

**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of Application No. 2003-1:

**SAGEBRUSH POWER PARTNERS,
L.L.C.**

**KITTITAS VALLEY WIND POWER
PROJECT**

COUNCIL ORDER No. 827

**ORDER ON MOTIONS FOR
RECONSIDERATION OF ORDER 826 BY
KITTITAS COUNTY, AND MR. ED
GARRETT AND MS. ROSEMARY
MONAGHAN**

NATURE OF THE PROCEEDINGS: This matter involves the Application by Sagebrush Power Partners, L.L.C. for certification to build and operate the Kittitas Valley Wind Power Project in Kittitas County, Washington.

PROCEDURAL SETTING: The procedural history regarding this application and adjudication is explained in detail in Council Order No. 826 that was announced at open public meeting on March 27, 2007, and served on all parties on March 28, 2007. Council Order No. 826 recommends that the Governor approve the Kittitas Valley Wind Power Project Application and preempt Kittitas County Land Use regulations subject to conditions set out in that Order and the accompanying Draft Site Certification Agreement.

MOTIONS FOR RECONSIDERATION: On April 6, 2007 the Energy Facility Site Evaluation Council (EFSEC or Council) received two motions for reconsideration¹, one by Kittitas County, the other by Mr. Ed Garrett and Ms. Rosemary Monaghan (husband and wife) Kittitas County land owners². In addition, the Council received two letters taking issue with the Council's decision. The letters were received from Christine Burtchett, an Ellensburg, Washington resident and from Gloria Baldi, President of the Kittitas County Audubon Society. The letters are not denominated as petitions for reconsideration and will not be treated as such.

Kittitas County's Motion for Reconsideration

The County's motion raises the following general issues: growth management, environmental analysis, bad faith, regulation conflicts, and conflict with Initiative 937. (See Motion for Reconsideration, page 1, lines 15-23).

¹ WAC 463-30-335 refers to "petitions" for reconsideration. The Council will consider the "motions" that were filed as petitions but will reference them as motions in this Order.

² Although there are arguments that the Motion for Reconsideration by Mr. Garrett and Ms. Monaghan does not specifically satisfy WAC 463-30-335, the Council will consider this motion as a motion for reconsideration.

Ed Garrett and Rosemary Monaghan's Motion for Reconsideration

Ed Garrett and Rosemary Monaghan primary arguments are similar to the County's.

ANSWERS TO MOTIONS FOR RECONSIDERATION: the Council received answers to the above motions from Sagebrush Power Partners L.L.C.; the Department of Community, Trade and Economic Development; and Renewable Northwest Project. In addition the Council received an answer from Kittitas County for the motion from Mr. Garrett and Ms. Monaghan.

The parties responded to each issue raised by the County and Mr. Garrett and Ms. Monaghan.

COUNCIL FINDINGS: The Council has considered the motions and answers and makes the following findings:

Growth Management

The County maintains the lawfulness of its Growth Management Act compliance including the "Wind Farm Overlay Ordinance." (Overlay Ordinance) Growth management issues are addressed by Council Order 826 in the Council's discussion of the Overlay Ordinance (pp.14-17, Order 826), and in response to the County's argument that the State's preemption of the location, construction, and operations conditions of energy facilities within Council's jurisdiction is repealed by the Growth Management Act. (Order 826 at pp. 27-28)

The Council determined and reaffirms that that the "Overlay Ordinance" conflicts with and duplicates the Council's siting authorities contained in RCW 80.50. As Order No. 826 states,

"...site-specific details are not for a county or city to negotiate and impose, but are firmly within the jurisdictional realm of this Council. EFSEC is charged with unitary permitting authority for energy facilities seeking its site certification, allowing for a streamlined siting process. EFSEC's preemptive statutory power to certify and regulate the location, construction, and operation of energy facilities such as the proposed KVVWPP simply cannot be usurped by local governments seeking to impose their own imprimatur on the siting process." (Order at p. 17)

and

"...but for the existence of the Wind Farm Overlay Ordinance, the County could have evaluated the KVVWPP as a whole through its conditional use permit process or reviewed each individual tower through a series of applications seeking variances from local height restriction." (Order at p. 17)

Environmental Analysis/Visual Impacts

Kittitas County raises two “Environmental Analysis” issues, both focusing upon visual impacts. (Motion at pp.2-3) The Council carefully considered the visual impacts issues raised by the County, and acknowledges that while not all visual impacts can be eliminated on nearby properties, its requirement of significant setbacks from “non-participating” residences provides substantial mitigation. (Order 826 at pp. 30-32) The Council’s finding requires setbacks greater than that proposed by the applicant to eliminate any “looming” impacts upon non-participating residences (Order 826 at pp. 30-31)

Bad Faith

The County argues that the applicant showed “bad faith” by refusing “to work with the County.” “walked away from the County process,” and was less than “honest” in its dealings with the County. The Council found this argument unpersuasive and, to the contrary, concluded that the applicant showed good faith and “...expended significant effort to navigate the County’s permitting process and that these efforts to resolve the land use noncompliance issues were made in good faith.” (Order 826 at p. 21)

Consistency with Council Regulations

The County maintains that the Council erred in finding that alternative sites were not available. (Motion at p. 4). WAC 463-28-040(3) requires that when requesting preemption “...alternate locations which are within the same county and city have been reviewed and have been found unacceptable.” The Council utilized five reasonable criteria in this evaluation and affirms its finding regarding the lack of alternative sites and that that the proposed site is “...the best available undeveloped wind resource remaining in Kittitas County.” (Order 826 at pp. 22-24)

Conflict with Initiative 937 and the Interest of the State

The Council agrees with Sagebrush Power Partners, L.L.C. and the Department of Community, Trade, and Economic Development’s responses to the Motion for Reconsideration. The project does not conflict with Initiative 937.

DISPOSITION: Pursuant to WAC 463-30-335 and RCW 34.05.470 parties to a proceeding may petition for reconsideration. Although Mr. Garrett and Ms. Monaghan are members of Residents Opposed to Kittitas Turbines (ROKT) their motion was not on behalf of ROKT; however; the Council did consider their communication as a motion for reconsideration.

Pursuant to WAC 463-30-335 and RCW 34.05.470, the Council has considered the Kittitas County, and Mr. Garrett and Ms. Monaghan’s motions for reconsideration. The Council finds and concludes that neither motion raises any factual or legal arguments that the Council has not already heard during the adjudication and in post-hearing briefs, deliberated upon, and discussed in Order No. 826 and the appended Draft Site Certification Agreement. No basis has been provided to justify any

changes in the Council’s findings, conclusions, or recommendation. Hence, the Council denies the Kittitas County’s, and Mr. Garrett and Ms. Monaghan’s motions for reconsideration.

The Council notes one administrative error in Order No. 826 and corrects it at this time. On page 64 of Order 826, Finding of Fact number 98, the words “and the City of Kittitas” are hereby deleted.

ORDER

THE COUNCIL ORDERS The motions for reconsideration by Kittitas County, and Ed Garrett and Rosemary Monaghan are denied.

DATED at Olympia, Washington and effective on this 26th day of April, 2007.

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL

James O. Luce, Chair