

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

In the Matter of:

Application No. 2003-01

SAGEBRUSH POWER PARTNERS, L.L.C.

KITTITAS VALLEY WIND POWER
PROJECT

PREHEARING ORDER NO. 7

COUNCIL ORDER NO. 789

ORDER GRANTING APPLICANT'S
REQUEST FOR EXTENSION OF TIME TO
RESOLVE LAND USE INCONSISTENCY

Nature of the Proceeding: This matter involves an application from Sagebrush Power Partners, LLC (the Applicant), to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Kittitas Valley Wind Power Project (Project), an approximately 182-megawatt wind turbine electrical generation facility. The proposed Project would be located within Kittitas County, on the ridges on either side of Highway 97, roughly 12 miles northwest of the city of Ellensburg.

Procedural Setting: The Council convened a prehearing conference on Tuesday, January 13, 2004, at 3:00 p.m., in Ellensburg, Washington, pursuant to due and proper notice. The prehearing conference was held before Council Chair James Luce, and Councilmembers Hedia Adelman (Department of Ecology), Chris Smith Towne (Department of Fish & Wildlife), Tony Ifie (Department of Natural Resources), Richard Fryhling (Department of Community, Trade, and Economic Development), Tim Sweeney (Utilities and Transportation Commission), and Patti Johnson (Kittitas County), and Adam E. Torem, Administrative Law Judge. Assistant Attorney General Ann Essko was also present as the Council's legal advisor.

The primary purpose of the prehearing conference was to determine the status of negotiations between the Applicant and Kittitas County regarding the Project's land-use inconsistency with local land-use plans and zoning ordinances. The Council's secondary purpose for prehearing conference was to begin consideration of a tentative schedule for the adjudicative proceedings in this matter.

Participants: The Parties were present as follows: the Applicant, SAGEBRUSH POWER PARTNERS, LLC, Darrel Peeples, Attorney at Law, Olympia, Washington; Kittitas County, James Hurson, Assistant Prosecuting Attorney, Kittitas County, Washington; Counsel for the Environment, John Lane, Assistant Attorney General, (AAG), Olympia, Washington; Washington State Department of Community, Trade & Economic Development, Mark Anderson, Senior Energy Policy Specialist, Olympia, Washington; Renewable Northwest Project, Susan Elizabeth Drummond, Attorney at Law, Seattle, Washington (by phone); Phoenix Economic Development Group, Debbie Strand, Executive

Director, Ellensburg, Washington; Residents Opposed to Kittitas Turbines (ROKT), James C. Carmody, Attorney at Law, Yakima, Washington; F. Steven Lathrop, Jeff Slothower, Attorney at Law, Ellensburg, Washington; and Chris Hall, pro se, Ellensburg, Washington.

Summary of Prehearing Conference:

1. Ex-Parte Disclosures

Councilmember Fryhling disclosed that he had contact with County Commissioner Perry Huston, retired County Planner Tom Pickerl, and Mr. Fitz Glover, but that none of these contacts or discussions addressed the substance of the Kittitas Valley Wind Power Project.

Councilmember Patti Johnson disclosed that she works with James Hurson and Clay White of the County on a daily basis, but has had no discussions regarding the Kittitas Valley Wind Power Project with either of them.

2. Decision on Petition for Review of Council Orders No. 781, 782 and 783

The Council issued a decision denying the F. Stephen Lathrop Petition for Review of Council orders No. 781, 782 and 783.

3. Schedule for Applicant/County Resolution of Land-Use Inconsistency

Darrell Peeples, legal counsel for the Applicant, submitted a request for an additional extension of time for attempting to resolve land use inconsistencies as set out in WAC 463-28-040.

Mr. Peeples noted that the Council had previously extended the deadline for resolving land-use inconsistencies to January 15, 2004, and that he wished to have another extension to February 15, 2004.

James Hurson, Kittitas County Prosecutor, presented a flowchart illustrating Kittitas County's possible timeline for resolution of the land use inconsistency by processing the Project through the County environmental review process. Mr. Hurson noted that the Draft Environmental Impact Statement (DEIS) for the Project had been published and made available to the public by EFSEC on December 12, 2003, and the comment period would not expire until Tuesday, January 20, 2004. Mr. Hurson also noted that uncertainties existed with regard to the timing of the Council's ability to provide Kittitas County with the functional equivalent of a Final EIS (FEIS). Therefore, the Board of County Commissioners' possible adoption of a wind zone overlay zone (the potential final step in the flowchart's timeline) could not be reached for at least four and a half months after the Council's release of the functional equivalent of an FEIS.

Mr. Peeples agreed to inform the Council on or before February 15, 2004 whether or not the Applicant would be asking EFSEC for state preemption of the County's land-use regulations as authorized by Chapter 463-28 WAC.

No other Parties present expressed opposition to the Applicant's request for extension.

4. Process and Tentative Schedule for Adjudicative Proceedings

The Applicant urged the Council to establish its own schedule for the Adjudicative Proceedings beginning with the Applicant's prefiled testimony being due as early as the first week of February. The Council postponed further discussion of schedule pending resolution of the land use consistency issues. As of the date of the Prehearing conference, no petitions for late Intervention had been received in the EFSEC office.

5. Stipulations and Settlement Agreements

The Applicant reported that no settlement agreements or stipulations had been reached between the Applicant and other Parties to this proceeding.

6. Next Prehearing Conference

The Council indicated its desire to schedule an additional prehearing conference in February 2004 to ascertain the status of the same issues contained on its agenda for the current prehearing conference. All Parties were invited to submit their available dates for the last two weeks of February to EFSEC staff.

Discussions and Decision: The Council appreciates the efforts undertaken by the Applicant and Kittitas County to attempt to resolve the existing land-use inconsistency. However, the Council would like to be able to set out a schedule for the adjudicative hearings on this application in the near future. The Council approved the Applicant's request for another extension of time to attempt to resolve land-use inconsistencies to February 15, 2004, with the understanding that the Applicant would, on or before that date, be prepared to indicate its intentions to the Council regarding a potential request for state preemption.

Notice to Parties: Unless modified, this prehearing conference order shall control all further proceedings in this matter. In accordance with WAC 463-30-270(3), any objections to this order must be stated within ten days after the date of mailing of this order.

DATED and effective at Olympia, Washington, the _____ day of February, 2004.

Adam E. Torem, Administrative Law Judge