Page 1

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) Pages 1 - 25
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A prehearing conference in the above matter was held in the presence of a court reporter on April 24, 2006, at 1:00 p.m., at 925 Plum Street S.E., Building 4, Conference Room 401, in Olympia, Washington, before Energy Facility Site Evaluation Councilmembers.

* * * * *

The parties were present as follows:

SAGEBRUSH POWER PARTNERS, LLC, Darrel Peeples, Attorney at Law, 325 Washington Street N.E., Suite 440, Olympia, Washington 98501; and Timothy L. McMahan, Attorney at Law, Stoel Rives, LLP, 805 Broadway Street, Suite 725, Vancouver, Washington 98660.

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

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

Reported by: Shaun Linse, CCR #2029

	Page 2		Page 4
1 A	Appearances (cont'd):	1	here as is Tim McMahan, and I don't recognize the
2	F. STEVEN LATHROP, Jeff Slothower, Attorney at	2	gentleman.
3 I	Law, Lathrop, Winbauer, Harrel, Slothower & Denison, LLP,	3	MR. PECK: I'm Dana Peck. I'm the new
4 2	201 West Seventh Avenue, Ellensburg, Washington 98926.	4	project manager for Kittitas Valley.
5	ECONOMIC DEVELOPMENT GROUP OF KITTITAS COUNTY	5	JUDGE TOREM: All right. Dana Peck.
6 I	Debbie Strand, Executive Director, 1000 Prospect Street,	б	MS. POTTER: Joy Potter, project manager.
7 F	P.O. Box 598, Ellensburg, Washington 98926.	7	JUDGE TOREM: All right. You guys are
8	RESIDENTS OPPOSED TO KITTITAS TURBINES (ROKT),	8	stepping in for Chris Taylor; is that correct?
9 E	Ed Garrett, Lay Representative, P.O. Box 1680, Ellensburg,	9	MR. FIKSDAL: Chris is on the phone.
10 V	Washington 98926.	10	MR. PECK: That's correct.
11	* * * *	11	JUDGE TOREM: But Chris is also joining us
12	JUDGE TOREM: We will call the Energy	12	on the phone I understand. Chris Taylor, are you out
13	Facility Site Evaluation Council to order. It's now a	13	there on the phone?
14	couple minutes after one o'clock on Monday, April 24,	14	MR. TAYLOR: I am but I'm needed because I
15	2006. This is the Kittitas Valley Wind Power Project	15	just landed in an airport.
16	Application No. 2003-01, and we'll quickly go down the	16	JUDGE TOREM: Fair enough. Back to mute for
	roll of the EFSEC Councilmembers who are present both on	17	you.
18	the phone and in person.	18	Jim Hurson is here in person from Kittitas
19	Chairman Luce is absent. Dick Fryhling is	19	County and, Darryl Piercy, you're on the phone out there;
	here in person. Chris Towne is absent.	20	is that correct?
21	Patti Johnson, you're there on the phone; is	21	MR. PIERCY: That's correct. I'm on the
22	that correct?	22	phone.
23	MS. JOHNSON: Yes, that's correct.	23	JUDGE TOREM: For Renewable Northwest
24	JUDGE TOREM: Tim Sweeney, there on the	24	Project?
	phone?	24 25	No one from Renewable Northwest.
	-	2.5	
1	Page 3	1	Page 5
1	MR. SWEENEY: Roger. JUDGE TOREM: Hedia Adelsman?	1	Phoenix Economic Development Group is Debbie
2		2	Strand, and you're out there on the phone. Debbie Strand?
3	MS. ADELSMAN: Yes. If you could speak up a		MS. STRAND: Yes, I'm here.
4	little bit, it would be good.	4	JUDGE TOREM: Excellent.
5	JUDGE TOREM: Okay. We'll try to do that.	5	Sierra Club Cascade Chapter, do we have
6	MS. ADELSMAN: Thank you.	6	anyone representing today?
7	JUDGE TOREM: Judy Wilson absent. So we do		And Residents opposed to Kittitas Turbine or
8	have barely a quorum, four out of seven.	8	ROKT?
9	Around the room you guys are going to test	9	MR. GARRETT: Ed Garrett.
10	my memory here. We don't have a new Counsel for the	10	JUDGE TOREM: Ed Garrett is on the line.
11	Environment, do we, yet today?	11	Anyone else?
12	MR. PEEPLES: Yes, it's Michael Tribble.	12	All right. For Mr. Steven Lathrop I heard
13	MR. FIKSDAL: Who just joined us on the	13	Jeff Slothower ring in. You still there, sir?
14	line?	14	MR. SLOTHOWER: Yes, I'm here.
15	MR. TAYLOR: This is Chris Taylor with	15	JUDGE TOREM: Is your client present today
16	Horizon.	16	also?
17	JUDGE TOREM: All right, Chris.	17	MR. SLOTHOWER: No, he's not.
18	Michael Tribble?	18	JUDGE TOREM: Did I miss anybody out there
19	Apparently not on the line.	19	on the phone?
20	Okay. For the Applicant which is Sagebrush	20	All right. Hearing none, then let's take a
- 01	Power Partners but is now doing business under a differen		look at the adoption of the proposed agenda. It's really
21		22	pretty simple today. We're going to talk about the status
22	name; is that correct?		
22 23	MR. PEEPLES: No, it's still under that	23	of where we are, maybe scheduling some additional
22			

2 (Pages 2 to 5)

	Page 6		Page 8
1	Members of the Council?	1	project could be reconfigured in some way to address some
2	And from the Applicant any other items?	2	of their concerns with regard to proximity to local
3	MR. PEEPLES: No.	3	residences.
4	JUDGE TOREM: Then I'd ask, Council	4	In terms of how we feel I personally am not
5	Mr. Fryhling, you're here so would you move that we adopt	5	full of optimism that we're going to get through this
6	the agenda?	6	expeditiously. I'm not sure if we'll get through it
7	MR. FRYHLING: I move we adopt the agenda.	7	successfully so that's I guess what I have to say.
8	JUDGE TOREM: Councilmembers on the phone	8	Is there anything Darrel or Dana or Joy
9	can we have a second?	9	would add to that?
10	MS. ADELSMAN: Second.	10	MR. PEEPLES: I don't think we can give you
11	JUDGE TOREM: Call the question. Anybody	11	anything tentative today at all, and I think the closest
12	opposed?	12	statement was we're not going to get through to anything
13	Hearing none, then I would assume the rest	13	expeditiously either way if any of this goes, and I think
14	say Aye.	14	that's a pretty objective statement.
15	COUNCILMEMBERS: Aye.	15	JUDGE TOREM: All right. Do I understand
16	JUDGE TOREM: So we're ready to ask for a	16	though that the reasons for what we've done now we struck
17	status update, and I'll turn it over to Darrel Peeples,	17	dates I believe that were going to happen last month
18	see what you can tell us as to where we're going.	18	immediately upon my return so that this process could go
10	MR. PEEPLES: Essentially I don't know how	19	forward with the County?
20	much we can tell you today, and I think I'm going to turn	20	MR. McMAHAN: Correct.
20	it over to Tim at this point. He has been more involved	20	MR. PEEPLES: Correct.
22	on the local process than I have. You mind going over it?	21	JUDGE TOREM: Also the preexisting request
22	JUDGE TOREM: Mr. McMahan.	22	for preemption has been formally withdrawn.
24	MR. McMAHAN: Tim McMahan for the record and		MR. PEEPLES: Correct.
24 25	I may turn it over to Dana in a minute. We have, Horizon	24	JUDGE TOREM: So now we're back to the
25	Thay turn it over to Dana in a minute. We have, nonzon	25	
	Page 7		Page 9
1	Wind has been engaged very actively locally to try to seek	1	typical statutory and regulatory requirement that you get
2	consistency with local plans, regulations, and ordinances.	2	land use consistency certification from the County or back
3	We've been involved in a series of hearings where one	3	to where you were requesting preemption again.
4	seemingly endless hearing gets continued I guess, but	4	MR. PEEPLES: Correct.
5	we've been involved in the hearing process with the County	5	JUDGE TOREM: Certainly the goal is to avoid
6	before the planning commission, and we're currently still	6	that latter choice.
7	involved in the hearing process before the Board of County	7	MR. PEEPLES: Yes, that's correct.
8	Commissioners.	8	JUDGE TOREM: Is it your feeling,
9	As Your Honor may know, we don't know if the	9	Mr. McMahan, Mr. Peeples, that when the county
10	planning commission recommended denial of the wind	10	commissioners meet on Thursday that will be the end of it
11	resource permit and the related approvals. That decision	11	MR. PEEPLES: We don't know.
12	is now pending on recommendation to the Board of County	12	MR. McMAHAN: What we can say I thinkand
13	Commissioners. We had the Board deliberating after	13	Mr. Hurson's better able to answer this than I. What we
14	another round of presentations.	14	know to be true is that it certainly won't be fully
15	The Board deliberated the application a	15	concluded on Thursday one way or the other. The County
16	couple weeks ago, and in some ways we're encouraged by the	16	would certainly need to adopt findings and a decision by
17	record, the transcript from the deliberation. A lot of	17	resolution or ordinance one way or the other or if there's
18	the issues that have been controversial from some of the	18	some opportunity to engage in some negotiations they may
19	opponents the Board seems not to be going there.	19	further direct us and staff to do that. It's very hard to
20	But I would also say that we're somewhat	20	predict right now, but I would again say I can't imagine
21	discouraged by some of the things in the record in terms	21	us being completed within I don't know weeks.
22	of being able to successfully navigate the consistency	22	JUDGE TOREM: The next thing comes to mind
23	process. The Board is taking this up again on Thursday.	23	is whether or not the modifications that have been made to
24	They've asked us for some additional information regarding	24	the project I understand was cut down over the last year
25	setbacks and some information about how or whether the	25	in size from over 100 potential turbines to around 65 or
			3 (Pagag & to 9)

3 (Pages 6 to 9)

1 70. 1 is significanly different than what was recommended for 2 MR. PEEPLES: Sixty-fvc. 2 rejection by the planning commission? 4 be additional modifications to the layout of the turbine 5 Sittings or the number of uturbine to satisfy threes 5 5 strings or the number of uturbine to statisfy threes 5 WR. McMAILAN: Well, that's a question. 7 MR. PEEPLES: Correct. 7 MR. McMAILAN: Well, that's a question. 7 MR. PEEPLES: Correct. 7 8 Further ow in a way that wold be meaningful for the 7 MR. PEEPLES: Correct. 7 10 root of County Commissioners. That's the big issue rift 7 MR. PEEPLES: Correct. 7 2 JUDGE TOREM: Mr. Hurson, do you want to 12 commissioners. 12 additional changes that will be voted on by the county 12 chine in and clim e why toy coll and us to 13 application said form \$2.5 correct. 14 MR. HURSON: Well, firm Hurson for the 14 servert. 14 application said form \$2.5 correct. 14 application said form \$2.5 correct. 14 application said form \$2.5 correct. 15 application said form \$2.5 correct. 15		Page 10		Page 12
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4 (Pages 10 to 13)

	Page 14		Page 16
1	whistles will be, whether it's preemption or a	1	changed the project, we've cut down its scope, its nature,
2	certificate. None of that will probably be ready by the	2	and we're still talking and we're still very hopeful that
3	August 14 dates is my guess unless they tell us otherwise.	3	we can get those issues resolved.
4	My recommendation was going to be if that is	4	I think for the purposes here of our
5	the case strike the hearing dates and not set additional	5	planning you would have to make the assumption on my
6	dates until perhaps a month from now when we get together	6	statement. I mean those I think are the parameters we're
7	and see if the picture is any clearer because it seems	7	dealing with right now, but I don't want to have that P
8	that we've got weeks at a time of people's calendar, and	8	word in people's face because it's not meant thatwe're
9	we continue to hold those dates and then strike them, hold	9	really doing the best we can to work it out with the
10	those dates and then strike them. Rather than try to	10	County, and that's where we are.
11	schedule everybody again today, I would suggest we come	11	JUDGE TOREM: Mr. Hurson.
12	back in a month and find out what the Board of County	12	MR. HURSON: As far as striking the current
13	Commissioners did on Thursday and where they think they're	:13	hearing dates, I agree that would be appropriate. There's
14	going in the several weeks that would occur after that.	14	so many uncertainties as to where we're going with the
15	MS. ADELSMAN: I think that's a good idea.	15	EFSEC process right now. I think it just would make more
16	JUDGE TOREM: Mr. Garrett, had a question or	16	sense when we have better certainty and then we can set a
17	a comment as well.	17	date with schedules as needed. It could be a shorter
18	MR. GARRETT: My question is if the BOCC	18	schedule, longer schedule just depending upon what the
19	decides to deny this project, I would like to know what	19	course was.
20	the intent of the Applicant is, if they are going to	20	MR. TRIBBLE: This is Mike Tribble, Counsel
21	pursue the application through EFSEC or just drop it.	21	for the Environment. I've got a question. Is there any
22	JUDGE TOREM: Mr. Peeples.	22	chance that the hearings will be sooner than the currently
23	MR. PEEPLES: We'll pursue it through EFSEC.	23	scheduled hearing dates or are we deciding now that if
24	JUDGE TOREM: So it sounds as though they	24	they're stricken they'll almost certainly be after that
25	still intend to pursue it which I assume would be a	25	two-week schedule?
	Page 15		Page 17
	10.90 10		
1	resurrection of sorts of the request for preemption to	1	JUDGE TOREM: There's no bet in Vegas more
1 2	resurrection of sorts of the request for preemption to reflect the current state of the facts.	1 2	JUDGE TOREM: There's no bet in Vegas more sure than it will be later.
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5 (Pages 14 to 17)

1 2 3 4	Page 18		Page 20
2 3	have lasted a full week lasted a day and half and then had	1	also am a realist about the time it's going to take to
3	a public comment session one evening.	2	move this case forward, especially in opposition. So that
	I from what I've watched over the last few	3	is what it is.
	years of this don't anticipate that even if the County is	4	One thing I would just say for the record
5	able to settle out will occur here. There's much more	5	and probably goes without saying is that in the event that
6	heated debate, and geographically speaking these windmills	6	we are in a total limbo situation a month with the County
7	as proposed are much closer to people's residences and	7	and things aren't moving forward, we may come back in and
8	apparently people's hearts than the ones that were up on	8	ask for a hearing date, not August but just be set even
9	Whiskey Dick Ridge.	9	though we may not be concluded with that process. I'm not
10	So my suggestion here is that we not plan on	10	naive enough to think that pouring heat on the County with
11	the schedule moving up any sooner for Mr. Tribble's	11	an upcoming hearing is making any difference because I
12	perspective. To coordinate all the necessary witnesses	12	think they're going to do what they're going to do with
13	and the parties' schedules we're at least working three to	13	their process and that's fine, but just to understand that
14	four months out. We're less than three months out from	14	we may be in that position a month from now.
15	the proposed hearing dates and we don't know if what I	15	JUDGE TOREM: Well, the two choices I see
16	would tend to call the major issue of land use	16	are we either keep the hearing dates we have and wait to
17	consistency, maybe not the major issue of failed use	17	strike in case something happens or we go ahead and strike
18	major issues in the case, how it will be resolved.	18	them today and decide to wait to reschedule rather than
19	If as Mr. Hurson says the County is able to	19	reschedule without knowledge of what you're going to get.
20	reach an agreement here and a development agreement comes		MR. McMAHAN: I'm not arguing with striking
21	out of his client's discussions on the Thursday night, the	21	the hearing dates. It's just too hard to orchestrate
22	hearings will get a little bit shorter, but I don't think	22	witnesses and the like and holding them all on strings in
23	tremendously so given the other array of issues that are	23	the middle of the summer months.
24	still on the plate.	24	JUDGE TOREM: Okay. Council, it sounds as
25	So again, Mr. Peeples, did you have any	25	though the Applicant and the County are in agreement with
		25	
-	Page 19		Page 21
1	opposition to striking the hearing dates as they're now	1	my suggestion. Are there any other parties on the line,
2	set?	2	intervenors of the like that want to comment on being for
3	MR. PEEPLES: As long as when we know the	3	or against striking the hearing date and waiting another
4	dates, when we know what we have we can get it set, and if	4 5	month to determine new dates? MR. GARRETT: Ed Garrett, ROKT. For the
	we have consistency, I just want to state we can probably		
5	be within weeks of where we presently have it set if not		
6	in that Amount	6	record, I would just like to say that I agree with the
6 7	in that August.	7	record, I would just like to say that I agree with the previous comments that this proceeding has been dragging
6 7 8	JUDGE TOREM: All right. My thought is that	7 8	record, I would just like to say that I agree with the previous comments that this proceeding has been dragging out and in such there has been many more people moving
6 7 8 9	JUDGE TOREM: All right. My thought is that if it's going to move, September we know for Ellensburg is	7 8 9	record, I would just like to say that I agree with the previous comments that this proceeding has been dragging out and in such there has been many more people moving into the area even though they know or do not know about
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6 (Pages 18 to 21)

	Page 22		Page 24
1	JUDGE TOREM: Did I miss anybody else out	1	will work together on that.
2	there this afternoon?	2	JUDGE TOREM: Councilmembers, does that
3	All right. Then, Members of the Council, I	3	sound adequate?
4	form a motion on your behalf that we strike the hearing	4	COUNCILMEMBERS: Yes.
5	dates and set another prehearing conference toward the end		JUDGE TOREM: Any other business to schedul
6	of May to determine the way forward in the Kittitas Valley		today then?
7	case. Anyone want to adopt that as a motion?	7	All right. Hearing none, I think that we
8	MR. FRYHLING: I would adopt that as a	8	can be adjourned at about 1:25.
9	motion.	9	****
10	JUDGE TOREM: All right. Thank you,	10	(Prehearing conference adjourned at 1:25
11	Mr. Fryhling.	11	p.m.)
12	Is there a second?	12	
13	MS. ADELSMAN: Second.	13	
14	JUDGE TOREM: Thank you, Hedia.	14	
15	Is there any discussion?	15	
16	Hearing none, Councilmembers, state your	16	
17	agreement or disagreement by saying first Aye.	17	
18	COUNCILMEMBERS: Aye.	18	
19	JUDGE TOREM: Any opposed?	19	
20	All right. Then our hearing dates are	20	
21	stricken for August, and we'll free up everyone's summer	21	
22	vacation calendar.	22	
23	Dates for a prehearing conference the last	23	
24	week of May, the last available spot I think for me is	24	
25	Tuesday, May 30, if you want to do that that afternoon by	25	
	Page 23		Page 25
1	phone. It would simply be a scheduling hearing. If that	1	
2	works for everybody, great. If not, then Irina can take	2	
3	your suggestions for times the previous week. But if	3	
4	Tuesday, May 30, after the holiday weekend works for	4	
5	folks, and I see some nods around the room here, then we	5	AFFIDAVIT
б	will tentatively do that. Please communicate with Irina	6	
7	Makarow and let her know if you can do that Tuesday	7	I, Shaun Linse, CCR, Certified Court Reporter,
8	afternoon May 30, and we'll have our calendars out and see	8	do hereby certify that the foregoing transcript
9	what's available.	9	prepared under my direction is a true and accurate
10	Perhaps Irina anticipating that we might	10	record of the proceedings taken on April 24, 2006,
11	push it back a month can check availability in town for	11	in Olympia, Washington.
12	accommodations starting the first full week of September	12	
13	after the holiday weekend, and we can start looking	13	
14 15	anytime after that holiday weekend forward as to what	14	Chaun Linge CCD
15 16	might appear. Mr. Peeples, if you have an update that you	15 16	Shaun Linse, CCR CCR NO. 2029
17	want to send out by e-mail to all the parties saying if	16 17	UUK INU. 2029
18	there's going to be land use consistency that would help	17 18	
19	people note that the hearing might be shorter or if you're	19	
20	going to need more time what your proposed dates would be.		
1 - ×	If you could circulate that in about two to three weeks,	21	
21			
21 22		2.2	
	that would be fantastic, and Mr. Hurson can issue his	22 23	
22			

7 (Pages 22 to 25)