

July 20, 2009

TIMOTHY L. MCMAHAN  
Direct (360) 699-5900, ext. 3  
tlmcmahan@stoel.com

**VIA OVERNIGHT MAIL**

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
905 Plum Street SE  
PO Box 43172  
Olympia, WA 98504-3172

**Re: Response by Sagebrush Power Partners, LLC to Comment Letters Concerning Request for Amendment to the Kittitas Valley Wind Power Project Site Certificate Agreement**

Dear Mr. Fiksdal, Chairman Luce and Members of the Council:

We are writing on behalf of the applicant, Sagebrush Power Partners, LLC (“Sagebrush” or “Applicant”) to respond to comment letters received concerning the request by Sagebrush to amend the Site Certificate Agreement (“SCA”) for the Kittitas Valley Wind Power Project (“KV Project” or “Project”).

**A. Background**

In response to Governor Gregoire’s stated concern regarding visual impacts to immediate surrounding residences and the Council’s micrositing requirements addressing that concern, the proposed amendment would significantly revise the original layout to reduce turbines in the most visible locations. Exhibit 1 of Request for Amendment dated May 29, 2009. The revised layout results in a 20% reduction in installed wind turbine generators from the SCA-approved 65 down to 52 units. This change is made possible with the selection of a larger nameplate turbine, while still meeting all turbine specifications as stipulated in the SCA, including conditions related to the height of the wind turbine generators and towers. There is a net overall reduction in ground disturbance as set forth in the Request for Amendment, Tables 1 and 2. With the selection of a larger nameplate turbine, the amendment request not only reduces the ground disturbance impact

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 2

for the Project as a whole, it also very significantly reduces the visual impacts for non-participating landowners as requested in the setback conditions.

Revisions are proposed that would eliminate two of the approved corridors, remove two additional turbines and relocate the remaining turbines resulting in a total elimination of 13 turbines. All proposed turbines continue to meet, and in the vast majority of cases exceed, the visual setback distances required by SCA Article I, Section C.7 (the “setback condition”). As discussed below, both Mr. Michael Robertson and Mr. Wayne Bell are major beneficiaries of this reduction of impacts.

Among other modifications intended to reduce visual impacts noted in the Request for Amendment, the proposed amendment would remove the entire F string of turbines and make minor modifications to the locations of the A-1 and A-2 turbines. As the Council is aware, the locations depicted for the original turbine layout have always been hypothetical locations, situated within “micrositing” corridors, as approved by the SCA and as fully analyzed and mitigated in accordance with the Environmental Impact Statement (“EIS”) for the Project. Opponents, including Residents Opposed to Kittitas Turbines (“ROKT”), challenged the micrositing approach during the contested case proceedings and through the Supreme Court. The Supreme Court affirmed the decision of Governor Gregoire and EFSEC to use this methodology.

The actual positions of the final layout have always depended on many factors, primary of which is the size of turbines (the height of each turbine primarily influences all setbacks, including implementation of the 4X turbine height setback requirement from non-participating landowners). The positions of A-1 and A-2 turbines as shown in the original hypothetical layout, although viable for smaller turbines, will not meet the required setbacks for the larger turbine chosen for the purpose of reducing the number of turbines and visual impact, while maintaining the same output. Sagebrush now proposes final locations, comporting with all conditions of the SCA, including the setback condition.

The setback condition did not establish a minimum setback distance of 2,500 feet. Rather, for turbines within 2,500 feet of a non-participating landowner’s existing residence, micrositing determinations “shall give highest priority to increasing the distance of the turbine from that non-participating landowner’s residence, even beyond the minimum four times height setbacks” as described in the SCA. SCA Article I, Section C.7. Given the nature of the approval of

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 3

micrositing corridors, the hypothetical turbine layout was never considered to be “fixed” at the time of final approval. Rather, all final turbine locations must be scrutinized for efforts to reduce visual impacts.

Sagebrush emphasizes that the setback condition was not intended to be administered on a strictly turbine-by-turbine basis, without regard to overall reduction in visual impacts. The goal was to require the Applicant’s strong efforts to further reduce visual impacts of turbines within 2,500 feet of all non-participating residences. The Applicant believes that to do so means to account for *all* non-participating residences with turbines within 2,500 feet, including those residences in proximity to *all* turbines. The proposed amendment must consider all locations as an integrated whole, not individually. Turbine locations are dependent upon each other in order to accomplish both the needed power generation and the reduction in visual impacts. The result of the Applicant’s effort is a greater level of reduction in visual impacts than could be achieved by a purely turbine-by-turbine analysis. A strictly turbine-by-turbine analysis would simply guarantee a final layout of the maximum number of turbines, deterring efforts to further minimize impacts as proposed.

EFSEC should consider not only the complaints of two residents who ignore the clear benefits of the proposal, but also the *lack of comments* from those non-participating residents with homes near *all* of the turbine strings that are proposed for removal and reduction. In this context, where the KV Project previously faced fierce opposition, that silence is noteworthy.

## **B. Constraints Limiting Location of A-1 and A-2 Turbines**

The Applicant proposes final locations for the A-1 and A-2 turbines. These locations were selected after extensive engineering analysis and efforts to locate these turbines at the maximum distance from existing residences. The following constraints significantly restrict alternative locations and necessitate the proposed locations:

**1. Transmission line setback constraint, SCA Article I, Section C.7:** In accordance with the SCA, turbines may not be constructed at a distance of less than maximum turbine tip height from existing transmission lines. The Applicant imposes its own standard, which is slightly more conservative—1.1 times maximum turbine tip height from the existing transmission lines (448 feet for the selected WTGs). In order to install the selected turbines, which enable the reduction proposed in this amendment request, the original hypothetical

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 4

locations of A-1 and A-2 were not possible with the larger turbine equipment. Consequently, increased distances were needed to enable a sufficient setback from the Puget Sound Energy (“PSE”) transmission line running east and west across the Project. These turbines could not be moved to the south due to the same setback restrictions from the BPA transmission lines. The enclosed map, Exhibit C, demonstrates this constraint, related to the PSE transmission lines.

**2. Non-participating residential setback constraint:** Also in accordance with the setback condition, for the larger turbine model, the A-1 turbine location needed to be moved to meet the 4X setback from the Robertson residence. This caused its shift to the east, putting this turbine in closer proximity to the Bell residence. This relocation caused a significantly greater distance from the Robertson residence but a lessened distance from the Bell residence. For both residences, the proposed location meets or exceeds the 4X tip height setback requirement.

**3. Road setback constraint:** As shown on Exhibits A and B, Hayward Road runs in a north-south direction, situated to the east of the proposed A-1 and A-2 locations. The SCA requires a minimum distance of maximum turbine height from the outermost edge of county roads. This constraint limits further movement to the east.

**4. Terrain and wind resource constraint:** Also limiting further movement to the east, the terrain drops off precipitously. This significantly negatively affects the available wind resource, rendering further movement to the east impracticable.

**5. Cultural resource constraints:** As noted in the cultural resource information filed confidentially with EFSEC, a historically significant irrigation ditch is situated near Hayward Road, also to the east of the proposed locations. Further movement to the east would harm this resource and is inconsistent with efforts to minimize impacts to cultural resources in accordance with the ASC and FEIS. The proposed locations take advantage of an existing jeep trail as an access road, minimizing ground disturbance and avoiding impact to the historically significant irrigation ditch.

**6. Location constraints to the west of original hypothetical A-1 and A-2 turbine locations:** The Applicant considered locations to the west of the original locations. Any area to the west is impossible due to the 541-foot mandatory property line setback (SCA Article I, Section C.7), the constraint concerning transmission lines discussed above and the mandatory 4X

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 5

turbine setback for non-participating residences applicable to another residence further to the west, shown on Exhibit C.

**7. Constraints limiting relocation in other areas of the Project:** Due to FAA flight paths, turbine locations on G, H, I and J north of the proposed turbine locations are prohibited. Additional locations have been explored on B, C and E, with engineering determinations that the terrain (wind resource), substation, transmission lines and beam path constraints eliminate additional locations for two turbines in other Project areas. Further, the terrain and beam paths do not allow two additional turbines to be placed closer to A-3 and A-4.

**Summary of constraints:** The proposed locations for the A-1 and A-2 turbines meet all setback requirements, avoid all constraints summarized above and minimize visual impacts for all residences. The avoidance of cultural resource sites and removal of the F string corridor significantly reduced options for turbine placement. Due to a range of constraints, no other locations are suitable and, unless the F string is reinstated, the proposed locations are necessary.

## **C. Response to Comments**

**1. Response to Michael H. Robertson letter:** Mr. Robertson takes issue with the proposed amendment, contending that the A-1 and A-2 turbine locations violate the setback condition. His main reason relates to alleged “health” effects from “shadow flicker.”

The amendment request proposes relocating the A-1 turbine from the original, hypothetical distance from the Robertson residence of approximately 1360 feet to a distance of 1,780 feet—a 420-foot increase. For the A-2 turbine, the proposal is to move the turbine from a hypothetical 2,120 feet to 1,960 feet—a 160-foot decrease. While it is true that the A-2 turbine would be somewhat closer to the Robertson residence, the A-1 turbine is proposed to be sited at a distance significantly further from the residence. The entire F string is removed from the proposal. These proposed changes are shown on the map, Exhibit A, enclosed.

To help you fully understand the Applicant’s efforts to satisfy the setback condition and to take further measures to minimize impacts of the KV Project, we refer to Exhibit 34 SUP (TP-T SUP), the Prefiled Supplemental Direct Testimony of Thomas Priestley. We enclose a copy of this testimony, which was accepted into evidence during the contested case proceedings. Specifically, Figure 1 in Mr. Priestley’s supplemental testimony (page 7) shows the primary

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 6

view orientation of residences with respect to proposed turbines. The Robertson residence is identified as residence #6, oriented toward the north, away from the A turbine string. Moreover, removing the F string greatly reduces visual impacts to the Robertson residence and other homes, including the most visible turbines, given the orientation of the Robertson home. On balance, the “highest priority” has been given to increasing distances, and Sagebrush has complied with the setback condition.

Mr. Robertson’s principal contention is the following: “They (turbines A-1 and A-2) are both located farther to the east which makes our residence more susceptible to the effects of shadow flicker (number of occurrences and length of time).” For this reason, Mr. Robertson contends that “an updated shadow flicker assessment study” should be submitted “based on this new turbine type.”<sup>1</sup> The SCA imposes the following mitigation measures specifically addressing Mr. Robertson’s shadow flicker allegation:

**I. Shadow Flicker Mitigation Measures.**

To mitigate for shadow flicker effects, the Certificate Holder shall shut down the operation of a WTG, for the duration of such impact, upon the written request of a non-participating landowners [sic] whose residence:

- was constructed as of January 13, 2003, or was located on property with vested rights to build as of January 13, 2003; and
- is located within 2,500 ft. of the offending turbines; and

---

<sup>1</sup> As discussed extensively in the contested case proceedings, there is no competent medical evidence to validate claims of health effects related to WTG-generated shadow flicker. Shadow flicker can be annoying, and Sagebrush, therefore, volunteered the mitigation ultimately adopted in SCA Condition VII.I.

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 7

- has a line of sight view of the turbine.  
[Additional text not included]

#### SCA Article VII.I.

In other words, the SCA requires *avoidance* of shadow flicker impacts in their entirety on a complaint-generated basis. Again, it is the risk of “the effects of shadow flicker” that Mr. Robertson cites as his fundamental reason for opposing the modification of locations for the A-1 and A-2 turbines. Assuming Mr. Robertson avails himself of his rights under Condition VII.I, *there will be no appreciable shadow flicker impact* as a consequence of the proposed amendment.

Neither the EIS nor the SCA requires specifications of the selected wind turbine generator equipment at this time for any turbine proposed for construction on the Project site. The SCA does not condition approval on any particular turbine model or any particular locations. To the contrary, the SCA approves a range, and the EIS evaluated a range, of turbine size scenarios. FEIS Chapter 2.2. The proposed turbines are within that range. Any turbine must meet all conditions of approval, including the following:

#### **IV.L Noise and Shadow Flicker Modeling**

Thirty (30) days prior to the beginning of site preparation the Certificate Holder shall submit to EFSEC for review the modeling of noise and shadow flicker impacts from the project in its final layout and accounting for the specific WTG components selected.

This amendment request does not require modification of the conditioning of this Project. Sagebrush is not seeking to relax the conditions, and the Applicant will comply with them. This includes all conditions imposed as a consequence of extensive review (up to and including the Washington State Supreme Court) of the environmental impacts of the Project. Conditions imposed by the SCA will fully address all concerns set forth by Mr. Robertson in his letter. If the Applicant cannot comply with Condition IV.L, the offending turbines will not be constructed and, without some further modifications, could not be operated.

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 8

Finally, with respect to Mr. Robertson's allegations concerning compliance with I-937, these allegations have been previously addressed in the contested case proceeding. As a member of the opposition group ROKT, Mr. Robertson made similar allegations to the Supreme Court. These allegations failed, the Supreme Court rejected them and the Siting Council should move beyond this kind of baseless acrimony.

**2. Response to letter from Wayne T. Bell:**

Mr. Bell's letter is very similar to the Robertson letter. Like Mr. Robertson, Mr. Bell contends that the proposed A-1 and A-2 turbine locations violate the setback condition, basing this accusation on alleged "health" effects from "shadow flicker."

Also as noted in Mr. Priestley's testimony, the primary view orientation of the Bell residence (residence #5) is toward the north, and the proposed turbine relocations (A-1 and A-2) are proposed to the south of the residence. While it is true that the A-1 and A-2 turbines are proposed for location slightly closer to the residence, Sagebrush also proposes to remove six F string turbines entirely from the primary north-facing viewscape, including four previously proposed within the 2,500 foot area regulated by the setback condition. These proposed changes are shown on the map, Exhibit B, enclosed.

With respect to the Bell residence, the Applicant proposes the following final locations (proposed distance), as compared to the originally shown, hypothetical locations approved within the micrositing corridors:

	<b>Hypothetical Approval Distance</b>	<b>Proposed Distance</b>
A1	2300'	1695'
A2	3070'	2240'
F1	2870'	Removed
F2	2200'	Removed



Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 9

F3	2150'	Removed
F4	1900'	Removed
F5	1740'	Removed
F6	2770'	Removed

In compliance with the setback condition, the Bell residence clearly gains substantially from Sagebrush's efforts. Both the A-1 and A-2 turbines would be fully compliant with the 4X height setback condition, although they would be somewhat closer to the residence. Four turbines previously proposed within 2,500 feet of the residence (and in its primary viewscape) would be removed entirely, along with others beyond that distance. As noted in response to the Robertson letter, conditions imposed in the SCA (concerning noise and shadow flicker) would mitigate, minimize and even avoid alleged impacts. Similar to the Robertson letter, the Bell letter takes issue with the relocation proposal due to shadow flicker concerns. As discussed above, shadow flicker will not cause any significant impact, in accordance with the SCA.

#### **D. Conclusion**

The proposed amendment would enable construction of a facility that meets the renewable energy generation objectives of the KV Project, as approved by EFSEC and Governor Gregoire. As the Council is well aware, the Project has been previously and repeatedly significantly reduced in size due to the Applicant's ongoing efforts to minimize visual impacts. The generation permitted is necessary, cannot be further compromised and fulfills the Council's statutory mandate to "provide abundant power at reasonable cost." RCW 80.50.010(3).

At this juncture, Sagebrush is fully within its right to proceed with the existing layout. For the disputed A string turbines, Sagebrush has several options: (1) proceed with the previous layout project-wide, with smaller turbines; (2) proceed with the previous locations for the A-1 and A-2 turbines with smaller capacity turbines, or eliminate one or both of these turbines, and reinstate the F string (with larger turbines) in order to regain the lost generation capacity; or (3) proceed with the proposed amendment. It is our strong belief that the proposed amendment strikes a very favorable balance, meets EFSEC's statutory requirements, achieves compliance with the setback condition and significantly reduces impacts, ironically including a significant reduction in overall

Energy Facility Site Evaluation Council  
Allen Fiksdal, Siting Manager  
Jim Luce, Chair  
Members of Siting Council  
July 20, 2009  
Page 10

impacts to the Robertson and Bell residences. It would be unfortunate for all affected landowners (including Robertson and Bell) if a choice were made that results in a greater impact than proposed in this amendment request.

Very truly yours,

**STOEL RIVES LLP**

---

Timothy L. McMahan

**LAW OFFICE OF DARREL PEEPLES**

---

Darrel L. Peoples

Enclosures

cc: Clients