BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2003-01

SAGEBRUSH POWER PARTNERS,
L.L.C.

KITTITAS VALLEY WIND POWER
PROJECT

POST HEARING RESPONSE BRIEF
(CTED-TU)

The Department of Community, Trade and Economic Development (CTED, Department) has appeared in this matter to support the Kittitas Valley Wind Power Project because the Project furthers the goals of state energy policy and the State Energy Strategy. State Energy Policy, codified generally in Chapter 43.21F RCW and with respect to energy facility permitting in Chapter 80.50 RCW, has multiple goals. Permitting the Project presents a prime opportunity to further these goals.
CTED Rules Support the Applicant’s Contention that EFSEC Retains Sole Authority to Permit the Kittitas Valley Wind Power Project.

In the Growth Management Act, Chapter 36.70A RCW, (Act) the legislature directed the Department to develop procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of the Act. WAC 365-195-020. CTED, through its rules, provides guidance to counties and cities in multiple areas of land use planning. In a number of sections in WAC 365-195, CTED addresses the issue of the Act’s planning requirements relative to other planning requirements. CTED directs counties and cities to attempt to identify other statutes and legal authorities affecting subjects addressed by the plans and regulations that the counties and cities develop under the Act. WAC 365-195-710(1). A key reason for this is to avoid unnecessary duplication of effort. But it has the practical purpose of helping counties and cities not waste time in planning efforts that are not in their jurisdiction. In the same section, CTED suggests that state agencies, among others, should aid in this identification by implementing programs to inform the planning entities of relevant programs and provisions within their jurisdiction or expertise. WAC 365-195-710(2). In the rules implementing the act, CTED provides basic assumptions of the Act relative to other statutory provisions, lists statutes expressly amended by the Act, and cites state preemption of energy permitting through EFSEC as a specific state
authority not amended by the Act. Regarding the preemptive effect of the Act on other statutory provisions, WAC 365-195-705(2) states:

Absent a clear statement of legislative intent or judicial interpretation to the contrary, it should be presumed that neither the [A]ct nor other statutes are intended to be preemptive. Rather, they should be considered together and, wherever possible, construed as mutually consistent.

This rule supports the contention that EFSEC retains authority to preempt local ordinances regarding the siting of energy facilities because the EFSEC enabling statute explicitly establishes state preemption, and the Act does not explicitly amend and preempt Chapter 80.50 RCW. In the rule, CTED lists all the statutes that are explicitly amended by the Act, and Chapter 80.50 RCW is not among them. WAC 365-195-750. Finally, CTED advises the counties and cities that “Plans and regulations adopted under the [A]ct should accommodate situations where the state has explicitly preempted all local land use regulations, as for example, in the siting of major energy facilities under RCW 80.50.110.” WAC 365-195-745. CTED concurs with the Applicant’s preemption arguments as set forth in pages 6-27 of the Applicant’s Opening Post-Hearing Brief. It could hardly be more clear that the Act did not impliedly repeal the state’s authority to preempt local ordinances insofar as they apply to the certification of energy facilities under RCW 80.50.

The Kittitas Valley Wind Power Project Furthers the State’s Interests in Promoting Indigenous and Renewable Energy Resources.

The Legislature has expressed a strong public policy in favor of renewable energy in RCW 43.21F.010 and RCW 43.21F.015(1). RCW 43.21F.010 reads:
The legislature finds and declares that it is the continuing purpose of state government, consistent with other essential considerations of state policy, to foster wise and efficient energy use and to promote energy self-sufficiency through the use of indigenous and renewable energy sources, consistent with the promotion of reliable energy sources, the general welfare, and the protection of environmental quality.” (emphasis added)

Similarly, RCW 43.21F.015(1) provides that “It is the policy of the state of Washington to encourage the development and use of a diverse array of energy resources with emphasis on renewable energy resources.” Subsection (7) of this statute provides that the state energy strategy “shall provide primary guidance for implementation of the state’s energy policy.” The latest edition of the State Energy Strategy identifies wind as a renewable resource and supports its development in Guiding Principle #2. The principle is: “Encourage the development of a balanced, cost-effective and environmentally sound resource portfolio that includes conservation, renewables, (e.g., wind, geothermal, hydro, biomass, and solar technologies), and least-cost conventional resources.” (Emphasis added). (Exhibit 60.2) (TU-2) In addition, CTED is identified in RCW 43.21F.045 (g) as the state department that shall “Serve as the official state agency responsible for coordinating implementation of the state energy strategy.” It is state policy to encourage the development of wind resources, and CTED supports this Project to further that end.

In addition, EFSEC’s enabling legislation lists a number of premises upon which permitting actions should be taken, including the premise to provide abundant energy at reasonable cost. RCW 80.50.010(3). The following bullets provide a summary of key energy policy reasons why CTED believes this Project should be permitted:

• The Project is a renewable resource, with no significant air emissions (criteria pollutants or greenhouse gases), negligible water use, a small footprint, and few avian impacts;
• The Project makes use of an indigenous energy resource - wind;
• The Project will provide utility scale amounts of electricity supply;
• The Project will provide power at low cost relative to alternatives;
• The Project will provide power at known costs and carries no risk of fuel cost increases (i.e. the fuel is free);
• The Project will help diversify Washington state’s portfolio of energy resources;
• The Project’s characteristics fit well into our hydropower based system, capable of being coordinated with hydropower and providing a reliable supply of energy on an annual basis improving system sufficiency;
• The Project site is crossed by two sets of high voltage transmission lines eliminating the need to construct transmission, reducing costs and environmental impacts; and
• The Project is proposed to be located in an area zoned for resource extraction that has rural characteristics, allowing the Project to “extract” power from the wind while grazing and farmland uses continue unhindered.

The Department believes the record developed at the hearing demonstrates unequivocally that the Project will be an exceptional generating station, with great benefits for the State and the county and few negative impacts.

Conclusions

There are few energy resources in the world that can compare to wind power. Not only are the environmental impacts low, but the cost is low compared even to traditional alternatives, and
free from fuel cost increases over time. No other major electricity supply resource can be
constructed so as to allow use of the land after construction in the same way it was used before.
This is particularly beneficial when it allows continued grazing and farming and maintenance
of the rural character of the site. In addition, the proposed site combines a good wind regime
with existing transmission lines, eliminating the need to construct additional transmission
towers and lines.
It is primarily for these reasons that state energy policy and the State Energy Strategy
courage the development of indigenous and renewable resources like wind power. And it is
therefore for these reasons that we encourage the Council to recommend to Governor Gregoire
that the Sagebrush Power Partners L.L.C., receive a site certificate and be permitted to
construct the Kittitas Valley Wind Power Project.