

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. 1  
COUNCIL ORDER NO. 777

PREHEARING ORDER: GRANTING, ON  
CONDITION, PETITIONS FOR  
INTERVENTION; ADOPTING HEARING  
GUIDELINES AND TAKING FURTHER  
ACTION

**Nature of the Proceedings:**

On January 13, 2003, SAGEBRUSH POWER PARTNERS, LLC (herein "Sagebrush" or the "Applicant"), submitted application No. 2003-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Kittitas Valley Wind Power Project (herein the "Project"), an approximately 182-megawatt wind turbine electrical generation facility, consisting of 121 wind generation turbines. The proposed Project will be located within Kittitas County, on the ridges on either side of Highway 97, roughly 12 miles northwest of the city of Ellensburg.

Associated with the Project will be underground electrical transmission lines and a short overhead transmission line, sited on and parallel with the right-of-way and overhead transmission lines of Puget Sound Energy. The project will also include access roads, foundations, grid interconnection facilities, one or two substations, an operations and maintenance center and associated supporting infrastructure and facilities, including approximately 121 wind generation turbines which measure approximately 249 feet at tip height, with a 197 foot rotor diameter.

EFSEC is conducting an environmental review of this Project and will be issuing a draft Environmental Impact Statement for public comment under the Washington State Environmental Policy Act (SEPA). EFSEC will also conduct an examination of the project through a formal adjudicative proceeding.

**Procedural Setting:**

As noted, on January 13, 2003, "Sagebrush" submitted application No. 2003-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Kittitas Valley Wind Power Project. On May 16, 2003, the Council issued a Notice of Intent to Hold Adjudicative Proceeding and Notice of Opportunity and Deadline to File Petitions for Intervention by June 16, 2003, Applicant's Objections or Response orally at the First Prehearing Conference on June 26, 2003, and Notice of Intent to Hold Prehearing Conference on June 26, 2003, with Petitioners' for Intervention replies to the responses of Applicant to any Petitions for Intervention to be submitted orally at the First Prehearing Conference.

The Council convened the first prehearing conference in the adjudication regarding this matter on June 26, 2003, pursuant to due and proper notice to all appropriate persons. The Conference was held before Council Chair Jim Luce, and Council members: Richard Fryhling (Community, Trade & Economic Development), Charles Carelli (Department of Ecology), Sue Patnude (Department of Fish & Wildlife), Tony Ifie (Department of Natural Resources), Tim Sweeney (Utilities and Transportation Commission), Patti Johnson (Kittitas County) and the Administrative Law Judge, Julian C. Dewell.

**Participants:**

The following persons participated in the prehearing conference:

Representing the Applicant: **SAGEBRUSH POWER PARTNERS, LLC**, by **Darrel Peeples**, Attorney at Law, Olympia, Washington.

Counsel for the Environment: **Michael Lufkin**, Assistant Attorney General, (AAG), Olympia, Washington.

Petitioners for Intervention:

Washington State Department of Community, Trade & Economic Development: **Mark Anderson**, Senior Energy Policy Specialist, Department of Community, trade and Economic Development, Olympia, Washington.

Kittitas County: **James E. Hurson**, Deputy Prosecuting Attorney, Ellensburg, Washington.

Renewable Northwest Project: **Susan Elizabeth Drummond**, Seattle, Washington.

Phoenix Economic Development Group: **Debbie Strand**, Executive Director, Ellensburg, Washington.

Sierra Club, Cascade Chapter: **Louise Stonington**, Seattle, Washington. [Participated by written petition only; did not appear at the prehearing conference]

Residents Opposed to Kittitas Turbines (ROKT): **James C. Carmody**, Yakima, Washington.

F. Steven Lathrop: **F. Steven Lathrop**, Ellensburg, Washington. Mr. Lathrop was accompanied by his legal counsel, Jeff Slothower, who agreed to submit a formal notice of appearance.

Chris Hall: **Chris Hall**, Ellensburg, Washington. [Chris Hall submitted her verification prior to the June 26, 2003 hearing].

**Parties in EFSEC Adjudicative Proceedings:**

Pursuant to WAC 463-30-060 and 463-30-050, parties to the adjudicative portion of an EFSEC proceeding include:

- The applicant; in this case SAGEBRUSH POWER PARTNERS, L.L.C.;
- Each member agency as defined in RCW 80.50.030(3)<sup>1</sup>; in this case, the Department of Fish and Wildlife, the Department of Community Trade & Economic Development, the Washington Utilities and Transportation Commission, Department of Natural Resources and the Department of Ecology;
- The "Counsel for the Environment" as defined in RCW 80.50.020(12); in this case, Assistant Attorney General Michael Lufkin;

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[1] RCW 80.50.030(3) provides that the council shall consist of the directors, administrators or their designees of the following departments, agencies, commissions and committees: the departments of ecology; fish and wildlife, health, military, community, trade, and economic development, natural resources, agriculture, transportation, and the utilities and transportation commission. In addition, RCW 80.50.030(4) provides that the county legislative authority of the county where an application for a proposed site is located shall appoint a voting member to the Council during the consideration of that site.

- Each person admitted to the adjudicative proceeding as an "intervenor", but such party is only a party for the purposes, and subject to any limitations and conditions, specified in the herein council order granting intervention.

### **Hearing Guidelines:**

On June 17, 2003, by mail, the Council distributed draft Hearing Guidelines for the conduct of the hearing to assist parties in understanding the Council's expectations and to show how it will manage the adjudicative hearing. The Council adopted these Hearing Guidelines for this proceeding, at the prehearing conference on June 26, after allowing any party to comment or object to any of these guidelines. The Council reserves the authority to vary from these guidelines when there is good cause to do so. The Council expects all parties and intervenors to be familiar with and comply with the guidelines. Further, the Council reiterated the necessity for all parties to be familiar with the Administrative Procedure Act (Chapter 34.05 RCW), the Washington Administrative Code (Title 463 WAC) and EFSEC's statutory authority (Chapter 80.50 RCW), as they relate to these proceedings. The hearing guidelines are attached to this order as Appendix A.

### **1. Rulings and Background on Intervention:**

#### **A. Laws on intervention in EFSEC adjudicative proceedings:**

The laws controlling the intervention of parties in EFSEC adjudicative proceedings are contained in the Washington Administrative Procedures Act (APA), at RCW 34.05.443, and in EFSEC's rules at WAC 463-30-400 and 410.

RCW 34.05.443, the part of the APA, which addresses intervention, provides:

(1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The

presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

EFSEC's rules at WAC 463-30-400 and 410 provide:

**Intervention.** On timely application in writing to the council, intervention shall be allowed to any person upon whom a statute confers a right to intervene and, in the discretion of the council, to any person having an interest in the subject matter and whose ability to protect such interest may be otherwise impaired or impeded. 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 exercising discretion with regard to intervention, the council shall consider whether intervention by the petitioner would unduly delay the proceeding or prejudice the rights of the existing parties. The council may establish a date after which petitions to intervene will not be considered except for good cause shown. When such a date has been established, the council will assure that adequate public notice is given.

**Participation by intervenor.** In general, it is the policy of the council to allow any intervenor broad procedural latitude. To the extent that the council determines that numerous intervenors might unduly delay the proceedings or prejudice the rights of existing parties, intervenor status may be conditioned upon assent by the prospective intervenor and counsel for the environment to allow the counsel for the environment to act as lead counsel for the balance of the hearing, where the intervenor's interests more closely align with those of the counsel for the environment. Intervenor status may also be conditioned upon allowance of other parties to act as lead parties, where appropriate. The council reserves the right to prescribe other limitations and conditions, where appropriate.

#### **B. General principles for participation in EFSEC adjudicative proceedings:**

The Council is committed to providing an appropriate forum for all persons and entities to provide their views and expertise to the Council. Effective participation from all of the petitioners for intervention is encouraged. In individual cases, the most appropriate forum may be the formal adjudicative hearings with party status and responsibilities, participation as a witness for the Counsel for the Environment or another party to the hearings, participation in the public hearings provided for in WAC 463-14-030 and RCW 80.50.090, or in the land use law consistency and compliance hearing which was held in Kittitas County on May 1, 2003, or by submitting written comments for the Council's consideration.

In addition to persons participating and communicating to the Council as parties to the proceedings, the law at RCW 80.50.090(3) also provides that, prior to the Council making any recommendation to the governor on a site application, the Council will conduct a public hearing as an adjudicative proceeding under the APA, Chapter 34.05 RCW. At that hearing, any person is entitled to be heard in support of, or in opposition to, the application for certification. RCW 80.50.090(3); WAC 463-14-030.

### **C. Identification of parties and rulings on specific petitions for intervention:**

The Council has considered all of the petitions for intervention, the oral comments of the Applicant to the Petitions for Intervention, and the oral Responses of the petitioners for intervention party status. In light of those Petitions and with consideration of the statutes and rules on intervention, and the above-described principles of intervention, the Council makes the following decisions regarding parties to the adjudicative proceedings:

Applicant SAGEBRUSH POWER PARTNERS, L.L.C.: under WAC 463-30-060 the Applicant, who applies for a site certification, is a party as of right to the adjudicative proceedings.

Counsel for the Environment: the Counsel for the Environment is an assistant attorney general appointed by the Attorney General and represents the public and its interest in protecting the quality of the environment. Michael Lufkin has been duly appointed by the Attorney General and is a party as of right pursuant to WAC 463-30-060.

Approval of Petitions for Intervention: The following Intervenors, whose intervention is in the interest of justice and whose intervention will not impair the orderly and prompt conduct of these proceedings, are allowed with regard to the issues identified in the written Petitions for Intervention, to wit:

a. Washington State Department of Community, Trade and Economic Development: The Council finds that Washington State Department of Community, Trade and Economic Development (CTED), which has a representative on EFSEC, is entitled to party status in the Council's adjudicative proceedings as a matter of right. WAC 463-30-050 and WAC 463-30-060. CTED, pursuant to RCW 80.50.030(3), is therefore a party. CTED will be limited to the issue that it supports Sagebrush's application, as consistent with Washington Energy Policy, which is to encourage renewable energy resources, as such issues generally fall within CTED's jurisdiction in Washington State.

b. Kittitas County: The Council finds that the County in which the proposed plant is to be located has shown the legal criteria for intervention and is granted party status pursuant to WAC 463-30-060(4), limited to the issues which directly affect Kittitas county concerning land use and zoning; protection of the lands, waters and environment of Kittitas county; protection of the general health and welfare of the inhabitants of Kittitas county; the claim that Applicant's plan is inconsistent with Kittitas county land use and zoning ordinances; the assertion that Applicant should comply with state and local law, including the state Growth Management Act and the county Comprehensive Plan and zoning ordinances; and assertions dealing with impacts on urban growth, sprawl, transportation, housing, economic development, property rights, natural resources, open space, recreation, environment, public facilities, public services and historical preservation, as they apply to Kittitas county.

c. Renewable Northwest Project: The Council finds that Renewable Northwest Project is entitled to status as an intervenor, limited to the issues of proper siting; economic and environmental benefits of wind energy projects; importance of resource diversity and rate

stability of electrical energy; adverse impacts of solely relying on fossil fuel for electric generation to meet load growth; environment protection, including wildlife and habitat; and the regulatory framework needed to ensure appropriate investments in new renewable resources.

d. Phoenix Economic Development Group: The Council finds that Phoenix Economic Development Group is entitled to status as an intervenor, limited to issues of the economic impacts of the project on Kittitas county, the future growth and development of the county, and business development, expansion and retention activities that diversify the economy and create family wage jobs.

e. Sierra Club, Cascade Chapter: A representative of the Sierra Club did not attend the hearing on June 26, 2003; however, the Council considered the Sierra Club's Petition. The Council finds that Sierra Club, Cascade Chapter is entitled to status as an intervenor, limited to the issues of affordable and reliable electric power at consistent rates, full employment in a healthy and sustainable economic climate, regulatory processes supportive of the establishment of clean alternative [energy] technology, the responsive use of earth's resources, the protection and restoration of the quality of the natural environment, and the diversity of clean and environmentally sustainable energy sources.

f. Residents Opposed to Kittitas Turbines (ROKT): The Council finds that ROKT is entitled to status as an intervenor, limited to issues of proper location for the wind farm and alternate locations.

g. F. Steven Lathrop: The Council finds that F. Steven Lathrop is entitled to status as an intervenor, limited to issues of adjacent agricultural interests, local property values, and local concerns and attitudes and potential impact of the project on the area.

h. Chris Hall: The Council finds that Chris Hall is entitled to status as an intervenor, limited to issues of the siting of the wind farm and its effect upon cellular phones, highway safety, noise, wildlife, aesthetics, earthquake, ground water and "cradle to the grave" considerations, concerning assignment of interests and final terminations.

The Applicant (Sagebrush Power Partners), Counsel for the Environment and all Petitioners for Intervention were advised that at the Second Prehearing Conference the Council will consider questions of limitations on the number and consolidation of the examination of witnesses and exhibits and requiring Intervenors, with like issues, to use a lead counsel to present such issues, testimony and exhibits, rather than repetitive presentations by various intervenors.

## **2. Issue Identification:**

The Council has requested that an issue list be developed to clarify what will be adjudicated. The Counsel for the Environment has submitted a list of issues in his Appearance herein. Some of the intervenors have submitted issues in their Petitions for Intervention, essentially set out in the foregoing paragraph. The parties were directed to meet with Counsel for the Environment and come to agreement, if possible, on an issues list within 45 days after the date of this order.

The Counsel for the Environment agreed to coordinate the effort to develop the issues list. All intervening parties were advised to communicate with Mr. Michael Lufkin regarding the issues, which they would like to see addressed in the adjudicative proceeding, restricted to those issues set out for the individual Intervenors in the foregoing paragraph. This matter will be discussed at the Second Prehearing Conference and thereat finalized, subject to alteration after the filing of the Draft Environmental Impact Statement (DEIS). In the event the DEIS raises issues which could not have been reasonably anticipated at the time the parties identified issues in this proceeding, any party may petition the Counsel, for just cause, to allow additional issues to be added to the issues list.

### **3. Discovery:**

The parties were encouraged to conduct informal discovery. The Council will hear progress reports on the status of discovery at its Second Prehearing Conference.

### **4. Scheduling and next scheduled prehearing conference:**

The Council will hold at least one more prehearing conference to take place at a time and date to be announced. Items to be discussed will include progress on stipulation and agreement discussions, finalizing the issues list, any discovery issues, and consideration of the hearing schedule. Further, there will be an opportunity for evidentiary hearings on any stipulations or agreements that were submitted for Council's approval at least 10 days prior to the Second Prehearing Conference.

### **5. Challenge to presence of Council member representatives of the Department of Natural Resources and the Department of Community, Trade and Economic Development:**

At the Hearing on June 26, 2003, F. Steven Lathrop and his representative raised questions of conflicts of interest regarding Council member representatives from the Department of Natural Resources and the Department of Community, Trade and Economic Development. No facts were produced at the meeting, the issues was not raised in the Petition for Intervention and this oral challenge was the first indication that such a claim would be made. The Council advised F. Steven Lathrop and his representative that a formal Motion to disqualify such representatives must be filed with EFSEC one week from June 26, 2003.

### **6. Other issues discussed:**

All matters on items 9 and 11 of the approved Agenda were brought forward and discussed and the parties were encouraged to direct their efforts to identifying and resolving these items. These items included: Intervention (Applicant's Objections; Petitioner's Responses; and Applicant's Rebuttal); Stipulations and Settlement Agreements; Preliminary List of Issues; and Procedural Matters and Other Matters in the Paragraph Entitled "Notice of Intention to Conduct a



Prehearing Conference” as identified in the may 16, 2003 Notice of Intent to Hold Adjudicative Proceeding.

**7. Notice to parties:**

Any objection to the provisions of this order must be filed within ten days after the date of mailing of this order, pursuant to WAC 463-30-270(3). Unless modified, this prehearing conference order shall control further proceedings in this matter.

**A revised service list is attached to this order as Appendix B.**

**DATED** at Olympia, Washington and effective this \_\_\_\_\_ day of July, 2003.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

By

\_\_\_\_\_  
Julian C. Dewell, Administrative Law Judge

**Appendix A**  
**FINAL HEARING GUIDELINES**

**Kittitas Valley Wind Power Project**  
**Application No. 2003-01**

**Washington State**  
**Energy Facility Site Evaluation Council**

These guidelines are of a general nature and are provided to assist counsel in understanding the Council's expectations and how it will manage the adjudicative hearing. The Council may, when appropriate, vary from the guidelines or use measures not specified.

**ADMINISTRATIVE MATTERS**

**(1) General administrative matters.**

(a) Case-related correspondence, pleadings, etc., should be addressed to the Council, not any Council member or staff member. Correspondence addressed directly to an individual may not be logged in, may not be inserted in the case file, and may not constitute a part of the official record for appeal or for other purposes.

Unless other instructions are given or other arrangements are made with the Council Manager, parties shall file an original and 15 copies of pleadings and case-related correspondence.

(b) Starting times will be strictly observed. The hearing may proceed without counsel who are late.

(c) All counsel are expected to address comments, objections, and statements to the Council rather than to other counsel. Questions will be addressed to the witnesses rather than to counsel.

(d) There will be no off-the-record discussions at the request of counsel unless counsel first asks leave to go off the record and states the purpose for the request. Extended colloquies regarding procedural issues should be conducted off the record. After such a colloquy, each attorney will be given the opportunity to state for the record a summary of his or her view on behalf of his or her client when the record resumes.

**(2) Prefiled evidence.** The Council may require that parties' evidence be distributed to the Council and other parties in advance of the hearing<sup>1</sup> or hearing session. The schedule for prefiling will be determined after consultation with the parties.

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<sup>1</sup> Through these guidelines, the term “hearing” refers to the adjudicative hearing or a particular session thereof.

**(3) Pleadings and exhibits.**

(a) All pleadings and prepared exhibits shall be 8½ by 11 inches in size or reduced to that size. They may be folded to that size if reduction would render the document illegible. Large documents, charts, etc., may be used at the hearing for illustrative purposes so long as a legible reduction is provided for inclusion in the record.

(b) The Council prefers that pleadings and exhibits be double sided. If double-siding is not feasible for a party, the party may request authority from the Council Manager to file single sided pleadings and exhibits.

(c) Every pleading and exhibit shall be punched for insertion into three-ring binders.

(d) Line numbers shall be set out on all prepared testimony to facilitate transcript or exhibit references.

(e) Unless other instructions are given or other arrangements are made with the Council Manager, parties shall file an original and 15 copies of pleadings and exhibits.

(f) One (1) electronic (diskette) copy of all pleadings and exhibits must be submitted at the time hard copies are filed. Diskette specifications: Council software requires one of the following document formats, each for use on IBM-compatible hardware: Microsoft Word, WordPerfect, ASCII or Adobe Acrobat Reader (.pdf files). Participants desiring to submit material in other formats should discuss this with Council staff well before the filing is due and may provide material in another format if doing so is approved by the Council Manager. All diskettes should be write-protected and clearly labeled with the party's name, the word processing program used, the name of the file, type of pleading or submission, witness' name, etc. Maps or illustrations need not be submitted on diskette, unless requested by the Council or Council staff. Page and line numbering must be consistent between the hard copy and the electronic copy.

(g) The electronic version shall also be e-mailed to the Council Manager and/or other EFSEC staff as specified in the Service List.

**(4) Hearing format.** The Council will decide hearing format and schedule after hearing parties' comments. At least three (3) format models are available: (i) exchange of evidence, followed by a single hearing session; (ii) individual hearing sessions for cross examination of applicant's case, intervenors' and Counsel for the Environment's cases, and rebuttal cases; and (iii) individual hearing sessions for cross-examination of all evidence on a given topic. In addition, one or more hearing sessions will be held specifically for the purpose of receiving comment from members of the public.

**(5) Objections.** The Council need not specifically ask each representative whether that party objects to an offer of evidence or other motion or proposed action. Instead, the Council may ask generally whether there are objections, and persons having objections shall state them.

Failure to respond or object means that the party does not object, and will constitute a waiver of the right to object.

- (6) **Daily prehearing conferences or administrative sessions.** The Council will set a time prior to the start of the presentation of evidence for a prehearing conference for marking, distribution, and argument regarding objections to exhibits to be offered during the day and for arguing motions or other matters. Counsel who anticipate such matters should request that the time be set aside.

### **DISCOVERY.**

To the extent not inconsistent with the Administrative Procedure Act, chapter 34.05 RCW, EFSEC’s administrative regulations, Title 463 WAC, and EFSEC’s Hearing Guidelines, the Council shall be guided by the Washington State Superior Court Civil Rules, with the exception of CR 37, in questions related to discovery and motion practice in this proceeding.

- (7) **Informal and formal discovery.** Parties are encouraged to engage in informal methods to obtain discovery prior to using formal discovery. If a party desires to use formal discovery, such procedures are governed by WAC 463-30-190.
- (8) **Streamlining discovery.** Whether discovery is formal or informal, copies of a requesting party’s questions (requests for discovery) shall be sent to all parties of record on the same day the questions are sent to the responding party. Parties of record shall advise the responding party within seven (7) calendar days that they would like to receive copies of the responses to particular questions. The responding party shall send its response to the original requesting party and all subsequent requesting parties on the same day.<sup>2</sup> If the responding party’s response is not sent within 14 days after the request for information, the responding party shall provide a status report, indicating the timeframe necessary for a complete response.
- (9) **Limitations on discovery.** If a party determines that discovery has become unduly burdensome, the party may request that the presiding officer reasonably limit discovery.

### **PETITIONS AND MOTIONS.**

- (10) **Method of filing and service.**

(a) **Filing.** One original and fifteen (15) copies of all motions and related pleadings must be filed with the Council in the manner required in WAC 463-30-120. Under unforeseen circumstances, a party may request and the Council Manager may grant authority to file a

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<sup>2</sup> Certain discovery need not be shared. The Council acknowledges that at times parties may be engaged in sensitive negotiations as to which the sharing of discovery would be inappropriate. The process described above for sharing discovery information will not apply in such sensitive situations.

document by facsimile. If a document is filed by facsimile, the required number of copies must be received by the Council on the following business day.

(b) Service of pleadings and exhibits may be made on all other parties by mail<sup>3</sup> or hand delivery. Alternatively, pleadings and exhibits not exceeding 25 pages may be served by facsimile, provided that the document is mailed on the date of facsimile.

(c) Parties are strongly encouraged to send courtesy copies of documents to the Council Manager<sup>4</sup>, and to each other via electronic mail.

(d) A party may expressly allow service upon it by electronic mail through a waiver of the statutory service requirements. A party may make a waiver as to all other parties, a limited waiver as to certain parties, or a mutual waiver by stipulation with another party. To make a waiver, a party shall file a one-page pleading stating that it “waives the protections afforded by RCW 34.05.010(18) and WAC 463-30-120,” that “service upon it by delivery, United States mail and/or facsimile is unnecessary,” and that it “expressly authorizes service upon it by electronic mail.”

(e) When a party serves a pleading by electronic mail upon another party who has filed such a waiver, the serving party shall on the same date file and serve upon the receiving party by method other than electronic mail a one-page “notice of service by electronic mail” which describes with particularity the document or pleading which was served by electronic mail. The receiving party shall, within five (5) days of service of the aforesaid notice, file and serve by method other than electronic mail a one-page response denominated either “confirmation of receipt of electronic mail” or “notice of non-receipt of electronic mail” specifically acknowledging and confirming receipt or denying same.

**(11) Timing of filing and service.** Filing and service shall occur on the same date.

**(12) Date of filing or service.** Filing is complete upon receipt by an authorized agent of the Council. Service is complete upon (i) delivery, (ii) deposit in the mail, or (iii) successful transmission by facsimile, provided that the document is deposited in the mail on the date of facsimile.<sup>5</sup> Service by electronic mail upon parties who have specifically waived their right to other forms of service and who specifically accept service by electronic mail is complete when sent, provided that the sending party complies with Hearing Guideline 10(e).

**(13) Dispositive motions.**

(a) Defined. Dispositive motions include (without limitation) petitions or motions seeking the dismissal of any party or any portion of a proceeding.

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<sup>3</sup> All references to “mail” in this document include U.S. Mail and other systems of parcel delivery, including, but not limited to, Express Mail, Federal Express, United Parcel Service, Airborne Express, etc.

<sup>4</sup> allenf@ep.cted.wa.gov

<sup>5</sup> Filing by facsimile is not allowed in general. Under unforeseen circumstances, filing by facsimile may be allowed under Hearing Guideline 10.

(b) Filing schedule. Dispositive motions shall be filed at least 45 days before the next relevant adjudicative session. Answers, if any, shall be served and filed no later than 14 days after filing of the motion.

Replies to any answer shall be allowed. Replies, if any, shall be served and filed no later than seven (7) days after the earlier of (i) the date the last answer is filed or, if one or more named respondent does not respond, (ii) the deadline for filing answers.

(c) Oral argument. A dispositive motion shall indicate whether oral argument is requested. Oral argument may be allowed in the Council's discretion.

The Council may hear oral argument on dispositive motions at regularly scheduled Council meetings, at prehearing conferences, at regularly scheduled hearing sessions, or at times and places specially set for the purpose of receiving oral argument.

(d) Requests to shorten time. On the request of any party or in its own discretion, the Council may shorten the times established in this guideline relating to dispositive motions if it finds both good cause for the requester's failure to comply with the guideline and sufficient necessity that the matter be addressed in an expedited manner.

A request for shortened time shall be made to the Council and served no later than the time the dispositive motion is filed and shall state with particularity the circumstances demonstrating both good cause for failure to comply with time requirements and necessity for expedited review. The request shall propose a schedule for answers and replies to the dispositive motion. Responses to the request may be made by parties opposing the request if filed within two (2) business days or such shorter time as the Council may direct.

The Council may in its discretion allow or require oral argument on the request. Parties requesting oral argument should state why the written presentations are an insufficient basis for a reasoned and reasonable decision.

**(14) Non-dispositive motions.**

(a) Defined. Motions related to evidence or to the procedural course of the hearing, but not involving dismissal of a party or a part of the proceeding, will be considered non-dispositive for the purposes of these guidelines. Non-dispositive motions include (without limitation) motions to extend time, set an adequate evidentiary foundation, and strike evidence previously admitted (based upon witness' response to cross examination).

(b) When raised. Non-dispositive motions should be raised no later than the start of the relevant adjudicative session, unless they arise from matters emerging during the adjudicative session that are not reasonably foreseeable. Counsel should notify the Council that a motion will be presented as soon as counsel decides to do so. If a motion is not presented at or before the start of the adjudicative session, the Council may refuse to hear it or may defer consideration.

(c) Briefing and oral argument. Non-dispositive motions may be written or oral. They will likely not require a formal briefing schedule. Written response or separately scheduled argument may be required in the Council’s discretion.

- (15) **Computation of deadlines.** Deadlines shall be computed by counting calendar days. Whether a due date is stated as a given number of days before or after a particular date of reference, the date of reference shall not be included in counting the designated period. If a calculated due date falls on a Saturday, Sunday, or legal holiday, the deadline is the first business day following the calculated due date.

### WRITTEN AND ORAL EVIDENCE.

- (16) **Administration of evidence.**

(a) When prefiling of evidence is required, each party shall file one original and fifteen (15) copies of its evidence with the Council no later than the established filing date unless different instructions are given.

(b) Prefiled testimony will be treated as an exhibit and may be accompanied by other exhibits. Parties should not preassign numbers to their own prefiled testimony and exhibits. Instead the following system should be used, including the witness's initials, and marked serially. For John Q. Witness's prefiled testimony and accompanying exhibits:

- Ex . . . . (JQW-T)
- Ex . . . . (JQW-1)
- Ex . . . . (JQW-2)
- Ex . . . . (JQW-3)

Parties not familiar with this method of identification may contact the Council for further guidance. The official numbers for the record will be assigned at the hearing session.

(c) Each witness should present a short summary of his or her remarks at the beginning of prepared testimony.

- (17) **Revisions to prefiled evidence.**

(a) A party finding it necessary to make a revision to prefiled evidence having substantive effect shall disclose the revision to other parties as soon as need for the revision is discovered.

(b) Any revisions to prefiled or previously admitted testimony or exhibits shall be prominently labeled "REVISED" and bear the date of the revision. The revised portions shall be highlighted, in legislative style or other manner clearly indicating the change for comparison with the original submissions. This practice should be followed even as to minor changes that involve only one page of an exhibit. Counsel should identify revisions

by page and date at the time an exhibit is presented for identification, sponsored, or offered into evidence, as appropriate.

**(18) Evidence at the hearing.**

(a) Each party is responsible for having one revised, corrected copy of its exhibits ready for marking and inclusion in the official record at the hearing. A second revised, corrected set of exhibits will also be needed for the court reporter.

(b) An errata sheet may be used to indicate the corrections to prefiled evidence for a relatively small number of relatively minor revisions. A rule of reason will apply.

(c) Corrections and revisions should be made or attached to all documents distributed at the hearing before the copies are distributed.

(d) Parties must have sufficient copies at the hearing of each document that they distribute, other than prefiled evidence, so that each party, each Council member, the Council staff, and the Council consultant may each have a copy.

**(19) Direct examination.**

(a) Counsel should **not** ask the witness on the stand to correct obvious typographical errors in the prefiled testimony if more than three (3) corrections are required, but should submit an errata sheet or revised documents.

(b) Counsel will be expected to ask several foundation questions: the witness' name and business address, whether any prefiled testimony represents the answers the witness would give if asked those questions; whether any exhibits were prepared by the witness or under her or his control or direction; and what subjects the witness will cover. The latter foundation question should request only a statement of the subjects to be covered by the witness, e.g., aquatic biota, not a summary of the witness's positions on the subjects.

**(20) Cross-examination.**

(a) For planning purposes, counsel should be prepared to provide time estimates for cross-examination of witnesses.

(b) Cross-examination will be limited to two (2) rounds except upon a showing that good cause exists.

(c) Witnesses should not be asked to perform calculations or extract detailed data on the stand. Such questions should be provided to the witness in advance or should be asked "subject to check."

(d) When a witness answers "subject to check," the witness must perform the "check" as soon as possible. A response given "subject to check" will be deemed accurate unless



disputed by the witness within ten (10) days of distribution of the transcript or by the time the record is closed, whichever occurs first.

(e) Exhibits used for cross examination of witnesses that have not been previously prefiled with the Council will be submitted to the Council no later than one week prior to the scheduled start of the adjudicative hearings, except for good cause shown. Such exhibits will be submitted in the required number of copies, and with a cover sheet indicating which witnesses they are intended for.

**(21) Stipulation and Settlement Agreements**

Any parties that come into stipulated or settlement agreements shall present copies of their settlements and stipulations, and any supporting documents, to the Council a minimum of one week prior to a scheduled settlement hearing date, except for good cause shown. Parties that come into such agreements shall notify the Council no less than one week in advance of any settlements or stipulation agreement presentations at scheduled prehearing conferences. The Council encourages settlement agreements.

**(22) Public testimony.**

(a) At the beginning of a hearing session for the purpose of taking testimony from members of the public, Counsel for the Environment may inform the public of the major contested issues and the purpose of the hearing session.

(b) Documents provided by or on behalf of members of the public at a public hearing may be offered as illustrative exhibits.

(c) Letters received by the Council and Counsel for the Environment from members of the public may be offered into evidence as illustrative of the opinions of the correspondents.

(d) Documents from the public that Counsel for the Environment believes to contain factual information of a probative nature may be offered into evidence separately, provided that a sponsoring witness is available for cross-examination.

(e) If Counsel for the Environment knows that a witness intending to present evidence as a member of the public will be speaking with expertise in a technical or scientific area as opposed to expertise regarding the community, public sentiment or perception, or personal sentiment, Counsel should inform the Council in advance so that any questions of admissibility, scheduling, and rebuttal may be addressed.

(f) Only exhibits and testimony offered and received are part of the record and subject to consideration by the Council in its decision.

**POST-HEARING PROCESS.**

- (23) The Council will confer with the parties at the conclusion of the hearing about post-hearing process.
- (a) The Council will determine whether oral argument, briefs, or both will be required, taking into consideration the parties' preferences and its own needs.
- (b) If the Council requests briefs, it may determine a format to be used by all parties. The Council will establish a maximum length for briefs. Number and complexity of the issues will be considered in setting the allowed length of briefs. Limited-issue intervenors may be allowed fewer pages than parties addressing all issues.
- (24) **Transcripts.** Each party will bear its own costs for transcripts purchased from the court reporter, including charges for expedited service when the party requests it.

**Appendix B**

**Kittitas Valley Wind Power Project Application No. 2003-01**  
**Service List**

Unless otherwise indicated, copies must be served on all persons on this list.

<b>Energy Facility Site Evaluation Council:</b>	
<p>Mr. Allen J. Fiksdal (<b><u>original and 15 copies</u></b>)                  EFSEC Manager                  Energy Facility Site Evaluation Council                  925 Plum Street SE, Building 4                  PO Box 43172                  Olympia, WA 98504-3172                  Ph: (360) 956-2252                  Fax: (360) 956-2158                  allenf@ep.cted.wa.gov</p> <p><b>Serve an electronic version of all documents to both:</b></p> <p><b>allenf@ep.cted.wa.gov</b>  <b>irinam@ep.cted.wa.gov</b></p>	<p>Ann Essko, Assistant Attorney General                  905 Plum Street, Building 3                  P.O. Box 40108                  Olympia, WA 98504-0108.                  Ph: (360) 664-2510                  Fax: (360)586-3593                  anne@atg.wa.gov</p> <p>Julian Dewell                  Administrative Law Judge                  609 Maulsby Lane                  Everett, WA 98201                  Ph.: (425) 259-6269                  Fax: (425) 258-3345                  jdewell@earthlink.net</p>
<b>Counsel for the Environment:</b>	
<p>Michael Lufkin                  Assistant Attorney General                  Counsel for the Environment                  Office of the Attorney General                  1125 Washington St. S.E.                  P.O. Box 40100                  Olympia, WA 98504-0100                  Ph: (360) 586-3649                  Fax:(360) 664-0229                  MichaelL@atg.wa.gov</p>	
<b>Applicant - Sagebrush Power Partners L.L.C.:</b>	
<p>Chris Taylor                  Zilkha Renewable Energy                  210 SW Morrison, Suite 310                  Portland, OR 97204                  Ph: (503) 222-9400                  Fax:(503) 222-9404  <a href="mailto:ctaylor@zilkha.com">ctaylor@zilkha.com</a></p>	<p>Darrel Peeples                  Attorney at Law                  325 Washington Street NE, #440                  Olympia, WA 98501                  Ph: (360) 943-9528                  Fax: (360) 943-1611  <a href="mailto:dpeeples@ix.netcom.com">dpeeples@ix.netcom.com</a></p>

<b>Washington State Department of Community, Trade and Economic Development:</b>	
<p>Tony Usibelli  Assistant Director, Energy Policy Division  CTED  PO Box 43173  Olympia, WA 98504-3173  Ph.: (360) 956-2125  Fax: (360) 956-2180  tonyu@ep.cted.wa.gov</p>	<p>Mark Anderson  Senior Energy Policy Specialist  CTED  PO Box 43173  Olympia, WA 98504-3173  Ph: (360) 956-2170  Fax: (360) 956-2180  marka@ep.cted.wa.gov</p>
<b>Kittitas County:</b>	
<p>James L. Hurson  Kittitas County Prosecutor  Kittitas County Courthouse - Room 213  Ellensburg, WA 98926  Ph: (509) 962-7520  Fax: (509) 962-7022  JAMESH@co.kittitas.wa.us</p>	<p>Clay White  Kittitas County Planning  411 N Ruby Street, Suite 2  Ellensburg WA 98926  Ph:(509) 962-7506  Fax:(509) 962-7697  clayw@co.kittitas.wa.us</p>
<b>Renewable Northwest Project:</b>	
<p>Sonja Ling  Renewable Northwest Project  917 SW Oak Street, Suite 303  Portland, OR 97205-2214  Ph: (503) 223-4544  Fax: (503) 223-4554  sonja@rnp.org</p>	<p>Susan Elizabeth Drummond  Foster Pepper &amp; Shefelman P.L.L.C.  1111 Third Avenue, Suite 3400  Seattle, WA 98101-3299  Ph: 206-447-4400  Fax: _____  DrumS@foster.com</p>
<b>Phoenix Economic Development Group:</b>	
<p>Debbie Strand  Executive Director  Phoenix Economic Development Group  1000 Prospect Street  PO Box 598  Ellensburg, WA 98926  Ph: (509) 962-7244  Fax: (509) 962-7141  phoenix@elltel.net</p>	
<b>Sierra Club Cascade Chapter:</b>	
<p>Louise S. Stonington  Sierra Club Cascade Chapter  1922 15<sup>th</sup> East  Seattle, WA 98112  Ph: (206) 322-7193  Fax: _____  lstoni@hotmail.com</p>	

<b>Residents Opposed to Kittitas Turbines (ROKT):</b>	
<p>Residents Opposed to Kittitas Turbines                      P.O. Box 1680                      Ellensburg, WA 98926                      Phone: 425/868-5959</p>	<p>James C. Carmody                      Velikanje, Moore &amp; Shore, P.S.                      405 East Lincoln Avenue                      P.O. Box 22550                      Yakima, WA 98907                      Ph: 509/248-6030                      Fax: 509/453-6880                      jcc@vmslaw.com</p>
<p>Mike Robertson                      4101 Bettas Rd.                      Cle Elum, WA 98922                      Ph: 509/857-2113                      Fax: _____                      kestrels.edge@elltel.net</p>	<p>Please also e-mail Shawna Butler at                      shawna@vmslaw.com</p>
<p>Hal and Gloria Lindstrom                      1831 Hanson Rd.                      Ellensburg, WA 98926                      Ph: 509/925-1807                      Fax: _____                      E-mail: _____</p>	
<p>Steve and Amy Oslund                      31802 NE 139th Street                      Duvall, WA 98019                      Ph: 425/788-3520                      Fax: _____                      amy_oslund@hotmail.com</p>	
<p>Geoff Saunders                      22807 NE 23rd Street                      Sammamish, WA 98074                      Ph: 425/868-5959                      Fax: _____                      geoff@geoffsaunders.com</p>	
<p>Ed Garrett and Rosemary Monaghan                      19205 67th Avenue SE                      Snohomish, WA 98296                      Ph: 425/483-9770                      Fax: _____                      garrett_ew@netos.com</p>	

<b>F. Steven Lathrop:</b>	
F. Steven Lathrop Lathrop, Winbauer, Harrel, Slothower & Denison, LLP 1572 Robinson Canyon Road P. O. Box 1088 Ellensburg WA 98926 Ph: (509)-925-5622 Fax: 509-925-3861 steve@lwhsd.com	Jeff Slothower Lathrop, Winbauer, Harrel, Slothower & Denison, LLP 201 West Seventh Avenue Ellensburg, WA 98926 Ph: (509) 925-6916 Fax: (509) 962-8093 jslothower@lwhsd.com
<b>Chris Hall:</b>	
Chris Hall 106 E. 10 <sup>th</sup> Avenue Ellensburg, WA 98926 Ph: (509) 962-6955 Fax: _____ E-mail: hall@ellensburg.com	