



STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

February 23, 2005 draft Special Meeting Minutes

1. CALL TO ORDER

Chair Luce called the February 23, 2005 special meeting to order at 925 Plum Street S.E., Building 4, Room 308, at 2:30 p.m.

2. ROLL CALL

Council members present were:

Richard Fryhling	Department of Community, Trade and Economic Development
Hedia Adelsman	Department of Ecology
Chris Towne	Department of Fish and Wildlife
Tony Ifie (via phone)	Department of Natural Resources
Tim Sweeney	Utilities and Transportation Commission
Jim Luce	Chair

A quorum was present to conduct business.

Staff in attendance were:

Allen Fiksdal – EFSEC Manager, Mike Mills – Compliance Manager, Mariah Laamb – Council Secretary, Ann Essko – Council Attorney

Guests in attendance were:

John Lane – Counsel for the Environment, Cindy Custer – Bonneville Power Administration, Darrel Peoples – Attorney (Kittitas & Wild Horse projects), Mark Anderson – Community, Trade and Economic Development, Karen McGaffey – Attorney for Satsop CT Project, Tami Garrow – Grays Harbor Public Development Authority, Curt Leigh – Fish and Wildlife, Tom Noguchi – Bonneville Power Administration, Kevin Smith – Invenergy, Steve Foldesi – Omega Rigging

Guests attending via phone:

Chris Davies – EES Consulting, Gary Saleba – EES Consulting

3. ADOPTION OF PROPOSED AGENDA

Chair Luce asked for any changes to the agenda; with none offered, the proposed agenda was adopted.

4. WALLULA POWER PROJECT

<i>Schedule to Consider Request to Terminate SCA</i>	<i>Mike Mills, EFSEC</i>
--	--------------------------

The Council received a letter from Competitive Power Ventures dated February 8, 2005, requesting the Site Certificate Agreement (SCA) for the Wallula Power Project (Wallula) be rescinded (terminated). Competitive Power Ventures, Inc., acting on behalf of certificate holder Wallula Generation, LLC, requests that the SCA for Wallula be terminated and that Wallula Generation, LLC be absolved of all monies perceived to still be outstanding.

In accordance with the provisions of WAC 463-66, termination of an SCA is an amendment to the agreement, thereby triggering WAC 463-66-030, which specifies that the Council will need to “determine a schedule for action,” and “hold one or more public hearing sessions,” in its consideration of the proposed SCA amendment.

Staff recommends that the Council set its April monthly meeting to discuss Wallula Generation’s request to terminate the Wallula SCA and request that Wallula Generation/Competitive Power Ventures make a formal presentation to the Council on their request.

Motion: Concur with the staff recommendation to discuss the request to terminate Wallula’s SCA at the April 2005 Council meeting and hear a presentation from Competitive Power Ventures/Wallula Generation at that meeting. Tim Sweeney made the motion and Chris Towne seconded the motion. The motion was approved unanimously.

5. SATSOP COMBUSTION TURBINE PROJECT

<i>EES Consulting Report on Financial Review of Invenergy Investment Company LLC & Affiliates</i>	<i>Kevin Smith, Invenergy & Chris Davies, EES Consulting</i>
---	--

Allen Fiksdal, EFSEC Manager, reported that EES Consulting had been retained by the Council to conduct an analysis of the current and projected longer-term financial health of Invenergy to assist the Council in determining Invenergy’s ability to meet the financial responsibilities associated with the Site Certification Agreement (SCA) for the Satsop Combustion Turbine (CT) Project being transferred from Duke Energy Grays Harbor, LLC, to Invenergy Grays Harbor, LLC (Invenergy). EES provided recommendations on the types of financial assurances that the Council should require from Invenergy to assure future site restoration. EES reviewed possible alternatives to the current corporate guaranty of \$5.5 million that Duke Energy North America (DENA) has in place and because the Council is looking for a very high degree of certainty, is recommending three (3) options be considered to provide the same level of security as DENA’s guaranty. The options are: an irrevocable letter of credit; a performance or surety bond; or a multi-party guaranty.

Kevin Smith, Senior Vice President of Invenergy indicated that they had reviewed the three alternatives and were prepared to provide an “evergreen” letter of credit to meet the financial assurances requirements. Mr. Smith explained that the letter of credit would be written in one-year increments and be renewed 30 days prior its expiration date to ensure that it is always in place. If it is not renewed (or replaced), the Council could collect the full amount of the letter of credit, (\$5 million in 2001 dollars). The letter of credit would be secured from an “A” rated financial institution, thereby further reducing the risk to the Council.

Mr. Smith stated that they had looked at other options, but felt that the letter of credit would provide the cleanest, most straight-forward form of security at this time. He noted that they

might want to look at proposing an upstream parent company guarantee to replace the letter of credit in the future.

Chris Davies, who was the lead for EES Consulting, in conducting the financial review of Invenergy, indicated that he concurred with Mr. Smith’s statements and agreed that the benefit of a letter of credit is that it would be the easiest to collect on. It was explained that the letter of credit is preferable to a surety bond because you do not have to prove poor or no performance to collect and getting restitution is not as complicated or as lengthy a process. An upstream or parent company guaranty is an option; it is the cheapest to the company, but presents the most risk. Each of the options outlined would also include an automatic annual increase of 2.5% as an inflation factor.

Mr. Fiksdal thanked EES Consulting for the good job they did in their assessment of the current and projected longer-term financial health of Invenergy. The analysis was done in a very timely manner that will help the Council keep processing of the transfer request on schedule. He noted that the next steps are to visit the site following this meeting and to conduct a public comment meeting this evening in Montesano. At that meeting, the Council is expected to consider an order that would authorize transfer of the SCA, subject to certain conditions and receipt of the approved financial instrument.

Chair Luce recessed the meeting at 3:05 p.m. to proceed to the Satsop Development Park for a site visit.

<i>Satsop Combustion Turbine Project – Site Visit at Satsop Development Park</i>	<i>Laura Schinnell, Energy Northwest</i>
---	---

Council members, EFSEC staff and other meeting attendees met at the Satsop Development Park around 4:10 p.m. to tour the Satsop Combustion Turbine Project site. Attendees viewed the project facilities and site from 4:10 – 5:00 p.m.

The meeting was recessed until the evening public comment meeting scheduled to start at 7:00 p.m. at the Montesano City Hall upstairs meeting room.

<i>Special Meeting Reconvened</i>	<i>Jim Luce, EFSEC Chair</i>
--	-------------------------------------

Chair Luce reconvened the Special Council meeting at the Montesano City Hall upstairs meeting room at 7:00 p.m. The roll was called and there was a quorum.

Council members present were:

Richard Fryhling	Department of Community, Trade and Economic Development
Hedia Adelsman	Department of Ecology
Chris Towne	Department of Fish and Wildlife
Tony Ifie	Department of Natural Resources
Tim Sweeney	Utilities and Transportation Commission
Jim Luce	Chair

<i>Public Comment Hearing</i>	
--------------------------------------	--

The public comment hearing for the proposed transfer of the Satsop Combustion Turbine Project SCA was transcribed by a court reporter and is available upon request by contacting the EFSEC office. The meeting was noticed in the local newspaper and mailed to our Satsop and Minutes and Agenda mailing lists of over 300 persons. The public was given an opportunity to comment on the transfer request and one oral and two written comments were received, expressing no objection to the proposed changes.

<i>Consideration of Transfer of Control and SCA Amendment</i>	<i>Allen Fiksdal, EFSEC Manager</i>
---	-------------------------------------

Proposed Council Order No. 809 (Order) was presented to the Council for consideration by Allen Fiksdal, EFSEC Manager. There was some discussion on clarification of some of the terms in the Order regarding language related to the Letter of Credit. The Order sets out the details of the process to transfer the control of the SCA to allow Invenergy to own the Satsop Combustion Turbine Project, provided that upon the receipt and approval of financial assurances from Invenergy Grays Harbor, LLC, in the form of an “evergreen” letter of credit from an A-rated financial institution to replace the DENA Guaranty, and upon notification that the DENA/Invenergy transaction had closed, the Council issue a resolution that:

- (a) Terminates the DENA Guaranty referenced above and releases Duke Energy North America, LLC, its affiliates and subsidiaries and their respective directors, officers and employees from all obligations under the DENA Guaranty or the SCA;
- (b) Approves the Site Restoration Plan with the financial assurances provided by Invenergy Grays Harbor, LLC; and
- (c) Amends the SCA to change the name of the certificate holder to Invenergy and removes Energy Northwest as a certificate holder and releases it from all obligations under the SCA (including plans approved in connection therewith) arising after issuance of the resolution.

Motion: To adopt Order No. 809, thereby authorizing the transfer of control of the Satsop CT Project to Invenergy from Duke Energy (and Energy Northwest) and to amend the SCA as proposed in the order. Chris Towne made the motion and Dick Fryhling seconded the motion. The motion was approved unanimously.

6. MARCH 2005 MEETING(S)

<i>Meeting Schedule</i>	<i>Allen Fiksdal, EFSEC Manager</i>
-------------------------	-------------------------------------

Allen Fiksdal, EFSEC Manager requested Council members consider holding the March Council meeting after the adjudicative hearings for the Wild Horse Project, scheduled for the week of March 7th. Chair Luce recommended the meeting be held on March 15th and Council concurred with this date. Mr. Fiksdal stated the arrangements would be made and a notice of the change would be sent to the minutes and agenda mailing list.

7. ADJOURN

Chair Luce adjourned the Special Council meeting at 7:30 p.m.