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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITIES SITE EVALUATION COUNCIL

In the Matter of	)	
Application No 2003-01	)	KITTITAS COUNTY
	)	RESPONSE TO APPLICANT'S
SAGEBRUSH POWER PARTNERS, L.L.C.	)	OBJECTIONS TO PREFILED
	)	TESTIMONY
	)	
KITTITAS VALLEY WIND	)	
POWER PROJECT	)	
	)	
	)	
	)	

The Applicants Objections dated August 3, 2004 were not properly served on the parties and were not served in a timely fashion. During the July 19, 2004 prehearing conference the ALJ directed the parties to serve the pleadings that were due via electronic e-mail. This was done given the short turn around times of the schedule in order to give the parties adequate time to respond. No electronic copy or hard copies were served on the parties. No electronic "courtesy copy" was forwarded to the parties. The motion was simply mailed from Portland Oregon on Tuesday August 3<sup>rd</sup> without any notice to parties that the motions even existed. This tactic ensured a delayed delivery to the parties. It worked. The County copies were not received until the afternoon of Thursday August 5, 2004. That compressed what was an already short response time schedule of three day down to just one day to respond. Such a delayed service is in violation of the directions from the ALJ to serve electronic copies so parties would have an opportunity to respond and as such the motion should be stricken.

Not only were the served late, but they also were not served on the proper parties and so should be stricken on that basis also. Although the affidavit of service certifies that the Objection and Motion was served via mail on Clay White that is not true. For reasons unclear,

1 a copy directed to David Taylor (a witness for Lathrop) was addressed to the Community  
2 Development Services Department (See attached). No copy was mailed to Clay White. As such  
3 the motions should be stricken for untimely and improper service.

4 If this motion is going to be considered even though it was untimely and not served on  
5 the parties it should in any event be denied. The motion as they relate to the County witnesses  
6 should be denied in that they relate to testimony admissible as opinion testimony pursuant to ER  
7 701 and 702. The applicant in this case has an obligation to demonstrate that they have made a  
8 good faith effort to resolve noncompliance. The statements referenced in the motion relate to the  
9 failure of the applicant to act in good faith. The testimony of Mr. White is “rationally based on  
10 the perception of the witness”. (ER 701(a)). This testimony is also “helpful to a clear  
11 understanding of the witness’ testimony or the determination of a fact in issue.” (ER 701(b)).  
12 The actions of the applicant’s representatives to which Mr. Whites testimony relates were also  
13 contrary to Mr. Whites experience and expertise as a planner as to how a person who is actually  
14 trying to process an application would be acting. ER 702. Such testimony is, therefore,  
15 admissible under both ER 701 and ER 702.

16  
17 If the ruling on this matter is, however, that such statements are inadmissible then the  
18 same standard of exclusion should equally apply to the submittals of the applicant witnesses.  
19 The parties should be granted additional time to sort through those issues regarding the  
20 Applicants witness testimony. This creates yet one more basis for a stay in proceedings as has  
21 already been requested. While the applicant had the testimony of Clay White for three weeks  
22 before they filed its motion to exclude, the County didn’t receive the applicants “rebuttal”  
23 testimony until July 29. That gave the County only three working days (one of which was spent  
24 attending the EFSEC hearing in Olympia) to attempt to review and make motion regarding the  
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1 applicants supposed "rebuttal" testimony. As the County has previously pointed out in its  
2 motion filed earlier this week, the testimony presented by the applicant as "rebuttal" was not true  
3 rebuttal testimony. As such, the turnaround time to respond to this supposed "rebuttal"  
4 testimony was inadequate and the schedule must be extended to afford the parties time to  
5 adequately address the issues.

6 Dated this 6th day of August, 2004

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9   
10 James E. Hurson WSBA #12686  
11 Chief Civil Deputy Prosecutor for  
12 Intervener Kittitas County



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