BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2003-01
SAGEBRUSH POWER PARTNERS, LLC
KITTITAS VALLEY WIND POWER PROJECT

NO. 2003-01
RESPONSE TO APPLICANT'S
OPENING BRIEF, PROPOSED
FINAL ORDER, AND PROPOSED
SITE CERTIFICATION
AGREEMENT

I. INTRODUCTION

Counsel for the Environment (CFE) hereby submits this Response to Applicant’s Opening Brief, Proposed Final Order, and Proposed Site Certification Agreement. CFE is charged with representing the public and its interest in protecting the quality of the environment in proceedings before the Energy Facility Site Evaluation Council (EFSEC). RCW 80.50.080. In this regard, CFE’s involvement in review of the Kittitas Valley Wind Power Project (KIVWPP) is limited to the environmental impact of the proposed project. CFE takes no position regarding preemption or the proposed project’s socio-economic impact, and neither supports nor objects to construction of the KIVWPP.

Promotion of renewable energy sources is in the public interest, so long as the development of those renewable sources does not have an undue adverse impact on the quality of the environment. Although wind energy presents many positive environmental impacts such as reduced reliance on fossil fuels and reduction in emissions of greenhouse
gases, construction of wind power plants also poses environmental impacts that must be carefully considered and mitigated.

The two primary significant environmental impacts raised by the KKWPP are (1) the effect on the shrub steppe habitat within the project area and region; and (2) the effect on avian species, including birds and bats. The Applicant should be commended on many of its proposed mitigation measures argued for in its Opening Brief and listed in its Proposed Final Order, and Draft Site Certification Agreement (Draft Certificate). However, this Response will identify additional measures that should be included in any Site Certification Agreement (Certificate) if the Governor approves the Application.

Contingency environmental mitigation plans must be enacted to adequately address unintended consequences or unforeseen problems if the project is constructed and a particular mitigation need arises. Most importantly, projected avian mortality must not materially exceed current expectations so that an Altamont Pass situation does not occur in the Kittitas Valley. ¹ If the KKVPP is built, proper stewardship of the environment strongly suggests that the mitigation measures proposed by the Applicant, along with those advocated for below, should become elements of the Certificate.

II. CONDITIONS THAT SHOULD BE INCLUDED IN THE CERTIFICATE

A. The Certificate Must Contain A Detailed Plan For Mitigating Shrub Steppe Destruction And For Revegetating Disturbed Areas.

The Certificate should assure that temporarily disturbed shrub steppe, a State of Washington Priority Habitat, will successfully be re-grown under the Applicant’s mitigation plan. In its Draft Certificate, Article IV.E.1, Applicant suggests it be required to “avoid, to the greatest extent possible, construction activities outside areas that will be permanently disturbed except during the months of May through October when soil moisture is low.” This

¹ Altamont Pass was an early generation wind farm in California. Poor citing of this project has resulted in a concerning number of annual avian kills, especially among raptor populations.
proposed language is not strong enough to adequately protect the environment. All
construction activities outside of the permanently disturbed areas should be strictly limited to
those proposed months. This mitigation measure is contemplated in the testimony of
Applicant witness on habitat biology, Wally Erickson, as well as in the Draft Environmental
Impact Statement (DEIS) itself. Mr. Erickson testified that his analysis assumed that heavy
construction would occur outside of the critical winter months. KJVPP Hearing Testimony
of 9/20/06, P. 682, Ln. 6-13. The DEIS similarly assumes this dry-month construction
schedule at 3.2-33 ¶3 and again at 3.2-37 ¶1.

The Certificate should also contain measurable objective standards for evaluation of
post-construction site restoration success. Consistent with Draft Certificate, Article IV.E.9,
the Certificate should provide that reseeding programs will be required when optimal
germination and establishment conditions are present and not necessarily immediately
following the disruption.

Threat of disruption of lithosols within the region are of particular concern. Lithosols
are a specialized "shallow soil" subdominant habitat. Lithosols are sensitive to disturbance
and difficult to restore. Unfortunately, a great proportion of lithosols occur along ridge tops
where turbines are proposed to be placed. In addition to the language in the Draft Certificate,
the Certificate should specifically provide that Applicant’s revegetation program will make a
concerted effort to successfully regrow lithosols in the temporarily impacted areas of the
project.

Consistent with Draft Certificate Article V.A, and with Applicant’s stipulation with
CFE, the Certificate should provide for an EFSEC approved environmental monitor (EM)
with the authority to stop all construction on the site for violations of the Certificate. The EM
should be a qualified engineering firm and report directly to EFSEC. Moreover, the
Certificate should provide that the Applicant’s referenced “Stop Work” criteria should be
approved by EFSEC, not merely be created in consultation with EFSEC.
B. The Certificate Must Include A Detailed Mitigation Plan To Address Bird Kills.

The Audubon Society and many members of the Kittitas Valley community have objected to the one year avian study conducted by the Applicant. Many individuals have argued that a two year study should have been conducted to gain a better understanding of avian abundance in the KVVPP area. Members of the Audubon Society and local community also asked for night studies to be conducted. The Applicant resisted these requests, relying on the one year study as sufficient. Although the Washington Department of Fish and Wildlife (WDFW) Wind Power Guidelines only call for a one year study and a one year study is common within the industry, the more comprehensive study called for by the environmental community, including night monitoring, would have provided more data to form the basis of avian kill projections. Because the Applicant chose to forego a more comprehensive study, EFSEC should hold the Applicant strictly to the mortality numbers its experts have projected. To do this, EFSEC must be empowered and prepared to respond swiftly to avian mortality rates materially exceeding the projections of the Applicant by shutting down the offending turbine(s) during the hours/days found most likely to produce unexpected kill rates.

Consistent with the Draft Certificate Article IV.E.5, the Council should require a comprehensive monitoring program (i.e., the Technical Advisory Committee (TAC)) as a condition of any Certificate. As proposed by the Applicant, the TAC should convene for the life of the project, unless terminated by EFSEC for the Applicant’s stated reasons (i.e. attrition, etc.) All TAC members should be approved by the Council in an effort to ensure that diverse interests are represented. The members proposed by the Applicant (representatives from the Washington Department of Fish and Wildlife, United States Fish and Wildlife Service, EFSEC, Kittitas County, the Audubon Society, and the certificate holder) are important interest groups to be represented. However, an adjacent landowner without a turbine lease agreement, or any other contractual obligation with the Applicant, should also be included as a member. CFE should receive copies of all documents produced.
by the TAC and access to all documents presented to or reviewed by the TAC, as well as the
option to intervene as a member of the TAC.

Consistent with Draft Certificate Article VI.C.5, the Certificate should include a
condition that the TAC shall reconvene (if previously terminated) if unanticipated
circumstances arise during incidental monitoring. Finally, the Council should reserve the
right to decommission or require a particular turbine, or set of turbines, to be turned off for a
period of time if any turbine, or set of turbines, is found to kill a disproportionate number of
avian species during post construction monitoring.

C. The Certificate should require strict monitoring of bat kills.

There is limited information regarding the effect of turbines on bat mortality. Bats
play an important role in the ecosystem. See Exhibit 91 (KRB-T), Prefiled Testimony of Ken
Bevis. No studies of bats were conducted at the KVVPP site. Estimates of bat mortality are
entirely calculated based on information from other wind power sites across the country. The
Applicant has indicated that eco-monitoring and night vision studies are unreliable and were
not a viable option for conducting pre-construction research for the abundance of bats using
the proposed project area. Therefore, the Council should impose strict oversight on the bat
monitoring program to ensure that the Applicant be held to strict compliance with its
estimates. In that regard, the Council should decommission or require a particular turbine, or
set of turbines, to be turned off for a period of time if any turbine, or set of turbines, is found
to kill a disproportionate number of bat species during post construction monitoring.
III. CONCLUSION

CFE takes no position regarding whether the KVWPP should be constructed. CFE’s only objective is that the Applicant sufficiently mitigates the environmental impact of the project if EFSEC recommends approval of the project and the Governor certifies it. All mitigation measures proposed by the Applicant should be included as conditions of the Certificate. Further, the above argued conditions should be included in the Certificate to ensure responsible environmental stewardship of the site for the benefit of the citizens of the state of Washington.

DATED this _9_ day of November, 2006.

ROB MCKENNA  
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BEFORE THE STATE OF WASHINGTON
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In the Matter of Application No. 2003-01
SAGEBRUSH POWER PARTNERS,
LLC
KITTITAS VALLEY WIND POWER
PROJECT

NO. 2003-01
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I, Nicole Teeter, certify that I served a copy of Response to Applicant’s Opening Brief, Proposed Final Order, and Proposed Site Certification Agreement on all parties on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 9th day of November, 2006.

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