

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of
Application No. 2006-02

of

DESERT CLAIM WIND POWER LLC

for

DESERT CLAIM ENERGY PROJECT

PREHEARING ORDER NO.1
COUNCIL ORDER NO.838

PREHEARING ORDER GRANTING
PETITION FOR INTERVENTION;
ALLOWING LATE-FILED PETITION;
ESTABLISHING HEARING SCHEDULE

Nature of the Proceeding

This matter involves Application No. 2006-2 submitted by Desert Claim Energy Project LLC ("Applicant") to the Washington State Energy Facility Site Evaluation Council ("Council") on November 6, 2006. Applicant seeks certification of a site in Kittitas County, Washington on which to construct and operate the Desert Claim Energy Project (the Project). The Project, as revised by a filing with the Council on February 6, 2009, involves the construction and operation of 95 wind-powered generating turbines and associated facilities.

Procedural Setting:

The Council convened a prehearing conference pursuant to due and proper notice to all interested persons at 1:30 p.m. on April 24, 2009, in Ellensburg, Kittitas County, Washington. The Conference was held before Council Chair Jim Luce, and Council members Richard Fryhling (Department of Community, Trade & Economic Development), Richard Byers (Utilities and Transportation Commission), Mary MacDonald (Department of Natural Resources), and Administrative Law Judge, C. Robert Wallis.

Participants:

The following persons appeared before the Council during the prehearing conference:¹

¹ Contact information for the parties' representatives and others requiring service are listed in Appendix I to this order.

² Representatives of Council member agencies act as judges of matters being adjudicated in an application proceeding. In particular, when an agency chooses to participate as a party in an adjudication, the agency must provide total separation between the council member and persons involved in advocacy of a position. See, RCW 34.05.455.

Applicant: **Desert Claim Wind Power LLC**, by
Karen McGaffey, Attorney at Law, Perkins
Coie LLP, Seattle.

Counsel for the Environment: **H. Bruce Marvin**, Assistant Attorney
General (AAG), Olympia.

Council Member Agencies Appearing as
Parties: **Washington Department of Community,
Trade & Economic Development²** by
Mark Anderson, Agency Staff, Olympia.
Kittitas County, by Neil A. Caulkins,
Civil Deputy Prosecuting Attorney,
Ellensburg.

Petitioners for Intervention: **Economic Development Group of
Kittitas County**, by Ron Cridlebaugh,
Executive Director, Ellensburg.
Roger Overbeck, Pro Se, Ellensburg

Participation of right. The Washington Department of Community, Trade and Economic Development (CTED) and Kittitas County, Council members pursuant to RCW 80.50.030, stated their intention to participate as parties. CTED and Kittitas County have representatives on EFSEC for this proceeding and are entitled to party status in the Council's adjudicative proceedings as a matter of right. WAC 463-30-050 and WAC 463-30-060.

Petitions for Intervention.

The petition for intervention of the Economic Development Group is adequate to identify a required interest, received no objections, and is granted.

Mr. Overbeck failed to present a timely petition for intervention, but appeared and orally requested leave to intervene. He asked excuse from the obligation of filing a petition, stating that he had been out of the state and did not learn of the opportunity to intervene until one or two days before the hearing. The applicant voiced concern to the oral request for intervention, stating that the grounds for and nature of the proposed intervention were not clear. The petition is deferred for consideration, and Mr. Overbeck was given leave to file a written petition clearly stating his interests and the basis for his entitlement, no later than April 30, 2009. Mr. Overbeck should also state in his petition his ability to fulfill responsibilities of parties as set forth in WAC 463-30, recognizing that failure to satisfy these responsibilities may result in his dismissal as a party if his petition is granted. Parties who wish to be heard on the petition may file a response no later than May 7, 2009 and the Council will rule promptly on the request.

Procedural schedule. Following the deadline for filing petitions for intervention, the Applicant submitted and circulated to parties and petitioners for intervention a proposed procedural schedule.

Parties expressed concern about a proposed May 11 deadline for submission of issues lists, noting that it coincided with the deadline for submission of Applicant's prefiled evidence. The Applicant suggested, and we confirm, that the deadline is not exclusive. For the parties' convenience, we establish May 18, 2009 as the deadline for revisions to the parties' May 11 issues lists.

Applicant and the parties thereafter will work to develop stipulations of fact and law and proposed partial or complete settlements of issues, for presentation at the prehearing conference on July 7, 2009.

In other respects, there were no objections to the proposed schedule. We adopt it with only minor revisions, as noted below.

Filing and Service of litigation documents. PLEASE NOTE: The parties are required to circulate case-related documents by electronic mail to all other parties and to Council staff and members, unless a party waives such receipt by notice to the Council and all parties.

Under RCW 34.05.010 official service may be made only by physical delivery of documents by mail or commercial delivery service, or by personal delivery. RCW 34.05.050 provides that parties may waive provisions in the APA that protect their interests. Any party who wishes to waive physical service of documents may do so by filing a waiver of the service provisions promptly, in writing, with a copy to other parties. Unless otherwise noted, a stated **filing** deadline is the date on which a document must reach the Council, and a stated **Service** deadline is the date on which it must be sent via mail or other permissible vehicle, and sent to other parties and the Council by electronic mail.

Any party or petitioner for intervention who has not already done so must also submit complete contact information, including telephone and electronic mail, to the Council for update of a service list.

Documents that constitute prefiled evidence for introduction at the hearing, including proposed testimony of witnesses, must bear at the top, right-hand corner of the first page, the following information:

Name of the proposed witness through whom the exhibit will be offered³
 Number of the exhibit, in order of presentation, for that witness
 Brief identification of the document (e.g., "prefiled testimony" or "possible exhibit on cross-examination").

Please note: Waivers of *service* requirements do not affect requirements for *filing* documents with the Council. Filing dates determined by the Council require that submitted materials reach the Council offices no later than the close of business of the

³ Including exhibits (if any) to be introduced on cross-examination of another party's witness.

date specified, unless the date is extended by the Administrative Law Judge or the Council Manager. The Council requires an original plus **twelve (12)** copies of each filing, unless other arrangements are made. The Council also requires parties to provide the documents electronically on disk with the paper filing, and to provide the documents by electronic mail to the Council and to persons identified on the attached service list.

Dates for oral argument, if any, will be determined at the hearing upon consideration of the needs of the parties and the Council.

HEARING SCHEDULE, DESERT CLAIM (Revised)

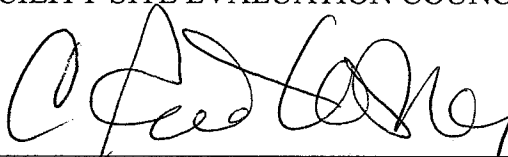
First prehearing conference (Ellensburg)	April 23
Desert Claim files pre-filed testimony and exhibits	May 11
Other parties circulate list of issues May 11	
Deadline for revisions to initial issues lists	May 18
Intervenors file direct answering testimony and exhibits	June 11
Prehearing conference (Olympia) for presentation of Proposed settlements and stipulations and Determination of other procedural matters,	week of July 7*
Adjudicative Hearing (Ellensburg), week of	July 13*
Hearing sessions to receive comments from Members of the public	
Ellensburg, week of	July 13*
Seattle, week of	July 13 or 20*
Post-hearing process	
Simultaneous briefs	July 31
Proposed Site Certification Agreement	July 31
Answering briefs	August*

Notice to Parties: Unless modified, this prehearing conference order shall control further proceedings in this matter. In accordance with WAC 463-30-270(3), any objections to this order must be filed with the Council and served on parties within ten days after the date of service of this order.

* Specific dates will be established later and provided by later notice.

Dated at Olympia, Washington, and effective this **29th** day of April, 2009.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL



C. Robert Wallis, Administrative Law Judge

Appendix I

Service List

Unless otherwise indicated, copies must be served on all persons on this list.

EFSEC:	
<p>Allen J. Fiksdal EFSEC Manager Energy Facility Site Evaluation Council 905 Plum Street SE, 3rd Floor PO Box 43172 Olympia, WA 98504-3172 Email: allenf@cted.wa.gov Phone: 360-956-2152 Fax: 360-956-2158</p> <p>Please serve an electronic version of all documents to both: allenf@cted.wa.gov stephenp@cted.wa.gov</p>	<p>Kyle Crews Assistant Attorney General Office of the Attorney General P.O. Box 40108 Olympia, WA 98504-0108 Email: KyleC@atg.wa.gov Phone: 360-664-2510 Fax: 360-586-3593</p> <p>C. Robert Wallis Administrative Law Judge c/o EFSEC P.O. Box 43172 Olympia, WA 98504-3172 Email: RobertW@cted.wa.gov Phone: 360-339-3373 Fax: 360-956-2158</p>
Counsel for the Environment:	
<p>H. Bruce Marvin Assistant Attorney General Counsel for the Environment Office of the Attorney General P.O. Box 40100 Olympia, WA 98504-0100 Email: BruceM1@atg.wa.gov Phone: 360-586-2438 M Tu W 206-389-3840 Th F Fax: 360-664-0229</p>	
Desert Claim Wind Power, Applicant:	
<p>David Steeb Desert Claim Wind Power LLC P.O. Box 4 Woodinville, WA 98072 Email: independent.power@verizon.net Phone: 425-941-3774 Fax: 425-481-1519</p>	<p>Karen McGaffey Kelly Moser Perkins Coie LLP 1201 Third Avenue, Suite 4800 Seattle, WA 98101 Email: mcgak@perkinscoie.com kmoser@perkinscoie.com Phone: 206-583-8888 Fax: 206-359-7368</p>

Washington State Department of Community, Trade and Economic Development:	
Tony Usibelli , Director Energy Division Department of Community, Trade and Economic Development P.O. Box 43173 Olympia, WA 98504-3173 Email: Tonyu@cted.wa.gov Phone: 360-725-3110 Fax: 360-586-0049	Alice Blado , AAG CTED P.O. Box 40109 Olympia, WA 98504-0109 Email: Aliceb@atg.wa.gov Phone: 360-753-6216
Kittitas County:	
Neil A. Caulkins Civil Deputy Prosecutor Kittitas County Courthouse Room 213 Ellensburg, WA 98926 Email: neil.caulkins@co.kittitas.wa.us Phone: 509-962-7520 Fax: 509-962-7022	
Economic Development Group of Kittitas County	
Ron Cridlebaugh , Executive Director Economic Development Group of Kittitas County P.O. Box 598 Ellensburg, WA 98926 Email: director@kittitasedc.org Phone: 509-962-7244 Fax: 509-962-7141	
Others	
Roger Overbeck 1103 Madison Ave Yakima, WA 98902 Phone: 509-929-5930 Fax: 509-925-7480 No Email address available	