

BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

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In the Matter of  
Application No. 2006-02

DESERT CLAIM WIND POWER  
LLC

DESERT CLAIM WIND POWER  
PROJECT

ORDER COMMENCING ADJUDICATIVE  
PROCEEDING;

NOTICE OF OPPORTUNITY AND CLOSING  
DATE TO FILE PETITIONS FOR  
INTERVENTION- **April 17, 2009**

NOTICE OF PREHEARING CONFERENCE  
AND ORAL ARGUMENT ON  
INTERVENTION –  
**April 23, 2009 1:30 P.M. at Hal Holmes  
Community Center Ellensburg, Washington**

NOTICE OF TOUR OF THE DESERT  
CLAIM WIND POWER PROJECT SITE –  
**April 23, 2009 Leaving at approximately  
3:00 P.M. from the Hal Holmes Community  
Center Ellensburg, Washington**

**The Application**

Desert Claim Wind Power Project, Application No. 2006-02 – On February 2, 2009 Desert Claim Wind Power LLC, a Washington limited liability company submitted a revised Application for Site Certification to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Desert Claim Wind Power Project (Project) a 190 megawatt electrical wind generation facility. This application is a revision to the original application submitted in November 2006 and includes the following Project design changes: The project area has been consolidated to one contiguous area covering 5,200 acres; the total number of turbines has been reduced from 120 to 95; non-participating residences located within 2,500 feet of a proposed turbine have been reduced to seven. The Project is proposed to be located in unincorporated Kittitas County, approximately 8 miles northwest of the city of Ellensburg.

EFSEC has taken lead agency status under WAC 197-11-938 of the State Environmental Policy Act (SEPA) rules for the environmental review of the Desert Claim Wind Power Project. EFSEC has prepared a draft supplemental environmental impact statement (DSEIS) for this project that has been issued for public comment. EFSEC will also conduct an examination of the project through a formal adjudicative proceeding.

**Notice of Adjudicative Proceeding**

The Council is reviewing Application No. 2006-02 under the procedures set forth in Chapter 80.50 of the Revised Code of Washington (RCW) and Title 463 of the Washington Administrative Code (WAC) for reviewing applications for new major energy facilities. The statute requires the Council to hold an adjudicative proceeding under Chapter 34.05 RCW, the Administrative Procedure Act. EFSEC in this order commences the adjudicative hearing related to Application No. 2006-02 in accordance with the procedural requirements found in Chapter 463-30 WAC and Chapter 34.05 RCW.

**Notice of Closing Date for Submitting Petitions for Intervention – April 17, 2009 5:00 P.M.**

The statutory parties to an adjudicative proceeding are the Applicant, Desert Claim Wind Power LLC., and the Counsel for the Environment (as defined in RCW 80.50.020(12)), Assistant Attorney General, Bruce Marvin. According to WAC 463-30-050, any state agency that is a member of EFSEC, or has opted to appoint a Council member for this proposal, may participate as a party. Any other person may petition to intervene as a party in this adjudicative proceeding under RCW 34.05.443, RCW 80.50.090, and WAC 463-30-091. The Council will consider the requests for intervention and determine whether or not to grant intervention.

An "intervenor," as defined in RCW 80.50.020(3), may be an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized. Any such "person" who wishes to participate in this proceeding may petition for intervention. The nature of intervenor status and a discussion of factors that the Council has used in deciding whether to grant petitions for intervention are described in this notice.

Each person admitted to an adjudicative proceeding as an intervenor is a party to the proceedings only for the purposes and subject to any limitations and conditions specified in the EFSEC order, granting intervention.

**In this case, the deadline for submitting requests for intervention is April 17, 2009.**

The Council will consider requests for late intervention according to the requirements of WAC 463-30-091 and 463-30-092 and other considerations identified in this Notice. See the discussion below for further information. Also see Other Opportunities for Public Participation below.

**How to Intervene**

To be considered timely, Petitions for Intervention in the matter of Application No. 2006-02 **must be received in the EFSEC office by close of business (5 p.m.) on April 17, 2009.** Petitions for Intervention will not be considered after that date except for good cause as discussed below. A copy of each petition must be served on Desert Claim Wind LLC, and on Counsel for the Environment at the same time they are filed with the Council. The names and

mailing addresses of the Council, all known parties, and their representatives appear in Attachment A.

Petitions for Intervention must be filed with:

Washington State Energy Facility Site Evaluation Council  
Attn: Allen J. Fiksdal, Manager  
P.O. Box 43172  
**905 Plum Street SE, 3<sup>rd</sup> floor**  
Olympia, WA 98504-3172

Petitions must be filed in hard copy with one original and one copy. A courtesy electronic copy should be provided on disk<sup>1</sup> at the time of filing, or e-mailed to [efsec@cted.wa.gov](mailto:efsec@cted.wa.gov). **E-mail alone does not constitute filing with EFSEC.**

Persons wishing to intervene should consider relevant provisions of Chapter 463-30 WAC. In particular, WAC 463-30-091 establishes the following requirements for Petitions for Intervention:

*All petitions to intervene shall be verified under oath by the petitioner, shall adequately identify the petitioner, and shall establish with particularity an interest in the subject matter and that the ability to protect such interest may be otherwise impaired or impeded.*

In considering whether to file a petition to become an intervenor, potential parties should recognize that persons who are granted intervenor status assume responsibilities they must meet in order for the adjudicative process to be an effective means for all participants to resolve the significant issues that are raised. Intervenors are expected to appear at the proceeding, either on their own behalf or by an attorney.

Intervenors must study other parties' cases so they can participate knowledgeably. They must decide whether to cross-examine other parties' witnesses, and determine the nature and scope of the cross-examination. Intervenors also have the responsibility either to attend the entire proceeding, including prehearing conferences, or to monitor it to learn when their interests will be at issue - otherwise they may be bound by matters that are resolved in their absence. Intervenors have the responsibility to become familiar with the Council's procedural rules and guidelines to enable them to participate knowledgeably and to advance their interests effectively. Because of potential delay to the proceeding that could interfere with rights of the parties involved, and because simply appearing to give advice to one party could give the appearance of impropriety or could adversely affect the rights of others, the Council cannot instruct participants on procedural matters. Becoming an intervenor in a Council adjudicative proceeding may require a significant commitment of time and financial resources.

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<sup>1</sup> Electronic versions must be IBM-PC compatible and may be supplied on: CD-ROM, IOMEGA (or other brand) 100 MB ZIP disk. For questions or assistance with these requirements please contact Stephen Posner of EFSEC at (360) 956-2063, or [stephenp@cted.wa.gov](mailto:stephenp@cted.wa.gov).

To receive examples of petitions for intervention that have been filed in previous EFSEC cases, contact Stephen Posner of EFSEC at (360) 956-2063 or the EFSEC office at (360) 956-2121.

Each petitioner for intervention, the Counsel for the Environment, and each governmental agency appearing as a party must identify the particular issue(s) or concern(s) that the petitioner or agency intends to address as an intervening party. The identification of issues must be specific enough for the Council and other parties to identify the specific problem that could cause harm to the petitioner or agency and the nature of that harm. The designation of issue(s) may be a factor in determining whether to grant intervention and will be used to organize and to manage the hearing. Parties may add additional issues later in the proceeding using the same basis the Council may use to grant late-filed petitions for intervention.

The closing date for intervention and for statements of intervention by authorized governmental agencies, who intend to participate as intervenors is **April 17, 2009, 5:00 P.M.**

### **Late Intervention for Good Cause Shown**

After April 17, 2009 other persons may petition the Council to intervene for the first time if they can establish that new information identified, not previously known or reasonably discoverable, demonstrates that an interest of theirs could be impaired or impeded by the proposed project. Persons may seek late intervention or expansion of the issues they may address as parties at other times, but must also demonstrate that their petition to do so is based upon new information, not previously known to them or reasonably discoverable by them, and that their petition is made within a reasonable period after discovering that information.

### **Notice of Prehearing Conference – April 23, 2009**

The Washington State Energy Facility Site Evaluation Council will convene an initial prehearing conference on **April 23, 2009 at 1:30 P.M., Hal Holmes Community Building, 209 N. Ruby Street, Ellensburg, Washington 98625**. The purpose of this prehearing conference will be to hear the Applicant's objections to petitions for intervention, petitioner's responses to the Applicant's objections to petitions for intervention, to rule on timely filed petitions for intervention, and to discuss and rule on matters as provided for in WAC 463-30-270:

- (a) Simplification of the scope and issues;
- (b) Opportunities for settlement agreements between parties;
- (c) The necessity or desirability of amendments to the pleadings;
- (d) The possibility of obtaining admissions of fact, and admissions of the genuineness of documents which will avoid unnecessary proof;
- (e) Limitations on the number and consolidation of the examination of witnesses;

- (f) Procedural matters including but not limited to: draft hearing guidelines; discovery and scheduling issues; determination of dates for the evidentiary hearing; whether evidence shall be prefiled; whether the hearing shall be segmented, the location of hearing sessions, and the timing and location of hearing sessions devoted to receiving evidence from the public;
- (g) Distribution of written testimony and exhibits to the Council and to parties prior to the hearing; and
- (h) Such other matters as may aid in the disposition or settlement of the proceeding including scheduling the hearing and determination of the sequence of the subject matter.

All participants are asked to be prepared to discuss the matters identified above including intervention request to the extent that they are reasonably able to do so. A detailed notice of the first prehearing conference may be sent at a later date to all parties, all petitioners for intervention, and all persons who ask to receive such notices. A form for requesting assistance is attached to this notice as Attachment B; please fill it out and return it if any party or witness needs an interpreter or other assistance.

### **Oral Responses To Petitions For Intervention**

The Council will hear the Applicants oral responses, if any, to intervention requests at the first prehearing conference, scheduled for **April 23, 2009**. Petitioners' responses to the Applicant's objections to intervention requests shall also be presented orally at the first prehearing conference scheduled for **April 23, 2009**, for any review of the basis of their intervention. If there are objections, petitioners must be prepared to respond to any objections filed. Appearance by telephone does not constitute an acceptable appearance, and will not be considered by the Council for the **April 23, 2009** prehearing conference.

### **Other Opportunities for Public Participation**

Besides formal intervention, public participation in the EFSEC process is accommodated in several additional ways. First, under RCW 80.50.080, the Counsel for the Environment represents "the public and its interest in protecting the quality of the environment". Second, RCW 80.50.090(3) affords an opportunity for members of the public to present testimony in the hearing without having to intervene formally. Third, the public has the opportunity to submit written comments at any time. When adjudicative (evidentiary) hearings begin (perhaps later this year), the Council plans to schedule specially-designated sessions to receive testimony from members of the public, at one or more times and places to be set by later notice of hearing. The Council will maintain a copy of current records of the hearing at its offices in Olympia for the use of persons who may wish to review them. Mr. Bruce Marvin has been designated as Counsel for the Environment by the Attorney General under RCW 80.50.080 to represent the public and its interest in protecting the quality of the environment. Persons wishing to contact Counsel for the Environment should contact him directly at the address, e-mail or telephone number listed on Attachment A.

## **Notice of a Tour of the Desert Claim Wind Power Project Site – April 23, 2009**

The Council members will tour the Desert Claim Wind Power Project site northwest of Ellensburg. **The tour will begin at approximately 3:00 P.M.** following the prehearing conference scheduled at 1:30 P.M. The tour will leave the **Hal Holmes Community Building, 209 N. Ruby Street, Ellensburg, Washington 98625** and proceed to various locations in and around the proposed site. At select locations the Council members will stop to view some possible wind turbine locations for this project. Any person may attend this tour but they must provide their own transportation.

### Contact Information

To obtain additional information about the intervention process, please contact the EFSEC office at (360) 956-2121.

More specific information about the project is available from EFSEC's office, on EFSEC's web site at [www.efsec.wa.gov](http://www.efsec.wa.gov), or from reviewing the application at public libraries at the following locations:

- Washington State Library, Joel M. Pritchard Branch: 6880 Capitol Blvd South, Olympia, WA, 98504-5513, (360) 704-5200;
- City of Ellensburg Public Library: 209 North Ruby Street, Ellensburg, WA 98926, (509) 962-7250;
- City of Cle Elum Public Library: 302 Pennsylvania Avenue, WA 98922, (509) 674-2313;
- Central Washington University, Brooks Library: 400 East University Way, Ellensburg, WA 98926, (509) 963-1111.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

Dated in Olympia, Washington this 25th day of March, 2009.

Allen J. Fiksdal, EFSEC Manager

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**Addresses of the Council and representatives of known parties**

**Desert Claim Wind Power Project Application No. 2006-02**

**Note: Parties petitioning to intervene must serve petitions to all of the addresses below.**

<b>Desert Claim Wind Power, Applicant:</b>	
David Steeb Desert Claim Wind Power LLC P.O. Box 4 Woodinville, WA 98072  Email: <a href="mailto:independent.power@verizon.net">independent.power@verizon.net</a>  Phone: 425-941-3774 Fax: 425-481-1519	Karen McGaffey Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101  Email: <a href="mailto:mcgak@perkinscoie.com">mcgak@perkinscoie.com</a>  Phone: 206-583-8888 Fax: 206-359-7368
<b>EFSEC:</b>	
Mr. Allen J. Fiksdal EFSEC Manager Energy Facility Site Evaluation Council 905 Plum Street SE, Building 3 PO Box 43172 Olympia, WA 98504-3172  Email: <a href="mailto:allenf@cted.wa.gov">allenf@cted.wa.gov</a>  Phone: 360-956-2152 Fax: 360-956-2158	Kyle Crews Assistant Attorney General Office of the Attorney General P.O. Box 40108 Olympia, WA 985  Email: <a href="mailto:KyleC@atg.wa.gov">KyleC@atg.wa.gov</a>  Phone: 360-664-2510 Fax: 360-586-3593
<b>Counsel for the Environment:</b>	
H. Bruce Marvin Assistant Attorney General Counsel for the Environment Office of the Attorney General P.O. Box 40100 Olympia, WA 98504-0100  Email: <a href="mailto:BruceM1@atg.wa.gov">BruceM1@atg.wa.gov</a>  Phone: 360-586-2438 M Tu W 206-389-3840 Th F Fax: 360-664-0229	

**Attachment B**

**Request for Interpreter or Other Assistance**

**NOTICE**

PLEASE TAKE NOTICE that:

- The hearing facilities are accessible to interested persons with disabilities.
- A qualified interpreter will be appointed at no cost to the party or witness, if a party or witness is hearing impaired or limited English-speaking and needs an interpreter.
- Smoking is prohibited in hearing facilities.

*Information needed to provide an appropriate interpreter or other assistance should be given below and the form returned to Allen Fiksdal, EFSEC Manager, Energy Facility Site Evaluation Council, P.O. Box 43172, 905 Plum Street, Olympia, WA 98504-3172.*

**Please print all requested information.**

Hearing date/location: \_\_\_\_\_

Applicant: Desert Claim Wind Power, LLC

Name of Party: \_\_\_\_\_

Primary language: \_\_\_\_\_

Hearing impaired? (Yes) \_\_\_ (No) \_\_\_

Do you need a certified sign language interpreter? Visual \_\_\_\_\_ Tactile \_\_\_\_\_

Other type of assistance needed: \_\_\_\_\_

English-speaking person who can be reached if there are questions:

Name: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_