

**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. 26

COUNCIL ORDER NO. 823

PREHEARING CONFERENCE ORDER  
REGARDING HEARING SCHEDULE  
AND OTHER PROCEDURAL MATTERS.

**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 Tuesday September 12, 2006, at approximately 2:45 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), Richard Fryhling (Department of Community, Trade, and Economic Development) and Patti Johnson (Kittitas County). Administrative Law Judge Adam Torem conducted the hearing.

The purpose of the prehearing conference was for the Council to consider, and act on, procedural matters in advance for the adjudicative hearing scheduled to begin the following week.

**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 participating by phone: Erin Anderson, Attorney at Law, Ellensburg, Washington.

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

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

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).

### **Witness/Hearings Schedule.**

Mr. Peeples presented the proposed witness schedule that had been prepared by himself and Mr. Tribble. He indicated that in general parties had thoughtfully set out the cross examination times needed, and as a result he felt that the hearings could be completed in three days. Mr. Peeples asked whether the testimony of certain witnesses (primarily Mr. Clay White) could be stipulated into the record, unless Councilmembers had questions. He also requested that certain witnesses be permitted to testify by phone, in particular those that would have to travel longer distances for only a short period of cross examination. He notified the Council that there was a new facility at Central Washington University with conference call capability. Judge Torem responded that efficiencies were desirable, but had to take into account whether Councilmembers had questions for these witnesses or not.

Mr. Hurson also expressed belief that the hearings could realistically be completed in three days. Regarding the appearance of Mr. White, he indicated that Mr. White's testimony did not address the most recent round of proceedings conducted by the County. He added that Mr. White is now the Stevens County Planning Director, and his availability for the upcoming week of hearings was not working out well. Only Mr. Carmody had set aside time to cross examine Mr. White, but after discussion, Mr. Carmody had agreed to waive his right to examine this witness. Mr. Hurson supported Mr. White's testimony being brought in by affidavit, swearing under the penalty of perjury that the testimony he submitted previously was true and correct.

The other parties present at the conference did not have any objections. The Council agreed to have Mr. White's testimony admitted by affidavit.

The Applicant and other parties discussed the possibility of some witnesses appearing by phone. Mr. Carmody waived his cross examination of witnesses Tebb, Pappalardo, Butler, Krichbaum, Flenniken, Polisky, Pitzler and Acutanza, and agreed to have the other witnesses slated for cross examination to appear by phone. Mr. Tribble confirmed that both of his witnesses, Mr. Tebb and Mr. Bevis, were not appearing on behalf of the state agencies they were employed by, but simply as experts in the fields represented. Mr. Slothower also requested that Mr. Taylor be permitted to appear on September 20<sup>th</sup> rather than the 19<sup>th</sup>. Judge Torem and the Council considered the appearance of witnesses by phone, and approved this process for the following: Witness No. 90,

Tom Tebb; Witness No. 43, Randy Hardy; Witness No. 35, George Sterzinger; Witness No. 80, Steven Grover; Witness No. 23, Michael Pappalardo; Witness 24, Josh Butler; Witness 30, Randall Krichbaum; Witness 28, Jeff Flenniken; Witness 31, Les Polisky; Witness 32, Dan Pitzler; Witness 33, Jeanne Acutanza; Witness 37, Henrik Jorgensen; Witness 38, Michael Bernay; and Witness 39, Dan Kammen. The parties agreed to ensure that their witnesses would be provided with the correct testimonies so that they are prepared to answer Council questions if any. Late-breaking exhibits would also be faxed to witnesses in question as a courtesy.

Before concluding this agenda item, Judge Torem reviewed the expected start and finish times for each day of the hearings, and the proposed opening for a site visit to be organized at the Council's request. The proceedings would start and end each day as follows:

- Monday and Tuesday: Start at 8:30 a.m., and finish at 5 p.m., with a lunch hour break from noon to 1:00 p.m.;
- Wednesday and Thursday: Start at 9:00 a.m. and finish at 4:00 p.m. with a lunch hour break from noon to 1:00 p.m.; resume at 7:00 p.m. for the evening public hearings;
- The windows for a site visit would be: Thursday morning, Thursday afternoon, or Friday morning.

Closing times would be somewhat flexible each day to accommodate the flow of cross examination of witnesses.

Mr. Peeples indicated that he had objections to Mr. Carmody's cross examination of certain of the applicant's witnesses. Judge Torem instructed Mr. Peeples to talk with Mr. Carmody prior to Monday September 12<sup>th</sup>, and to present objections to the Council at the hearings, if any objections remained.

### **Additional Questions/Issues for Adjudicative Hearings**

Judge Torem introduced a list of questions/themes on which the Councilmembers were seeking information. The list had been circulated to all parties by e-mail the day before. Judge Torem asked that the parties review these questions, and bring a supplemental exhibit, if one exists, to help clarify the issues for the Council. Judge Torem warned that the Councilmembers would have other questions at the hearings for specific witnesses also. A discussion ensued among the parties and Judge Torem regarding the breadth of new information that should be brought forward to address the Council's questions.

### **Other Procedural Matters**

Mr. Hurson re-iterated the County's objection to DNR being represented on the Council for this proceeding. He clarified that the County was not objecting to the specific representative, i.e. formerly Mr. Ifie or currently Ms. Wilson. Mr. Slothower re-iterated his continued objection to CTED being represented on the Council.

Judge Torem clarified that all of the phone witnesses would be taken in one block, on a single day, and that Mr. Tebb could be taken on September 19<sup>th</sup> to accommodate his work schedule. EFSEC staff would coordinate the specifics of the conferencing facility with the applicant.

In response to Mr. Garrett's remarks about previous site visits, access to private roads and potential view points, Judge Torem indicated that EFSEC staff would coordinate the visit with the parties in Ellensburg the following week. Because this visit is being conducted as part of the adjudicative hearing, parties would be able to participate in the coordination of the visit and the visit itself.

The prehearing conference was adjourned at approximately 3:48 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 13th day of October, 2006.

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Adam Torem, Administrative Law Judge