

1 BEFORE THE STATE OF WASHINGTON  
2 ENERGY FACILITY SITE EVALUATION COUNCIL  
3  
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5 In the Matter of Application No. 2003-01

EXHIBIT 60 SUP (TU-T SUP)

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7 SAGEBRUSH POWER PARTNERS, L.L.C.  
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10 KITTITAS VALLEY WIND POWER  
11 PROJECT  
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14 **PREFILED SUPPLEMENTAL TESTIMONY**  
15 **WITNESS #1 – TONY USIBELLI**

16 Q Are you sponsoring any new exhibits for entering into the record?

17 A No.  
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20 Q Are you able to answer questions under cross examination regarding these sections?

21 A Yes.  
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23 Q. What will be the subject of your testimony.?

24 A. My testimony will focus on three areas related to the issue of land use consistency  
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26 preemption by EFSEC: 1) that the excellent nature of the Kittitas Valley project highly

1 recommends it for a site certificate regardless of noncompliance, 2) that far too much  
2 time has passed and that EFSEC should complete its adjudication and make a  
3 recommendation to the Governor quickly, and 3) that the applicant has made all  
4 reasonable efforts in good faith to resolve the noncompliance as required by the  
5 relevant chapters of administrative code.  
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### 7 8 **Kittitas Valley Project Worthy of Preemption**

9 Q. Preemption of local land use plans and ordinances is an extraordinary measure, not  
10 previously recommended by EFSEC. What should the Council's recommendation be  
11 based on, in light of noncompliance?  
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13 A. The Council's recommendation should be based on the same criteria for this project as  
14 for any other project, i.e. benefits of the project weighed against its costs.  
15 Noncompliance is irrelevant unless it represents a substantive inconsistency between  
16 the project and the nature of the surrounding site, i.e. a major cost. In this case it does  
17 not.  
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20 RCW 80.50.010 establishes the basis upon which the Council's recommendation  
21 should be made. The Council is to balance the state's need for new energy resources  
22 with the broad interests of the public. More specifically, the broad interests of the  
23 public include appropriate operational safeguards, limited environmental impacts,  
24 abundant energy at reasonable cost, and timely decision making. At the same time the  
25 statute recognizes "...that the selection of sites will have a significant impact upon the  
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1 welfare of the population, the location and growth of industry and the use of the natural  
2 resources of the state.” Some negative impacts are expected and acceptable.

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4 Setting aside the issue of noncompliance for a moment, the fact is that the benefits of  
5 this project are substantial, and its negative impacts are minor, even in absolute terms,  
6 but especially when compared to alternative forms of electrical generation. My initial  
7 testimony (Exhibit T-TU) articulates the low cost of wind power, its low risk (a long  
8 term cost), and the value of wind power in diversifying our state’s and region’s  
9 portfolio of energy resources. I would also direct you to the applicant’s testimony from  
10 Witness # 43, Randy Hardy, former administrator for the Bonneville Power  
11 Administration. His testimony, particularly the two paragraphs starting on page 2, line  
12 11, succinctly articulates the benefits of wind to the region, and is the reason the largest  
13 utilities in the region are all acquiring or planning to acquire wind power. The  
14 applicant also has provided testimony underscoring the positive wind regime of this  
15 site, and its proximity to high voltage transmission lines. The DEIS records the very  
16 limited impacts on the environment of this project on this site.  
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21 Q. What about noncompliance with local land use plans and zones?

22 A. In this case noncompliance is a technicality, born of the fact that no land use zone  
23 anywhere in the County is compatible with wind power until a Wind Overlay Zone is  
24 granted – and that can be achieved only at the end of a lengthy process, much of which  
25 duplicates the Council’s process. In other words, noncompliance does not necessarily  
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1 reflect any inconsistency whatsoever between the project and the nature of, or use of,  
2 the agricultural- and resource-zoned land surrounding the site. In fact, in Kittitas  
3 County, a perfectly appropriate location is always noncompliant until the County rules  
4 on other, site specific issues. "Compliance" is subject to other decisions that may have  
5 nothing to do with the appropriateness of the site. That is the situation here. The site  
6 for which the Kittitas Valley project is proposed is, in fact, an excellent location for a  
7 wind power project. As I did in my first testimony, I would refer you to the applicant's  
8 witness # 2, Andrew Linehan, Exhibit 21, who shows the consistency between wind  
9 power and the zones in which the Kittitas Valley project is proposed (see page 8). (See  
10 also supplemental testimony of Chris Taylor for clarification of the Linehan testimony  
11 – page 5).  
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15 Q. Should the fact that the County Planning Commission recommended against a permit  
16 due to the negative impacts of the project, and the Board of County Commissioners  
17 voted to deny a permit to the project, keep the Council from making a positive  
18 recommendation to the Governor?  
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21 A. Absolutely not. As I said previously, the Council's determination should be made on  
22 the merits of the project balanced with the broad interests of the public. While local  
23 impacts are important, they do not necessarily reflect the interests of the public at large.  
24 In my previous testimony I indicated that the development of renewable resources like  
25 wind power is to be encouraged, according to both statute and the State Energy  
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1 Strategy, because of the benefits they bring to all the citizens of the state. From this  
2 project, there are local benefits as well: revenue for participants, revenue for the county  
3 and reduced taxes for county property owners. Applicant's witness # 1, Stephen  
4 Grover, in exhibit 80-T, estimates large economic benefits for the County.  
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7 Saying that the recommendations of the Kittitas County Planning Commission and the  
8 vote of the Board of County Commissioners should not keep the Council from making  
9 a positive recommendation does not dismiss the County process or its concerns.  
10 EFSEC should look at the relevant documents and record to further inform its own  
11 process. For example, in the Applicant's Second Request for Preemption, Exhibit 2,  
12 (Kittitas County Planning Commission Findings of Fact, dated February 13, 2006), the  
13 Commission recommends that the Board deny the project a permit. Item 9 of the  
14 document says, "The proposal's visual impacts are significant and cannot be mitigated  
15 under the current proposal. Shadow flicker will impact numerous existing residences  
16 and home sites." Shadow flicker should be a concern, but the Council should look at  
17 standards, quantifiable measures, analytical assumptions, and determine to what degree  
18 shadow flicker needs to be mitigated or not. Shadow flicker can be mitigated through  
19 automatic blade shutdown programmed to specific days and times. EFSEC should  
20 consider whether this, or any other impact mitigation measure, should be a condition of  
21 a site certificate. All the findings and decisions of the County have value, but none of  
22 them should keep the Council from making a positive recommendation to the Governor  
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1 if the project is worthy, by the Council's criteria. If ever there were a project worthy of  
2 preemption, this would be it.

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4 **Time for a Decision**

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6 Q. You stated above that "far too much time has passed" to complete the permitting  
7 process. How does that relate to preemption?

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9 A. I will be very brief about this. Delay has a number of negative impacts, including  
10 waste of applicant and public resources, and brings with it risk of losing the project  
11 entirely. We were very concerned when the Wild Horse project moved ahead of this  
12 project on the EFSEC schedule, that the applicant might abandon its permitting efforts  
13 for the Kittitas Valley Project. We have been equally concerned watching the County  
14 process to see the lack of progress month after month, now into its second year,  
15 especially when the County process duplicates so much of the EFSEC process. Taking  
16 appropriate time is one thing, unnecessary delay is another.

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19 The link is this. We urge the Council to move expeditiously in considering the issue of  
20 preemption. If the Council is not prepared to preempt a local jurisdiction's land use  
21 codes and ordinances, i.e. to recommend a site certificate regardless of noncompliance,  
22 it should end the proceedings immediately and recommend against a site certificate. If  
23 the Council is willing to preempt under some circumstances, what would those  
24 circumstances be? Because the criteria for awarding a site certificate should be the  
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1 same regardless of compliance, the very best projects are the most deserving of  
2 preemption. This project is so good, comparatively, that there should be no question  
3 about preemption. If the Council can find a substantive reason to deny the permit, fine,  
4 especially if the location is inappropriate, but the decision should not be affected by the  
5 state of compliance. We urge the Council to quickly dispense with the issue of  
6 preemption, hear relevant testimony, and render a decision.  
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### 8 **Applicant Has Fulfilled Its Responsibility**

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11 Q. What is required of the applicant when local noncompliance cannot be resolved, and  
12 how does that recommend preemption?

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14 A. There are a number of administrative requirements required of the applicant, including  
15 regular reports to the Council and a request for preemption that must address certain  
16 issues. However, there are really only two substantive requirements: that the applicant  
17 make "...all reasonable efforts..." to resolve the noncompliance in good faith, and that  
18 the applicant look at alternative sites in the county. WAC 463-28-030 and 040.  
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21 Q. What does it mean, "all reasonable efforts?"

22 A. The Council must decide. We would suggest a number of things. First, the period for  
23 resolving the issue is expected to be no more than 90 days. WAC 463-28-040.  
24 Complex analyses and processes are not anticipated by the rule. I believe this is mainly  
25 because the issue of land use compliance is a fairly simple one traditionally, and is  
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1 intended to relate to whether a project is consistent with general local Comprehensive  
2 Plan policies and zoning. We are now in our second year of trying to resolve  
3 noncompliance. Throughout this time, we have had both sides report “progress,” only  
4 to learn there was more to resolve, so they must have been meeting and talking and  
5 trying to resolve the noncompliance. With its request for preemption, the applicant has  
6 provided documents, correspondence and transcripts that record those efforts.  
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9 Second, the applicant has provided significant evidence that it has been willing to  
10 consider substantive measures. Indeed, it has volunteered to make significant changes  
11 to the project to come into compliance. For example, the applicant has reduced the  
12 number of turbines (so there will be reduced visual impacts because of fewer towers),  
13 and the applicant has agreed to a greater setback (from 1000 feet to a quarter mile -  
14 1350 feet), also to reduce visual impacts. The reduction in turbines appears to result in  
15 a loss of approximately 60 megawatts capacity for the project. See Applicant’s Second  
16 Request for Preemption, pages 2 and 3. These are substantial concessions by the  
17 applicant and strong evidence of a good faith attempt to make all reasonable efforts to  
18 resolve noncompliance.  
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22 There is another aspect of these documents, correspondence, and transcripts provided  
23 by the applicant that bears consideration. It is clear that the County is interested in  
24 reducing site specific impacts of the project, when it continues its dialogue with the  
25 applicant over issues like appropriate setbacks. See Applicant’s Second Request for  
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1 Preemption, Exhibit 3, County Board of Commissioners Resolution to Deny, page 10,  
2 item 40, where the Board says, “The Board finds that at least a 2500 foot minimum  
3 separation from wind turbines...would be necessary to reduce the significant adverse  
4 impact rating of “high” down to moderate visual impacts...” While the Board does not  
5 say that agreeing to such a setback would cause the Board to change its position, it is  
6 clear that the County is leading the applicant to understand that things like greater  
7 setbacks are necessary to come into compliance. That implies that a wind farm is  
8 consistent with the Comprehensive Plan area and zone if certain site specific conditions  
9 can be met. This further supports my contention that “noncompliance” is technical and  
10 underscores the point that wind power is a consistent use of the land for which it is  
11 proposed. It also explains the applicant’s willingness to continue negotiations with the  
12 County over such a long period.  
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16 The length of time involved in hearings and negotiations, the number of meetings and  
17 analyses conducted - including the look at alternate locations in the DEIS, and the  
18 willingness of the applicant to make substantive changes, provide more than enough  
19 evidence to show that the applicant has made all reasonable efforts in good faith to  
20 resolve noncompliance.  
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23 Respectfully Submitted,

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26 Tony Usibelli, Assistant Director  
Energy Division

Department of Community, Trade  
and Economic Development

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