

**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. 14

COUNCIL ORDER NO. 799

ORDER DENYING INTERVENOR
RESIDENTS OPPOSED TO KITTITAS
TURBINES MOTION TO STAY
ADJUDICATIVE HEARING UNTIL
ISSUANCE OF FINAL ENVIRONMENTAL
IMPACT STATEMENT

Nature of the Proceeding: On Monday, August 2, 2004, Intervenor Residents Opposed to Kittitas Turbines (ROKT), by and through its counsel James Carmody, filed a *Motion to Stay Adjudicative Hearing* arguing that pursuant to the State Environmental Policy Act (SEPA), the Energy Facility Site Evaluation Council (EFSEC or Council) has no authority under Chapter 43.21C Revised Code of Washington (RCW) to conduct an adjudicative hearing prior to release of a Final Environmental Impact Statement (FEIS). On August 6, 2004, the Applicant, Sagebrush Power Partners, LLC, filed its *Response* to Intervenor ROKT's *Motion to Stay*. An adjudicative hearing on this matter was scheduled to commence on August 16, 2004, in Ellensburg [*since the time of these filings, this date has changed to September 27, 2004*].

Summary of Ruling: The Council DENIES Intervenor ROKT's request that EFSEC stay the scheduled adjudicative hearings [previously] scheduled to commence in less than a week's time because EFSEC's rules implementing SEPA require that an FEIS be issued after EFSEC has held adjudicative hearings, but prior to EFSEC's making any final decision on the Application (i.e. the Council's *Recommendation to the Governor*).

Issue Presented

Should the Adjudicative Hearings previously scheduled for August 16-27, 2004, be stayed until EFSEC issues and circulates to the public an FEIS on the Application?

Analysis

Washington's State Environmental Policy Act (SEPA) requires state agencies responsible for making decisions on certain proposed projects to create a "detailed statement," known as an "environmental impact

statement,” which analyzes probable significant adverse impacts of the proposal. See RCW 43.21C.030(2)(c) and RCW 43.21C.031. SEPA requires this EIS to be included in any recommendation or report regarding the proposed action or to be a separate document that accompanies the agency’s decisional action. See RCW 43.21C.030(2)(c) and RCW 43.21C.031(1). The SEPA statute does not otherwise specify the required timing of release of a Final EIS, but the SEPA Rules, Chapter 197-11 Washington Administrative Code (WAC), offer further guidance on this matter.

The SEPA Rules require that “appropriate consideration of environmental information shall be completed before an agency commits to a particular course of action.” WAC 197-11-055(2)(c); see also WAC 197-11-070(1). Additionally, the SEPA Rules dictate that “agencies shall not act on a proposal for which an EIS has been required prior to seven days after issuance of the FEIS.” WAC 197-11-460(5). Thus, it is clear that an FEIS must be issued before a state agency can take action to approve or disapprove any proposed project.

Local governments typically issue a Draft EIS, allow commenting, and then issue their FEIS prior to holding an “open record hearing” and announcing a decision on a proposed project. See WAC 197-11-775. EFSEC however, is required by statute to conduct an adjudicative hearing, rather than the open record hearing more commonly found before local governments and their planning commissions. See RCW 80.50.090. As with local governments, EFSEC usually holds separate public comment hearings when issuing a DEIS. However, pursuant to EFSEC rules implementing SEPA, EFSEC does *not* issue an FEIS prior to the adjudicative hearing on an application. See WAC 463-47-060(3).

Intervenor ROKT’s *Motion to Stay* construes the EFSEC process as violative of SEPA’s requirement in RCW 43.21C.020(2)(d) that an EIS “accompany the proposal through the existing agency review processes.” This is unquestionably incorrect. EFSEC issued a Draft EIS on this Project in December 2003, is circulating a Draft Supplemental EIS at this time, and will issue a Final EIS *after* the adjudicative hearing process is completed. This process maximizes the amount of information available to the Council during its deliberations. Further, in accordance with SEPA Rules, the Council will not take any final action and issue its *Recommendation to the Governor* until at least one week after issuing the FEIS on the proposed project.

Decision

After full consideration of the issues presented by Intervenor ROKT’s *Motion to Stay* and the Applicant’s *Response*, EFSEC hereby ORDERS the *Motion* DENIED. The adjudicative hearing scheduled to commence on August 16, 2004, shall not be stayed for any reason raised in Intervenor ROKT’s *Motion*.

DATED and effective at Olympia, Washington, the 1st day of September, 2004.

Adam E. Torem, Administrative Law Judge