BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2004-01	**PREHEARING ORDER NO. 2 COUNCIL ORDER NO. 806**
WIND RIDGE POWER PARTNERS, L.L.C.	**PREHEARING ORDER GRANTING APPLICANT'S REQUEST FOR EXTENSION OF TIME TO RESOLVE LAND USE INCONSISTENCY, AND ESTABLISHING HEARING SCHEDULE AND PRE-FILED TESTIMONY TOPICS**
WILD HORSE WIND POWER PROJECT	

Background and Procedural Matters:

On March 9, 2004, Wind Ridge Power Partners, L.L.C., a wholly owned subsidiary of Zilkha Renewable Energy (Applicant), submitted Application No. 2004-01 to the Energy Facility Site Evaluation Council (EFSEC or Council) to construct and operate the Wild Horse Wind Power Project (Project), an approximately 312-megawatt wind turbine electrical generation facility consisting of up to 158 wind generation turbines. The proposed Project would be located along the ridge tops of Whiskey Dick Mountain, two miles north of Vantage Highway, and 11 miles east of the city of Kittitas. In August 2004, EFSEC issued a Draft Environmental Impact Statement (DEIS) and held a public comment hearing on the DEIS in Ellensburg, WA.

On October 20, 2004, pursuant to RCW Chapter 80.50 and WAC Chapter 463-26, the Council issued a *Notice of Intent to Hold Prehearing Conference* to, among other things, discuss the status of the Applicant's efforts to resolve local land use inconsistencies, adopt a list of relevant issues, and schedule the adjudication in this matter. On November 1, 2004, at 12:00 p.m., the Council convened a prehearing conference in Olympia, WA, with the following Councilmembers present: Council Chair James Luce, Tony Ifie (Department of Natural Resources), Hedia Adelsman (Department of Ecology), Chris Smith Towne (Department of Fish & Wildlife), Richard Fryhling (Department of Community, Trade, and Economic Development), and Tim Sweeney (Utilities and Transportation Commission). Councilmember Patti Johnson (Kittitas County) appeared and participated by telephone conference call.

Assistant Attorney General Ann Essko was also present at this prehearing conference as the Council's legal advisor. Adam E. Torem, Administrative Law Judge of the Office of Administrative Hearings, presided over the prehearing conference.

Participants in Prehearing Conferences:

The following parties, as determined by WAC 463-30-060, participated in the conference:

Representing the Applicant:	**Darrel Peeples**, Attorney at Law **Tim McMahan**, Attorney at Law **Chris Taylor**, Wind Ridge Power Partners L.L.C.
Counsel for the Environment:	**John Lane**, Assistant Attorney General

The following state agency, a party of right as determined by WAC 463-30-050, participated in the conference:

Dept of Community, Trade and Economic Development (CTED)	**Tony Usibelli**, Assistant Director, Energy Policy Division

In addition, the following petitioners for intervention participated in the conference:

Kittitas County:	**James Hurson**, Chief Civil Deputy Prosecuting Attorney **Darryl Piercy**, Planning Department Director
Economic Development Group of Kittitas County:	**Debbie Strand**, Executive Director
Friends of Wildlife & Wind Power:	**David A. Bricklin**, Attorney at Law, Seattle, Washington **Robert Kruse**, Ellensburg, Washington
F. Steven Lathrop:	**Jeff Slothower**, Attorney at Law, Ellensburg, Washington

Summary of Prehearing Conference

1. Project Status Update – Land Use Inconsistency and Preemption Period. (*PHC Agenda Item 5*)

Darrell Peeples, legal counsel for the Applicant, explained his second request for an extension of time to continue attempts to resolve the existing land use inconsistencies associated with the Project. The Council had previously extended this deadline to November 15, 2004. Mr. Peeples reported that the Applicant was working with Kittitas County on proposed amendments to its Comprehensive Plan and that the process would last at least through the remainder of the year. James Hurson, Deputy Prosecuting Attorney for Kittitas County, concurred, noting that any final amendments to the Comprehensive Plan would not be completed until at least February 2005, when two required sets of hearings would potentially be completed.

Judge Torem recommended that the Applicant seek a sufficiently lengthy extension of time to allow completion of the local Kittitas County hearings and additional time as needed to evaluate the outcome of that process. No opposition was voiced to extending the Applicant's deadline to resolve land use inconsistencies or seek preemption. Following additional discussion, the Council voted to extend the Applicant's deadline to March 15, 2005.

2. Consideration and Adoption of Issues List (*PHC Agenda Item 6*)

The Council entertained discussion of a list of relevant issues for the adjudicative hearing on the proposed wind farm project, using the issues list previously adopted in the Kittitas Valley Wind Power Project (KVWPP) as a starting point for the discussion. Counsel for the Environment and Mr. Bricklin, counsel for Friends of Wildlife & Wind Power clarified that any narrowing of the list of issues under the topic of "Human Impact Issues" would not prevent raising those same issues with regard to their potential impacts on wildlife under the topic of "Environmental & Natural Resource Issues." Mr. Peeples, counsel for the Applicant, noted that several of the issues included in the KVWPP adjudication had not been raised at all with regard to the current proposed Project and should therefore be deleted from the final issues list. At the conclusion of the discussion, Judge Torem summarized the differences between the KVWPP issues list and the relevant items for the Wild Horse Project. At that time, several minor deletions and one addition to the KVWPP issues list were recommended to and adopted by the Council.

3. Tentative Schedule for Adjudicative Proceedings (*PHC Agenda Item 7*)

On the morning of the prehearing conference, the Council circulated its own draft proposed schedule for the Adjudicative Proceedings via electronic mail, with two weeks of proposed dates for the adjudicative hearing itself: February 28th through March 4th, and March 7th through March 11th, 2005. Based upon the above-noted discussions with regard to the Applicant's attempts to resolve land use inconsistency issues with Kittitas County, it became apparent that potential resolution of the existing land use inconsistency might not be possible before late February 2005. Mr. Peeples expressed his opinion that the hearing could be completed in a single week and therefore suggested that the week of March 7th through March 11th, 2005, would be appropriate.

The Council, after hearing discussion about the exact deadlines to be established for submission of pre-filed testimony, motions to strike testimony, and opening hearings, adopted a hearing schedule.

4. Adoption of Hearing Guidelines (*PHC Agenda Item 7*)

The Council inquired of all participants whether they wished to comment on the previously circulated *Draft Hearing Guidelines* (which were Attachment C to the *Notice of Intent to Hold Prehearing Conference*

from September 2004). Mr. Peeples noted that the Guidelines appeared to be consistent with those utilized by the Council for all recent adjudicative proceedings.

Council Staff inquired whether or not the Council wished to allow electronic filing of documents; Chairman Luce stated that electronic filing should be permissible. Therefore, Judge Torem indicated he would draft an amendment to the *Hearing Guidelines* and circulate it to the parties for comment and then present it to the Council in early February 2005, before the short-notice deadlines associated with motions became relevant.

The Council voted to adopt the *Hearing Guidelines*, with any amendment regarding electronic filing and service to be adopted at a later date.

5. Next Prehearing Conference

The Council did not schedule another prehearing conference in this matter. Parties seeing a need for an additional prehearing conference should forward their request and appropriate justification for calling together all of the parties to EFSEC staff. ALJ Torem will schedule additional prehearing sessions as necessary, including one in February 2005 to consider amending the *Hearing Guidelines* to allow for electronic filing and service of appropriate documents.

The prehearing conference was adjourned at approximately 1:20 p.m.

Discussions and Decisions:

Extension of Deadline for Applicant to Resolve Land Use Inconsistency or Request Preemption. The Council commends the efforts undertaken by the Applicant and Kittitas County to attempt to resolve the existing land use inconsistency for this Project. The Council approved the Applicant's request for an extension of time to attempt to resolve land use inconsistencies to March 15, 2005, with the understanding that the Applicant would be prepared on or before that date to indicate its intentions to the Council regarding a potential request for state preemption. The Council recognizes that in order for the adjudicative hearing to take place during the week of March 7-11, 2005, the Applicant and Kittitas County will have to reach an appropriate Agreed Settlement and present a certificate of land use consistency in late February 2005. As required by Council Order No. 791, the Applicant shall continue to regularly advise EFSEC of its efforts and any progress toward this goal.

Schedule for Pre-Filed Testimony, Opening Statements and Briefs, and Adjudicative Hearing. Further, having weighed all suggestions regarding the schedule in this matter, the Council now ORDERS the following deadlines for pre-filing of testimony and this schedule for the adjudicative hearing:

Applicant's Pre-Filed Testimony	Monday, December 6, 2004

All Other Parties' Pre-Filed Testimony	Tuesday, January 18, 2005
Applicant's and All Other Parties' Rebuttals	Tuesday, February 8, 2005
Pre-Hearing Opening Statements and Briefs	Wednesday, March 2, 2005
Adjudicative Hearings (5 days)	Monday, March 7, 2005 through Friday, March 11, 2005

Potential Continuance of Hearings. The Council respectfully requests that the Applicant immediately request a continuance of the adjudicative hearing if it becomes apparent that its efforts to resolve the existing land use inconsistency with Kittitas County will not be successful. The Council will then be able to reschedule the Adjudicative Hearings for an appropriate number of days between May 16th and May 27th, 2005, and, as necessary, modify the Issues List set out below, adopt deadlines for submission of additional pre-filed testimony regarding any *Request for Preemption*, and adjust deadlines for submission of Opening Statements and Briefs.

Rebuttal Testimony. Any Party may pre-file rebuttal testimony. Pre-filed rebuttal testimony shall be limited to witness statements that are responsive to other existing pre-filed testimony *or* which can otherwise be shown as relevant to the proceeding and the need for which could not have been reasonably foreseen prior to January 18, 2005, the deadline for filing of all Parties' pre-filed testimonies.

Any party wishing to file a *Motion to Strike* any pre-filed testimony, including pre-filed rebuttal testimony, shall do so no later than Tuesday, February 15, 2005. The potentially affected Party shall file a responsive pleading, if desired, no later than Friday, February 18, 2005. The Council will not hear oral arguments but will issue a ruling based only on the pleadings on or before Friday, February 25, 2005. *Motions for Reconsideration* will not be entertained.

Pre-Filed Testimony -- Topics. The pre-filed testimony for each witness should identify the topic(s) the witness will be addressing, which may include but are not limited to the following issue areas:

A. Environmental & Natural Resource Issues
   1. General Environmental Impacts
   2. Vegetation and Wildlife
   3. Land and Water
   4. Environmental Benefits of Wind Energy Project

B. Human Impact Issues

1. Public Health, Safety and Welfare Concerns
   a. Aesthetic & Visual Impacts
   b. Seismic Issues
   c. Soil Contamination
   d. Site Access Issues (i.e. access for use, recreation, etc.)
   e. Additional Health/Safety/Welfare Concerns (i.e. ice throw, fire, etc.)

2. Growth Management Issues and Impacts
   a. Housing and Urban Sprawl
   b. Public Facilities and Public Services
   c. Transportation Facilities
   d. Recreation Facilities

3. Cultural Resources and Historic Preservation

C. Economic Issues
   1. Property Values
   2. Local Economic Development
   3. Agricultural Interests

D. Project-Specific Issues
   1. Proper Location and Consideration of Alternatives
   2. Construction: Roadways, Turbine Foundations, Transmission Corridors
   3. Decommissioning and Site Restoration

E. Energy Policy Issues
   1. Consistency of Project with Washington State Energy Policy
   2. Benefits of Clean and Environmentally Sustainable Energy Sources

F. Miscellaneous Issues
   1. Compliance with Applicable Laws and Regulations
   2. Regulatory Framework
   3. Mitigation Compliance Mechanisms (including Assignment of Interest)
   4. Cumulative Impacts
   5. Protection of Local Governmental and/or Community Interests Affected by the Construction or Operation of the Project (per RCW 80.50.100(1))

As noted above, although the Council will hear evidence on a wide variety of different topics, it will make its overall recommendation to the Governor based upon the totality of the evidence presented at hearing and all other argument and evidence that is or becomes part of the record in this matter. Therefore, the Parties are

asked to avoid duplication of testimony; where overlap between issues exists, the Council encourages each Party to adopt by reference its pre-filed testimony from other subject matter areas.

Opening Statements and Briefs. In order to enhance the organization of presentations to the Council, brief opening statements that summarize the critical issues and conclusions to be addressed through particular witnesses are encouraged. Also, pre-hearing briefing that sets out a Party's stance on any or all issues regarding the proposed project would also be welcomed. All Parties are required to submit a written opening statement covering these topics; formal briefing citing legal authority remains optional. Submissions shall not exceed twenty (20) pages (double-spaced, font size no smaller than 12 characters per inch); oversize briefs shall not be considered. The Council does not contemplate hearing opening oral statements. Post-hearing briefs shall also be permitted, subject to a schedule to be set at the adjudicative hearings.

Discovery. The Council notes that the *Hearing Guidelines* adopted at the prehearing conference and attached to this Prehearing Conference Order authorize informal discovery between the parties (see paragraphs 7, 8, and 9). The Council strongly encourages all Parties to cooperate in exchanging information and prevent the need for resort to more formal tools for procuring access to documents and witnesses. In the event any Party wishes to conduct formal discovery in this matter, and in accordance with WAC 463-30-020, WAC 463-30-190 and RCW 34.05.446, the Council hereby appoints Administrative Law Judge Adam E. Torem as the presiding officer for all procedural matters involving in this case, specifically including issues of formal discovery.

Judge Torem hereby ORDERS the following procedures for consideration of each one of any Party's formal discovery requests:

1. A showing that informal discovery has been attempted and refused shall be required prior to consideration of any formal discovery request.

2. Formal discovery requests shall be served on the affected Party or Parties and then submitted to EFSEC staff.

3. EFSEC staff shall transmit any and all discovery requests to Judge Torem once per week. EFSEC staff will deliver each week's accumulated discovery requests to Judge Torem on Monday afternoon, with Judge Torem to render decisions on each pending request on or before noon on the subsequent Thursday of the same week (72 hour response time). Discovery requests received by EFSEC staff after 12:00 p.m. on any given Monday shall not be transmitted to Judge Torem until the following week.

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 5th day of January, 2005.

WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

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Adam E. Torem, Administrative Law Judge