

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

**In the Matter of
Application No. 2004-01**

**WIND RIDGE
POWER PARTNERS, L.L.C.**

WILD HORSE WIND POWER PROJECT

**PREHEARING ORDER NO. 6
COUNCIL ORDER NO. 811**

**ORDER ON PREHEARING TO
RECEIVE STATUS REPORT ON
SCHEDULED HEARING DATES, AND
TO DISCUSS HEARING AND WITNESS
SCHEDULES**

Background and Procedural Matters:

On March 9, 2004, Wind Ridge Power Partners, L.L.C., a wholly owned subsidiary of Zilkha Renewable Energy (Applicant), submitted Application No. 2004-01 to the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Wild Horse Wind Power Project (Project), an approximately 312-megawatt wind turbine electrical generation facility consisting of up to 158 wind generation turbines. The proposed Project would be located along the ridge tops of Whiskey Dick Mountain, two miles north of Vantage Highway, and 11 miles east of the city of Kittitas. In August 2004, EFSEC issued a Draft Environmental Impact Statement (DEIS) and held a public comment hearing on the DEIS in Ellensburg, WA.

On February 10, 2005, pursuant to Chapter 80.50 RCW and Chapter 463-30 WAC, the Council issued a *Notice of Intent to Hold Status Conference* to, among other things, receive a status report from the Applicant and Kittitas County regarding whether the adjudicative hearings should proceed the week of March 7 to 11, 2005. On February 22, 2005, at 3:02 p.m., the Council convened a prehearing conference in Olympia, WA, with the following Councilmembers present: Tony Ifie (Department of Natural Resources), and Hedia Adelsman (Department of Ecology). Council Chair James Luce, and Councilmembers Chris Smith Towne (Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), Tim Sweeney (Utilities and Transportation Commission), and Patti Johnson (Kittitas County) appeared and participated by telephone conference call.

On February 24, 2005, at approximately 9:05 a.m., the Council convened a prehearing conference in Olympia, WA, with the following Councilmembers present: Richard Fryhling (Department of Community, Trade, and Economic Development), and Tim Sweeney (Utilities and Transportation Commission). Councilmembers Tony Ifie (Department of Natural Resources), Hedia Adelsman (Department of Ecology),

Chris Smith Towne (Department of Fish & Wildlife), and Patti Johnson (Kittitas County) appeared and participated by telephone conference call.

Assistant Attorney General Ann Essko was present at both prehearing conferences as the Council's legal advisor. Adam E. Torem, Administrative Law Judge of the Office of Administrative Hearings, presided over the prehearing conferences. EFSEC staff, Allen Fiksdal and Irina Makarow were also present at the prehearing conferences, as was Mike Mills on the 24th.

Participants in Prehearing Conferences:

The following parties, as determined by WAC 463-30-060, participated in the conferences:

- Representing the Applicant: **Darrel Peeples**, Attorney at Law (22nd and 24th - by phone)
 Tim McMahan, Attorney at Law (24th – by phone)
 Chris Taylor, Wind Ridge Power Partners L.L.C. (24th - by phone)
- Counsel for the Environment: **John Lane**, Assistant Attorney General (22nd and 24th - by phone)

In addition, the following intervenors participated in the conference:

- Kittitas County: **James Hurson**, Chief Civil Deputy Prosecuting Attorney (22nd and 24th - by phone)
- Economic Development Group of Kittitas County (EDGKC): **Debbie Strand**, Executive Director (22nd and 24th - by phone)
- Friends of Wildlife & Wind Power: **David A. Bricklin**, Attorney at Law, Seattle, Washington (22nd and 24th - by phone)
- F. Steven Lathrop: **Jeff Slothower**, Attorney at Law, Ellensburg, Washington (22nd and 24th - by phone)

Summary of February 22, 2004 Prehearing Conference

Mr. Peeples reported that the Kittitas County Board of Commissioners had planned a meeting for the evening of February 22nd to further consider the matter regarding the Wild Horse Wind Power Project before them. Mr. Hurson indicated that the evening of the 22nd was the first date the Commissioners could meet since their last meeting of Wednesday, February 16, 2005. Both Mr. Peeples and Mr. Hurson indicated that the status report should be delayed until the morning of February 24, 2005.

The prehearing conference was continued until February 24, 2005, starting at 9:00 a.m. Chair Luce informed the parties that he was committed to another meeting, and that Councilmember Ifie would be acting Chair for purposes of the conference on the 24th.

Summary of February 24, 2004 Prehearing Conference

1. Status Report on Resolution of Land Use Inconsistency and Adjudicative Hearings.

Mr. Peeples reported that the Kittitas County Board of Commissioners (Board) met on the evening of February 22, 2005, to further consider the Wild Horse Wind Power Project application before the County. However, the Board wanted an opportunity to review the final documents prepared by County staff in connection with the matter prior to taking action. The Board is scheduled to meet on March 3, 2005, to consider the final documents, and take action. Mr. Peeples expressed confidence that all issues raised on the 22nd would be resolved.

Mr. Hurson, concurring in the characterization given by Mr. Peeples, indicated that there were a dozen or so minor revisions to the Development Agreement, and that the Board directed County staff to prepare final versions of all documents for their meeting on March 3. The document package prepared by County staff would also include a certificate of land use consistency, and a stipulation with the Applicant to be presented to EFSEC in connection with the Council's proceedings.

Mr. Peeples indicated that he was not requesting that the adjudicative hearings be continued. Notwithstanding Mr. Peeples' expressed confidence that the Board would take positive action on March 3, Judge Torem indicated that March 4th was the absolute deadline for the Applicant to request that the hearings be continued, to avoid unnecessary travel by the Council and other Parties and their witnesses. Costs incurred by cancellation of the hearings would be borne by the Applicant.

In response to Councilmember Towne, Mr. Peeples indicated that it was unlikely that the Development Agreement accepted by the Board on March 3 would have any effect on other Parties to the proceeding. Through the settlement hearing scheduled (see below), the Applicant would request that the Development Agreement be incorporated into the Site Certification Agreement.

2. Hearings Schedule

Judge Torem began the discussion by reporting that EFSEC staff had issued Notice of the reconvened Land Use Hearing, starting at 9:00 a.m., March 7, and the Public Testimony Hearing, starting at 7:00 p.m., March 8.

With respect to the witness order, Mr. Peeples indicated his preference for taking witnesses in the following order: first, the Applicant's witnesses, in the order of the prefiled testimony submitted to EFSEC; second the Parties' witnesses; with the exception of witnesses brought forward by the Department of Community, Trade and Economic Development (CTED) and the EDGKC, who would only be available on Tuesday, March 8.

After several rounds of discussion, Judge Torem proposed, and the Council approved, the following schedule:

- From 8:30 to 9:00 a.m., Judge Torem will be available to coordinate procedural issues brought forward by EFSEC staff and Parties. Hearings will start daily at 9:00 a.m.
- The morning of March 7 will be reserved for the Land Use Hearing, and consideration of settlements and stipulations. The presentation of witnesses in connection with the adjudicative hearing will begin after the noon break.
- The Council will break for lunches at noon¹ and will resume at 1:15 p.m., and adjourn at approximately 5:00 p.m., except for March 8 when the Council will conclude the hearings no later than 4:30 p.m.. The Council will consider extending hearings beyond 5:00 p.m. to accommodate the flow of witness' testimony, and to ensure that hearings are concluded by the end of the week.

Mr. Peeples notified the Council that he intended to present a stipulation with the Washington State Department of Fish and Wildlife, who would appear before the Council pursuant to EFSEC statute. In response to a question from Councilmember Towne, the Applicant agreed that all stipulations would be provided to EFSEC and all other Parties no later than March 4th.

In response to Mr. McMahan, Judge Torem clarified that it has been Council's practice to allow cross-examination of witnesses presented in support of a stipulation by other Parties to the proceeding, and that the Council would continue this practice in this matter. However, cross-examination would remain limited to the scope of intervention granted in Council Order No. 805, provided that some flexibility would be allowed to establish foundation.

3. Witness Appearances and Schedule

Mr. Peeples requested that the Council allow six witnesses (Jorgensen, Bernay, Kammen, Oliver, Flenniken, and Butler) to appear by phone. Mr. Slothower, Mr. Bricklin, and Mr. Lane indicated that they may have a few questions for some of these witnesses, but no Parties voiced an objection to the witnesses appearing by phone. The Council also did not object, and appearance by phone will be allowed for these witnesses. EFSEC staff is coordinating phone service for the hearing room. Judge Torem ordered that any cross-examination exhibits for these witnesses be provided to Mr. Peeples no later than February 28. No other Parties requested that their witnesses appear by phone.

With respect to witness schedules, Judge Torem ordered that Mr. Peeples circulate a witness list (in the proposed order of appearance) to all Parties as soon as possible, and that Parties respond with approximate cross-examination times (including indication of no cross), so that Mr. Peeples can provide a

¹ Judge Torem asked EFSEC staff to provide to other parties a list of establishments in Ellensburg that could provide boxed lunches.

substantially complete witness schedule to EFSEC by close of business Tuesday, March 1. Mr. Peebles asked in return that Parties respond quickly to his list, preferably by Tuesday morning.

No other issues coming before the Council, the conference was concluded at approximately 10:00 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 1st day of March, 2005.

WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

Adam E. Torem, Administrative Law Judge