

**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. 19

COUNCIL ORDER NO. 816

PREHEARING CONFERENCE ORDER
REGARDING APPLICANT'S UPDATES
ON LAND-USE NEGOTIATIONS,
PROCEDURAL ITEMS, AND MOTION
TO MOVE DEIS AND PUBLIC
COMMENTS INTO THE ADJUDICATIVE
RECORD.

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 preemption of local land use regulations and 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. An adjudicative hearing on this matter is scheduled to commence in March, 2006, in Ellensburg, Washington.

Procedural Setting: The Council convened a prehearing conference on Monday, August 22, 2005, at approximately 1:05 p.m., in Olympia, Washington, pursuant to due and proper notice. The prehearing conference was held before Council Chairman James Luce, as well as Councilmembers Judy Wilson (Department of Natural Resources), Chris Towne (Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), Tim Sweeney (Utilities and Transportation Commission), and Patti Johnson (Kittitas County). Councilmember Hedia Adelsman (Department of Ecology) participated by phone. Adam E. Torem, Administrative Law Judge (ALJ), presided over the prehearing conference. Assistant Attorney General Ann Essko was also present as the Council's legal advisor.

The purpose of the prehearing conference was to discuss procedural issues regarding scheduling of the adjudicative hearings in March 2006, to rule on Counsel for the Environment's Motion to move the DEIS, as well as corresponding public comments and public correspondence, into the Adjudicative Record, and to address other relevant prehearing issues.

Participants: The Parties were present as follows: the Applicant, Sagebrush Power Partners, LLC, Darrel Peebles, Attorney at Law, Olympia, Washington, Timothy McMahan, Attorney at

Law, Vancouver, Washington, and Chris Taylor, Director of Development, Horizon Wind Energy,¹ Portland, Oregon; Counsel for the Environment (CFE), Michael S. Tribble, Assistant Attorney General, (AAG), Olympia, Washington (by phone); Washington State Department of Community, Trade & Economic Development, Mark Anderson, Senior Energy Policy Specialist, Olympia, Washington; Kittitas County, James Hurson, Deputy Prosecuting Attorney, Ellensburg, Washington (by phone); Residents Opposed to Kittitas Turbines (ROKT), James Carmody, Attorney at Law, Yakima, Washington (by phone), Mike Robertson, Lay Representative, Cle Elum, Washington (by phone) and Ed Garrett, Lay Representative, Snohomish, Washington (by phone); F. Steven Lathrop, Jeff Slothower, Attorney at Law, Ellensburg, Washington (by phone); Economic Development Group of Kittitas County, Debbie Strand, Executive Director, Ellensburg, Washington (by phone).

Summary of Prehearing Conference:

Agenda Items 1, 2 and 3. Introduction, Appearances, and Adoption of Proposed Agenda.

Following an introduction to the conference and appearances, the prehearing conference agenda was adopted by the Council as proposed.

Agenda Item 4. Withdrawal of Chris Hall

On behalf of the Councilmembers, Judge Torem took note of the withdrawal of Chris Hall from the adjudicative proceeding in this matter. Neither the Applicant nor any other parties present had comment regarding this withdrawal.

Agenda Item 5. Format and Procedure for Applicant Updates Regarding Land-Use Negotiations with Kittitas County.

Mr. Peeples, Mr. McMahan, and Mr. Taylor, representing the Applicant, reported that the Applicant plans to file a new application for the Project with Kittitas County. The Applicant will also formally withdraw its request for preemption in this matter. The Applicant has met with the County planning director, Mr. Darryl Piercy, to determine whether the processing of a re-filed application would be a similar process to that utilized in the Wild Horse Wind Power Project. Mr. Piercy confirmed to the Applicant that if a complete application was filed by the end of August, county review could be concluded in time for the EFSEC March 2006 hearing date. The Applicant observed there was a reasonable spirit of cooperation and that the Applicant was hopeful that a reasonable and fair process would be available. Mr. Taylor added that the Applicant had notified Mr. Piercy that modifications would be made to the Project to scale it back, reducing the size and density of the proposed generation facility. However, the Project would remain within the parameters of the Application for Site Certification to EFSEC. The intent of these modifications is to respond to some of the concerns that have been raised through not just the EFSEC process but some of the other wind energy siting processes conducted by the County.

¹ By letter dated August 17, 2005, Chris Taylor notified EFSEC that Zilkha Renewable Energy had changed its name to Horizon Wind Energy.

Judge Torem summed up that a notice would be submitted to EFSEC at some future time formally withdrawing the request for preemption. The preemption issue would only reappear if the County denies the application that is to be filed in a few weeks. The Council would schedule a report by the Applicant at its December 2005 or January 2006 meeting to determine if preemption would be brought back to the table and, if necessary, issue appropriate filing deadlines to mesh with the March hearing dates. Mr. Peeples added that he believed that if a new preemption request was filed, the testimony on the issue would be much narrower in scope.

Judge Torem encouraged any interested parties, participating as intervenors in the EFSEC process or otherwise, to participate in the public processes in Kittitas County regarding the land use issues and make sure that voices are heard at the County level and not only heard as echoes back in the EFSEC hearings if there is a preemption discussion next March.

Mr. Hurson and Mr. Carmody respectively raised timing issues associated with other end-of-year County deadlines, and additional public notice periods for the County's SEPA process associated with review of the application. Mr. McMahan reviewed for the benefit of new Councilmembers issues regarding lead agency status for the Kittitas Valley Project, and the SEPA process employed by the County for the Wild Horse Project.

In conclusion, Judge Torem indicated that the Council would expect oral updates on the progress of the application with the County at the Council's scheduled monthly meetings through the end of the year and into 2006, provided that the Applicant will apprise EFSEC staff of any significant developments in the interim.

Agenda Item 6. Schedule

Confirmation of March 2006 Hearing Dates: Judge Torem reviewed the hearings schedule established to date: 9 days of hearings, March 13 through 16, and March 27 through 31, 2006. Judge Torem reminded the parties of the Council's assumption that the hearing will be picked up and issues revived where they were set down prior to postponement of the hearings in September 2004. Deadlines that applied previously still apply, as do the prior prehearing conference orders.

Parties' Need for Additional Prefiled Testimony: Judge Torem queried the Applicant and other parties regarding the need for additional prefiled testimony. Mr. Peeples indicated that from the Applicant's perspective, the only additional prefiled testimony that could be anticipated was testimony with respect to a new request for preemption, should there be one. Additional testimony related to project impacts would not be needed because project modifications will reduce impacts already addressed in EFSEC's Draft and Supplemental Draft Environmental Impact Statement (jointly the "DEIS"). Mr. Hurson concurred with Mr. Peeples, adding that if land-use consistency is attained, the County would withdraw from the adjudicative process altogether.

Mr. Carmody and Mr. Garrett asked about the possibility to update testimony based on new analyses and studies so that the Council's record reflects a decision being made in 2006, not in 2004. Judge Torem responded that the Council wishes to make a decision based on the most

current data. However, additions outside the scope of the testimony that has already been filed will not be accepted. Judge Torem encouraged parties to circulate new studies as soon as possible, so that by mid-January, the Council and all the parties are made aware of new information being presented to supplement existing pre-filed testimony. New information brought forward to supplement existing testimony must be filed with the Council and served on all other parties no later than January 13, 2006. Objections to the new testimony must be filed no later than January 27, 2006. The Council will rule on the objections at a prehearing conference, or at its following monthly meeting. For less substantive updates to prefiled testimony, parties shall be prepared to update individual witnesses testimony on the record at the March 2006 hearings.

Mr. Carmody raised questions about if and how the County's record regarding review of the application and land-use consistency would be entered into EFSEC's adjudicative record. Judge Torem replied that he expected only the County's reduction of their proceedings to either a land-use certificate and/or a development agreement to be entered into the EFSEC record. Other portions of the record could be incorporated into the Council's record if a person submitted them at a public meeting scheduled by the Council.

In conclusion, Judge Torem directed the Applicant to submit a copy of its new County application to EFSEC staff, including an executive summary for the Council and an oral presentation at the October Council meeting. Staff would circulate the document to the parties and notice it as an item at the October or November Council meeting.

Substitution of Witnesses: The Council will consider substitution of originally scheduled witnesses provided that parties wishing to substitute a witness submit a motion to that effect, subject to inquiry by other parties, and that such motion carry the reasoning in support of the unavailability of the original witness(es). Substitute witnesses must be available for cross examination as the original witness would have been. Motions for Substitution of Witnesses must be filed with the Council and served on all parties no later than 5:00 p.m. on January 31, 2006. Objections to such motions must be filed with the Council, and served on all parties no later than February 7, 2006.

Re-Affirmation of Witness Cross-Examination Times: Judge Torem instructed the parties to respond in a timely manner to the Applicant's queries for time needed for cross-examination of witnesses. Counsel for the Applicant will make such queries as the hearing dates get closer. Failure to cooperate and provide indication to the Applicant that cross-examination of a witness is needed, and the time required to cross-examine that witness, will be considered a waiver of that party's right to cross-examine a particular witness.

Post-Hearing Schedule: Judge Torem presented the post-hearing schedule in concept, as follows:

- Mid April: post-hearing briefs
- Late April: response briefs
- May 5: reply briefs
- Issuance of the Final EIS: Projected for May 15

- Council deliberations: last part of May, following issuance of the FEIS
- Council decision: dependent on length of deliberations and time needed to prepare either a site certification agreement or a recommendation to deny, May or June 2006
- Recommendation to the Governor: End of June 2006

Agenda Item No. 7. CFE's Motion to Move DEIS, Corresponding Public Comments, and Public Correspondence into the Adjudicative Record.

Mr. Tribble, Assistant Attorney General appointed as Counsel for the Environment (CFE) in this matter, summarized the motion filed by former CFE John Lane. Mr. Tribble agreed with Mr. Lane's analysis - because the DEIS, the Supplemental DEIS, and the corresponding public comments have been referenced by multiple parties in prefiled testimony and opening statements, it was useful for these documents to be moved into the adjudicative record. He also agreed with the motion's second point that rather than having the public resubmit comment information during the public comment portion of the adjudicative hearing it would make sense to have all the public comments received by the Council also moved into the adjudicative record. Mr. Tribble was not aware of any objections to this motion. Hearing no objections from the Applicant or other parties, the Council approved the motion.

Agenda Item 8. Other.

No other items being brought before the Council, the prehearing conference was adjourned at 2:14 p.m.

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 10th day of October, 2005.

Adam E. Torem, Administrative Law Judge