

MINUTES
ENERGY FACILITY SITE EVALUATION COUNCIL
OF WASHINGTON

March 15, 2004 - Regular Meeting
925 Plum Street S.E., Building 4, Room 308
Olympia, Washington 1:30 p.m.

ITEM 1: CALL TO ORDER

CHAIR LUCE: The regular meeting of the Washington State Energy Facility Site Evaluation Council for Monday, March 15, 2004, will come to order. Clerk, call the roll, please.

ITEM 2: ROLL CALL

EFSEC Council Members

Community, Trade & Economic Development

Department of Fish & Wildlife

Department of Natural Resources

Utilities and Transportation Commission

Kittitas County

Chair

Richard Fryhling

Chris Towne

Tony Ifie

Tim Sweeney

Patti Johnson

Jim Luce

CHAIR LUCE: The Chair is present.

MR. MILLS: And there is a quorum.

OTHERS IN ATTENDANCE

EFSEC STAFF AND COUNSEL

Allen Fiksdal

Mike Mills

Pete Dewell, ALJ – via phone

Irina Makarow

Ann Essko, AAG

Shaun Linse, Court Reporter

EFSEC GUESTS

Chuck Martin, Sumas Energy 2

Darrel Peeples – Kittitas Valley Wind Project

Mark Anderson – CTED EP

Karen McGaffey – Perkins Coie

Mike Robertson, Intervener for Kittitas Valley
Wind Project

Dave Grant, Whatcom County (via phone)

David Reich – Ecology

Duncan McCaig, Chehalis

Kirk Deal – Carpenter's Union

Alan Harger, WSDOT

Andrea McNamara, Senate Energy
Committee

NO. 3: APPROVAL OF MINUTES

CHAIR LUCE: The first matter is the approval of minutes for February 17, 2004. Are there any substantive corrections to the minutes?

MS. TOWNE: Not I.

CHAIR LUCE: Are there any comments on the minutes?

MS. TOWNE: I turned them in.

CHAIR LUCE: Do we have a motion to approve the minutes for February 17, 2004?

MR. IFIE: I so move.

MS. TOWNE: Second.

CHAIR LUCE: It's been moved and seconded for approval of the minutes. Discussion? Is there a call for the question?

MR. FRYHLING: Question.

CHAIR LUCE: There's been a call for the question. All in favor say aye.

COUNCILMEMBERS: Aye.

ITEM NO. 4: ADOPTION OF THE PROPOSED AGENDA

CHAIR LUCE: All right. The matter is the adoption of the proposed agenda. Do Council members have any revisions, additions, corrections, or otherwise to the proposed agenda? Hearing none, the agenda is approved.

ITEM NO. 5: PROJECT UPDATES

<i>Kittitas Valley Wind Power Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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CHAIR LUCE: Project updates, information items. We have a number of those. Irina, we'll begin with the Kittitas Valley Wind Project.

MS. MAKAROW: A very quick update. On Friday the Council issued Prehearing Order No. 8, Council Order No. 790, and for those of you attending here today you received a copy in your papers today which sets out the hearing schedule. If you have any questions, please don't hesitate to contact me or Adam Torem.

CHAIR LUCE: Thank you.

MS. MAKAROW: And that is all.

CHAIR LUCE: All right. Comments, questions from the Council? Hearing none, Wild Horse Wind Project.

<i>Wild Horse Wind Power Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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MS. MAKAROW: Wild Horse Wind Project. On March 9, we received several copies of the application for site certification for the Wild Horse Wind Power Project, and the Applicant also followed up with the funds required by statute and rule, and in your packets this afternoon there is also a cover letter addressed to the Council with regards to the submittal of this application. We have Darrel Peebles here today, and if Darrel would like to, we invite him to give us a little presentation about this newest EFSEC application.

MR. PEEPLES: I don't know how much of a presentation you want. I think I've already had a potential site study on the project, and if you read the cover letter for some reason it's going to be

strikingly similar to the cover letter for Kittitas Valley Wind Power Project. And we're kind of off and going on that.

We're having a meeting with staff and Jones & Stokes tomorrow trying to establish an EIS schedule and getting everybody's input into that. I just want to remind the Council that we filed this application in the EIS format, and I stated that in the cover letter. I had Chris state in the cover letter that we would probably be asking for a waiver of the old format. And I want to get people's input on that because we're using a new format on it. We will probably shortly outline a couple of the WACs we'll be asking waivers on, such as heat dissipation and things of that nature. We did not do that in the body of the application the way we did it last time because primarily we went with the EIS format. Is there any questions?

CHAIR LUCE: Questions from the Council? Allen.

MR. FIKSDAL: We received some copies of the application in the office last week, and I understand you're going to be sending out those applications to the local governments and different people.

MR. PEEPLES: We'll be doing the mailing on this, and then we'll also get probably additional copies of the application. Has anybody talked to my clients as to how many more additional copies you would like?

MS. MAKAROW: Yes. Staff has been in contact with Wind Ridge Power Partners, and we've provided them with a mailing list for interested persons, and we'll get some extra copies.

MR. PEEPLES: And I think that's the way we did it last time with Kittitas Valley too.

MR. FIKSDAL: When should people be expecting to receive their copies?

MR. PEEPLES: I would imagine this week.

MR. FIKSDAL: This week.

MR. PEEPLES: I mean I'll find out and let you know for sure. If not this week, next week clearly. And we're talking about all the mailing.

MR. FIKSDAL: Yes.

MR. PEEPLES: Anything else?

MS. MAKAROW: With regards to the next steps, EFSEC staff has developed a contract amendment, a task order amendment for Jones & Stokes to complete the application review and start on the environmental impact statement development for this project, and we expect them to start work this week. Probably tomorrow we'll be getting out notification letters and a press release, and the application will be put on our website, and we will start organizing for public information and scoping meetings, which will probably be held sometime in April.

CHAIR LUCE: Great.

MR. PEEPLES: Just briefly, the site itself is, as you're headed east on the old Ellensburg-Vantage Highway, the one before I-90 was put in. It's to the north just as you crest to start down to Vantage. It's just right at the top of the crest of the hill and to the north a mile or so. It's in that general area, if everybody knows where that is.

MR. FIKSDAL: It's on the Whiskey Dick Mountain.

MR. PEEPLES: Whiskey Dick Mountain for those of you that used to drive the old highway.

MR. FIKSDAL: What about us that are too young to remember that?

MR. PEEPLES: You'll never find it then.

CHAIR LUCE: Thank you.

MR. PEEPLES: Thank you.

CHAIR LUCE: All right. The next information item is BP Cherry Point Project.

<i>BP Cherry Point Project</i>	<i>Irina Makarow, EFSEC Staff</i>
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MS. MAKAROW: And the only outstanding item for BP is an update from the Applicant and Whatcom County on their progress with regards to reaching an agreement on the land use issues, and we have Karen McGaffey here and David Grant is on the phone.

CHAIR LUCE: Karen, Dave.

MR. GRANT: Yes.

MR. DEWELL: This is Pete Dewell.

MR. FIKSDAL: Hi, Pete.

MS. McGAFFEY: Good afternoon. Perhaps I could just summarize where things stand, and then David can jump in if he wants to add anything. Since the last time we met concerning the BP project and negotiations with Whatcom County, BP and Whatcom County have had several meetings and conference calls. And I think that both David and I are optimistic about reaching a potential agreement, but we don't have one yet. I think that has more to do with the logistics of trying to get everyone in the room at the same time and get a sign off from the County Council and Whatcom County. So I think it's fair to say that we are both optimistic that we will get a conceptual agreement together in the next couple weeks, but we're not quite there yet. Our hope is that if we were to reach such an agreement, it would resolve all the issues. Not just the land use consistency issues but all of the issues outstanding with Whatcom County.

CHAIR LUCE: David?

MR. GRANT: Yes, sir.

CHAIR LUCE: Have you got any comments?

MR. GRANT: No, that's a fair summary.

CHAIR LUCE: Councilmember questions? All right. I think we asked you to come and give us a report. You've given this report. Let's hear what sort of progress has been made within the next two weeks by next Council meeting, which is scheduled when?

MR. FIKSDAL: It would be the first Monday of April.

CHAIR LUCE: The first Monday of April, and we'll hope to have a conceptual settlement in hand by that point in time. Is that realistic?

MS. McGAFFEY: I think it's realistic that we would have a conceptual agreement.

CHAIR LUCE: Thank you. I appreciate your attending. Sumas Energy 2.

<i>Sumas Energy 2</i>	<i>Chuck Martin, SE2</i>
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MR. MILLS: I would like to introduce Chuck Martin from Sumas Energy, he's here to provide an update on the project to the Council.

MR. MARTIN: Hello, Chairman Luce and Council members. My name is Chuck Martin. I'm with National Energy and Sumas Energy 2. I used to know all the faces on the Council.

MR. FRYHLING: It's a big change.

MR. MARTIN: So it's fun to get to see who the new ones are. I'm going to take several minutes today, and I appreciate the opportunity to do that. And then if there are questions, I'll try my best to answer them. I just wanted to talk about where we are in terms of working under the SCA and then to talk about where we are with the National Energy Board on that permit process. I will take the National Energy Board second.

With the site certificate, you know we've continued to do our monthly progress reports to try to keep the staff and Council informed of where we are. We've temporarily paused our work on the offsets being that we have what we think is a pretty good inventory of opportunities, but we're having difficulty because of timing and logistics with the Canadian permit of actually implementing anything. So we think we're ready to go when our permits are ready to try to get

offsets in place. The next big milestone under the site certificate is the PSD permit which I think technically became effective last April, so about a year ago. And so at the 18-month point we need to renew that. So we have just started thinking about that, and we'll be talking to staff about the right way to go through that process. So since obtaining the site certificate we've been focused on the National Energy Board permitting process, which is a permit for about a five-mile transmission line that would run from Sumas, at the Washington State border, five miles north into British Columbia to connect up at Clayburn, which is the BC Hydro main grid. So it's about a five-mile right of way pretty much due north over an existing rail right-of-way and an industrial corridor.

Some of you will know that two weeks ago the National Energy Board of Canada made their ruling and denied our permit application, so that's where we stand right now. We have 30 days to make a decision to appeal that, if we're going to go to the Federal Appeal Court of Canada, which is one of the options that we have. We also have the option of just going directly back to the board and asking for a reconsideration, and there are probably other options which we haven't fully identified at this point. We're busy trying to understand the decision and what the likelihood of a positive outcome from either reconsideration or appeal is. At this point, I think it's likely that we'll appeal, but we probably won't make that decision until two days ahead of the deadline, so that we've really fully thought it out.

Our preliminary review of the decision, leads us to believe the board has made a number of, I don't know if mistakes is the right word. We believe there's a number of possible grounds for a positive appeal. For the first time that we can identify, the board has made a decision not based on standards. In fact, the National Energy Board pretty much agrees with the conclusions of this Council that the project meets all standards and in some cases surpasses standards. What they've done, what they've seemed to have done, is apply a cost benefit kind of analysis that's typically applied, but the way they've come to their conclusion seems different and possibly incorrect. I guess my summary, these are my words, is that they've looked at the project and said, well, the impacts even though not significant are very localized, and the benefits surprisingly are very diffuse. On that basis they've said that there's not a proper weighing of the cost and the benefits. My initial reaction to that is that these projects would always sort of look that way. So we believe there are a number of specifics underneath that that may be a basis for appeal, and I expect that we will make the decision to do that, but we haven't made it at this point. Anyway that's my report, and I would be happy to try to answer questions. Our 30-day period is up on April 2, so somewhere just ahead of that date, we'll make a decision and let everyone know about it.

CHAIR LUCE: Thank you. Councilmember questions? Please stay in touch.

MR. MARTIN: Thank you.

CHAIR LUCE: Thank you very much for coming, Mr. Martin.

MR. MARTIN: Thanks for the opportunity.

<i>Chehalis Generation Facility</i>
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<i>Duncan McCaig, Chehalis</i>

CHAIR LUCE: The next item on the agenda is Chehalis Generation Facility. Duncan McCaig.

MR. MILLS: Duncan is here to provide an update on status of the project and also to provide some information on the noise improvement program that they've undertaken.

MR. McCAIG: Thank you, Mike, and thank you to the Council for the opportunity to provide an update, which I have a handout here that I shall provide after I make a presentation. I call this the quarterly plant report to EFSEC, and then after that I will also have a handout, and I would be happy to walk you through some photos of the plant and our noise reduction activities.

We've generally had a very good quarter. The plant has been in operation pretty much throughout the months of January, February, and March to date. In fact, we have our first scheduled shutdown starting tonight. Safety, no recordable safety incidents. On the environment, no incidents to report. EFSEC and the Southwest Clean Air Agency - an audit was conducted we believe successfully last week, and the plant continues to monitor wastewater and prepare its monthly and quarterly reports.

The site as far as the grounds are remaining in excellent condition and stormwater originating from the site remains clear. We're at this time preparing our application for a Title V Air Operating Permit, and we intend to submit that application in May. We've met with EFSEC and Southwest Clean Air on the permit. Our plant staff continues to be 19 operating staff. We also include Tom Schneider who is still with us working on warranty issues and noise reduction issues. We have some contractor employees working on warranty issues and some additional subcontractors helping us with noise attenuation activities. The plant availability has been very high, greater than 98 percent for this quarter, which we think is quite good considering the plant achieved provisional acceptance only in August of 2003. The plant also remained in operation even during the January freeze adding to the northwest energy mix. Our emphasis right now is on achieving reliable startup and also on economic operation. And we are working with our Tractebel management and engineers in Houston to seek ways to improve the flexibility of the plant as a merchant plant and to continue to improve the plant economics. We are also continuing to emphasize the development of our maintenance program and operator qualifications. We are preparing for a short outage in early May to inspect the GE Gas Turbines, work on warranty items, to complete noise items, if necessary, if they're not done by then, and to conduct other routine maintenance and inspection. Since entering into commercial operation we have not had to perform much in the way of modifications or construction, but we are continuing to do warranty work.

For noise mitigation, during this last quarter we have completed fabricating and installing six out of eight boiler HRSG silencer additions. We've completed the installation of acoustic panels around our closed cooling water fans, we've installed panels around bypass valves, and we continue to investigate and test ways to reduce pipe noise. We've also been working with one of the vendors on reducing noise where the bypass steam dumps into the large ducts for the air cooled condenser. Due to continuous operation of the plant, we've had little opportunity to test noise other than through our routine weekly testing. However, as committed, we intend to, since we have a shutdown tonight, we expect to be able to start up in the next few days or weeks, and so we'll use that as an opportunity to test noise during startup and present results to EFSEC. During the past quarter, we received only one inquiry from a neighbor in mid-January during an upset condition due to noise, and since then we have installed additional silencers to reduce the noise level.

I would also like to mention before we go to the slides, another issue that we're working on is the lengthy time required during the cold start to start the plant up. As you know, we are required to reach emissions within three hours upon startup, and we have found that because of the lengthy time the steam turbine takes to equalize temperatures within the turbine that it has at times taken significantly longer than the three hours. That's also often as a result of equipment problems. We have been able to achieve the three-hour emission limit, but it has proven to be a challenge, and we're looking for ways to more readily meet that limit or also at the possibility of requesting additional time to reach emissions on startup. I would like to direct your attention to the slides that I've handed out, and I'll just walk you through the m. Number one is an aerial view during

construction just to show you the massive effort that was involved and the large number of people and equipment involved in that. The next slide shows the plant again from the air as it was nearing completion last year. Slide three shows our operation staff taken about ten months ago. Slide four is just a note that we're now focusing on operating and maintaining the plant, and these four individuals are looking at some sumps that suffered some damage during the January freeze. Five, the control room now is operating very smoothly benefiting by the experience of our mostly ex-Navy nuclear operators. We think we're off to a very good start on operations. Again, the major challenge is starting up smoothly and efficiently. We have an ongoing training and qualification program. This is on top of approximately five months of training that the operators received last year. Each operator is designated certain systems, becomes an expert, is certified, and then trains all of the other operators on the operation and maintenance of that system. Slide 7 is just a summary of our operations record. We had high dispatch August through November, with low dispatch in December due to high gas prices. We had very high dispatch in January, February, and March to date. Slide 8 just summarizes the challenges, and that is to continue reducing noise and actually to complete our noise attenuation program. Also to improve cold weather protection, we have several contractors on site adding insulation, adding heat tracing because we did suffer some problems; although, we were able to maintain operation during the cold weather. We have various engineering and construction issues that we're dealing with as part of the warranty process. Reliable, predictable starts are important, and we're looking for ways to increase our flexibility, so that the plant is more valuable to the marketers. Slide 9 shows a noise reduction unit that we installed for the hogger, for the unit that pulls the vacuum on our air-cooled condenser, and so we obtained a large cylinder, purchased a perforated stainless steel metal sheeting, obtained noise absorbing material, and basically fabricated the internals. And we were just delighted with the quality and with the ability of that equipment to reduce noise and decided to expand our program because it allowed us to move rapidly rather than waiting for three to four or more months for vendors to provide the equipment. Slide 10 gives a good view of many of the additions that we've made. You see in the upper left there are two large tanks. Those are silencers. One silencer has scaffolding around it as we are ready to install an extension on the high pressure silencer tank. Our silencer to the right already has an addition. That's for hot reheat. Two smaller silencers near the stack are for intermediate pressure and low pressure silencers, so those additions have already been made. And then if you look to the lower middle of the picture, you will see some walls. Those are sound absorbing walls that we've installed around some high pressure bypass valves. Slide 11 just shows a closer picture. It doesn't show up very well in black and white, but Mike has the color picture showing the fabrication efforts. These are basically concentric tubes with sound absorbing material, and they do an excellent job of reducing noise.

MR. FIKSDAL: Duncan, what's the radius of this or how big a piece of equipment are we talking about?

MR. McCAIG: The radius is something like 12 feet. This one is about 12 feet approximately. It's huge. It's about 8 to 10 feet high, so they're enormous.

MR. SWEENEY: Is there a person out to the left-hand corner in a tank or something? Is that a shadow of a head?

MR. McCAIG: No, there isn't.

MR. FIKSDAL: But if you think there is.

MR. McCAIG: No, they're enormous. Slide 12 just shows the same silencer addition a little closer. Slide 13 is from the top of one of the boilers, and looking down in the center of the

picture, you'll see kind of a boxy squarish device with some vapor coming out. That's a silencer unit that we installed on top of the blowdown stack. So normally the vapor is low velocity and very quiet, but during startup when we have continuous blowdown that was quite noisy too, and that silencer has been very, very effective. In the upper right you'll see one of the existing silencers provided by the vendor. You can see that the filling tubes inside are not as densely packed as the ones that we fabricated. Slide 14 shows a better view of the noise wall that I mentioned. Those panels again have sound absorbing material, so they not only block the sound, but they absorb it as well. Slide 15 is noise absorbing walls in a different area over on the west side around other bypass valves above the large ducts to the air-cooled condenser. Slide 16 is the sound absorbing walls that are placed between a large bank of fans and the admin building, but also built high enough that they can absorb some of the noise that was going over the building. Slide 16 shows a vendor provided building for our boiler feed-water pump.

MS. TOWNE: Seventeen.

MR. McCAIG: Slide 17, thank you. The pumps added substantially to the noise that we recorded on the east berm, so those were big improvements. Slide 18 is a building enclosing the gas metering station provided by Williams, and that building has significantly lowered the noise, greatly lowered the noise in that area. Slide 19 is just a view from the underside of the air cooled condenser partly to show you the massive size of it. The fan blades are 35 feet in diameter approximately, and there are 30 of them. However, the fans are surprisingly quiet, and many of the fans in this mild weather, many of the fans are operating at half speed, so they're even quieter. Slide 19 is just a slide to show you just a glimpse of the impact of the cold weather on some of our outdoor equipment. The cold weather really probed that part of our system, and so we are making some changes. And 20 is a slide of a BPA substation. Since I come out of the power industry I kind of like that, so I included it. But actually I just wanted to say that our relationship with BPA is excellent, and we're cooperating fully on maintenance, and it's a very good relationship. And then the last slide is a rendering of the plant. Finally, I would like to extend an opportunity or an invitation to the Council to visit the plant and see this equipment firsthand. We would be delighted to host you at the plant. I'm open for questions.

CHAIR LUCE: Council questions?

MR. FIKSDAL: Do you have a time that you think you will be done with all the noise attenuation?

MR. McCAIG: Our time frame depends on when we can shut down, so we have two silencers that need to be installed. And one is ready to be installed and the other is just in fabrication. So if we're down for a week, we should have all of those in place. That is the majority of our noise reduction. The next thing we'll do is to take noise readings again on the next startup. Depending on those readings we may very aggressively start pursuing noise reduction on the piping. We find that there is a significant amount of noise, especially during the startup, that transmits from the piping through the supports that are uninsulated into the structure, and so that's the next avenue. Beyond that an area that we're looking at is the so-called steam dumps where the bypass steam dumps into the large duct to the air-cooled condenser. On our next opportunity we're going to take noise readings of that. If the noise levels are unacceptable, there are some shrouds that can be put around the tubes inside this large tube. So I would say that the plan for noise reduction that we had discussed about three months ago, we are close to being a hundred percent complete. But depending on the readings we will continue to attenuate until we get to the levels that are acceptable.

CHAIR LUCE: Thank you. I'm sure the Council will be interested in coming down to see the plant. We will work with yourself and Allen and the Council members to find an acceptable date for a site visit.

MR. McCAIG: Okay. Thank you.

<i>Columbia Generating Station</i>

<i>Mike Mills, EFSEC Staff</i>

CHAIR LUCE: Thank you. Next item is Columbia Generating Station. Mike.

MR. MILLS: Thank you. Just a brief report on Columbia Generating Station's operating status. They're at 100 percent, and they've been on line for 256 days. I would report that there was a Northwest employee that died at the site on March 10 from what are being called personal health issues. Northwest did contact the Department of Labor and Industries, and they're performing a follow-up investigation. I was at the site that day, and I have the name and phone number of the L & I inspector, and I will follow up with him. But, again, the death was believed to be caused by personal health issues and was not a work-related kind of incident. But I will follow up with the L & I inspector on that.

Also in your handouts I believe there's a report from the Nuclear Regulatory Commission dated March 3, 2004. It's their annual assessment letter of the Columbia Generating Station. You're aware that the Nuclear Regulatory Commission performs ongoing inspections at the nuclear plant, and they issue reports on those inspections. Basically the findings indicate that there were no areas having safety issues and no findings that would require additional NRC oversight. So I think this is a good report on the operations and how the plant is operating from the Nuclear Regulatory Commission. They do cite a couple of follow-up issues, but I believe I would ask Energy Northwest to come and report on those directly to the Council because they are more familiar with those than I am. I think this is a good report of their 2003 operating experience, so that's available for your reading.

CHAIR LUCE: Thank you. Comments, questions? Moving ahead to the WNP-1/4, Mike, do you have a brief oral comment?

<i>WNP-1/4</i>

<i>Mike Mills, EFSEC Staff</i>

MR. MILLS: Just a brief report. We've been in contact with Jeff Tayer who's the Central Washington Regional Director for the Department of Fish and Wildlife. As you recall, we reported he's going to be the lead in looking at the off-site mitigation opportunities. He's indicated to us he's going to be in contact with Mr. McWhorter, who owns the piece of property that the Department and EFSEC are looking at as having the highest priority for possible acquisition in the Benton County area. The Department committed to take the lead and contact Mr. McWhorter and will be reporting back to the Chair and to staff on a regular basis. I believe Jim has also had a chance to talk with Mr. Tayer and indicated we would certainly like to hear back from them in the next 60-day timeframe on how they're doing with the McWhorter discussions. Based on how that goes, then I think the Council will determine what the next steps are.

CHAIR LUCE: We'll be looking for a recommendation from the Council committee on that, so Councilmember Fryhling and Councilmember Towne, and Councilmember Adelman, who is not here today, will be taking the lead on giving a recommendation for that issue. All right. Questions? Satsop CT.

MR. MILLS: On the Satsop CT project I believe we reported that Duke Energy and Energy Northwest have submitted a request for a technical amendment relating to some of the water use conditions of the site certification agreement. We've asked Karen McGaffey to update the Council on that effort, and I would report that last week staff issued a public notice indicating that we have received that request, and we gave some timeframes for accepting public comments. We will hold a public hearing in conjunction with your April 19 Council meeting. Karen.

MS. McGAFFEY: Mike asked me to just give you a little background on the request. I think in your packet you've got a copy of a February 12 letter from me, as well as the memorandum of understanding that was attached to that letter. Again, this is an issue that predates some of your involvement on the Council. A couple of years ago when Duke started constructing the Satsop project, there were a few issues that arose about the water use and the facility design with respect to the water use. That led to several meetings, involving Chuck Carelli and staff members from both Ecology and Fish and Wildlife. Over the months we've had several more meetings with folks from those agencies to try and resolve and clarify some of the issues that we began discussing more than a year ago. The memorandum of understanding is kind of a culmination of that effort, and you will see that it addresses four different issues.

The first issue, which is the subject of the request for an amendment of the site certification agreement, concerns the water use provisions of the SCA. For those of you who have looked at the current version of the SCA there's somewhat complicated language concerning water use. There's talk about an authorization to use 8.6 cfs for process water, and then there's a reference to using an additional 0.9 cfs for "quench water". In discussing these issues with Duke and with Fish and Wildlife and Ecology, there was agreement that we should simplify all of that language to comport with the current design of the facility which will only require 9.2 cfs water, and there won't be this distinction between what's process water and what's quench water. The idea is to minimize the amount of water being withdrawn from the well and discharge the water that's not used to the river. So that's what the request of the amendment language is about. Both agencies are in agreement that that's the way to go, so the letter spells out the request for which specific provisions in the SCA would need to change with respect to that.

The remaining issues that are addressed in the memorandum of understanding are probably worth touching on briefly. The second one has to do with the base flow restrictions on water use that are in the site certification agreement. Like many water rights that Ecology issues, there's a limitation on the water rights associated with this site certification agreement that says when the water in the river falls below these regulatory base flows, you can't withdraw water. What we've had extensive discussion with Fish and Wildlife and Ecology about is how that would be applied in practice. In a power plant you're not going to switch on and off the water every minute as the flow changes in the river, so we've agreed upon a system of 24-hour averages and how we would go about in practice deciding whether or not the low flow limitation was in effect or not. Again, there's agreement among the agencies on a system that makes sense to all of us. I don't think this requires an amendment to the SCA, but what we would like from the Council is your sign off on that being the way that the Council intends to implement those provisions. That's the second major issue in the memorandum of understanding. The last two are pretty simple and straightforward. Issue 3 is the protection of the USGS gauge. There's a gauge out there in the river that monitors the flow level, and in the past there's been some damage and vandalism to

that gauge, so we've agreed upon some additional measures recommended by the USGS, like a security light and signage to tell people to stop trashing the gauge. The last thing has to do with temperature monitoring. For those of you who have looked at the NPDES permit for this project, you know that there are requirements about temperature limits and how that would be monitored. This really spells out the details in how that monitoring would occur. The permit itself requires the submittal of a plan for monitoring all of the parameters of the permit, and this really just addresses one comment, although we did amend the plan that will be submitted to the Council. So that in a nutshell is the agreement we reached with the two agencies, and the letter addresses in more detail the amendment to the site certification agreement that we're requesting. So I can respond to questions if that wasn't clear.

MS. TOWNE: A couple of questions. Will the MOU become an attachment to the SCA incorporated by a reference?

MS. McGAFFEY: I don't think it would have to, but it certainly could because we're requesting a technical amendment to the SCA. I think the process that the Council's noticed is to hold a hearing on the 19th and then make an action by resolution, and the MOU could certainly be incorporated by reference to that resolution.

MS. TOWNE: On the temperature monitoring as I read it very quickly, you're going to do grab samples on a schedule unless somebody else is discharging into your line or that line that you use. In that case I can see why you don't want to get stuck with somebody else's high temps, but how are you going to know what the temperature and discharge is?

MS. McGAFFEY: My understanding, and I have to confess that it's been a while since I've looked at the temperature monitoring of this, is the concern that Fish and Wildlife had here is that the water as it traveled from the site I think it's about a half mile pipe down to the river that it might change temperature. So even though the discharge limits were being met at the point that it went into the pipe, there might be a problem by the time it got to the river. So the idea is to do some testing early on before there's anyone else contributing to that pipe just to confirm what we suspect.

MS. TOWNE: So this is before that.

MS. McGAFFEY: Right.

MS. TOWNE: Is that clear in the MOU?

MS. McGAFFEY: I hope so, but perhaps we'll go back and take a look at that and make sure that's clear.

CHAIR LUCE: Any other Councilmember questions? Staff, any questions?

MR. FIKSDAL: No, I think as far as how we incorporate the MOU, that if the Council wants to modify the SCA by technical amendment, we can incorporate that into the resolution that you pass changing the SCA.

CHAIR LUCE: Okay. Hearing nothing more on the project updates, thank you very much, Karen, for coming. I appreciate your hard work on this to resolve the parties' concerns.

ITEM NO. 6: EFSEC RULES

<i>Rules Review Discussion</i>	<i>Jim Luce, EFSEC Chair</i>
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CHAIR LUCE: The next item on the agenda is EFSEC rules, rules review and discussion. The Council is in the process of reviewing rules prior to them being posted once again on the Council

website. That will continue and hopefully be completed if not late today then maybe tomorrow. And at that point in time we have a cost benefit analysis. And how's the work coming on that?

MR. FIKSDAL: I guess I have a question. The work is coming fine, and we can talk to David about that. We'll get to it in the next item. As you all know the legislature has passed a bill that would require EFSEC and the Department of Ecology to require mitigation on CO2 for new energy facilities. The Council had proposed a CO2 rule that evidently now the legislature has superseded; therefore, I guess the question is, does the Council want to take any official action or notice or something to say something publicly that they do not intend to go forward with their CO2 rule making? And if that's the case, how will that affect the benefit cost analysis and whether we want to go ahead with it? That was one of the bigger points of that analysis if I'm not mistaken. I guess the first thing is, does the Council want to make some official statement regarding the CO2 rule or not?

CHAIR LUCE: Let's wait until the Governor signs the bill, and then we can decide that at that point in time. It would seem to me that the statute does supersede -- maybe not even supersede is the right word. The statute is the definitive word on CO2 mitigation for the power plants, and I guess I don't know what sort of public words we could put out on that. We could put a press release out or something to that effect. But my only interest would be in terms of how it affects the cost benefit analysis, and I'm not sure that it would, but I would love to hear comments about it.

MR. FIKSDAL: Before we hear from David, first, I still get several calls from people all over the country asking what the status of our rules are, and particularly the CO2 rule, and so I have been telling them that the legislation has been passed, but we haven't put this --

CHAIR LUCE: I would say activity has been suspended on the CO2 rule pending the signature or veto, but I anticipate signature by the Governor of the CO2 legislature.

MR. FIKSDAL: I guess that's what I wanted the Council to tell me.

CHAIR LUCE: Would we concur to suspend the CO2 rule?

MR. SWEENEY: Yes.

MR. FIKSDAL: Now, David.

MR. REICH: Well, I just had a couple of comments now; although, I think one of them has been addressed. A while ago you asked me to look at the idea of looking at a higher per ton cost than what was actually in 3141, so I'm assuming that I should no longer look at that. I just want to get verification on that. If CO2 goes away, well, I guess a question for the Council is when I was looking back at my correspondence sort of the original idea behind doing a benefit cost analysis was the CO2 rule, and that's all I have in my notes. No reference to the other rule changes. And since you elected to do that, I guess I wanted to ask if that was something the Council wanted to do. You are required to still do the SBEIS, and I'm working on that. I guess the related comment obviously the CO2 stuff was the big cost and benefit item in the analysis, so that's gone away now. We still have costs, of course, but they're a lot smaller relative to the CO2 stuff. So the SBEIS I'll revise it per the rule changes you're making now on the other rules. But the benefit cost I will still do that if you want me to, if you direct me to, but it's a question of whether or not you think it's useful to your policy making now that the CO2 component will not be in it or whether you don't think so.

MR. SWEENEY: We are going to do some CO2 rules somewhere down the line.

CHAIR LUCE: Down the line.

MR. SWEENEY: But we won't need to do such an analysis because the legislature has already done it.

CHAIR LUCE: Right.

MR. FIKSDAL: The legislation calls for the Council to adopt rules to implement the new law should the Governor sign it. So that would be a specific rule on implementation and not the development of rules and the cost of those rules.

MR. SWEENEY: Okay.

CHAIR LUCE: My recommendation would be if there's not a need to do a benefit cost analysis that we stop work. Council's done.

MS. TOWNE: In support of that position you will note that Section 7 says the Council, the Department, and the authority shall develop rules to carry out this chapter. And I think there's a mistake there of authority singular when there's several activated air agencies, authorities, and how do we get together with those folks? I'm hoping that the Department of Ecology air section, which works with the activated air agencies will convene them. But even if assuming that's how we do it, the responsibility, if any, for what David is doing would be shared by all those agencies, not just us, and this is some time in the future, I assume.

MR. FIKSDAL: Again, it's implementation. It's not a rule itself.

MS. TOWNE: There's one place where we do have rule making. We can adjust the price in Section 2(5)(8).

CHAIR LUCE: In two years.

MS. TOWNE: So that would be the only other place, but that's prospective and speculative.

MR. SWEENEY: Save your notes.

MR. REICH: Okay.

CHAIR LUCE: Thank you very much.

MR. REICH: So no benefit cost and continue on the SBEIS. I will revise that to match the proposed rules, and I guess as soon as they're put on the website, I can go forward.

CHAIR LUCE: Yes.

MR. ANDERSON: I'm just wondering how close we are in the cost benefit analysis? And if the law itself is actually relatively close to what the proposed rule was, it might be really interesting information to see what the cost benefit analysis was going to say. If there's a lot more work to be done, sure. But if we are very close on it, it might be very informative to us in general about what this rule would have done or what the law will do as we look forward to changes that might come down the road as well.

CHAIR LUCE: Well, I think there is already a draft; isn't there?

MR. REICH: There's not a draft out.

CHAIR LUCE: But work has been done.

MR. REICH: Work has been done. The models have been run and I have most of the results. But I've never compiled it, put it all together in a usable framework.

CHAIR LUCE: I think if Energy Policy wanted to talk to the Department of Ecology they could gather that information without doing any more work, without incurring any more expense.

MR. ANDERSON: We can do that.

CHAIR LUCE: Particularly since we don't have anybody to charge it to now. Now if CTED wants to bear the cost.

MR. ANDERSON: We'll talk with him.

CHAIR LUCE: Thank you very much. So we're not going to go ahead with the cost benefit analysis.

ITEM NO. 7: LEGISLATION

<i>Update</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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CHAIR LUCE: The next issue, legislation. First of all, I would like to welcome Andrea McNamara here from Senate Energy Committee. Andrea was instrumental and helpful, very helpful in terms of processing SHB 3141 through the Senate, and the amendment sort of adopted after discussion with Andrea and obviously the approval of the senate. So thank you very much, Andrea, for all your hard work on this. The legislation has been adopted by the House and amended by the Senate. The amendments have been concurred by the House, and the bill has been forwarded to the Governor's office for signature to occur within 20 days. The 20 days as I understood it started last Friday. Dave Danner indicated to me, he thought that was the transmittal date. The Governor hasn't yet said when he's going to sign it, but he has indicated unless there's some incredible change of mind that he will sign it. So I don't have any more to report. As soon as we have a firm date for signing we will get that out to everyone. Andrea, do you have anything to add?

MS. McNAMARA: No.

CHAIR LUCE: So a good bit of business on everybody's part. It was a give and take across the board, and I think we have a statute that will work over time.

MR. FIKSDAL: One other item on legislation I might note is the supplemental budget that was passed by the Legislature contained 3.5 million dollars to the Department of Community, Trade and Economic Development, and that was essentially to increase EFSEC's spending authority, so that they could handle the 3.5 million dollars for the WNP-1 and 4 mitigation in our budget, so we don't get tweaked by the spending authority.

CHAIR LUCE: There were a number of bills that failed. The transmission siting bill did not move forward. There was a bill that would have approved notices by email, that failed. On the transmission siting I think there's still some interest in that on behalf of Chairman Morris and he may continue discussions in an informal way between now and the next legislative session. I guess I also would note that we've received a letter from the Washington State Senate -- this bears in part on the next item -- asking me to attend a committee meeting on April 14, to discuss Council funding issues, and I'm going to look forward to doing that. And I will look forward to being accompanied by Allen Fiksdal, and we'll be preparing a power point presentation which we will give to the committee and then answer questions regarding how we intend to proceed. As you're aware we've already started on the process of defining a policy by which we will decide what expenses, if any, and I assume there will be some, need to be recovered through general fund funding. So we've got a process underway to define exactly what those costs might be. We'll be giving the Senate Energy Committee the best information we have as of April 14, 2004, and then inviting them to closely monitor, and we will keep them apprised as we come along on that issue.

ITEM NO. 8: EFSEC OPERATIONS

<i>Update</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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CHAIR LUCE: EFSEC operations. That sort of leads into --

MR. FIKSDAL: -- this next thing. You have a little handout in your handouts, budget items. This is the chart.

CHAIR LUCE: Do you have one, Andrea?

MR. FIKSDAL: No. We'll get you one, Andrea. This is a chart that you have seen before that I've been trying to develop. Basically it identifies the different budget items that we have, using the items in the state budget process, and I'm trying to identify different categories that may not be directly attributable to application processing, compliance monitoring, or potential site studies. I think basically, turn to the very last page in the very back. I started doing all that other thing, and then I started thinking we ought to just start with a list and then go backwards. Of course, all this is draft. Basically it says work activities not directly attributable to current potential site study, application processes, or compliance monitoring. We might look at rule making, whether it's new or amended rules that current applicants or certificate holders would not be subject to, would be an item. The other major thing that I could see was conferences, participation or attendance at conferences that do not apply to information, methods, technologies, policies, or practices used in application reviews or compliance monitoring. And then "other" is basically the whole other thing. Other than de minimus time meeting, talking and/or discussing issues or items related to energy, EFSEC, or other governmental functions or regulations not directly related to current applicants or certificate holders or specific projects. And then I was thinking, well, how much time is de minimus? If somebody calls me up on the telephone and asks me about some energy issue should I say, "I'm sorry. I can't talk to you because I'm not getting paid if isn't about a specific project" or things people call and want some information about? Is it four hours a week? Is it ten percent of the time? Is it two hours a week? Is it five percent of the time? Is that the types of things the Council wants to try to set as a policy or just say there is a de minimus amount of work that is allowable that we acknowledge can't be charged directly to an applicant or a certificate holder of a potential site requester? Is that the way to approach something?

MS. TOWNE: If it can't be attributed to them, there is no allowable de minimus segment of your time. It either is allowed or it's not allowed and we get funding. I would put that under a public information heading, not site specific, not application specific, and every other agency in state government is directed to undertake public involvement, public information. It's embedded in the open public meetings act and public records. We should have an allowance for that sort of activity which is largely carried out by staff responding to inquiries, providing outreach information about functions.

CHAIR LUCE: One of the statutory directives it to coordinate among state agencies and we've got other federal agencies regarding certain matters of energy issues.

MS. TOWNE: That's separate, yes, but I'd put it in that same box.

CHAIR LUCE: That falls in the same box, right.

MS. TOWNE: I wouldn't just say, oh, well, it's not enough to count. I think we ought to. If we're talking to the legislature, it ought to be one of those items. The legislature is the one that puts the burden on state agencies, and there's a price attached.

CHAIR LUCE: Are you saying this is an unfunded mandate?

MS. TOWNE: Well, 206 does come to mind, but we don't have to go there. Or 602 or whatever it is.

CHAIR LUCE: I tend to agree, Allen. I don't think we have to cover all of our bases. There's a public involvement section of this, then we will list so many dollars for public involvement. We may not get it exactly right, but we'll try to. Then after you talked on the phone with the public for 40 hours, you just tell them sorry the meter is no longer running. And if you want to keep talking, please contact your legislators. I think we have to account for everything.

MR. FIKSDAL: One of the issues though that we're going to come up with, if you adopt this policy, and if you put out a time line that sometime in June you're going to adopt the policy, you still have one full fiscal year left in this biennium that we have no funding for any of these activities.

CHAIR LUCE: Right.

MR. FIKSDAL: So in a way I was trying to get at the next fiscal year with this policy. How do we work with items of this nature, public involvement, public information, if that's the way you want to term it, without funding?

CHAIR LUCE: Well, that's part of the policy development. We will have to talk about that.

MR. FIKSDAL: Okay.

MR. SWEENEY: Can you just send your calls to Mark?

MR. ANDERSON: Some of the calls, sure.

CHAIR LUCE: Okay. So this was helpful and you want feedback.

MR. FIKSDAL: Yes.

MR. SWEENEY: Real feedback.

CHAIR LUCE: Any of our stakeholders, we would love for you to give us feedback on this too. So that concludes the information on the EFSEC Operations.

ITEM NO. 9: OTHER

CHAIR LUCE: Anything under "other"? "Other" items for the good of the order, good of the Council? Irina?

MS. MAKAROW: Nothing else.

ITEM NO. 10: ADJOURN

CHAIR LUCE: Comments from the public? Hearing none, we stand adjourned.

(Whereupon, the Council meeting concluded at 2:35 p.m.)