

**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. 25

COUNCIL ORDER NO. 822

PREHEARING CONFERENCE ORDER
REGARDING RENEWABLE
NORTHWEST PROJECT'S REQUEST
FOR PUBLIC COMMENT HEARING IN
WESTERN WASHINGTON.

Nature of the Proceeding: This matter involves an Application from Sagebrush Power Partners, LLC (the Applicant), to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Kittitas Valley Wind Power Project (Project), an approximately 182-megawatt wind turbine electrical generation facility. The proposed Project would be located within Kittitas County, on the ridges on either side of Highway 97, roughly 12 miles northwest of the city of Ellensburg. An adjudicative hearing on this matter is scheduled to commence in September, 2006, in Ellensburg, Washington.

Procedural Setting: The Council convened a prehearing conference on Thursday August 17, 2006, at approximately 3:35 p.m., in Olympia, Washington, pursuant to due and proper notice. The prehearing conference was held before Council Chair James Luce and Councilmembers Chris Towne (Department of Fish and Wildlife), Judy Wilson (Department of Natural Resources), Tim Sweeney (Utilities and Transportation Commission), Hedia Adelman (Department of Ecology), and Patti Johnson (Kittitas County). Councilmember Richard Fryhling (Department of Community, Trade, and Economic Development) participated by phone. Administrative Law Judge Adam Torem conducted the hearing.

The purpose of the prehearing conference was for the Council to consider and act on Renewable Northwest Project's (RNP) request for a public hearing in western Washington, and to consider other procedural matters.

Participants: The Parties were present as follows:

The Applicant, Sagebrush Power Partners, LLC: Darrel Peeples, Attorney at Law, Olympia, Washington; Timothy McMahan, Attorney at Law, Vancouver, Washington; and Erin Anderson, Attorney at Law, Ellensburg, Washington.

Counsel for the Environment (CFE): Michael S. Tribble, Assistant Attorney General, (AAG), Olympia, Washington (by phone).

Community, Trade and Economic Development (CTED): Tony Usibelli, Assistant Director, Energy Policy, Olympia, Washington.

Kittitas County: James Hurson, Deputy Prosecuting Attorney, Ellensburg, Washington; and Darryl Piercy, Director, and Joanna Valencia, Kittitas County Community Development Services, Ellensburg, Washington (by phone).

Residents Opposed to Kittitas Turbines (ROKT): Ed Garrett, Lay Representative, Snohomish, Washington (by phone).

F. Steven Lathrop: Jeff Slothower, Attorney at Law, Ellensburg, Washington (by phone).

Economic Development Group of Kittitas County (EDGKC): Debbie Strand, Executive Director, Ellensburg, Washington (by phone).

Renewable Northwest Project (RNP): Susan Drummond, Attorney at Law, Seattle Washington; and Troy Gagliano, RNP, Portland Oregon (both by phone).

RNP request for hearing in western Washington.

Judge Torem introduced the RNP request dated July 26, 2006. In addition to this request, EFSEC received a number of letters for and against the RNP request¹. Judge Torem reviewed EFSEC statutory authority to conduct public hearings during the adjudicative proceeding, see RCW 80.50.090 (3) and (4). Judge Torem requested comment on RNP's request from the parties attending the prehearing conference.

Ms. Drummond, representing RNP, began by clarifying that the requested meeting was not designed to supplant any of the hearings planned for Ellensburg. The intent was to provide an additional public input opportunity for people living on the west side of the state. Ms. Drummond explained RNP's rationale that Washington State long term energy needs are not bound by the mountain range, and that projects under EFSEC jurisdiction impact all citizens of the state. Finally, by having a meeting on the west side, less of a burden would be placed on west side residents wishing to participate in the public process for this project.

Mr. Tribble, Counsel for the Environment, stated that he did not have a position regarding the request. He viewed the request as an issue of advocacy; as CFE he does not want to emphasize any regional versus local questions, but rather focus on the environmental impacts of the project.

Mr. Hurson, representing the County, questioned whether the additional meeting was necessary for the process. The Council and other parties would incur additional costs to participate. The meetings in Ellensburg were open to all, and comments could also be submitted in writing. He reiterated the County's position that the project was not a referendum on the benefits of wind power in general, and that people from other parts of the state may not be informed regarding

¹ The letters received by EFSEC were distributed to all parties in this proceeding and to Council members in advance of the prehearing conference.

local siting conditions. Holding an additional hearing could also delay the entire process that has been scheduled.

Mr. Peeples, representing the Applicant, indicated that this was not the first time the Council would conduct a hearing outside of the immediate vicinity of the proposal, and that hearings have been held in Olympia and in other locations. The costs associated with the meeting are those of the government to open the process to the public. EFSEC has always been inclusive of public participation. A number of the issues regarding this project are statewide, whereas others, such as land use, are local.

Mr. Slothower, representing Mr. Lathrop, echoed Mr. Hurson's comments, emphasizing that it was a siting issue, not whether there should, or should not, be wind power resources in the state. He also opposed the request on the basis that the Council was making a decision whether the project should be sited locally, and that persons from other parts of the state were unfamiliar with the specific location.

Ms. Strand, representing the EDGKC, indicated that the EDGKC was not opposed to a meeting as long as it did not take away any of the local participation opportunities.

Mr. Garrett, representing ROKT, agreed with previous views that the issue was not a referendum on wind power, but a siting decision. The record established in this matter is already sufficiently extensive.

Mr. Usibelli, representing CTED, confirmed that he had signed on to RNP's letter, and felt the request was a reasonable accommodation. The costs involved would not be excessive to allow an opportunity for others to comment. Holding this meeting would not be an unreasonable precedent to establish or re-establish. Mr. Usibelli clarified that the letter should have stated that power generated by this project "may" be used in western Washington. In response to Councilmember Fryhling, Mr. Usibelli explained that the request accurately represents Energy Policy's position on the issue, and he signed onto the letter because he believed it was reasonable to support the request, although he could have prepared a similar request on CTED letterhead.

Councilmember Sweeney asked RNP if they thought this hearing was to contribute input to land-use consistency issues or to project impacts. Ms. Drummond responded that the hearing could address both land-use consistency and statewide project impact issues. Also in response to Mr. Sweeney, Mr. Gagliano indicated that RNP had no feelings for the turnout expected for this meeting.

Councilmember Johnson asked why RNP had not made this request until this late time in the process. Ms. Drummond responded that although the process has gone on a long time, there was still adequate time to conduct a meeting.

Councilmember Adelman asked if RNP would have requested this meeting if the County had voted in favor to the project. Ms. Drummond responded that RNP's motive was to add opportunity for participants not residing on the east side of the mountains.

Mr. Hurson added to his position that the issue was being characterized as an east side/west side controversy. In this framework Ellensburg was ideally centrally located for a meeting.

Ms. Drummond expressed that RNP does not view this as an east side/west side issue, and that RNP is fully supportive of the local process. RNP is asking for one more meeting to make the process more accessible. Mr. Peebles concluded the discussion with a citation to the Council's statewide responsibilities accorded through RCW 80.50.010, and that conducting this meeting was not unreasonable.

The Council proceeded with their discussion of the request.

Councilmember Towne, having entered the EFSEC review process after it had begun, understood that the Council had committed to holding hearings in Ellensburg. Chair Luce responded that the Council had made the commitment to hold hearings in Ellensburg to the greatest extent possible, and that the Council has done this in his opinion. At the time the commitment was made the Council did not have before it a request to hold any hearings elsewhere; since that time the Council has conducted a number of meetings in Olympia.

Councilmember Sweeney questioned Judge Torem as to what would happen with the schedule already set if the Council did hold an additional meeting. Judge Torem responded that if the hearing was held after the hearings set in Ellensburg had ended, the parties would not have the entire record before them until some time later. This had the potential to delay the Council's decision-making process.

Mr. Sweeney agreed with the characterization of EFSEC as an organization looking at "state" issues, and, finding RNP's request reasonable, felt the Council should respond affirmatively. He supported an additional meeting contingent on the hearing and decision-making schedule not being delayed.

Councilmember Johnson reiterated the Council's earlier commitment to hold all hearings in Kittitas County, noting that residents from King County had already attended meetings in Kittitas County. Noting the short notice of RNP's request, Ms. Johnson also did not want the Council's process to be delayed. She recommended that the Council stay with its decision to conduct hearings in Kittitas County.

Councilmember Fryhling also supported the Council's earlier decision to conduct all hearings in Kittitas County. Mr. Fryhling explained that he did not understand the extenuating circumstances that would prevent people from driving to Ellensburg, and did not see any advantage to holding another meeting on the west side.

Councilmember Wilson inquired when the record would be closed to public comments. Judge Torem responded that the record is open through the end of the adjudicative hearings, and that is the deadline for comments to be received in writing.

Ms. Wilson noted that RNP's request came late in the process, and that interested persons could participate in the comment process using various means. She recommended that if an additional

hearing was held it should be prior to the hearings set in Ellensburg, possibly on September 12th when the Council is already scheduled to meet in Olympia. She added that the public should rest assured that all written comment letters were being read by the Council.

Councilmember Adelman agreed with Ms. Wilson, and stated that RNP should have made this request months ago. She was not convinced by RNP's arguments for the meeting.

Ms. Towne noted that regulatory agencies benefit from additional public process. She was interested in what organizations represented by RNP have to say about the appropriateness of the project. She supported an additional hearing, and Ms. Wilson's suggestion that it be held in Olympia.

Chair Luce noted the difficulty of the decision, given that the request arrived late in the process. He agreed with RNP's view that EFSEC is a "state" Council. He supported listening to the public, and suggested that the meeting not be held in Olympia, but in the greater Seattle area, prior to the hearings in Ellensburg.

Ms. Wilson made a motion that the Council hold a public meeting prior to the start of adjudicative hearings scheduled for September 18th. Ms. Towne seconded the motion. The motion passed with a vote of five Councilmembers in favor, and two opposing.

After further discussion about the preferable date, time and location, Ms. Towne made a motion that EFSEC staff find a time and location at reasonable cost in the greater Seattle area, with a preference for the 12th of September. Ms. Wilson seconded the motion. The Councilmembers voted all in favor.

In conclusion, Councilmembers requested that notice of this additional meeting be published in both Ellensburg and Seattle newspapers, and that the transcript of the meeting on September 12th be ready for distribution to the public and other parties on September 18th.

Other Procedural Matters

In reference to the County's informal discovery request discussed at the last prehearing conference, Judge Torem noted that the Council was not party to the written exchange that followed between the County and the Applicant. Mr. Hurson informed the Council that the Applicant had not provided all the information requested, and the County would wait to see how the issues play out at the hearing. The County may send a more focused informal request by next Monday. If there are problems, they would communicate with EFSEC staff.

On the subject of the witness schedule, Mr. Peeples reported that he had communicated with the Mr. Tribble and would begin working on it once the last rebuttal testimony is filed on August 31. He will deliver a preliminary schedule shortly after the Labor Day holiday.

Prior to concluding the prehearing conference, Judge Torem requested that parties review their opening statements to ensure that they are clearly focused on the project before the Council at this time, and that the parties' issues are summarized.

Next Prehearing Conference

Judge Torem directed EFSEC staff to schedule the next prehearing conference for September 12, 2006, concurrent with the Council's monthly meeting.

The prehearing conference was adjourned at 4:40 p.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 31st day of August, 2006.

Adam Torem, Administrative Law Judge