BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of:  
Application No. 2003-01  

SAGEBRUSH POWER PARTNERS, LLC,  
Prehearing Conference  

KITTITAS VALLEY WIND POWER PROJECT  
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A prehearing conference in the above matter was held in the presence of a court reporter on September 22, 2004, at 3:03 p.m., at 925 Plum Street S.E., in Olympia, Washington, before Energy Facility Site Evaluation Councilmembers.

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The parties were present as follows:


COUNSEL FOR THE ENVIRONMENT, John Lane, Assistant Attorney General; 1125 Washington Street S.E., P.O. Box 40100, Olympia, Washington 98504-0100.

KITTITAS COUNTY, James L. Hurson, Kittitas County Prosecutor, Kittitas County Courthouse, Room 213, Ellensburg, Washington 98926.

RENEWABLE NORTHWEST PROJECT, Susan Drummond, Attorney at Law; Foster Pepper & Shefelman, PLLC, 1111 Third Avenue, Suite 3400, in Seattle, Washington 98101-3299.

Reported by:

Shaun Linse, CCR
Appearances (cont'd):
DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT, Tony Usibelli, Assistant Director, Energy Policy Division, P.O. Box 43173, Olympia, Washington 98504-3173.
RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT), James C. Carmody, Velikanje, Moore & Shore, P.S., 405 East Lincoln Avenue, P.O. Box 22550, Yakima, Washington 98907.
F. STEVEN LATHROP, F. Steven Lathrop, Attorney at Law, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP, 201 West Seventh Avenue, Ellensburg, Washington 98926.
ECONOMIC DEVELOPMENT GROUP, Debbie Strand, Executive Director, 1000 Prospect Street, P.O. Box 598, Ellensburg, Washington 98926.

It is now three minutes after three o'clock, and this prehearing conference of the Energy Facility Site Evaluation Council is convened on Wednesday, September 22, 2004. This is Administrative Law Judge Adam Torem, and this is a special meeting or an emergency prehearing conference I believe convened based upon a filing we received on Monday, September 20.

MS. TOWNE: Okay. Thanks.
JUDGE TOREM: It is a joint motion to continue the hearing date in the Kittitas Valley Wind Power Project. On the telephone line today we should have -- please acknowledge when I say your name -- Assistant Attorney General, Ann Essko.

CHAIR LUCE: Here.

MR. FRYHLING: He is present.
JUDGE TOREM: Department of Ecology, Hedia Adelsman.

MS. ADELSMAN: Here.
JUDGE TOREM: We should have the following Councilmembers. Chairman Jim Luce.

CHAIR LUCE: Here.
MR. FRYHLING: He is present.
JUDGE TOREM: Department of Ecology, Hedia Adelsman.

MS. ADELSMAN: Here.
JUDGE TOREM: Department of Fish and Wildlife, Chris Smith Towne.

MS. TOWNE: Here.
JUDGE TOREM: Department of Natural Resources, Tony Ifie.

MR. IFIE: Present.
JUDGE TOREM: And the Department of Utilities and Transportation Commission, Tim Sweeney.

Mr. Sweeney, are you there?
JUDGE TOREM: Anybody else from RNP?

MS. DRUMMOND: I don't believe so, no.

MR. LANE: Judge, John Lane is here too.

JUDGE TOREM: Thank you, Mr. Lane.

MS. STRAND: Did you get me, Debbie Strand?

JUDGE TOREM: Got you.

MS. STRAND: Okay.

JUDGE TOREM: All right. I think we've accounted for everybody on the list. Let's go ahead and hear from Darrel Peeples who is here and then hear from Mr. Hurson on the joint motion to continue the hearing.

MR. PEEPLES: This first motion should be in front of everybody. It's a very short motion. The basis is primarily it was announced yesterday that PSE is purchasing Wild Horse or has entered into a contractual relationship that hopefully will end up in a purchase of Wild Horse. Partly because of that and we want to put all of our efforts into the Wild Horse application it was felt that trying to try the Kittitas Valley case at the same time we were trying to process the Wild Horse case would cause somewhat of a delay for Wild Horse mainly because of staff time on both the Applicant and particularly the County who has basically two people.

So we decided that we would try to delay a postponement of six months of this Kittitas Valley Wind Power Project hearings that are scheduled to begin next Monday, September 27, and put them off and not reschedule them or discuss the project again before this Council Monday, September 27, and put them off and not reschedule the hearings in that matter.

MR. PEEPLES: I would use the word hope rather than expect.

MR. HURSON: Jim Hurson. Yes, that's our goal, and, yes, in fact, in the motion the way we said it is to schedule the meeting March 2005. We discussed the fact that if we resolved it, great. If there is still an issue, then we get back to the Council, and we need to get back on a schedule for preemption which we hope isn't the case. But anyway that would give us the opportunity to revisit, work together with all the other parties on the reschedule as necessary.

JUDGE TOREM: Let me go through each of the parties first before I call on the Councilmembers and determine if they have an objection or if they have a concurrence with this approach.

I'll start with Mr. Usibelli who's here in the room in Olympia representing Community, Trade, and Economic Development as an intervenor. Any objection or comments?

MR. USIBELLI: We support the motion and do have a few comments. We support the motion, especially if this actually gets a real project in the ground sooner rather than later. We do have a concern in general that we not lose what we think is a significant state and regional asset, namely, the Kittitas Valley site and potential project there. And we know that the rest of the country has been looking at whether Washington represents a good site to place wind projects, and that this process and other processes are an important indicator of the willingness of our state to be a good place to do wind projects.
JUDGE TOREM: Mr. Lathrop, I had already expressed that by email your attorney, Mr. Slothower, expressed his lack of objection and I think his support.

MR. LATHROP: That's correct.

JUDGE TOREM: I should have said no objection. He didn't indicate support. Did you have anything else you wanted to add?

MR. LATHROP: We have no objection.

JUDGE TOREM: Mr. Carmody and Mr. Garrett, for ROKT.

MR. CARMODY: Ed, do you have any comments on it?

MR. GARRETT: No, I basically think that it's probably a good idea.

MR. CARMODY: I agree with that.

JUDGE TOREM: Ms. Drummond, are you still there for RNP?

All right. She may have gone to her cell phone. We will try her again at the end of the list. Debbie Strand for the Economic Development Group.

MS. STRAND: Yes.

JUDGE TOREM: Do you have any objections, concerns, or want to voice support for this request?

MS. STRAND: We have no objection, and we would certainly support the request.

JUDGE TOREM: Counsel for the Environment?

MR. LANE: I have no objection. I do have a clarification question. In terms of March is that when we would reconvene, start setting dates again? Is that the understanding?

MR. PEEPLES: I think John and Jim you cut in after me if I'm not right. I think we'll report back.

Hopefully we would be reporting back with something solid. We may say we're ready to get the process going or we may not but report back just with the status is what the first meeting in March was for.

Jim?

MR. HURSON: Yes, it was to get a status report, and, frankly, I anticipate that at the semi-monthly meetings that the Council may occasionally ask to have a verbal update. We can probably give you those because we will be on the phone for Wild Horse anyway.

MR. PEEPLES: I do want to point out, and I think I stated this at the last Council meeting, I will be probably this week filing for an extension of the preemption period with regard to Wild Horse too. I haven't talked to Jim about what end date that would be, but we are in a dialogue process with the County which we both believe is progressing. So we will be asking to extend that preemption time which is now set for November 15.

JUDGE TOREM: That's correct.

MR. PEEPLES: So I'll talk to Jim and come back with a date.

JUDGE TOREM: All right. Has Susan Drummond rejoined us yet?

MS. DRUMMOND: RNP does not have an objection.

JUDGE TOREM: All right. Thank you, Ms. Drummond.

MS. DRUMMOND: Yes.

JUDGE TOREM: At this time I just have a few clarification questions to determine what might be going on in the six-month period that's being requested, and then I will see what other Councilmembers have questions in that regard.

First, Mr. Peeples, I want to point out that up until early this month the Applicant was quite vociferously against any stays or delays of the proceedings, and I realize that your client has now got something different from Puget Sound Energy shifting its focus to the Wild Horse Project.

In this Kittitas Valley Wind Power Project there's a request for EFSEC to preempt local land use. Is there any indication that that request might be withdrawn, and you will be attempting to seek land use consistency during this six months?

MR. PEEPLES: It is likely in that we will be working with the County during that period; however, we will not withdraw the request for preemption at this time. I mean if we do get consistency, then we will withdraw the request.

JUDGE TOREM: Is it the intention of the Applicant to continue to work with the County?

MR. PEEPLES: Yes, it is. That's what the motion states. The motion stated as well to afford the parties additional time to work on outstanding issues, and we will be working on the outstanding issues.

JUDGE TOREM: Can you clarify other than the staffing in Kittitas County, which clearly if the next three weeks they have to focus on Kittitas Valley and have to then focus on post-hearing briefs would have clear time commitment, besides what is it that the Applicant is gaining by putting this off for six months or maybe longer before the hearing can ever be held? I'm trying to figure out what the connection from your perspective is between
Wild Horse and the Kittitas Valley project then being delayed instead?

MR. PEEPLES: Well, I think what we are going to do is we plan to really put a lot of effort and all our time into Wild Horse. It's just not the hearing. We'll be working on the EIS issues. Clearly the County staff there's just two of them, just Clay and Jim, and they don't have the time to work on the briefs and at the same time go forward full speed with the process that we're trying to go through with them to obtain compliance with the local land use.

So I think that is a big thing, and the other thing would be probably something that is not solid, but if we're working in a positive way on the Wild Horse application, it would be I think somewhat complicated if we were dealing in a very negative situation on the KV on personal relationships going through this. So I think both of those would be the factors.

Andrew, did you have anything to add?

MR. YOUNG: The only thing I think I would add is that it's not just limited resources on the County's side but also on Zilkha's side. We have a certain finite amount of resources to focus attention on projects, and this one has a real customer at this time, and that's where we would also like to focus our attention.

MR. HURSON: This is Jim Hurson. Frankly, I think one of the side benefits the County is looking for and I think Zilkha is too is that working through the Wild Horse project which I think most people agree seems to be less controversial that can carry with it some momentum to get Kittitas Valley working well in that process too.

That's our hope and why we think it's important for the K Valley project because we think the Wild Horse and the Kittitas Valley project then being delayed instead?

MR. PEEPLES: Correct.

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MR. PEEPLES: Correct.

MR. YOUNG: A staffing agreement.

MR. PEEPLES: Yes.

MR. PEEPLES: Yes. For Wild Horse.

MR. YOUNG: A staffing agreement. I think Andrew and Jim and Clay are going to be meeting Friday with Huckell/Weinman; is that right?

MR. PEEPLES: Yes.

MR. PEEPLES: Correct.

MR. PEEPLES: Yes, and allows everybody to turn all their attention to it. I mean we can't be meeting with Huckell/Weinman if we're trying to get ready for hearing.

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MR. PEEPLES: Understood. The last thing I guess I would ask, and I didn't ask this on Kittitas Valley until a lot of time had passed. But when you come to us at the Wild Horse prehearing conference next week would the two of you, the County and Applicant, use your very best efforts to sit down and draw out a time line, a
specific time line in terms of milestones for processing
Wild Horse.

MR. PEEPLES: Yes, I think we can.

Jim, do you think we can?

MR. HURSON: We'll try to get one done in
the next week.

CHAIR LUCE: Okay. I think that would be
very helpful to the Council. As you're aware we've put a
heck of a lot of work into Kittitas Valley, and I
understand the circumstances revolving around today's
special meeting, but we would like to know where we are in
terms of processing these applications.

JUDGE TOREM: Thank you, Chairman Luce. Any
other Councilmembers with questions or comments?

MS. TOWNE: Yes, Judge Torem, Chris Towne.
I'm trying to picture the schedule out some months. We've
been asked to accept a report not earlier than March 1,
which is five months and ten days out, and I seem to
recall Mr. Hurson saying that he felt the Wild Horse local
government hearing would be concluded in January. Why
then can we not have a report shortly thereafter, keeping
in mind EFSEC's charged to get on about the business of
deciding power plants? I'd just as soon do it sooner
rather than later.

MR. PEEPLES: I guess my response, my
suggestion would be to keep the March date. I'm usually
at every single meeting, and I think probably Kittitas
County will too. And believe me when we hear something,
we get something, we'll report it immediately.

MR. HURSON: This is Jim Hurson. That was
my thought too. We kind of had the March date as sort of
the official formal this would be where we are, but when
you have your regular telephone conferences, we will have
Wild Horse there too, I undoubtedly will be on most of
those conference calls anyway. So if the Council wants to
ask how are things going on K Valley, I won't have a
problem updating you.

MS. TOWNE: Judge Torem, I guess my concern
is if our order says everybody has until March 1 to think
about where they're going to be, everybody is going to
take it until March 1. Would it be helpful in moving the
process along to set a date at least a month earlier?

JUDGE TOREM: It may be that also given the
January time frame for completing the land use consistency
issues in both Wild Horse and now if Kittitas Valley is
also going to be pursued that the Applicant may be adding
in that month, Chris, to allow the hearings for Wild Horse
to take place, and, if necessary, to determine if they're
going to file a request for preemption in that matter.

Therefore, after Wild Horse would have been fully spent
after perhaps the month of February is being targeted, and
Mr. Peesles is nodding his head here that seems to be
correct, March 1 would then come on after the hearing for
Wild Horse had been accomplished, and we would certainly
be waiting for post-hearing briefs and ready to do
deliberations thereafter. But we could then start
thinking about rescheduling the hearings. At the first
meeting in March we could set that schedule.

Mr. Peesles, is that correct?

MR. PEEPLES: That's exactly correct. But I
don't have any objection about reporting in early because
we'll probably be giving you status, at least unofficial
status reports all the way through this. Not that I know
what's official or unofficial, but we will be giving you
status reports as we go through. I think that's pretty
obvious.

MS. ADELSMAN: Judge Torem, this is Hedia.
JUDGE TOREM: Yes, ma'am.

MS. ADELSMAN: I think what the Chair has
said I fully agree with him 100 percent on the last point
about getting a plan in toward the end of September and
the County talking about January finalizing their
hopefully decision. So it would be really good to not
only have the milestones and the time frame because I know
there are public hearings, and, you know, I don't know if
issues perhaps canceling the October 4 meeting. We may
need to have a special meeting on the week of October 11
for other issues going on with the Council for the rule
making, and then if we were to have that meeting, there
may be no reason to have the October 18 meeting. So
that's some of the discussion that staff has been having.
JUDGE TOREM: Mr. Hurson and Mr. Peeples, is
it correct to assume that many of the land use milestones
in both the KV case and the Wild Horse case would be the
same?
MR. PEEPLES: You know, I probably assume
so, but I'd just like -- I would request that the County
and the Applicant not report back or be required to report
back a schedule or anything regarding KV.
JUDGE TOREM: You're looking to focus your
attention on Wild Horse.
MR. PEEPLES: We want to focus our attention
on Wild Horse. We're working through some things, and I
think it's best that we just leave that. After we get
through Wild Horse, then we'll turn our attention to KV.
JUDGE TOREM: Chris, did that address your
concerns between February and March?
MR. HURSON: No, I think that's fine with
me. I know that they want to focus on Wild Horse, so
probably I guess you could say in the near term that will
be all of it, but then eventually we will be getting to
the KV project trying to get that back on track too.
CHAIR LUCE: Judge Torem that was really
what I was asking is I want a specific schedule with
milestones for Wild Horse presented at the Council
prehearing meeting next week in Ellensburg.
MR. PEEPLES: And we might come out with
something in KV maybe at the same time, but I don't want
to be required to do that. Let's let that develop between
the Applicant and the County as it goes.
JUDGE TOREM: Chris, did that address your
concerns between February and March?
MS. TOWNE: It's better sooner than later,
but, yes, I guess.
JUDGE TOREM: Is there any other
Councilmember with a comment regarding the KV proposed
requested delay until the first meeting in March?
Are there any other parties on the line that
want to comment on this?
All right. Councilmembers, I think it's
appropriate then that someone make a motion. We will
close discussion formally now, but then we will make a
motion to either adopt and approve the joint motion before
us. And that again is to continue the matter to the first
regularly scheduled meeting in March at which time they
will present a status conference. Does anyone want to
make that particular motion?
MS. TOWNE: So moved.
MR. IFIE: Second.
JUDGE TOREM: Any further discussion on the
motion?
CHAIR LUCE: Call for the question.
Question has been called for. All in favor say aye.
COUNCILMEMBERS. Aye.
JUDGE TOREM: Are there any opposed?
Okay. The motion carries. This matter will
be continued. For all those that are still on the line
this does mean we will be having a press release issued
that says the hearings scheduled for next week will be
canceled and discussed again about rescheduling as
necessary in March of 2005.
There will be no status reports required,
Mr. Peeples and Mr. Hurson, but any that you can give us
in tandem when Wild Horse is on the regular scheduled
meeting docket will be helpful. For those folks that are
interested in the Wild Horse Project that meeting is still
going to be scheduled next Thursday morning in Ellensburg,
but the time is currently scheduled at 9:00 a.m.
There are no parties to that but,
Mr. Peeples, did you want to be there at nine o'clock in
the morning, Mr. Hurson, or did you want for those of us
coming from this side of the mountain perhaps travel that
day, have the meeting and then travel back and avoid
overnight accommodations? Any feelings, Mr. Peeples?
MR. PEEPLES: I don't. I think to me it's
whatever is the most convenient for the Council.
MR. FIKSDAL: Judge Torem, staff has already
noticed that meeting for 9:00 a.m. It would take I think
a renotification to change it. We can do that, but it's
an extra step on our part.
MR. PEEPLES: I don't care, but we have at
least one attorney traveling over from Seattle which would
be probably Mr. Lathrop's on the line, and if those people
want to go to another time, it's fine with me. I don't
care.
MR. FIKSDAL: I would suggest that a later
date may be cheaper.
JUDGE TOREM: Later date or later time?
MR. FIKSDAL: Later time, excuse me. Later
time may be cheaper. That way the Councilmembers and
staff wouldn't have to go over earlier.
MS. ADELSMAN: That would be my preference
if we could make it even at ten o'clock or so.
JUDGE TOREM: For those people on the line
interested in Wild Horse is there any objection to
scheduling this meeting for 10:30 a.m?
MR. FRYHLING: That would be great. This is Dick.

MR. HURSON: That's fine. This is Jim Hurson.

JUDGE TOREM: Anybody opposed to 10:30 a.m.?

All right. Then I'm going to ask that staff -- Chairman Luce, you still there?

CHAIR LUCE: Yes, I am.

JUDGE TOREM: Will you concur in my recommendation to staff that we push that back an hour and a half to avoid the early bird express?

CHAIR LUCE: Yes, that's reasonable.

JUDGE TOREM: So we will renotice that for 10:30.

Mr. Peeples.

MR. PEEPLES: Yes, Jim, could you check with Lathrop and make sure that's okay with him?

MR. LATHROP: Yes, that's fine.

MR. PEEPLES: Okay. I didn't hear that.

MR. LATHROP: 10:30 is fine.

MR. PEEPLES: Somebody needs to get a hold of Dave Bricklin.

JUDGE TOREM: Mr. Carmody, are you still on the line? And I don't think you had indicated you were going to intervene.

Ms. Strand, are you still there?

MS. STRAND: Yes.

JUDGE TOREM: Is 10:30 fine with you?

MS. STRAND: Yes.

JUDGE TOREM: So we'll renotice this for 10:30 in the morning as opposed to nine o'clock. I think everything else will stay the same, and my hope is that we'll be done by an hour and a half to two hours even with the projected scheduling update from the County and the Applicant on Wild Horse. Is there any other business the Council needs to take up this afternoon?

MR. LATHROP: Location, Your Honor?

JUDGE TOREM: For the meeting next week?

MR. LATHROP: Yes.

JUDGE TOREM: I think that will stay the same as previously noticed in Ellensburg, and, Mr. Fiksdal, what's the specifics?

MR. FIKSDAL: It's at the fairgrounds.

MR. LATHROP: Got it.

JUDGE TOREM: Mr. Hurson, if you will make sure to check with the fairgrounds folks and our staff if at all possible to make sure if there's a telephone connection need that we don't have the previous problems we had in that building.

MR. HURSON: I will give them a call this afternoon.

JUDGE TOREM: I appreciate it, and I'm sure Mr. Fiksdal does as well. He doesn't want to run around with the cell phones again. I know everybody else liked watching it, Allen.

Anything else for the Council today?

All right. Then this meeting is adjourned, and, again, the motion is granted. There will be no hearings next week and into October.

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(Whereupon, the prehearing conference was adjourned at 3:36 p.m.)

AFFIDAVIT

I, Shaun Linse, CCR, Certified Court Reporter, do hereby certify that the foregoing transcript prepared under my direction is a true and accurate record of the proceedings taken on September 22, 2004, in Olympia, Washington.

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Shaun Linse, CCR
CCR NO. 2029