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5 **BEFORE THE STATE OF WASHINGTON**
6 **ENERGY FACILITY SITE EVALUATION COUNCIL**

7 In the Matter of Application No. 2003-01

APPLICATION NO. 2003-01

8 SAGEBRUSH POWER PARTNERS,
9 LLC.

OPENING STATEMENT OF
COUNSEL FOR THE
ENVIRONMENT

10 KITTITAS VALLEY WIND POWER
PROJECT

11 **I. INTRODUCTION**

12 Counsel for the Environment (CFE) submits this opening statement pursuant to the
13 July 19, 2004 Pre-Hearing Conference suggestion of Administrative Law Judge Adam Torem
14 (ALJ) indicating the Energy Facility Site Evaluation Council (EFSEC or Council) would
15 appreciate opening statements summarizing the parties' various positions. CFE is charged
16 with representing the public and its interest in protecting the quality of the environment. *See*
17 RCW 80.50.080. CFE's involvement in review of the Kittitas Valley Wind Power Project
18 (KVVWPP) is limited to the environmental impact of the proposed project. CFE takes no
19 position regarding preemption or the proposed project's socio-economic impact. CFE neither
20 supports nor objects to construction of the KVVWPP. However, the CFE will advocate for
21 inclusion of the mitigating measures proposed by the Applicant, as well as additional
22 measures outlined below.

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

3 CFE will focus its presentation on two significant environmental impacts raised by the
4 KVVWPP: (1) the effect on the shrub steppe habitat within the project area and region; and (2)
5 the effect on avian species, including birds and bats.¹ CFE commends the Applicant on its
6 proposed mitigation measures and believes these proposed measures should be included as
7 conditions of a Draft Site Certificate Agreement (Certificate) if the Council approves the
8 project. However, CFE will advocate that some proposed mitigation measures should be
9 clarified in greater detail and in some cases additional mitigation measures should be
10 included.

11 CFE's sole objective is to ensure that sufficient mitigation measures are in place, and
12 stringent oversight is conducted, if the project is constructed. CFE seeks assurances that
13 contingency plans are enacted to adequately address unintended consequences or unforeseen
14 problems if the project is constructed and the need arises. Most importantly, CFE seeks
15 assurances that projected avian mortality does not exceed current expectations and that an
16 Altamont Pass situation does not occur in the Kittitas Valley.² If EFSEC recommends the
17 KVVWPP for construction, CFE believes the considerations and conditions outlined below
18 should become elements of the Certificate.

19 **II. MEASURES CFE BELIEVES SHOULD BE INCLUDED AS CONDITIONS OF**
20 **THE CERTIFICATE IF THE COUNCIL RECOMMENDS THE KVVWPP FOR**
21 **CONSTRUCTION**

22 **A. The Certificate must contain a detailed plan for mitigating shrub steppe**
23 **destruction and for revegetating disturbed areas.**

24 CFE seeks assurances that temporarily disturbed shrub steppe, a State of Washington
25 Priority Habitat, will successfully be re-grown under the Applicant's mitigation plan. In

25 ¹ Although these areas will be CFE's primary focus, CFE will also address other environmental issues
throughout the hearing.

26 ² 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.

1 addition to mitigation measures proposed by the Applicant, CFE will recommend that
2 construction activities outside the temporarily disturbed areas be limited to late spring,
3 summer, or fall, when soil moisture is low. CFE will present evidence that driving
4 construction equipment over the shrub steepe and grassland habitat when the soil is wet will
5 likely cause long term damage to the affected soils and plants.

6 The Certificate should also contain measurable objective standards for evaluation of
7 site restoration success. As previously addressed in CFE's DEIS comments, CFE believes
8 that the Applicant's promise to return disturbed land to "as close as possible to its original
9 condition" is not an adequate measuring device. The Certificate should also provide that
10 reseedling programs will be required when optimal germination and establishment conditions
11 are present and not necessarily immediately following the disruption.

12 CFE has particular concerns related to disruption of lithosols within the region.
13 Lithosols are a specialized "shallow soil" subdominant habitat. Lithosols are sensitive to
14 disturbance and difficult to restore. Unfortunately, the abundance of lithosols occur along
15 ridge tops where turbines a proposed to be placed. CFE seeks assurances that the Applicant's
16 revegetation program will make a concerted effort to successfully regrow lithosols in the
17 temporarily impacted areas of the project.

18 **B. The Certificate should outline specific conditions regarding the potential for bald**
19 **eagle kills.**

20 CFE does not believe the Applicant has adequately addressed the threat from the
21 KVVWPP to bald eagles in the area. According to the Applicant's witness, Wally Erickson, the
22 Applicant has applied for an incidental take permit. However, the incidental take permit
23 would only relieve the Applicant from the requirements of the Endangered Species Act. The
24 bald eagle is also protected by the Bald Eagle Protection Act. 16 U.S.C. § 668. An incidental
25 take permit does not alleviate the Applicant from compliance with the Bald Eagle Protection
26 Act. The Applicant has yet to provide any indication as to what steps it will take if a bald

1 eagle is killed. Reliance on the fact that no bald eagle has been killed at another wind power
2 project is not a sufficient mitigation measure.

3 **C. The Certificate must include a detailed mitigation plan to address avian kills.**

4 The Audubon Society and many members of the Kittitas Valley community have
5 objected to the one year avian study conducted by the Applicant. Many individuals have
6 argued that a two year study should have been conducted to gain a better understanding of
7 avian abundance in the KVVPP area. Members of the Audubon Society and local community
8 also asked for night studies to be conducted. The Applicant resisted these requests, relying on
9 the one year study as sufficient. CFE realizes that WDFW Wind Power Guidelines only call
10 for a one year study and a one year study is common within the industry; however, since the
11 Applicant has made the decision to rely upon the results of a one year study rather than
12 conducting a more comprehensive study, including night monitoring, the Council should hold
13 the Applicant strictly to the mortality numbers its experts have projected.

14 In addition to the mitigation measures proposed by the Applicant, CFE believes the
15 Council should consider requiring the use of free standing meteorological towers rather than
16 guy wired towers. Towers utilizing guy wires have a significantly higher rate of bird
17 mortality than free standing towers. In fact, the WDFW Wind Power Guidelines recommend
18 using towers without guy wires whenever possible.

19 CFE requests that the Council require a comprehensive monitoring program as a
20 condition of any Certificate. CFE believes the Technical Advisory Committee (TAC)
21 commitment proposed by the Applicant must be incorporated into the Certificate. The
22 Applicant has proposed at least one year of monitoring studies to evaluate impacts to avian
23 species. CFE believes a two year time frame would be appropriate, with incidental
24 monitoring during the life of the project. The Certificate should include a condition that the
25 TAC shall reconvene if unanticipated circumstances arise during incidental monitoring. CFE
26 recommends that all TAC members be approved by the Council in an effort to ensure that

1 diverse interests are represented on the committee. The members proposed by the Applicant
2 (representatives from WDFW, USFWS, Kittitas County, Audubon Society, project
3 landowners, and the applicant) are important interest groups to be represented on the TAC.
4 CFE also believes an adjacent landowner without a turbine lease agreement, or any other
5 contractual obligation with the Applicant, should be included as a member of the TAC. CFE
6 would also like to receive copies of all documents produced by the TAC and access to all
7 documents presented to or reviewed by the TAC, as well as the option to intervene as a
8 member of the TAC.

9 Finally, CFE requests that the Council reserve the right, as a last resort mitigation
10 option, to decommission or require a particular turbine, or set of turbines, to be turned off for
11 a period of time if any turbine, or set of turbines, is found to kill a disproportionate number of
12 avian species during post construction monitoring.

13 **D. The Certificate should require strict monitoring of bat mortality related to the**
14 **KVWPP.**

15 CFE is concerned about the limited information regarding the effect of the turbines on
16 bat mortality. Bats play an important roll in the ecosystem. No studies of bats were
17 conducted at the KVWPP site. Estimates of bat mortality are entirely calculated based on
18 information from other wind power sites across the country. The Applicant has indicated that
19 eco-monitoring and night vision studies are unreliable and were not a viable option for
20 conducting pre-construction research for the abundance of bats using the proposed project
21 area. CFE, therefore, asks that the Council impose strict oversight on the bat monitoring
22 program to ensure that unacceptable numbers of bats are not killed. The Applicant should be
23 held to strict compliance with its estimates.

24 **III. CONCLUSION**

25 CFE takes no position regarding whether the KVWPP should be constructed. CFE's
26 only objective is that the Applicant sufficiently mitigates the environmental impact of the
project if the Council approves of the project. CFE asks that all mitigation measures proposed

1 by the Applicant be included as conditions of the Certificate. Furthermore, CFE asks for the
2 inclusion of the aforementioned conditions as part of the Certificate in an effort to ensure that
3 if the KVVPP is constructed the project does not cause greater environmental harm than
4 good.

5 DATED this _____ day of _____, 2004.

6 CHRISTINE O. GREGOIRE
7 Attorney General

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