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No. 81332-9

SUPREME COURT OF THE STATE OF WASHINGTON

RESIDENTS OPPOSED TO KITTITAS TURBINES,
KITTITAS COUNTY, and F. STEVEN LATHROP,

Petitioners,

v.

STATE ENERGY FACILITY SITE EVALUATION COUNCIL (EFSEC)
and CHRISTINE O. GREGOIRE, Governor of the State of Washington,
et. al.

Respondents.

REPLY BRIEF OF RESPONDENT
RENEWABLE NORTHWEST PROJECT

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1. INTRODUCTION

Renewable Northwest Project (“RNP”) supports the Kittitas Valley Wind Power Project approval, and requests that the Governor’s decision approving it be affirmed.

The project has fully addressed its impacts. During the review process, the project was cut to almost half its original size, eliminating 55 wind turbines; buffers were established at a minimum four times turbine height, plus an additional setback distance to be determined during the micro-siting process; and the Energy Facility Site Evaluation Council imposed mitigation going beyond what is standard for wind projects. This Project has been under review for five years. It is time for it to be approved.

2. STATEMENT OF THE CASE

The applicant’s brief presents a factual background, which will not be repeated here. RNP will instead note its role in this proceeding.

Established in 1994, RNP, a 501(c)3 organization, is a coalition of environmental organizations, consumer interest groups, and renewable energy companies which promote the responsible development of clean, new renewable energy resources in the Pacific Northwest.¹ RNP has three strategic objectives: developing responsible renewable energy projects;

¹ AR 13843 (Ling Pre-filed testimony, 70 SL-T, pgs. 1-2, see generally pgs. 1-5).

developing and promoting renewable energy policies; and supporting retail green power programs.

RNP directly participates in siting proceedings for new renewable resource to ensure that proposed wind projects, large and small, are responsibly sited. RNP also becomes involved at the policy level. For example, in 2002 and 2003, RNP worked with the Washington Department of Fish and Wildlife and others to refine WDFW's siting guidelines for wind power projects.²

Through this proceeding, RNP has focused on the mitigation developed to address the State Environmental Policy Act and Energy Facility Site Evaluation Council review criteria. RNP supports the Project because the applicant has generally done more than what is typically required of wind developers to meet review criteria.

3. ARGUMENT

3.1 Project Impacts Are Adequately Mitigated, and Mitigation was Tailored to Address Community Concerns

The Applicant has made a good faith effort to address community concerns, and mitigate Project impacts, consistent with Energy Facility Site Evaluation Council review requirements.³ The Applicant altered the

² AR 13845 (Ling Pre-filed testimony, 70 SL-T, pg. 3, *see generally* pgs. 1-5).

³ *See generally* RCW 80.50.100 and .110; WAC 463-28-070 (addressing preemption); Chapter 463-47 WAC (SEPA provisions); *see also* AR 14257 (Council Order No. 826).

Project layout and eliminated turbines in areas where citizens expressed the greatest concern about potential visual impacts, and agreed to other project revisions:

- Project size is cut almost in half, from 120 down to 65 turbines;⁴
- Turbine setbacks are a minimum four times turbine height, plus an additional distance to be finalized during the micro-siting process;⁵
- Turbines will be shut down as necessary to mitigate shadow flicker for all existing residences within 2,500 feet of a turbine that have a line of site view;⁶ and
- Turbines are eliminated in areas where citizens expressed the greatest concern about potential visual impacts.⁷

The Governor's decision resulted in the Energy Facility Site Evaluation Council requiring that increasing setbacks to 2,500 feet be given the "highest priority" during the micro-siting process. EFSEC is to review and approve the final setback distances from each turbine.⁸

By cutting the project size in half, committing to turbine shut down in specified instances, increasing setbacks, and eliminating turbines of

⁴ AR 14257, 14276, 8274.

⁵ AR 14287 (EFSEC Approval).

⁶ AR 14288 (EFSEC Approval).

⁷ AR 6870-7014.

⁸ AR 14337 (Council Order 831, pg. 3); *see also* Order on Remand Letter From Governor Gregoire Modifying the Draft Site Certification Agreement Accompanying Order No. 826) ("For each turbine located within 2,500 feet of a non-participating landowner's existing residence, micro-siting determinations shall give highest priority to increasing the distance of the turbine from that non-participating landowner's residence....")

greatest concern for visual impacts, the Project incorporated local concerns.

3.2 Project Mitigation Is Beyond What is Standard for a Typical Wind Project

The Project is more thoroughly mitigated than most projects. While the applicant will provide more detail, one example is with regard to wildlife habitat. Standard wind power wildlife habitat mitigation is set forth in Washington's Wind Power Guidelines, which were developed in partnership with government, development, and environmental interest groups, (including RNP) following more than a year of negotiations.⁹

The pre-development studies, mitigation agreed to during project construction, and post-construction monitoring protocols, are consistent with, and often go beyond Guideline provisions. For example, the project's approximately 550-acre habitat mitigation plan exceeds Guideline provisions. The Guidelines provide for a 1:1 ratio (of replacement habitat for permanently impacted habitat) if the impacted habitat is grassland or conservation reserve program habitat.¹⁰ The actual footprint from permanent facilities is between 93 and 118 acres.¹¹ The

⁹ AR 13845 (Ling, Exhibit 70, SL-T).

¹⁰ AR 13867, 13872 (Clausing, Exhibit 71-R, TC-T, p. 6. A 2:1 ratio is for shrub-steppe, or other "high-value" habitat).

¹¹ AR 6232 (Kittitas Valley Wind Power Project, Addendum to the Draft EIS, p. 1-1).

550 acre mitigation parcel would be a 5:1 ratio.¹² The Project is consistent with the Guidelines, as Ted Clausing, Regional Wildlife Manager for WDFW, stated in his testimony to the Energy Facility Site Evaluation Council.¹³

3.3 The Project's Renewable Energy Is Needed and Vital To State Interests

Responsible renewable energy development is vitally important to both our citizens' health and our state's economy.

(a) Clean, Affordable Energy is Needed

Utilities in the Pacific Northwest are currently seeking to add wind-generated electricity to their portfolios. Utilities such as Puget Sound Energy, Pacific Power, Idaho Power and Portland General Electric are seeking wind power.¹⁴ These utilities have essentially cut all new coal fired plant proposals from their integrated resource planning processes.

This drive is being pushed by a number of factors, economic, environmental, and legal. In 2007, the Washington Department of Community, Trade and Economic Development finalized rules to implement I-937, an initiative requiring utilities to provide 15% of their

¹² AR 6258 (Kittitas Valley Wind Power Project, Addendum to the Draft EIS, p. 3-6).

¹³ AR 13867, 13871-13874, 13887; (Clausing, Exhibit 71-R, TC-T, *see in particular* pgs. 5-8; *see also* Exhibit 71-R SUP, TC-T).

¹⁴ AR 13850-13854 (Ling, Exhibit 70, SL-T, pgs. 8-12).

power from renewable resources by 2020.¹⁵ As a utility-scale wind energy generation facility, the Project is a competitively priced renewable electricity source. The Project's low-cost power is particularly important for utilities to comply with I-937, considering that CTED's I-937 rules include strict cost limitations.¹⁶

In addition to I-937, this year, the legislature required the state to reduce greenhouse gas emissions to 1990 levels by 2020; 25% below 1990 levels by 2035; and 50 percent below 1990 levels by 2050, or 70% percent below "business-as-usual" projections.¹⁷ Developing economically attractive, renewable energy is critical for meeting these requirements.

One reason utilities are attracted to renewable energy like wind is because the price of the power it produces is stable and predictable over many years,¹⁸ particularly when compared to the volatility in the fossil and nuclear fuel markets.¹⁹ The price of fossil and nuclear fuels is subject to global market forces that subject consumers to volatile energy prices. Since 1999 the price of natural gas has risen 300%, the price of coal has increased 20% between 2003 and 2005, and the price of uranium has

¹⁵ The Energy Independent Act is codified at Chapter 19.285 RCW; Chapter 480-109 WAC.

¹⁶ See e.g. RCW 19.285.050.

¹⁷ Chapter 14, Laws of 2008 (Engrossed Second Substitute House Bill 2815).

¹⁸ AR 13783, 13788-13789 (Usibelli, Exhibit 60, TU-T, pgs. 6-7).

¹⁹ AR 13912 (Gagliano, Exhibit 72-4 SUP, TG-4).

increased 40% from 2001 to 2005.²⁰ The stability and predictability of renewable resources is good for utilities, as well as Washington's economy and utility customers.²¹ In Puget Sound Energy's 2005 Annual Report, the utility declares that its investments in wind power will save customers an estimated \$170 million over the next 20 years.²² The local economy benefits as well.²³ This project will assist the state in meeting its energy needs, as well as its economic and legal objectives.

(b) Environmental and Health Benefits

Wind is particularly important for addressing air pollution and climate change, issues critical for maintaining human health, the environment, and our economy.

Using more renewable resources like wind is a major step toward reducing carbon dioxide pollution and other pollutants.²⁴ The expansion of wind power resources will reduce reliance on sources with air pollutants, such as coal-fired power plants, and the subsequent emissions of mercury, carbon dioxide and many other air and water pollutants that harm humans and wildlife.²⁵ The University of Washington's Joint Institute for the Study of the Atmosphere and Ocean details the many

²⁰ *Id.*, (Gagliano, Exhibit 72-4 SUP, TG-4, p. 10).

²¹ AR 13783 (Usibelli, Exhibit 60, TU-T, page 6-7).

²² AR 13907 (Gagliano, Exhibit 72-1 SUP, TG-1, page 5).

²³ AR 13908.

²⁴ AR 13903 (Gagliano, Exhibit 72, TG-T, pg. 3, and Ex. 72.3 SUP, at AR 13910-13911).

ways that climate change is likely to impact Washington's economy.²⁶

The Governor agreed:

The benefits of this Project are considerable and will accrue to the citizens across our state. The Project will generate renewable energy sufficient to supply power to tens of thousands of homes, by feeding power to the grid that supplies our electricity needs. It will also provide permanent and temporary jobs, millions of dollars of investment and other economic benefits, and increased valuation of the county's real property to support state and local schools and other local purpose districts. Further, these benefits are being secured without contributing to climate change. Projects like these are consistent with Washington's long-standing commitment to clean energy, as expressed by the Legislature and recently by a majority of the state's citizens through I-937.²⁷

The Project will provide needed power at competitive rates. This power will doubly benefit our state's citizens, because it is clean.

4. CONCLUSION

The Project has been under review for five years. It has been cut almost in half. Setbacks were increased at the Governor's request. At a time when the state critically needs renewable energy, it should not take this much time, and this much review, to build 55 wind turbines.

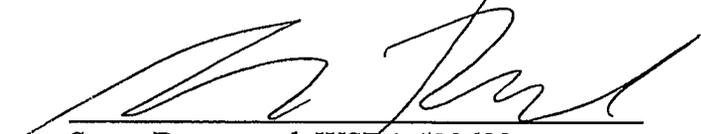
²⁵ AR 13843 (Ling, Ex. 70, SL-T; pgs. 5-7).

²⁶ AR 13903 (Gagliano, Exhibit 72-3, TG-T, pg. 3 and Ex. 72.3 SUP, at AR 13899-13900).

²⁷ AR 11907 (Correspondence from Governor re: EFSEC Recommendation Letter), September 18, 2007).

RESPECTFULLY SUBMITTED this 14th day of May, 2008.

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