

**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. 12

COUNCIL ORDER NO. 795

PREHEARING CONFERENCE ORDER
GRANTING APPLICANT'S MOTION TO
CONTINUE AND SETTING NEW
HEARING SCHEDULE AND DEADLINES

Nature of the Proceeding: On Tuesday, August 3, 2004, Intervenor Kittitas County, by and through its counsel James Hurson, filed its *Prehearing Motions and Argument* requesting, among other relief, that the Energy Facility Site Evaluation Council (EFSEC or Council) stay the adjudicative hearing on this matter scheduled to commence on August 16, 2004, in Ellensburg. As relevant here, Intervenor Kittitas County specifically requested a stay of the proceedings in order to allow for an opportunity to review and respond to EFSEC's pending issuance of additional environmental impact analysis documents, including an offsite alternatives analysis (see paragraph 7 of that pleading).

On Tuesday, August 3, Intervenor Residents Opposed to Kittitas Turbines (ROKT), by and through its counsel, James Carmody, filed a *Motion to Stay Adjudicative Hearing Until Issuance of Final Environmental Impact Statement (FEIS)*.

On Friday, August 6, 2004, the Applicant filed a *Motion to Continue Hearing Date*, similarly seeking to adjust the hearing schedule to allow review of the forthcoming State Environmental Policy Act (SEPA) documents. In addition, the Applicant requested permission for all Parties to submit additional pre-filed testimony regarding any new information contained in the Council's offsite alternatives analysis.

On Friday, August 6, 2004, EFSEC served all Parties with a *Notice of Intent to Hold Prehearing Conference*, using this communication to inform all Parties of the Applicant's *Motion to Continue*. In the *Notice*, the Council requested all Parties to be available at 1:00 p.m. on Tuesday, August 10, 2004, prepared to comment on the requested postponement of the scheduled adjudicative hearing. In addition, the *Notice* indicated that the Council would be issuing oral rulings on three pending *Motions to Stay* the proceeding and also ruling on the Applicant's *Motion to Continue*.

The Council convened a prehearing conference on Tuesday, August 10, 2004, at approximately 1:00 p.m., in Olympia, Washington. The prehearing conference was held before Council Chairman James Luce Councilmember, as well as Councilmembers Tony Ifie (Department of Natural Resources), Chris Smith Towne (Department of Fish & Wildlife), Hedia Adelman (Department of Ecology), Richard Fryhling (Department of Community, Trade, and Economic Development) (by phone), Tim Sweeney (Utilities and Transportation Commission), and

Patti Johnson (Kittitas County) (by phone), with Adam E. Torem, Administrative Law Judge (ALJ), presiding over the prehearing conference. Assistant Attorney General Ann Essko was also present as the Council's legal advisor.

As noted above, the primary purpose of the prehearing conference was to obtain the Parties' input on and issue a ruling regarding a continuance of the adjudicative hearing and for the Council to issue verbal rulings regarding the *Motions for Stay* and *Continuance* of the adjudicative hearing.

Participants: The Parties were present as follows: the Applicant, SAGEBRUSH POWER PARTNERS, LLC, via Chris Taylor, Portland, Oregon, Jennifer Diaz, Ellensburg, Washington, Darrel Peoples, Attorney at Law, Olympia, Washington, Timothy McMahan, Attorney at Law, Vancouver, Washington, and Charles Lean, Attorney at Law, Olympia, Washington; Counsel for the Environment (CFE), John Lane, Assistant Attorney General, (AAG), Olympia, Washington; Washington State Department of Community, Trade & Economic Development, Tony Usibelli, Energy Policy Division Director, and Mark Anderson, Senior Energy Policy Specialist, Olympia, Washington; Kittitas County, James Hurson, Deputy Prosecuting Attorney (by phone), and Clay White (by phone), Planning Department, Kittitas County, Ellensburg, Washington; Renewable Northwest Project (RNP), Susan Drummond, Attorney at Law, Seattle, Washington (by phone), and Sonja Ling, Lay Representative, Portland, Oregon (by phone); ROKT, James Carmody, Attorney at Law, Yakima, Washington (by phone), and Mike Robertson, Lay Representative, Cle Elum, Washington (by phone) and Ed Garrett, Lay Representative, Snohomish, Washington (by phone); and F. Steven Lathrop (by phone), Jeff Slothower, Attorney at Law, Ellensburg, Washington (by phone); and Economic Development Group of Kittitas County, Debbie Strand, Ellensburg, Washington (by phone).

Summary of Prehearing Conference: The Council announced that it would be denying the *Motions to Stay* filed by Intervenor Lathrop, Intervenor ROKT, and Intervenor Kittitas County. Separate written orders will be issued to explain the Council's denial of each individual *Motion to Stay*.

Upon discussion of the Applicant's *Motion to Continue* and that portion of Intervenor Kittitas County's *Prehearing Motions* addressing the to-be-released DSEIS, all Parties agreed to a postponement of the hearing. The Council suggested that the hearing be rescheduled within the following dates:

- Monday, September 27, 2004 through Wednesday, September 29, 2004
- Monday, October 4, 2004 through Friday, October 8, 2004
- Monday, October 11, 2004 through Thursday, October 14, 2004

All Parties generally agreed to these dates, but several attorneys for the Parties, including those for Intervenor Kittitas County, Intervenor F. Steven Lathrop, and Intervenor Residents Opposed to Kittitas Turbines (ROKT), noted potential schedule conflicts on the afternoon of Thursday, October 7, 2004, and the morning of Friday, October 8, 2004. Judge Torem requested that these lawyers seek leave of the appropriate Superior Court to reschedule the conflicting case and then notify the Council of whether those dates would remain problematic.

Counsel for Intervenor ROKT also noted a known schedule conflict for Wednesday, September 29, 2004. Judge Torem inquired of Attorney Carmody whether or not Intervenor ROKT's lay representatives might substitute for him on that date, allowing that any of ROKT's planned cross-examination of witnesses would be avoided on that day. Attorney Carmody assented to such an arrangement.

Further discussion ensued regarding the potential need for Parties to submit additional pre-filed testimony regarding the as yet unreleased DSEIS. One proposal suggested that the Parties follow the same style of schedule previously utilized for existing pre-filed testimony (i.e. Applicant submissions followed by all Parties' submissions, then rebuttal). However, due to the limited time period before the rescheduled hearing, it was agreed that all Parties would simultaneously submit their pre-filed testimony on the DSEIS with one subsequent filing of rebuttal testimony, as follows:

Friday, September 10, 2004	Pre-Filed DSEIS Testimony – All Parties
Monday, September 20, 2004	Rebuttal DSEIS Testimony – All Parties

Judge Torem then indicated that any *Motion to Strike* this pre-filed DSEIS testimony would need to be filed the week prior to the hearing's commencement, as follows:

Thursday, September 23, 2004	Motions to Strike
Friday, September 24, 2004	Responses to Motions to Strike
Monday, September 27, 2004	Council to Announce Rulings

Finally, Judge Torem and the Council clarified that for each of these newly allowed filings, Parties would be permitted to utilize electronic media to file and serve their pleadings. Council Staff noted that all documents are typically placed on-line at www.efsec.wa.gov on the same date EFSEC receives them. Judge Torem indicated that all Parties' regular reference to the EFSEC web site should assuage the concerns of not being afforded sufficient time to respond to a filing when delivery by U.S. Mail takes longer than expected.

Post-Conference Events: On Wednesday, August 11, 2004, the Council published a Draft Supplemental Environmental Impact Statement (DSEIS). The Council scheduled a public meeting in Ellensburg to receive comments on the DSEIS for Wednesday, August 25, 2004, at 6:00 p.m. In accordance with SEPA, the public comment period will end on Monday, September 13, 2004.

Post-Conference Correspondence: On Thursday, August 12, 2004, Intervenor ROKT, by and through its attorney James Carmody, submitted a letter indicating that he was unable to reschedule the case involving counsel for at least three intervenors that is pending in Yakima County Superior Court and scheduled to be heard on the afternoon of October 7, 2004, and the morning of October 8, 2004. Mr. Carmody asked that the Council consider this conflict before setting the final schedule for the postponed adjudicative hearing.

Decision: EFSEC hereby GRANTS the Applicant's *Motion to Continue Hearing Date* and also hereby GRANTS IN PART Intervenor Kittitas County's *Prehearing Motions* insofar as Intervenor Kittitas County sought a delay of the proceeding based upon the Council's pending issuance of a DSEIS. The Council hereby ORDERS the Parties to be ready to proceed at 8:30 a.m. on Monday, September 27, 2004, and conduct the adjudicative hearing on the following ten (10) days:

Monday, September 27, 2004 through Wednesday, September 29, 2004
Monday, October 4, 2004 through Wednesday, October 6, 2004
Monday, October 11, 2004 through Thursday, October 14, 2004

All Parties shall continue to cooperate and work with the Applicant to set an appropriate schedule for cross-examination of witnesses, taking into consideration the travel and health challenges that may be facing each Party's witnesses. Judge Torem shall resolve any disputes regarding the scheduling of witness.

In recognition of the potential need for additional pre-filed testimony on the DSEIS, the Council hereby ORDERS the adoption of the schedule set out at the prehearing conference, as noted above. The Council further ORDERS that any additional pre-filed testimony not reasonably within the scope of the DSEIS will be stricken, whether as a result of an appropriate *Motion to Strike* or *sua sponte* by Council action. All rulings on the striking of pre-filed DSEIS testimony shall be announced at the commencement of the adjudicative hearing on Monday, September 27, 2004.

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 _____ day of August, 2004.

Adam E. Torem, Administrative Law Judge