

**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. 2

COUNCIL ORDER NO. 840

PREHEARING ORDER
DENYING INTERVENTION;
AMENDING SCHEDULE

On April 29, 2009 the Council entered prehearing Order No. 838 in this matter, reciting events at the initial prehearing conference, establishing a litigation schedule, and authorizing a late-filed petition for intervention by Roger Overbeck, who appeared at the conference and sought orally to intervene.

Petition for Intervention

The Order repeated instructions given Mr. Overbeck at the conference, allowing Mr. Overbeck to file a petition for intervention on condition that he file it with the Council no later than eight days after the prehearing conference, on or before April 30, 2009. He agreed orally to do so. The order made it clear that filing required the Council to receive a document on the date specified.

Mr. Overbeck did not file a petition for intervention on April 30, as required. On May 4 he mailed a document to the Council that it received on May 8, the day after responses would be due following a timely petition.

The document Mr. Overbeck filed did not comply with terms of the order, as it did not address the nature of his own interests or the basis for his entitlement to intervention, nor did it address his ability to fulfill the responsibilities of parties as set out in WAC 463-30. Instead, it made allegations about EFSEC's lack of jurisdiction about the chair's asserted lack of authority to act in a prior proceeding, generalized complaints about governmental bureaucracy and assertions that windmills decrease property values.

We find that the document mailed on May 4 and filed on May 8 failed to satisfy the minimum requirements of law for establishing a right to intervention, and that it failed to meet the time requirements established at the hearing, agreed by the petitioner and reiterated in the written order for filing. On both grounds, the petition is denied.

Correction to published schedule

As noted above, Council Order No. 838 established the schedule for this litigation that Applicant proposed and other parties agreed to. The recitation in the order, however, omitted the date agreed for the Applicant to respond to prefiled evidence of other parties. The corrected schedule is attached to this order as Attachment 1.

The Council is proceeding to reserve facilities and set dates for hearing sessions, within the time frames indicated in Order No. 838, and will by appropriate notice of hearing advise the parties and the public of the times and places set for receiving the parties' evidence and public comments.

Dated at Olympia, Washington and effective this 12th day of May, 2009.

/s/

C. Robert Wallis, Administrative Law Judge

Attachment 1

**Application No. 2006-2
Desert Claim Wind Power LLC**

Corrected Hearing Schedule

HEARING SCHEDULE, DESDERT 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
Desert Claim files rebuttal testimony	June 30
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*	

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