

**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

POST HEARING ORDER NO. 1

COUNCIL ORDER NO. 824

ORDER ON SCHEDULE FOR
POST-HEARING BRIEFS

Procedural Setting: On Thursday, September 21, 2006, during the final day of the adjudication in this matter, the Council discussed the various options for the filing of post-hearing briefs. This Order also briefly addresses the possible dates for EFSEC to announce its *Recommendation to the Governor* and summarizes the Parties' rights in regard to requesting reconsideration of that *Recommendation*.

Summary of Discussion: At the adjudication, Administrative Law Judge (ALJ) Torem reminded the parties of the previous schedule published in Council Order No. 801 prior to the stay of the hearings issued in 2004. The Applicant volunteered to streamline the process with a suggestion of all Parties filing simultaneous briefs and then all Parties being afforded the opportunity to file simultaneous response briefs. However, various intervenor parties objected, indicating their desire to preserve the previous schedule set out in Council Order No. 801, so as to reserve their opportunity to review the Applicant's brief and respond to all pertinent issues.

The court reporter indicated that she could have the complete transcript of the adjudication completed within two weeks of the close of the adjudication, but in no case later than Monday, October 9, 2006. Therefore, with that amount of time in mind, the parties agreed that the Applicant should have a full three weeks thereafter to prepare its brief. Therefore, the Council determined that briefs would be due as noted below.

Post-Hearing Briefs – Due Dates and Appropriate Contents. Post-hearing briefs are mandatory for all Parties to the proceeding. All Parties shall submit their post-hearing briefs not later than 5:00 p.m., Pacific Time, on the following dates:

Applicant's Post-Hearing Brief	October 30, 2006
Other Parties' Response Briefs	November 13, 2006
All Parties' Reply Briefs	November 20, 2006

Electronic filing with EFSEC and electronic service upon the other Parties is expressly permitted; however, hard copies in the number required by the Hearing Guidelines (Appendix 1 to Council Order No. 777) must also be postmarked or actually delivered to EFSEC and all other Parties not later than the submission deadlines noted above.

The Applicant's post-hearing filing shall include: 1) a post-hearing brief with additional legal argument in support of the *Request for Preemption* as well as in support of the proposed Site

Certification Agreement (SCA); 2) a proposed SCA meeting all of the requirements of Revised Code of Washington (RCW) 80.50.100(1); and 3) a proposed Council Order with Findings of Fact and Conclusions of Law and an Order Recommending Action to the Governor.

Parties' response briefs should contain legal arguments in support of or in opposition to the *Request for Preemption*; in support of or in opposition to the Applicant's proposed Findings of Fact and Conclusions of Law; in support of or in opposition to the Applicant's proposed *Recommendation to the Governor*; in support of or in opposition to the proposed SCA; and may also address specific conditions (i.e. mitigation measures) that a Party seeks to have included in the SCA in the event EFSEC chooses to make a favorable *Recommendation to the Governor* for this Project.

Issuance of Final Environmental Impact Statement (FEIS). In accordance with Washington Administrative Code (WAC) 463-47-060(3), EFSEC does not issue the FEIS until *after* the adjudicative hearings have been concluded. EFSEC intends to issue the FEIS on this Project on or before Monday, December 4, 2006. In order to allow additional time for councilmember review prior to the commencement of deliberations, currently scheduled for Tuesday, December 5, 2006, all members of the Council will receive an electronic copy of the camera ready version of the FEIS on or about Tuesday, November 21, 2006, simultaneous with its submission to the Washington state Department of Printing. However, EFSEC deliberations on the Project shall not begin until the FEIS has actually been published and made available to the public. In accordance with WAC 197-11-460, the Council will not make any final determinations regarding the Project until at least seven (7) days have elapsed *after* issuance of the FEIS.

Issuance of Council's Recommendation to the Governor. The Council intends to consider and act upon its *Recommendation to the Governor* at an open public meeting to be held in Ellensburg, Washington, in late December 2006 or in January 2007. At this meeting, the Council intends to present the determinations addressed in its *Recommendation to the Governor* and the underlying rationale for each of these decisions. EFSEC will issue a separate notice to Parties and to the public with the specific date, time, and location of this meeting.

Requests for EFSEC to Reconsider its Recommendation to the Governor. Consistent with the procedures set out in the Administrative Procedure Act, specifically RCW 34.05.470, any Party may file a *Request for Reconsideration* within ten (10) days after issuance of the *Recommendation to the Governor*. Electronic filing with EFSEC and electronic service upon the other Parties is expressly permitted; however, hard copies must be postmarked or actually delivered to EFSEC and all other Parties not later than the expiration of the 10-day period for reconsideration.

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.

Adam E. Torem, Administrative Law Judge