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4 BEFORE THE STATE OF WASHINGTON
ENERGY FACILITIES SITE EVALUATION COUNCIL

5 In the Matter of)
6 Application No 2003-01) EXHIBIT 51 (DP-T)
7 SAGEBRUSH POWER PARTNERS, L.L.C.)
8)
9 KITTITAS VALLEY WIND)
POWER PROJECT)
10)
11 _____)

12 **KITTITAS COUNTY RESPONSE TESTIMONY**

13 **WITNESS #2: DARRYL PIERCY**

14
15 Q Please state your name and address for the record?

16 A My name is Darryl Piercy and my business address is 411 N. Ruby Street, Ellensburg
17 Washington 98926.

18
19 Q What is your present occupation, profession; and what are your job responsibilities and
20 duties?

21 A Director of Kittitas County Community Development Services (CDS). I have held that
22 position with Kittitas County since October 18, 2004. I am also one of the records
23 custodians for records of the Kittitas County Community Development Services
24 Department.
25

1 Q What is your professional background?

2 A Prior to my employment as Director of Community Development Services I was
3 employed by Kitsap County in the Department of Community Development serving as
4 Interim Director, Assistant Director and Senior Planner for 14 years. Prior to that I was
5 employed by the Port of Bremerton for 13 years serving in the positions of Operation
6 Officer and Harbormaster. This included the management and development of all Port
7 Facilities including the Bremerton National Airport, Olympic View Industrial Park and
8 the Ports 400 slip marina.

9
10 Q Included with your prefiled testimony are a number of exhibits. Are you sponsoring the
11 admission of all of these exhibits in this matter?

12 A Yes.

13
14 Q Are the content of these exhibits either matters based upon your personal knowledge or
15 based upon the files and records of the Kittitas County Community Development
16 Services Department?

17 A Yes.

18
19 Q To the best of your knowledge are the contents of these exhibits true?

20 A Yes.

21
22 Q Are you able to answer under cross examination question related to these exhibits?

23 A Yes.

24
25 Q Would you please describe the main focus of your testimony?

1 A My testimony is primarily related to the land use application for the Kittitas Valley wind
2 Power Project (KV project) that was filed with Kittitas County and its relationship to the
3 failure of the applicant to obtain consistency with local land use regulations and the
4 failure of the applicant to demonstrate the criteria under EFSEC regulations regarding
5 preemption.
6

7 Q Have all of the alternative locations for windfarms in Kittitas County been reviewed and
8 found unacceptable?

9 A No. Given the well know presence of wind in this county it would be quite incredible for
10 anyone to assert that the only possible location in all of Kittitas County for a wind farm
11 location would be the KV project.
12

13 Q Have other alternative wind farm sites in Kittitas County been reviewed and found to be
14 acceptable?

15 A Yes. The Wildhorse Wind Power Project has been approved by both Kittitas County and
16 EFSEC. It is currently under construction and the construction oversight is being
17 undertaken by Kittitas County CDS under contract with EFSEC.
18

19 Q It is safe to say that Kittitas County government is not opposed to wind farms being
20 located in Kittitas County.

21 A Kittitas County government is clearly not opposed to wind farms being located in this
22 county. We have in fact enacted a "one-stop shopping" type of land use ordinance that
23 allows a wind farm proponent to seek all of the necessary approvals from the county in
24 one consolidated process. A properly located and properly mitigated project
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1 (Wildhorse) has already been approved and I would anticipate that there will be other
2 properly located and properly mitigated projects proposed in the future.
3

4 Q Did the applicant in Wildhorse have any difficulty that you could see in working its way
5 through the county approval process for Wildhorse?

6 A No. The staff assigned by the applicant to handle the Wildhorse application had no
7 difficulty in working though or understanding the county process.
8

9 Q Are you aware of other alternative location within Kittitas County that have not yet been
10 reviewed and have not been found unacceptable?

11 A I am aware of at least three other specific windfarm proposals that are potential for
12 further wind farm development in Kittitas County, but we have not yet received
13 applications on them and they have not been reviewed. There may well be more, but at
14 this point I haven't heard of any others.
15

16 Q What are those three projects?

17 A Currently I am aware of at least a consideration and discussion for an expansion or Phase
18 2 to Wildhorse. A second potential windfarm is one that is being pursued by Invenergy.
19 And a third is a possible revision to the Desert Claim proposal that was previously
20 rejected by the County.
21

22 Q What can you tell me about the Wildhorse Phase 2 proposal?

23 A I don't have much detail on that since we do not yet have an application for that proposal.
24 I first learned of a Phase 2 concept for Wildhorse in January of this year (2006). Given
25 the relative ease of approval of the initial Wildhorse project and its remote location I

1 would assume that a well planed expansion of that project would likely enjoy the same
2 success as the initial phase.
3

4 Q Tell me a little bit about the Invenergy project you mentioned?

5 A Invenergy is a wind energy developer. They first approached the county regarding this
6 project in the later part of 2005. I have met with their representative to generally discuss
7 the local application process, but they have not yet submitted an application. It is my
8 understanding that they plan on submitting their application sometime later this fall. The
9 project itself would be in general located between the Old Vantage Highway and I-90.
10 The eastern end of the project would be from an area west of Vantage and the western
11 end of the project area would be at an areas south of the Wildhorse project. I understand
12 that Invenergy has approached Kittitas County regarding placing some turbines on the
13 county owned land that includes the county landfill. It is my understanding that this
14 contact included contacts with Patti Johnson, the Kittitas County solid waste director.
15 Patti Johnson is also the Kittitas County EFSEC representative so might have more
16 information regarding the details of the project, but I have not discussed those with her
17 given here position on EFSEC. This contact by Invenergy with Patti Johnson in her
18 capacity as Solid Waste Director was disclosed during a prehearing conference on this
19 site application earlier this year after the preemption request was filed.
20

21 Q Tell us about the Desert Claim project revision that you mentioned earlier.

22 A Desert Claim was a proposed wind farm project that would have been located less than
23 two miles east of the KV Project area. The previous project proposal was rejected by the
24 County for a number of reasons. That denial has been upheld by the court. DNR has,
25

1 however, come to an agreement with the Desert Claim proponents to expand the land
2 area for the project area and then intend to resubmit an application to Kittitas County.
3

4 Q How did you come to learn of this possible revision?

5 A I receive a notice from DNR wherein they have assumed lead agency status over the
6 SEPA issues related to the lease of the land to project. A copy of that notice is attached
7 as Exhibit 51-1. That notice indicates that the applicant will then apply to the county for
8 the necessary permits. It is my understanding that the land mentioned in this notice was
9 not part of the original Desert Claim area but would help to fill in some of the holes in
10 that original project proposal that had multiple noncontiguous parcels of land being
11 proposed as a single project and subarea.
12

13 Q Do you know what other revisions are being proposed for the Desert Claim proposal?

14 A No. I have no other information related to this other than the SEPA notice I received.
15 revision.
16

17 Q When do you anticipate receiving any additional applications for wind power projects?

18 A As I indicated previously, we anticipate the Invenergy application to come forward this
19 fall although the exact time of that will be up to them. I am not aware of any proposed
20 application date for the other potential projects.
21

22 Q What is your understanding of the size of project that the applicant is asking EFSEC to
23 preempt local land use regulations in the matter that is current before EFSEC?

24 A It is my understanding that the applicant is asking for preemption to approve a 120
25 megawatt wind energy project.

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Q What do you base that understanding upon?

A That is the number stated on the first page of the Applicants Second Request for Preemption.

Q Has the applicant ever sought approval by Kittitas County of a windfarm of that size?

A No. The project they proposed to the county in 2005 was significantly larger than the 120 MW project that is being asked of EFSEC. The 2005 application sought approval of a project of up to 80 turbines with each being up to 3 megawatts in size. The math would indicate this would be a 240 MW project, but the applicant indicated that the total capacity for that proposal was 246 MW.

Q Did the applicant remain with the 246 MW proposal?

A No. During the hearing process did they reduce the number of turbines to 65 turbines.

Q Testimony of applicant representatives seems to imply that the number of turbines were reduced at the county request. Is that accurate?

A No it is not. The applicant is the one who chose the number of turbines it was proposing. The reduction in turbines from 80 to 65 appears to have simply done as a response to questions from the County regarding the location the 80 turbines there application proposed. The issue was that the application asked that up to 80 turbines be approved by the county, but all of the mapping presented by the applicant simply showed 64 turbines. The applicant was repeatedly asked to supply a map showing the 80 turbine layout.

Q Did the applicant ever produce a map showing an 80 turbine layout?

1 A No. We repeatedly asked for one but they never would supply one. Eventually they
2 simply said that they would reduce the number of turbines from 80 to 65 turbines, but
3 that was their choice to reduce the number of turbines, not ours. We were simply seeking
4 mapping that matched what they were asking to be approved.

5
6 Q Why did you want a map showing the 80 turbines?

7 A If the application is asking for 80 turbines one would reasonably assume that such a
8 number was achieved though some sort of analysis. I don't see how the public could
9 make a meaningful analysis of a project when only a part of the layout is being shown.
10 Both the public and decisions makers have a right to know what the project is before a
11 decision is made on the project. As such we asked for such a map so that the public and
12 decision makers could understand what the project is that is being proposed.

13
14 Q When the applicant reduced the number of turbines to 65, did that reduce the proposal to
15 the size that the applicant is proposing to EFSEC?

16 A No. A 65 turbine proposal with 3 MW turbines would result in a project size of 195
17 MW. The preemption request asks for a 120 MW project.

18
19 Q The current proposal calls for 65 turbines. Have you ever been given a layout map that
20 illustrates such a layout?

21 A No. I've seen maps showing 64 turbines or less but I've never been shown a map
22 showing 65 turbines.

23
24 Q Why do you want a map showing the 65 turbines?

1 A I would want it for the same reason that we wanted a map if the proposal was for 80
2 turbines. Both the public and the decisions makers have a right to know what is being
3 proposed.

4
5 Q Was a request for a review of all of the 65 turbine layouts that have been analyzed by the
6 applicants for this project made during the course of informal discovery?

7 A Yes it was.

8
9 Q Was a map showing a 65 turbine layout – any 65 turbine layout - provided in response to
10 that request?

11 A No. They said the information we were seeking on that issue was in their testimony.
12 There was no map provided so it would appear that although the applicant is asking for
13 65 turbines they have never undertaken any analysis to see what a 65 turbine
14 configuration would look like.

15
16 Q We are only talking about a difference between a 65 turbine layout and a 64 turbine
17 layout. Why do you care about just one more turbine?

18 A The reason it's a concern to me is because they refuse to disclose it. When people won't
19 provide you with what would appear to be relatively basic information it makes one
20 concerned about what other information is inaccurate or missing. Some of the maps the
21 applicant prefiled in this cases show even fewer turbines than 64, yet they are asking for
22 approval of 65 turbines. It makes no sense whatsoever to refuse to fully disclose the
23 project if someone is acting in good faith and has a project that can withstand public
24 scrutiny.

1 Q Why is the size of the turbine an important consideration in evaluating a wind power
2 project?

3 A In addition to the obvious statement that smaller turbines would be smaller, smaller
4 turbines could be spaced closer together than larger turbines. As such, knowing the size
5 of the turbine is important to understanding the spacing that would be needed to figure
6 out how many turbines could fit in any given location. For example a 3 MW turbine is
7 going to be taller and with a wider blade span than a 1 MW turbine. As such the 3 MW
8 turbines are spaced further apart.

9
10 Q The applicant has indicated that you said you didn't care about the MW the turbines
11 would produce. Is that accurate?

12 A No. During one of our staff level meeting before the public hearings, I indicated that if
13 the development agreement sets forth the size and number of turbines that I didn't believe
14 that the development agreement needed a maximum MW capacity on it because I didn't
15 see a need to revisit the development agreement if years down the road there was a
16 improvement in technology that would allow a more efficient generator on an existing
17 turbine. For example, if the technology advanced 10 or 15 years in the future so that a
18 generator is developed that could produce 3 MW of power on a turbine size that currently
19 could only produced 1.5 MW, I saw no need to come back and amend the development
20 agreement as long that there were no other additional impacts such as noise. If the visual
21 impact would be the same and if it causes no other added impacts I saw little reason to
22 revise a development agreement if the agreement already sets forth the number and size
23 of turbines involved.
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Q The applicant has indicated that county staff would not assist or work with them on this project. Do you agree with that assessment?

A Not at all. County staff met with the applicant on numerous occasions. We discussed the application, the process, and the draft development agreement with them. We also suggested that they revise and clean up the draft development agreement.

Q Did they follow your suggestion?

A No. They said they didn't want to do that and wanted to go into the public hearing with the draft as they had put together.

Q What was the response from the board to this level of fine tuned detail of the draft they proposed?

A The BOCC (Board of County Commissioners) was less than pleased with the product and asked the applicant to put together more thoughtful proposal.

Q Did you discuss substantive policy choices with applicant prior to the hearings?

A No.

Q Why not?

A Until the BOCC engaged in their decision making after the public hearings testimony had been presented I did not know what the decision of the BOCC would be. Under the open public meeting act and appearance of fairness it would have been totally inappropriate.

Q Did you tell the applicants representatives this?

1 A Yes. I told them that this was a public process and that the substantive policy discussions
2 related to the application would be occurring during the public hearing and not behind
3 closed doors.

4
5 Q Did the applicant appear to be in agreement that this was the proper process?

6 A No. When it came time to discuss matters in the public setting during the hearing the
7 applicant was clearly reluctant to engage in a conversation in public regarding the issues
8 at hand. Rather than attempt to characterize the discussion I would suggest that the
9 transcripts demonstrate that reluctance. Even the testimony from applicant's witnesses
10 still appears to complain about the fact that discussion related to this project was expected
11 to take place in public rather than is some sort of private meeting outside of the view of
12 the public.

13
14 Q Was there environmental analysis conducted regarding wind power projects in Kittitas
15 County?

16 A Yes. There have been three different EIS analysis conducted regarding wind farms in
17 Kittitas County. We have a final EIS for the Desert Claim project, a final EIS for the
18 Wildhorse project, a draft EIS for the KV Project, and an addendum and a supplement to
19 the DEIS for the KV Project.

20
21 Q Were all of those used as part of the KV project?

22 A Yes all of those environmental documents were included into the record in light of the
23 draft nature of the KV Project EIS that was prepared by EFSEC.

24
25 Q Did those include environmental analyses regarding visual analysis?

1 A Yes. Attached as Exhibit 51-2 are portions of the Desert Claim FEIS related to the visual
2 impacts.

3
4 Q Did any of the EIS's or FEIS include any visual analysis for a wind turbine as close as
5 the 1320 foot setback that has been proposed by the applicant and rejected by the BOCC?

6 A No. There was no analysis conducted at that close proximity in any of the EIS. The
7 analysis that was done at further distances all showed significant adverse impacts within
8 one half mile of turbines.

9
10 Q Over the course of the process has the applicant changed its stance over setbacks
11 distances?

12 A Yes.

13
14 Q What were those changes?

15 A Initially the applicant proposed a 1000 foot setback from residences. That would be the
16 same setback distance that the BOCC had rejected in the first Desert Claim project
17 proposal. I could not understand why such a distance would be proposed when the
18 applicant representatives were well aware of that case and had been monitoring its
19 progress during those hearings.

20
21 Q Did the applicant change the setback it said it could deal with?

22 A I was told by Mr. Peck that a setback in excess of 1250 would render the project no
23 longer viable. This conversion occurred during the day between hearing sessions. He
24 gave no explanation for this assertion. A day or two later I was then told that a 1320
25 setback would be work but no setback greater than that could work.

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Q Were you ever given any explanation as to the basis for this statement?

A No.

Q During the hearings did the applicant's representative make a similar statement?

A The applicant representative said that a set back of 2500 feet from existing residences would make the project not economically viable.

Q Did the applicant provide any support that that assertion.

A No. There has been no evidence presented during the course of the hearing on that subject. At least one of the BOCC members asked for the some sort of information to back up such an assertion but the applicant would give none. There had been no testimony during the course of the hearing that supported that assertion.

Q Why would the economic viability of a project if it has to comply with a project proposal be part of a land use request?

A Normally it would not be. In this case, however, the applicant made it an issue by asserting it as the only basis for refusing to comply with a setback based upon the environmental analysis that had been undertaken. In addition, everyone involved was aware of the EFSEC component and the fact that the applicant would be seeking preemption. The only basis for refusing to agree to the mitigation measures called for by the BOCC is an assertion of lack of economic viability, but no explanation or analysis was given by the applicant to support this assertion.

Q Why would there be a question about the accuracy of such an assertion?

1 A Two reasons: first, if you look at the various turbine locations that the applicant has filed
2 with EFSEC and apply a 2500 foot buffer around residences there are more than 65
3 turbine locations still located outside of a 2500 foot residential buffer. Attached as
4 Exhibit 51-3 is a representation showing the 2003 turbine layout plus the additional
5 turbines added to the 2005 proposal. That is overlaid with the 2500 buffer map that the
6 applicant sent the county when it said a 2500 foot setback from residences would make
7 the project no longer viable. The second reason why a claim of lack of economic
8 viability is questioned is the fact that there are numerous existing and planned wind farms
9 in this country that are much smaller than the KV project proposal. Horizon's own
10 website demonstrates that. Attached as Exhibit 51-4 are copies of information for
11 Horizon's web site regarding just some of the smaller windfarms that it participates in.

12
13 Q Was the 2500 foot setback from residences a firm and fast limitation set by the BOCC?

14 A No. During the discussions the BOCC members recognized that there could be situations
15 where it would be acceptable to have turbines closer to a home such as instance where the
16 view of them would be blocked by a hill or some other feature. The applicant was given
17 the opportunity to demonstrate where such exception were warranted but declined to do
18 so.

19
20 Q The applicants have indicated in their prefiled testimony that the record was closed so
21 they couldn't add any more information to the record. Is that accurate?

22 A No. The BOCC asked for additional information to be placed into the record on this
23 subject but the applicant refused to supply it.

24
25 Q Why is knowing the specific location of turbines so important?

1 A The location of the turbines become highly important in making an assessment of the
2 impact of a project. Here the applicant wants a set back of only 1320 feet. The
3 environmental analysis shows significant adverse impacts within half a mile. It might be,
4 however, that based upon the specific location of a turbine, there wouldn't be an adverse
5 impact if the turbine is properly located to eliminate the impact. This is in contrast to the
6 situation we had with the Wildhorse project. With Wildhorse the nearest home was a
7 mile and half away. A more generalized location of turbine strings can be acceptable in
8 a situation such as Wildhorse because there is no significant adverse impact at that
9 distance. With the KV project, however, there are significant impacts at the close
10 proximity the applicant sought. As such it requires greater accuracy and scrutiny of each
11 tower location to evaluate the impact.

12
13 Q Much of the matters discussed in your testimony occurred in public hearing. Are there
14 transcripts of those discussions?

15 A Yes there are transcripts. The applicant supplied some but not all of the transcripts in
16 their preemption request. Notably absent from the transcripts supplied by the applicant
17 are the transcripts from April 12, 2006. That hearing date contained much of the BOCC
18 discussion and some questioning of applicant representatives of regarding the
19 inadequacies of the draft development agreement. Attached as Exhibit 51-5 is a copy of
20 that transcript.

21
22 Q Which transcripts focus on the discussions of the BOCC and their dialogue with the
23 applicant?

24 A Those are found primarily in the transcripts commencing with the April 12, 2006 hearing
25 date and continue through to the balance of the transcripts.

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Q The applicant has claimed that the local process was unduly lengthy and cumbersome and that the entire process has taken too long. Do you agree?

A No. The local process, beginning to end took very little time in comparison to the overall process including EFSEC hearings and what is now the second preemption request. The county did not receive a complete application until October 17, 2005. Even though the application was deemed complete it did not mean that additional information was not required for review. Specifically, CDS requested an updated environmental analysis as a result of the new layout proposal. This addendum to the amended Draft EIS did not arrive until December 19, 2005. Further, the requested development agreement, a necessary component of the local review process did not arrive until December 23, 2005. The arrival of these documents in late December precluded the possibility of having hearings before the Planning Commission and Board of County Commissioners before the first of the year. The applicant took over two months of local review time to submit the additional documents needed for review.

Q Were there other elements of the application process that were hindered by the applicant's failure to submit material in a timely manner.

A Yes, When the local review process of the Wild Horse project was completed with an approval in March of 2005 we anticipated an application for the KV project shortly thereafter. Upon inquiry by staff, the applicant indicated that they would be submitting soon, June became July which became August etc. In August we discussed a time table for a submittal in early September that would facilitate hearings before the first of the year. This was obviously not accomplished by the applicant.

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Q How did the period of local review compare between the Wild Horse project and the KV project

A We issued a notice of complete application for the Wild Horse project on July 28, 2004 and completed the approval on March 4, 2005 or about 8 months. For Kittitas Valley we issued a notice of complete application on October 17, 2005 with final decision issued on June 6, 2006 or about 8 months. Considering the complexity of these projects, the volume of material to review and the fact that the KV project was modified from the project originally analyzed the DEIS this is in my opinion a speedy review and compares to the review time undertaken for the Wild Horse project. The applicant praised the review process and County staff for their efforts in this review. It appears that it is the outcome, rather than the process, that is of concern to the applicant and is misdirected criticism of the local process.