STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

November 16, 2009 Special Meeting Minutes

5:30 pm at Hal Holmes Community Center
Ellensburg, Washington

1. Call To Order

Chair Luce called the November 16, 2009 special meeting to order at the Hal Holmes Community Center in Ellensburg, Washington at 5:30 pm

2. Roll Call

Council members present were:

Jim Luce	Chair
Dick Fryhling	Department of Commerce
Hedia Adelsman	Department of Ecology
Jeff Tayer	Department of Fish and Wildlife
Mary McDonald	Department of Natural Resources
Dick Byers	Utilities and Transportation Commission
Ian Elliott	Kittitas County

Staff in attendance were:

Allen Fiksdal – EFSEC Manager and Stephen Posner – Compliance Manager, Kyle Crews – Assistant Attorney General, Judge C. Robert Wallis

Approximately 29 guests were in attendance

3. Desert Claim Wind Power Project

Chair Luce stated that the purpose of the Special Meeting was to consider a recommendation to the Governor regarding the Desert Claim Wind Power Project. He asked Judge Wallis to review the Council findings regarding the Desert Claim Project and the administrative order the Council will consider.

Judge Wallis noted that the Council heard public comment, and references in the order demonstrate that the Council considered public

comment in making its decisions. The Council also received and considered 144 written comments. He also noted that often in an EFSEC proceeding, the parties disagree on different issues. Here, by the time of the hearing, the parties had minimal or no disagreements with the applicant or each other. The Applicant worked with Counsel for the Environment and resolved all of the issues raised. In addition, the Applicant worked with the Washington Department of Fish and Wildlife, and resolved all of that party's issues. In its brief to the Council, Kittitas County said that it had no remaining issues with the Applicant. After the hearings, the Council met twice to deliberate the result. The Council considered the evidence and decided to grant the application.

Judge Wallis said the Council addresses all of the environmental issues appearing on the record, either directly in the proposed Order or in the Draft Site Certification Agreement, or in the Final Supplemental Environmental Impact Statement. The Applicant is also required to create specific plans for complying with a number of environmental requirements. He said that one Council member counted them and reports that there are about 35 separate plans required and that each of the plans will be reviewed by the Council, to ensure that the Applicant is complying with the requirements of the SCA.

Judge Wallis then covered some specific issues addressed by the Council:

- Regarding birds the order acknowledges that some birds will die as a result of collision with the towers or blades, and requires steps such as minimizing use of guy wires and external lighting for auxiliary buildings. In addition, it requires formation of a technical advisory group or TAC with affected agencies to review actual effects in operation and develop solutions for unexpected problems.
- Shadow flicker is not expected to affect any nonparticipating houses. The order accepts the Applicant's proposal to stop turbine operations if it occurs, at the request of nonparticipating owners.
- Regarding turbine views and aesthetics, the Council carefully reviewed the evidence concerning turbine views. It concludes (consistent with the FSEIS and the Applicant's brief) that for nearby residents, the wind farm can be visually significant. Therefore, the Order follows a procedure used in the Kittitas Valley application and requires the Applicant study the locations of turbines that are tentatively identified to be within 2,500 feet of nonparticipating residences. The order requires the Applicant to make its best efforts in the engineering and micro-siting process to move those turbines farther away, and to limit to one, if feasible, the number of turbines closer than 2,500 feet from any nonparticipating residence.
- The order also requires the Applicant to meet its commitment to use landscaping and low-reflective paint to minimize obtrusiveness and to forbid advertising or other prominent decorations on Project structures.
- County roads outside the Project that are used for construction access will be photographed before and after construction and, if they are damaged by Project traffic, the Applicant will bring them back to County standards. Roads into the project will be built to County standards from the point of entry to the Site up to the point that public traffic is allowed.

Roads built just for internal access bring out conflicting goals: the Applicant agreed with CFE and WDFW to minimize road construction in order to preserve habitat. On the other hand, the Council recognizes the need for those roads to serve emergency traffic, and requires the Applicant to consult with fire responders and other emergency service providers to ensure that safety on the site and for neighbors of the Project is adequately ensured.

Judge Wallis concluded stating that the Council recognizes that major energy projects require a balance between the State's need for abundant energy and the needs of the State and the public for environmental protection. While the Council recognizes that there will be some effects on the environment, on animals, and on people, it believes that the order strikes an acceptable balance between the two goals by requiring steps to minimize adverse effects where possible, and to mitigate remaining effects where possible. With those requirements, the order recommends that the Governor enter into a Site Certification Agreement with the Applicant for construction and operation of the Project.

Council members were invited to comment. Council Member Elliott noted that as a newcomer to the EFSEC process he had to spend significant time understanding the law and convention as it pertains to EFSEC. He also believes the process is flawed because the rights of the local citizens and the obligations of EFSEC do not align. As a result, once a project has been accepted by EFSEC and local permitting has been preempted, the issues of law take precedence over the issues of the project and how those issues affect the local citizen or land owner. An issue might be significant but if it is not of record in the hearing it is not to be considered. He said that he believed the project has too high a turbine density in units per acre and that the Council had not adequately dealt with the visual effect of multiple turbines on relatively flat terrain as it pertains to local residents.

Council member Elliott also noted that the cumulative effect of multiple proceedings on local citizens was an issue. He said that Kittitas County has gone through three applications and two preemptions and that the vast majority of the local populace has taken the attitude, "what difference does it make? They are going to approve the project anyway, why bother to get involved?" He said that this is evidenced by the great volume of public involvement and testimony in the first project and dearth of similar input in Desert Claim. Local news stories and letters to editor also point to this conclusion. Adequate safeguards and flexibility are required to protect the local interests after preemption. In addition, I believe that the State of Washington has done a poor job of informing the citizens of their rights under preemption and how their input can affect the outcome.

Council member Elliot concurred with the outcome of the process, given the parameters the Council was required to work within and he applauded the hard work of the Council in trying to deal with some issues they felt were needed to be addressed but were limited by the evidence of record

Council member Jeff Tayer noted from a fish and wildlife perspective it is better to site a project in non-wildlife areas and that the Desert Claim

project was located in such an area. He also said that the project is consistent with the Department of Fish & Wildlife's wind farm guidelines.

Council member Dick Fryhling asked the applicant to work hard on micro-siting to lessen any impacts to nearby residences.

Council member Dick Byers noted that the issues regarding fire had been addressed in the proposed order.

Motion: Council member Hedia Adelsman moved that the Council approve Order No. 843 - Order Recommending Approval of Site Certification Agreement for the Desert Claim Wind Power Project. Council member Dick Byers seconded the motion. The motion was unanimously approved with a roll call vote.

Allen Fiksdal, EFSEC Manager noted that any requests for reconsideration of Order No. 843 were due by November 30, 2009 and that if requests for reconsideration were received responses to the requests would be due in 14 days. He also noted that the recommendation would be forwarded to the Governor in early December if there were no requests for reconsideration and if there were, it would be forwarded to the Governor after the Council considers the request and responses, if no other action is necessary.

4. Adjourn

The meeting was adjourned at 5:48 pm.