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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITIES SITE EVALUATION COUNCIL

In the Matter of )  
Application No 2003-01 ) KITTITAS COUNTY  
SAGEBRUSH POWER PARTNERS, L.L.C. ) OPENING STATEMENT  
KITTITAS VALLEY WIND )  
POWER PROJECT )  
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The law does not allow EFSEC to “bulldoze” its way over the GMA and local land use regulations, but that is precisely what the applicant is asking EFSEC to do. EFSEC does not have the legal authority to preempt GMA. Even if it did, however, the applicant has fallen woefully short in meeting the EFSEC established criteria regarding preemption that may apply to the numerous non-GMA counties in this state. The applicant has not acted in good faith to resolve consistency issues. The applicant unilaterally withdrew from the GMA mandated process to attain consistency on this issue. Alternative locations within Kittitas County for siting a wind farm have not been found unacceptable. The interest of the state would not be served by the applicants proposal.

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It seems that there are some members of the Council who have made up their mind and intend to recommend approval of this project regardless of the facts. Fortunately, it is also our perception that there are other members who have not prejudged this matter, have not yet made up their mind, and are going to carefully consider the evidence on this important issue. For those of you with that mindset going into these proceedings, we thank you.

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Once you hear the evidence, you will find that the facts and the law dictate that

1 preemption cannot be legally granted. The issue here isn't whether wind farms should be  
2 constructed in Kittitas County. We have enacted ordinances to enable us to do so. We are  
3 processing applications according to those laws. The issue is *where* wind farms should be  
4 constructed in Kittitas County. Where they should go is, however, up to the duly elected Kittitas  
5 County Board of County Commissioners. They are the ones whom this community has elected  
6 to make these important land use decisions. They are the ones to whom the Legislature has  
7 delegated this important task. To some of the Council members this community may be nothing  
8 more to them than a truck stop on their way to the Tri Cities or Spokane. Those Council  
9 members that are open minded in this process will, however, recognize that our community is  
10 much more. To those of us who live here it is much more than that. It is where we live. It is  
11 where we raise our families. It is our home. It is our right as a community to make a decision on  
12 matters such as this that directly impacts this community. Zilkha seeks to deprive us of that right.

14 EFSEC has never granted preemption in its thirty years of existence and even its  
15 authority to do so under any circumstances is questionable. Under the EFSEC rules preemption  
16 is designed to be a very difficult hurdle for an applicant to overcome. Under those rules,  
17 preemption is supposed to be difficult so that a local jurisdiction can consider the multitude of  
18 local planning issues that impact a community. The actions of the applicant show however that  
19 they simply expected the County to either not really make a land use decision and "rubber  
20 stamp" their wind farm or else seek preemption from the Council. When the County wouldn't  
21 simply "rubber stamp" their wind farm, they simply undertook a strategy of seeking preemption.  
22 This concern was expressed early on by the County. An e-mail to Chris Taylor dated June 3,  
23 2003 gives a snapshot view of this strategy and which the record demonstrates is an accurate  
24 perception. That e-mail provides in part:  
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1 As you know Chris, it has been a concern of mine for quite some time that Zilkha  
2 has plotted out some sort of strategy to delay getting an application to us as long  
3 as possible so the County lacks sufficient to time to carry out its statutory duty.  
4 My concern has been that Zilkha will then try to force the County to accomplish  
5 its duty in an unreasonably short time frame and then go to EFSEC to seek an  
6 override of local land use planning and zoning when the County is unable to  
7 complete its work in that compressed timeframe.

8 \* \* \*

9 Your e-mail is also yet another example of facts consistent with a strategy that I  
10 am concerned is taking place. You appear to be trying to make it look like you've  
11 been submitting things to us when you haven't.

12 \* \* \*

13 Zilkha's record of incompleteness simply highlights my concerns that this is just a  
14 strategy with an end game of seeking preemption.

15 \* \* \*

16 These actions speak to a bad faith strategy to circumvent the local land use  
17 decision-making process.

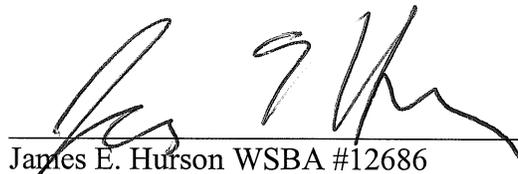
18 We urge that the Council read that e-mail and the rest of the information that the County has  
19 submitted on this matter. The applicant did not proceed in good faith to resolve this issue. They  
20 cannot be rewarded for their tactics. If the Council has questions during the course of the  
21 hearings or is confused on the issues, ask us for clarification. As always, we are open about the  
22 events and issues since Zilkha Renewable Energy first came to Kittitas County. We have not  
23 delayed the applicant's proposal. As Clay White stated in his pre-filed testimony, if he delayed  
24 their project from being heard from the Board of County Commissioners he would be fired. In  
25 fact, the Kittitas County decision makers have not even seen this project due to the tactics of the  
applicant. What we are against is a company trying to circumvent the local land use process that  
is established, lawful, and produced by the citizens of Kittitas County for the citizens of Kittitas  
County. We want the Council to be fully informed of the tactics Zilkha has taken over the past 2  
years.

1 Not only will Zilkha fail to demonstrate a good faith effort to resolve non-compliance,  
2 they simply cannot demonstrate that alternative locations for wind farms that are within Kittitas  
3 County have been reviewed and found unacceptable. There are two other wind farm applications  
4 already pending in Kittitas County and neither has been found unacceptable. They are still in the  
5 application stage and the outcome of those applications is yet to be determined.

6 The applicant will also fail to demonstrate that this project meets the interest of the state.  
7 This wind farm would produce an amount of electricity that is just a small fraction of the power  
8 produced by the energy facilities that EFSEC has reviewed in the past. At the other end of the  
9 spectrum the land area impacted is many fold the land area involved in other projects approved  
10 by EFSEC. This is a major land use and zoning issue that will produce a relatively minor  
11 amount of electricity.  
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13 We don't intend in this brief opening statement to address all of the issues and facts that  
14 are in the record. Those facts demonstrate, however, that the only lawful course of action for the  
15 Council to take in this matter is to deny the preemption request. Such a denial necessarily  
16 requires that the Council recommend rejection of site certification.

17 Dated this 6th day of August, 2004

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21 James E. Hurson WSBA #12686  
22 Chief Civil Deputy Prosecutor for  
23 Intervener Kittitas County  
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