BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of **Application No. 2004-01**	**PREHEARING ORDER NO. 4** **COUNCIL ORDER NO. 808**
WIND RIDGE **POWER PARTNERS, L.L.C.**	**PREHEARING ORDER AMENDING HEARING GUIDELINES** **AND**
WILD HORSE WIND POWER PROJECT	**NOTICING STATUS CONFERENCE: FEBRUARY 22, 2005, 3:00 PM**

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 February 1, 2005, pursuant to RCW Chapter 80.50 and WAC Chapter 463-30, the Council issued a *Notice of Intent to Hold Prehearing Conference* to, among other things, amend the Council's Hearing Guidelines in this matter to include electronic service, and to discuss the status of the Applicant's efforts to resolve local land use inconsistencies. On February 8, 2005, at 1:35 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 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. EFSEC staff, Allen Fiksdal, Irina Makarow, Mike Mills, and Mariah Laamb were also present.

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. (by phone) Scott Williams, Puget Sound Energy
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 Mark Anderson, Senior Energy Policy Specialist, Energy Policy Division

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

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

The following members of the public identified themselves as participating in the prehearing conference: Troy Gagliano, representing Renewable Northwest Project (by phone), and Ed Garrett, representing Residents Opposed to Kittitas Turbines (by phone).[1]

Summary of Prehearing Conference

1 Because the Prehearing Conference was held during the Council's February 8, 2005, Monthly Meeting, other members of the public were present but did not directly participate in the prehearing conference.

1. Prehearing Conference Agenda and Appointment of Chair Luce.

Judge Torem reviewed the Prehearing Conference Agenda, and informed the parties that Governor Gregoire had re-appointed James Luce as Chair to the Council. Copies of the January 31, 2005, appointment letter are available upon request made to EFSEC staff.

2. Guidelines for Electronic Service

The Council reviewed the proposed amendment to Section 10, Method of filing and service, of the Hearing Guidelines adopted in this matter, as set out in draft Council Order 808, Prehearing Order No. 4. Hearing no changes from the parties to the proposed amendment, the Council approved the amendment of Hearing Guidelines, Section 10, by addition of a new subsection (f) Permissibility of electronic service, as set out below.

> (f) Permissibility of electronic service. In addition to the situations individually allowed in subsection (d) above, electronic service is permitted for filings identified in the following table:

Filing	Deadline (5:00 p.m. of date shown)	Electronic service permitted?
Applicant's and All Other Parties' Rebuttals	Tuesday, February 8, 2005	No
Motion to Strike Prefiled Testimony	Tuesday, February 15, 2005	Yes
Responses to Motions to Strike	Friday, February 18, 2005	Yes
EFSEC Ruling on Motions to Strike	By Friday, February 25, 2005	Yes
Pre-Hearing Opening Statements and Briefs	Wednesday, March 2, 2005	Yes
Cross Examination Exhibits	Monday, March 28, 2005	No
Cross Examination Exhibits presented at hearing	Day prior to being used	No
Witness Schedule (Coordinated by Applicant)	Monday, February 28, 2005	Yes
EFSEC Rulings on Discovery		Yes

> This e-service schedule may be revised by the Council to handle procedural or substantive motions that are not foreseen above and are filed prior to the Adjudicative Hearings scheduled for March 7 through March 11, 2005.
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> Electronic service requires:
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> For service by the Parties:
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> i. The entire filing must be available in electronic format. Oversize documents should not exceed 11x17 paper format so that they can be printed on reasonably available equipment.
> ii. The filing must be e-mailed (or faxed at receiving party's prior request) to all persons indicated on the service list by the deadline set out above.

iii. One original shall be mailed to EFSEC the same day of the filing; parties need not provide the 15 copies set out in subsection (a) above.
iv. One hard copy shall be mailed to each party on the service list the same day;
v. EFSEC staff will make all attempts to have the information posted on the EFSEC website the day of receipt, or at latest by noon the next day if needed to accommodate the volume of filings received.
vi. If EFSEC staff are aware of technical difficulties that prevent receipt of e-mail by EFSEC, parties will be notified as early as possible, and will be given alternate instructions for service by e-mail or facsimile.
vii. Parties that are aware of technical difficulties with their e-mail should provide alternate instructions for service to other parties.

For service by EFSEC:

i. EFSEC shall serve filings by e-mail or fax (as a backup to e-mail) to all parties indicated on the service list by the applicable deadlines indicated above.
ii. One hard copy shall be mailed to each party on the service list the same day.
iii. The filing will be placed on EFSEC's website the same day.
iv. If a party is having e-mail problems it is their responsibility to inform EFSEC staff, and to supply an alternate e-mail or facsimile number for service. If EFSEC staff receives e-mail notification that a document is not being delivered, staff will make a single attempt to contact the party to let them know of the problem.

Irina Makarow of EFSEC staff noted that if the Applicant achieved Land-Use consistency, the hearing schedule for March 7 through March 11 would need to be amended to include a resumed Land-Use Hearing for the Council to consider additional filings and evidence on this issue. Mr. Peeples requested that the Land-Use Hearing be the first item on the council's schedule for the first day of hearings on March 7, 2005.

3. Applicant's Status Report on Resolution of Land-Use Inconsistency

Darrel Peeples and Tim McMahan reported on behalf of the Applicant that they believe that Land –Use consistency will be achieved, and that they will be able to report with certainty by February 22, 2005. Kittitas County held a joint hearing of the Planning Commission and the Board of County Commissioners on January 25 and 26, 2005, and continued the hearings on several occasions thereafter. On February 7th the Planning Commission approved a final recommendation to the Board of Commissioners that the Wild Horse Project was consistent with local land use ordinances and the County's comprehensive plan. Some concerns were expressed, but the Applicant will continue working with the County to resolve them. Hearings before the Board of Commissioners are planned for February 16 and 17.

James Hurson, reported that the Applicant and County will continue to work together to narrow and/or resolve the issues raised by the Planning Commission. Furthermore, a decision had not been made as to whether additional public comment would be taken by the Board of County Commissioners. He expects

that by February 22 the County would likely have a firm idea of the direction of the Commissioners' decision, but might not have a final development agreement document prepared, given the short amount of time between the hearings on the 16th/17th and the 22nd of February.

4. Schedule for Status Conference on February 22, 2005

Judge Torem proposed that a Status Conference be held on Tuesday, February 22, 2005, to confirm the hearing dates and times for March 7, through 11, 2005, and to finalize other issues as may be needed. Following discussion, the status conference was scheduled for February 22, 2005, at 3:00 p.m.

The conference will be held at the WSU Energy Program Building, Building 4, Conference Room 308, 925 Plum Street S.E., Olympia, Washington, 98504. A telephone bridge line will be made available for this conference. Parties and Councilmembers wishing to participate by phone should dial into **(360) 956-2226** starting at 3:00 p.m. on February 22, 2005.

This prehearing order hereby serves as notice for this conference.

5. WDFW Contractor Letter to EFSEC

Councilmember Towne indicated on the record that she had received an e-mail sent by a Washington Department of Fish and Wildlife (WDFW) employee regarding a mitigation proposal for the Wild Horse project. Ann Essko and Irina Makarow notified her not to read or review the document. She deleted the e-mail without reading the document, and notified the WDFW employee that she would not be reviewing the document.

Judge Torem informed the parties that EFSEC had received a letter on February 8, 2005, from its WDFW contractors regarding the Wild Horse Project. This letter was circulated by e-mail earlier in the day to the parties by EFSEC staff.

Mr. Bricklin questioned why the WDFW contractors to EFSEC, Brent Renfrow, and Ted Clausing, clearly on EFSEC's side of the WDFW "firewall", had not been made available for questioning to his client, but were communicating directly with the Applicant on substantive issues. Mr. Bricklin noted that other parties to the proceeding needed access to these contractors and had been refused. EFSEC staff and Counsel responded that the WDFW contractors were working with the Applicant pursuant to EFSEC statute, specifically RCW 80.50.085, and such contact was not only statutorily allowed but required. Furthermore, EFSEC regulations (WAC 463-30-200(5)), prohibit EFSEC staff, and contractors as an extension to staff, from being called and examined as witnesses in a Council proceeding.

Mr. Bricklin further asked if and how the Council planned to entertain additional evidence regarding issues raised in the letter. Judge Torem responded that the Council would entertain motions from parties wishing to further delve into prefiled testimony on this issue. Mr. Peeples asked for clarification that new prefiled

testimony would be limited to rebuttal testimony on issues raised in the letter. Judge Torem responded that either limited rebuttal or additional cross examinations of witnesses may be merited, depending on the motions presented to the Council, if any. Mr. Bricklin acknowledged that the burden was on his client to determine if he was prejudiced by the letter, and if such a motion should be submitted to the Council. Judge Torem encouraged Mr. Bricklin to coordinate with EFSEC staff and Counsel to determine if his objections were procedural or substantively consequential. Chair Luce added that in the past the Council has accepted comment from parties on such documents, an avenue that still remained open.

6. Other

Judge Torem indicated that EFSEC would need to determine whether the Council's Monthly Meeting scheduled for March 8 would need to be cancelled, re-scheduled, or held in Ellensburg, to accommodate the Adjudicative Hearings currently planned. Allen Fiksdal indicated that all options would be considered pending the outcome of the status conference on February 22, and other Council business that needed to be conducted in March.

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 10th day of February, 2005.

WASHINGTON STATE ENERGY FACILITY
SITE EVALUATION COUNCIL

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Adam E. Torem, Administrative Law Judge