

**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. 22

COUNCIL ORDER NO. 819

PREHEARING CONFERENCE ORDER  
REGARDING STATUS OF LAND USE  
CONSISTENCY NEGOTIATIONS AND  
SCHEDULING OF ADJUDICATIVE  
HEARINGS.

**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. An adjudicative hearing on this matter was scheduled to commence in March, 2006, in Ellensburg, Washington.

**Procedural Setting:** The Council convened a prehearing conference on Tuesday May 30, 2006, at approximately 8:30 a.m., in Olympia, Washington, pursuant to due and proper notice. The prehearing conference was held before Council Chair James Luce; Councilmembers Richard Fryhling (Department of Community, Trade, and Economic Development), Tim Sweeney (Utilities and Transportation Commission), Hedia Adelman (Department of Ecology), Chris Towne (Department of Fish and Wildlife); and Patti Johnson (Kittitas County) who participated by phone. Councilmember Judy Wilson (Department of Natural Resources) attended the last portion of the conference. Adam E. Torem, Administrative Law Judge (ALJ), presided over the prehearing conference.

The purpose of the prehearing conference was to receive an update regarding the status of the Applicant's on-going application before Kittitas County to resolve the land-use inconsistency issue, and the scheduling of the adjudicative hearings in this matter.

**Participants:** The Parties were present as follows:

The Applicant, Sagebrush Power Partners, LLC: Darrel Peeples, Attorney at Law, Olympia, Washington.

Counsel for the Environment (CFE): Michael S. Tribble, Assistant Attorney General, (AAG), Olympia, Washington (by phone).

Department of Community, Trade and Economic Development: Tony Usibelli, Assistant Director, Energy Policy Division, Olympia, Washington; and Mark Anderson, Senior Energy Policy Specialist, Olympia, Washington.

Kittitas County: James Hurson, Deputy Prosecuting Attorney, Ellensburg, Washington; and Darryl Piercy, Director, Kittitas County Community Development Services, Ellensburg, Washington (by phone).

Residents Opposed to Kittitas Turbines (ROKT): James Carmody, Attorney at Law, Yakima, Washington; Ed Garrett, Lay Representative, Snohomish, Washington; and Mike Robertson, Lay Representative, Cle Elum, Washington (all 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).

### **Land-Use Consistency Status**

Mr. Peeples and Mr. Hurson summarized the status of the review of the Kittitas Valley Wind Power Project Application for a development agreement pending before the Kittitas Board of County Commissioners (BOCC). Mr. Peeples reported that the applicant and County staff had conducted more discussions following Mr. Hurson's appearance before the Council at EFSEC's May 9, 2006, Council Meeting to request on behalf of the County for the Applicant to continue discussions with the BOCC. Both Mr. Peeples and Mr. Hurson expected additional discussions to take place at the BOCC's meeting scheduled the following day, May 31<sup>st</sup>.

Mr. Peeples and Mr. Hurson clarified the status of the BOCC's action in this matter. Due to unclear communication between the BOCC and the Applicant at the BOCC's April meeting, the BOCC had made a preliminary motion to deny the project. The BOCC was expected to further consider the project at their upcoming session.

Mr. Hurson reported that County staff were trying to keep discussions with the Applicant going, but could not provide more details regarding the outcome. The BOCC's motion to deny the project had been characterized as "preliminary" in order to allow the record to be kept open for further discussions with the Applicant. Mr. Hurson further explained that the BOCC could only act at open meetings, and the next meeting was scheduled for tomorrow (Wednesday, May 31<sup>st</sup>). The preliminary motion to deny was based on the development agreement submitted by the Applicant to the BOCC. The BOCC's vote is not final until they act on a written decision document. In response to Councilmember Towne, Mr. Hurson explained that the BOCC's decision could be appealed before the BOCC and Kittitas County Superior Court, through the appeal avenues afforded by the Growth Management Act and the Land Use Petition Act. Mr. Hurson concluded that at the BOCC's request, final action documents reflecting preliminary

denial are being prepared for the BOCC's meeting tomorrow. However, the BOCC could decide to table such documents.

### **Schedule for Adjudicative Hearings**

Judge Torem recapped the late September/early October dates potentially open for scheduling the adjudicative hearings. Mr. Peeples requested that the Council wait to set the hearing dates until the BOCC acted on the project, and the Applicant reported back to the Council at their June 13<sup>th</sup> meeting. Mr. Hurson agreed with this approach, because the path to be taken for the hearings depends on the outcome of the BOCC's decision. Mr. Hurson was in favor of an update to the Council on June 13<sup>th</sup>, with a prehearing conference to set hearing dates scheduled later. Mr. Hurson indicated that he did not know when the BOCC would meet again regarding the project after May 31<sup>st</sup> – that would depend on the issues on the table.

Councilmembers Towne and Luce reminded the Applicant and Parties that the project has been before EFSEC for more than three years. Councilmember Towne was uncomfortable with the time line slipping over this period when EFSEC's statute requires a recommendation be made to the Governor within one year. Chair Luce laid out several options available to the Council: to wait until June 13<sup>th</sup> to see how the BOCC has acted; to conduct a hearing only on the substantive matters of the case if the Applicant and the County settle their differences and resolve the land use issues to make them consistent; to conduct hearings on both preemption and substantive issues if the Applicant and County do not resolve the inconsistency, a track that the Council would not prefer; and finally, to dismiss the application on the basis that the time required to resolve the land-use consistency issues has exceeded the timeframes established in EFSEC's regulations, specifically WAC 463-28.

Chair Luce proposed that the Council set a conditional hearing date, with specific hearing times and a pre-hearing filing schedule confirmed on June 13<sup>th</sup>. The hearing would consider the matters of the case, including preemption if applicable, or the Council would dismiss the Application. In response to Councilmember Sweeney, Mr. Peeples agreed that if a hearing date were set in late September there would be enough time for a case to be prepared regardless if preemption was an issue or not. Mr. Hurson explained that from the County's perspective, if the land use consistency is resolved, the County would essentially withdraw from the case. If preemption is to be considered however, 3 months until hearings are held may not be sufficient as discovery and other procedural hearing issues would have to take place. Mr. Hurson preferred not to establish a "preemption" schedule now because he still wanted the Applicant to negotiate a solution with the BOCC.

Mr. Tribble did not have any objections to the September-October time frame being discussed. He saw the CFE's participation in the possible preemption issue to be minimal, and expected to use the same testimony already filed by his predecessor Mr. Lane.

Judge Torem suggested that the Council proceed to set the hearing dates today, with the timing of other procedural steps being specified on June 13<sup>th</sup>.

Mr. Slothower indicated that he had scheduling conflicts the week of October 9<sup>th</sup>. Mr. Usibelli indicated that CTED's Energy policy group was hosting a national energy conference the week of September 11<sup>th</sup>, and the weeks chosen would work if that could be accommodated. Mr. Carmody, Garrett, Piercy, and Ms. Strand were all available for the last three weeks in September (Sept 11<sup>th</sup> through Sept 29<sup>th</sup>).

On Judge Torem's recommendation, Councilmember Sweeney moved that the Council set the hearing dates for the weeks of September 11, 18 and 25, and that the specific timelines for hearings and other submittals be determined on June 13<sup>th</sup>. Councilmember Towne seconded the motion, and all Councilmembers voted in favor of the motion.

Prior to concluding the discussion on hearing scheduling, Judge Torem clarified for Mr. Garrett and Mr. Carmody that, as explained in the Council's previous orders on this issue, the Council would not bifurcate the "preemption" and "application" issues at the hearing, and that a single recommendation would be made to the Governor, addressing both preemption and the Application. The Council would therefore not issue a decision on preemption prior to moving on to the hearing on the merits of the Application.

### **Scheduling of additional submittals and briefs prior to the Adjudicative Hearings**

The Council tabled this agenda item until the next prehearing conference.

### **Next Prehearing Conference**

The next prehearing conference will be held on June 13, 2006, starting at 1:30 p.m. at the meeting space in EFSEC's offices in Olympia, Washington. Judge Torem requested that EFSEC staff include schedules developed in previous orders with the prehearing conference notice. Judge Torem also requested that Mr. Peeples resurrect the witness/topic schedule developed earlier in this proceeding, and coordinate transmittal of this schedule to other parties through EFSEC staff. Finally, Judge Torem requested that all parties review their prefiled testimony submitted to date and be prepared to present to the Council on June 13<sup>th</sup> if and how the testimony should be supplemented prior to the September hearings.

Prior to conclusion of the conference, Mr. Tribble notified the Council that he may not be able to attend the June 13<sup>th</sup> meeting due to family priorities, but that he would coordinate with EFSEC staff to ensure transmittal of information or would arrange coverage by another Assistant Attorney General.

Mr. Garrett welcomed Judge Torem back from his tour of duty, and expressed thanks for his service.

No other items being brought before the Council, the prehearing conference was adjourned at 9:25 a.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 6th day of June, 2006.

  
\_\_\_\_\_  
James O. Luce, EFSEC Chair