 So if you want to read through it, tonight is just an  
12 announcement. There will be plenty of time for that.

13 CHAIR LUCE: Clerk, please call the roll.

14 MR. FIKSDAL: Department of Community,  
15 Trade, and Economic Development?

16 MR. FRYHLING: Dick Fryhling is present.

17 MR. FIKSDAL: Department of Ecology?

18 MS. ADELSMAN: Hedia Adelsman is here.

19 MR. FIKSDAL: Department of Fish and  
20 Wildlife?

21 MS. TOWNE: Chris Smith Towne is here.

22 MR. FIKSDAL: Department of Natural  
23 Resources?

24 MS. WILSON: Judy Wilson is present.

25 MR. FIKSDAL: And I want to apologize,

1 Ms. Wilson, for forgetting your nameplate.

2 Utilities and Transportation Commission?

3 MR. SWEENEY: I'm Tim Sweeney.

4 MR. FIKSDAL: Kittitas County?

5 MS. JOHNSON: Patti Johnson.

6 JUDGE TOREM: And the Chair?

7 CHAIR LUCE: Chair is present.

8 Good evening. As you know my name is Jim  
9 Luce and I'm the Chair of the Council, and as our  
10 Administrative Law Judge Torem indicated, tonight the  
11 Council has a single item on the meeting agenda, and that  
12 is to consider the application for Sage Brush Power's  
13 Facility Application No. 2003-01 for the proposed Kittitas  
14 Valley Wind Power Project and to vote on the proposed  
15 order and recommendation to the Governor of the State of  
16 Washington.

17 In addition to the Councilmembers I want to  
18 begin by acknowledging the presence of Kyle Crews, our  
19 Assistant Attorney General; Mike Tribble for the  
20 environment, and Adam Torem our Administrative Law Judge.  
21 I would also be remiss if I did not recall the significant  
22 contribution of Ann Essco, the Assistant Attorney General  
23 who proceeded Mr. Crews; and John Lane and Michael Lufkin  
24 counsels for the environment who preceded Mr. Tribble.

25 I would like to begin to describe the events

1 leading to today's special Council meeting for  
2 certification of the Kittitas Valley Project. As I expect  
3 you all know the Applicant proposes the construction and  
4 operation of up to 65 wind turbines generating somewhere  
5 between 100 and 180 megawatts of wind power dependent on  
6 the type of turbines selected by the Applicant. The  
7 project encompasses some 6,000 acres of land, 371 of which  
8 would be temporarily disturbed, and of those 118  
9 permanently developed for placement of the turbine's  
10 access roads, substations, transmission lines, and related  
11 facilities.

12 Before proceeding further I want to  
13 summarize the Council's role. Some of you have been here  
14 for many times and you've probably heard this before, but  
15 for those of you who haven't been here, I just want to  
16 recall EFSEC was created to advise the Governor in  
17 deciding what proposed locations are appropriate for  
18 siting of new large energy facilities, and the legislature  
19 in so doing recognized the selection of sites would have a  
20 significant impact on the welfare of the entire population  
21 of the State of Washington and the use of the state's  
22 natural resources.

23 In our job we make very difficult balancing  
24 judgments and contribute hopefully to the goal of abundant  
25 power at a reasonable cost while protecting the

1 environment and the public interest. We are aided in this  
2 process by thoughtful advice of voting members from local  
3 communities who sit with the Council such as Patti  
4 Johnson. Patti has done an outstanding job.

5 Recognizing that Council recommendations can  
6 be difficult and sometimes controversial and yet critical  
7 to the entire state the legislature directed us in the  
8 following way:

9 The State hereby preempts the regulation and  
10 certification of the location, construction, and  
11 operational conditions of certification of energy  
12 facilities. Under Washington Law EFSEC has jurisdiction  
13 over alternative energy resources such as the proposed  
14 Kittitas Valley Project if a developer seeks to have EFSEC  
15 site that project.

16 This project as we all know has a very long  
17 history. It's been the subject of untold public meetings,  
18 hearings, studies, restudies, environmental impact  
19 statements, supplemental environmental impact statements,  
20 addendums to environmental impact statements, and other  
21 proceedings. The process has stretched over several years  
22 with the active involvement from the Kittitas County Board  
23 of Commissioners, the Kittitas County Planning Commission,  
24 and I want to say most importantly the citizens of  
25 Kittitas County; both those who have supported and those

1 who have opposed that project, particularly the members of  
2 the public, you who have taken a lot of time away from a  
3 lot of other priorities to come to us and to present your  
4 opinions and your testimony.

5 I'm not going to try to substantially repeat  
6 all of the public process. It's all set forth in the  
7 record. I will, however, offer some observations  
8 regarding the Council's order and recommendation to  
9 Governor Gregoire and summarize certain recommendations I  
10 know of interest to all of you, and I'm then going to ask  
11 for a motion to adopt the proposed order, which if adopted  
12 by the Council will be called Order No. 826, and that is  
13 how I will refer to it for the rest of my remarks.

14 Proposed Order 826 recommends Governor  
15 Gregoire approve the Kittitas Valley Wind Power Project  
16 and sets conditions for construction and operation of the  
17 project that the Council feels are necessary to protect  
18 the health and safety of the citizens of Kittitas County  
19 and the state, as well as to protect and preserve the  
20 environment.

21 I will note that there is a descending  
22 opinion in the proposed order. I'm going to ask certain  
23 Councilmembers to briefly summarize areas the Council  
24 examined in some detail, and then we will take a roll call  
25 vote. If a majority votes to enter the proposed order, it

1 will be entered and forwarded to the Governor. After that  
2 vote, I will adjourn the meeting.

3 If the order is adopted, there will be a  
4 12-day period after which it has been officially served on  
5 any party to file a petition for reconsideration. The  
6 Council will handle such petitions as soon as practicable.  
7 After the meeting Mr. Fiksdal, Council Manager; and I will  
8 answer questions about the EFSEC process and very briefly  
9 about the order. We will not discuss the order in detail.  
10 There are copies of the executive summary available which  
11 summarizes the Council's recommendation. We also have  
12 limited copies of the proposed order that will be  
13 available on a first come, first serve basis and the  
14 entire order will be on our website first thing in the  
15 morning.

16 The order is the result of a deliberative  
17 process. It speaks for itself. Any concurring or  
18 descending opinion will speak for the individuals who  
19 published them. I believe the proposed order is clearly  
20 written and answers most of your questions. If you have  
21 specific questions about where to find individual items of  
22 interest to you, EFSEC staff will assist. I'm not going  
23 to talk anymore about the public process. What I am going  
24 to say is that the project as originally envisioned has  
25 changed in several key areas, many of which you have

1 identified all of you here tonight: the intervenors, the  
2 witnesses, and the public. I want to highlight those.

3 The project was originally envisioned as  
4 being between 82 and 150 turbines with a total nameplate  
5 of about 182 to 246 megawatts. As modified there are no  
6 more than 65 wind turbines with a maximum total nameplate  
7 capacity of 195 megawatts depending upon the size of the  
8 turbines. The turbines as you will remember have been  
9 relocated and in some cases entirely eliminated to protect  
10 the viewscape or otherwise mitigate its impact, and the  
11 developer is required to program turbine operation to  
12 completely eliminate shadow flicker from nonparticipating  
13 residences.

14 The Council is also after hearing from the  
15 public and the parties addressing the issue of visual  
16 impact. We are recommending to the Governor the setback  
17 of four times the turbine height from nonparticipating  
18 residences. For proposed 1-1/2-megawatt turbines with a  
19 tip height of 330 feet, the required minimum setback from  
20 a nonparticipating residence would be 1,320 feet. For the  
21 proposed three megawatt turbines with tip heights of 410  
22 feet, the minimum setback would be 1,640 feet. In these  
23 and other ways the Kittitas Valley Wind Power Project  
24 before us is a substantially different project, and the  
25 Council believes that it will further many of the

1 legislative policy directives, including the state's  
2 commitment to clean energy, to promote air cleanliness,  
3 and while producing minimal affects on the environment and  
4 providing abundant power at a reasonable cost.

5 I'm now going to ask individual members to  
6 identify themselves and summarize their thinking on  
7 specific issues on which the Council deliberated. We will  
8 begin with Councilmember Judy Wilson. Judy is a former  
9 county commissioner from Thurston County. Ms. Wilson  
10 represents the Department of Natural Resources and will  
11 discuss the preemption issue. Ms. Wilson will be followed  
12 by Chris Towne who will comment on the fish and wildlife  
13 issues and Richard Fryhling, our member from the  
14 Community, Trade, and Economic Development will talk about  
15 the economic impacts and other issues pertinent to the  
16 community.

17 Judy.

18 MS. WILSON: Thank you. I want to make sure  
19 I'm live. I sound like I'm on. Can you hear me?

20 Good evening. In developing our  
21 recommendation to the Governor the decision to preempt  
22 Kittitas County was the most difficult. Although RCW  
23 Chapter 80.50 expressly supersedes state and local law  
24 relative to siting energy facilities, the fact that an  
25 application had been reviewed and denied at the local

1 level presented an unusual circumstance for the Council.  
2 As a former county commissioner the idea that a state  
3 Council could override a decision made at the local level  
4 presented a conflict for me. However, I did join the  
5 majority in agreeing to preempt the decision as allowed by  
6 RCW 80.50.

7 During the week of adjudicative hearings the  
8 Council participated in a site visit where we visited  
9 several locations addressed in testimony. Thanks to all  
10 of those who allowed access to their properties for that  
11 visit, as it proved very helpful.

12 Before reaching a decision we reviewed all  
13 of the documents developed during the application process,  
14 including the transcripts of the planning commission and  
15 county commissioner meetings. We reviewed the language of  
16 the Kittitas County Comprehensive Plan and zoning code.  
17 WAC 463-28 lays out four areas for Council consideration  
18 for preemption.

19 Number one, the Applicant has demonstrated  
20 good faith in resolving noncompliance issues with the  
21 local entity. There was a difference of opinion regarding  
22 this topic since the record indicated the Applicant at one  
23 point in the process ceased communication. However, in  
24 reviewing the entire record, the majority of the Board  
25 concluded that in general the Applicant showed good faith

1 in attempting to address the areas of concern.

2 Number two, that the Applicant and the local  
3 authorities are unable to reach an agreement which will  
4 resolve the issues. The record in this case indicates  
5 that the parties did not reach agreement; however, failure  
6 to reach an agreement does not mean there was not efforts  
7 made to do so.

8 Number three, alternate locations within the  
9 same county and city have been reviewed and found  
10 unacceptable. An analysis of alternative sites was  
11 included in Chapter 2.6 of the Final Environmental Impact  
12 Statement. The FEIS used five criteria and identified  
13 alternate sites. One, sufficient wind resource, the most  
14 important; proximate adequate transmission facilities,  
15 large land area, absence of significant environmental  
16 constraints; and, number five, property owner interest,  
17 property availability or control of the property. While  
18 other locations may meet some of the criteria mentioned  
19 above, the Applicant is not in control of those  
20 properties. The robust wind resource in this area is well  
21 documented.

22 Number four, interest of the state as  
23 delineated in RCW 80.50.010. The Council believes the  
24 development of wind resources in the state meets the state  
25 energy goals; therefore, I joined with the majority of the

1 Council in recommending approval of this application to  
2 the Governor.

3 CHAIR LUCE: Thank you, Judy.

4 Chris Towne representing Department of Fish  
5 and Wildlife.

6 MS. TOWNE: Thank you, Mr. Chairman.

7 First, I'd like to speak to the subject of  
8 fish, and necessarily I must talk about fish habitat.  
9 They are inextricably linked. On this site we determined  
10 that there was no existing or potential habitat for  
11 federal or state protected species and in fact for almost  
12 all species of fish; therefore, there could be no impacts.  
13 The streams on the sites are ephemeral. When it rains  
14 hard, there are temporary streams. When it doesn't rain  
15 hard, there aren't any streams; therefore, fish cannot be  
16 accommodated.

17 However, our concern was the control of  
18 runoff, erosion, and other forms of sedimentation into  
19 water bodies adjacent to the site or nearby the site,  
20 primarily the Yakima river which at its closest point is  
21 about a half mile away. The Council determined after  
22 examining with great diligence the various environmental  
23 impact statements that implementation of best management  
24 practices, how the developer will do his job in  
25 constructing the facility, and the requirements of

1 stormwater permits for operation of the facility will  
2 effectively control such runoff, erosion, and  
3 sedimentation so as to result in no impact of significant  
4 adverse nature to fish resources outside the site  
5 boundaries.

6 Second, the terrestrial habitat. This  
7 encompasses both mammals and to a lesser extent birds.  
8 The project's design and the mitigation measures  
9 incorporated in the site certification agreement and the  
10 final environmental impact statement avoid or minimize  
11 impact to plants, including shrub-steppe habitat and  
12 lithosols. Those were the two specific areas of concern.

13 Sensitive habitat, including some small  
14 wetlands in or near construction areas, will be avoided or  
15 any unavoidable harm will be mitigated. In addition, a  
16 539 plus or minus acre mitigation site has been or will be  
17 purchased by the Applicant to ensure for the life of the  
18 project that an area will remain of high quality, will  
19 remain intact. As to that big game within the areas of  
20 construction, there will be only limited displacement  
21 impact to such game because most major construction will  
22 occur outside of the winter months. No elk, no problem.

23 Avian impacts, the last and probably most  
24 contentious issue that we dealt with. The Audubon  
25 Society, the Counsel for the Environment, and several

1 individual commentators that are here in the room tonight  
2 argued that the one-year baseline study performed by the  
3 Applicant was not adequate to assess potential impacts.  
4 How did we come up with the one-year study? We came up  
5 with it by referring to the Department of Fish and  
6 Wildlife's Wind Power Guidelines published in 2003 which  
7 provided for that one-year baseline study. Those who  
8 argued for two or more years said that the one-year period  
9 was not adequate to assess potential impacts, and we could  
10 not rely on a one-year study to correctly ascertain what  
11 bird communities were present on the site, the accuracy of  
12 the expected number of birds, and the estimated mortality.

13 The Council again after long deliberation and  
14 study determined that the Applicant's baseline monitoring  
15 and mortality analysis in fact conformed to the DFW  
16 guidelines, and after reviewing the data presented in the  
17 EIS concluded that there is no evidence that the data  
18 cannot be relied on. It's sort of a double negative.  
19 However, just to be on the safe side, because we don't  
20 want to be responsible even indirectly for mortality  
21 beyond that estimated, we have required implementation of  
22 post-construction monitoring. After the project is built  
23 and the windmills are turning, the monitoring will assess  
24 the accuracy of our mortality estimates that were relied  
25 on as we develop these site certification agreements. If

1 necessary, the Council will impose required mitigation  
2 measures to correct whatever deficiency would emerge from  
3 such monitoring.

4 Further, the site certification agreement  
5 provides for a technical advisory committee of experts on  
6 the subjects, including Audubon, the Department of Fish  
7 and Wildlife and other agencies with expertise who will  
8 review that monitoring and other information and may  
9 recommend responses to impacts, if any, beyond those  
10 expected. The Council, EFSEC, retains the authority to  
11 implement additional mitigation measures on the project.  
12 The TAC is as its name implies advisory to the Council.

13 In conclusion, the Council finds that the  
14 studies and measures incorporated in its findings and  
15 conclusions of law and the site certification agreement  
16 are consistent with the DFW wind power guidelines and that  
17 the project will not result in significant unavoidable  
18 adverse impacts to wildlife or its habitat. Thank you.

19 JUDGE TOREM: Thank you, Councilperson  
20 Towne.

21 Mr. Fryhling, do you have some comments to  
22 offer on behalf of the Community, Trade, and Economic  
23 Development Department?

24 MR. FRYHLING: I have about a  
25 page-and-three-quarters worth of comments, but I'm going

1 to only read one paragraph.

2 The record shows that this project is a  
3 rural friendly, agriculture-friendly, private sector  
4 development enabling sustainable agriculture, resources  
5 management uses on the land in the vicinity of the  
6 project. The Council found the Kittitas Valley Wind  
7 Project provides a unique opportunity for economic growth  
8 and development in a rural area without compromising the  
9 County's GMA based comprehensive plan and zoning code  
10 policies and requirements for the protection and  
11 preservation of agriculture, natural resource base land  
12 uses, practices and traditions, and that's all I have to  
13 say.

14 CHAIR LUCE: Thank you very much. For all  
15 of the reasons that I have explained and Councilmembers  
16 have added, Council Order No. 826 findings of fact,  
17 conclusions of law, and an order recommending approval of  
18 site certification will now entertain a motion from  
19 Councilmembers to adopt what has been designated as  
20 Council Order No. 826. Do I have such a motion?

21 MR. FRYHLING: So moved.

22 CHAIR LUCE: Do I have a second?

23 MS. TOWNE: Second.

24 CHAIR LUCE: A motion has been made and  
25 seconded to adopt Council Order No. 826 to recommend to

1 the Governor to approve the siting of the Kittitas Valley  
2 Wind Power Project.

3 Would Mr. Fiksdal please call the roll.

4 MR. FIKSDAL: Department of Fish and  
5 Wildlife, how do you vote?

6 MS. TOWNE: Yes.

7 MR. FIKSDAL: Utilities and Transportation  
8 Commission?

9 MR. SWEENEY: Yes.

10 MR. FIKSDAL: Department of Natural  
11 Resources?

12 MS. WILSON: Yes.

13 MR. FIKSDAL: Department of Ecology?

14 MS. ADELSMAN: Yes.

15 MR. FIKSDAL: Department of Community,  
16 Trade, and Economic Development?

17 MR. FRYHLING: Yes.

18 MR. FIKSDAL: Kittitas County?

19 MS. JOHNSON: No.

20 MR. FIKSDAL: Chair?

21 CHAIR LUCE: Yes.

22 Would you please announce the results of the  
23 vote, Mr. Fiksdal.

24 MR. FIKSDAL: Six yes, one no.

25 JUDGE TOREM: Thank you very much.

1                   The motion is approved. Council Order No.  
2     826 is adopted. I want to remind you there is a 12-day  
3     period from the date of the order served on all the  
4     parties to request reconsideration. If there is a request  
5     for reconsideration, the Council will review the request  
6     and determine appropriate action. Once this procedure has  
7     been completed, the order will be transmitted to the  
8     Governor for her review.

9                   The Governor makes the final decision. Once  
10    the Governor receives our recommendation, she has 60 days  
11    to review our recommendation and either approve the  
12    project, remand the recommendation back to EFSEC for  
13    further consideration, or deny the Kittitas Valley Wind  
14    Power Project all together. Again, I want to thank all of  
15    you for your participation in this process. This meeting  
16    is adjourned.

17                                   \* \* \* \* \*

18                                   (Special meeting adjourned at 7:24 p.m.)  
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A F F I D A V I T

I, Shaun Linse, CCR, Certified Court Reporter,  
do hereby certify that the foregoing transcript  
prepared under my direction is a true and accurate  
record of the proceedings taken on March 27, 2007,  
in Ellensburg, Washington.

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Shaun Linse, CCR

CCR NO. 2029