



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

April 10, 2007 Monthly Meeting Minutes

**1. CALL TO ORDER**

Chair Jim Luce called the April 10, 2007 monthly meeting to order at 925 Plum Street S.E., Building 4, Room 308, at 1:30 p.m.

**2. ROLL CALL**

**Council members present were:**

Jim Luce	EFSEC Chair
Dick Fryhling	Community, Trade & Economic Development
Hedia Adelsman	Department of Ecology
Jeff Tayer	Department of Fish and Wildlife
Judy Wilson	Department of Natural Resources
Tim Sweeney	Utilities and Transportation Commission
Patti Johnson (via phone)	Kittitas County Representative
Vern Eaton	Cowlitz County Representative
Justin Erickson (via phone)	City of Kalama Representative
Bruce Rader (via phone)	Port of Kalama

**Staff in attendance were:**

Allen Fiksdal – EFSEC Manager, Mike Mills – Compliance Manager, Stephen Posner – EFS Specialist, Tammy Talburt – Administrative Secretary, Kyle Crews – Assistant Attorney General

**Guests in attendance were:**

Darrel Peebles – Attorney for Horizon Wind, Scott Williams – Puget Sound Energy, Karen McGaffey – Perkins Coie, Tom Donovan – Grays Harbor Energy, David Steeb – Desert Claim, Mark Anderson – CTED Energy Policy, Katy Chaney – URS Corp. Laura Schinnell – Energy Northwest, Trent Enzsol – BP Cherry Point, Steve Berry – BP Cherry Point, Brett Vanderheuvell – The Columbia River Keepers, Mike Tribble – Counsel for the Environment.

**Guests attending via phone:**

Jennifer Diaz – Puget Sound Energy, Liz Thomas – Kirkpatrick & Lockhart Preston Gates Ellis LLP, Mot Hedges – Energy Northwest, Jim Hurson – Kittitas County, Neil A Caulkins – Kittitas County, Darryl Piercy – Kittitas County, Ed Garrett - Residents Opposed to Kittitas Turbines, Debbie Strand – Kittitas Economic Development and Dan Kirchner.

### 3. ADOPTION OF PROPOSED AGENDA

The agenda was presented to the Council for amendments or additions. The agenda was adopted with one change – Satsop CT Project was moved to the first item and WNP-1 Offsite Mitigation was moved to be the last project update.

### 4. MINUTES

Staff presented the following minutes for approval: March 13, 2007 Monthly Meeting; March 27, 2007 Special Meeting – Wild Horse Site Tour; March 27, 2007 Special Meeting – Wild Horse SCA Amendment; and March 27, 2007 Special Meeting Minutes Kittitas Valley Wind Power Project Recommendation Announcement.

**MOTION – Ms. Wilson made a motion, seconded by Mr. Sweeney, that the minutes for March 13, 2007 monthly meeting, March 27, 2007 Special Meetings Wild Horse Site Tour, Wild Horse SCA Amendment and the Kittitas Valley Wind Power Project Recommendation Announcement be approved. The motion passed unanimously.**

### 5. PROJECT UPDATES

#### Satsop CT Project

<i>Project Status</i>	<i>Tom Donovan, Grays Harbor Energy</i>
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Mr. Tom Donovan informed the Council that construction activities at the Satsop CT Project are going well and they are 5% complete as of this time, with the completion target of the end of the year still on track. All staff have attended Spill Prevention Training, which has assisted in there being no discharges or spills on the site this month. Security continues to be a priority with 18 attempted break-ins during the last 30-day period. Only three attempts were successful in penetrating the site. The site is being targeted for the copper.

#### Columbia Generating Station

<i>Operational Status</i>	<i>Mot Hedges, Energy Northwest</i>
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Mr. Mot Hedges reported that Columbia is shutdown due to a small transformer fire that occurred on Saturday April 8. The fire was caused by electrical problems in the transformer, and the plant is expected to restart on Thursday April 12, 2007. Because there was damage to plant equipment the fire was reported to the proper agencies, with Mr. Fiksdal and Mr. Mills being contacted by the Military Department Duty Officer. Columbia's refueling and maintenance outage is scheduled to start May 12.

<i>Contracts – Interagency EP/Audits</i>	<i>Mike Mills, EFSEC Staff</i>
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Mr. Mike Mills presented for the Council's approval contracts with the following three (3) state agencies that support the Columbia Generating Station (Columbia) Offsite Emergency Preparedness (EP) Program for FYs 2008-2009. Also, approval for renewal of a contract with the Department of Health, Office of Radiation Protection, for environmental monitoring at Columbia in FYs 2008-2009 was requested. The contracts presented for approval today are:

	<u>FY 2008</u>	<u>FY 2009</u>
• Department of Health – EP	\$605,354	\$616,515
• Department of Agriculture – EP	\$113,773	\$116,456
• Washington State Patrol – EP	\$ 11,500	\$ 11,700
• Department of Health – Audit	<u>\$329,291</u>	<u>\$338,663</u>
Total Package approval of	\$ 1,059,918	\$ 1,083,334

**MOTION: Ms. Wilson made a motion, seconded by Mr. Fryhling, that the Council approve the renewal of the Council's contracts with the Department of Health, Department of Agriculture and Washington State Patrol to perform Columbia Generating Station-related emergency preparedness activities for FYs 2008 and 2009 and for the Department of Health for Columbia – related environmental audit activities for FYs 2008 and 2009, not to exceed the amounts specified above. The Motion passed unanimously.**

### **Wild Horse Wind Power Project**

<i>Request for SCA Amendment</i>	<i>Stephen Posner, Staff</i>
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Mr. Stephen Posner directed member to the meeting packet that includes Resolution No. 321 - SCA Amendment 4 and three (3) attachments. The three attachments include the PSE SCA amendment request dated 3/2/07, public comments summary, and the specific changes to the Wild Horse Wind Power Project (Wild Horse or WHWPP) SCA. In their SCA amendment request, PSE seeks Council approval to construct a solar demonstration facility on the Wild Horse site, for the company to gain a better understanding of how solar power can be integrated into a broad power supply portfolio.

The proposed amendment would allow the installation of a 500-kilowatt solar facility. The majority of the facility would be located on 4.5 acres within Quarry 1 an existing disturbed area. The remainder of the facility, .5 acres, would be located adjacent to the Operations/Visitors Center. EFSEC members, staff and PSE personnel toured the location of the proposed solar facility on March 27, 2007. A public meeting to receive comments on the matter was held in Ellensburg also on March 27, 2007. Two oral comments, both in support of the proposal were received during the meeting. Mr. Posner reported that EFSEC has also received one written comment from DFW offering support for the project contingent upon EFSEC review of design plans prior to the commencement of construction. Approval of Resolution No. 321 would allow PSE to proceed with:

- Installation of a 500 kw Solar Demonstration Facility. The Facility will be constructed on two previously disturbed areas within the boundaries of the WHWPP site, covering approximately 5 acres.
- The current Post-Construction Restoration Plan includes provisions to the reclamation of temporary rock and gravel quarries. The restoration for that portion of Quarry #1 (approximately 4.5 acres) and .5 acres adjacent to the Operations Visitors Center, where the Solar Demonstration Facility is to be constructed, may be delayed, until after operation of the Solar Demonstration Facility is complete and the facility is removed from the site. The certificate holder shall provide EFSEC notice prior to removal of the Solar Demonstration Facility, together with submittal of a restoration plan subject to EFSEC approval.
- All applicable SCA conditions and mitigation measures apply to the construction and operation of the Solar Demonstration Facility.

EFSEC staff recommended Council approval of Resolution No. 321 – SCA Amendment No. 4: for the installation of a demonstration solar facility on the WHWPP site, contingent upon approval of design plans by EFSEC staff.

**MOTION: Mr. Fryhling made a motion, seconded by Ms. Wilson, that the Council approve Resolution No. 321 – SCA Amendment No. 4 for the installation of a demonstration solar facility on the Wild Horse Site, contingent upon approval of design plans by EFSEC staff. The Motion passed unanimously.**

<i>Project Update</i>	<i>Scott Williams, PSE</i>
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Mr. Scott Williams reported that the Wild Horse project produce 61,000-megawatt hours, which equates to a 39% capacity factor during the past month.

**Kittitas Valley Wind Power Project**

<i>Project Update</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reported that the Council issued Order No. 826 recommending the Governor approve the Kittitas Valley Wind Power Project. He announced that the Council has received requests for reconsideration from Kittitas County and Ed Garrett. Mr. Fiksdal offered four options the Council can consider regarding these motions: reconsider the order, deny the motion, do nothing, or modify the order to reflect the requests. If the Council does not do anything, then in 20 days the motion is automatically denied. Discussion followed on how the Council should address the reconsideration motions. Staff was directed to set up an executive session next week to consider the final order on reconsideration.

**Desert Claim Wind Power Project**

<i>Motion determination</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reported that on March 5, 2007, Desert Claim had filed a “Motion for Determination That Desert Claim Has Satisfied WAC 463-28-030(1)” (Motion). The Motion requested the Council to make a formal determination that Desert Claim has made “all reasonable efforts to resolve the noncompliance” with local land use requirements, for purposes of satisfying the WAC cited, and therefore, may proceed to file a written request for preemption.

Applicant attorney Karen McGaffey spoke to the Motion. Ms. McGaffey asked the Council to approve the Motion for a determination based on WAC 463-28-030(1). By Order No. 825, dated March 7, 2007, EFSEC found that the Desert Claim Wind Power Project (project) was not consistent with local land use plans and zoning ordinances and directed Desert Claim to make all reasonable efforts to work with Kittitas County, (County) to resolve the existing land use inconsistencies in the application.

Ms. McGaffey noted that in their Motion, Desert Claim states that it has made all reasonable efforts to obtain the necessary approvals from the County, but was unsuccessful in getting those approvals, and should now be permitted to move forward through the Council’s siting process without further delay. Ms. McGaffey’s final point was that the ruling should be made today because the 90-day period to request for preemption ends on April 30, and in order to make the request for preemption there will need to be a decision on the satisfaction of WAC 463-28-030(1).

Deputy Prosecutor Jim Hurson addressed the Council on behalf of Kittitas County. Mr. Hurson stated that the application before the Council today is different from the Desert Claim application presented to the County, almost 4 years ago. He said the County can’t make any effort to work with the applicant on the land use consistency issues without a new application. He also noted that the County refuses to break laws by ignoring the regulations. Mr. Hurson said the applicant asked for meetings in private and that goes against the regulations of the County process and in addition, it is totally inappropriate to make this decision at this time.

Ms. McGaffey declined to respond to Mr. Hurson’s remarks. Mr. Sweeney wanted clarification on the County process and specifically asked if the applicant would need to apply to

the County for a wind farm overlay and request site-specific land ordinances. If it was the case, isn't it the same process that this Council has said circumvents our ability to achieve our statutory mandate. Mr. Hurson said he disagrees with the analysis that their process does circumvent EFSEC's process. He noted that this is "an opt-in process," therefore, nobody has to be before EFSEC on wind farms. The County has taken the lead to make the land use process a one-stop shop process.

Mr. Sweeney asked Mr. Hurson to tell the council what the applicant would have to do to meet the good faith effort in the County's eyes; would it be that an application has to be submitted and go through the full county process. Mr. Hurson said that was correct.

Ms. Adelman stated that the original project presented to the County had a different project area. Her concern is that Kittitas County will make them go through their whole process. Ms. Adelman wanted to request that the County look at only the parts of the application that are different, not to send the applicant through the whole process and that going through the whole process seemed useless.

Ms. Wilson stated that she can't find that the applicant has taken the application that is before EFSEC back to the county planning staff to review the differences between the application originally presented to the county. She wondered if there is something in the EFSEC application that is big enough to make a difference that they might be able to approve this application. Ms. Wilson also stated that she doesn't see where there has actually been a sit-down with the County staff. Mr. Darryl Piercy, Kittitas County Planning and Zoning Department, stated that the applicant hasn't made any contact with his department, and that they have been anxiously waiting for that to happen. The County and the applicant have not had an opportunity to have those discussions. The Council's order requires that the applicant make contact with the County staff to attempt to resolve those issues that caused the denial of the application previously presented to the County. Everyone is clear on what the County's position is about the impacts of this project. Mr. Piercy noted that he is unavailable to meet with the applicant to discuss the Project.

Mr. David Steeb, Director of the Desert Claim project, stated that since the order came out they have not gone back to the planning department, but over time, he has made various contacts with the commissioners and the planning department. He stated that he'd received a letter back from Commissioner Bowen that said that the County process only works this way. Mr. Steeb noted that enXco has looked at the three different determinations on the setbacks for consistency, and has tried to be diligent and work with the County. He said he has also looked at the County's record to understand what they are looking for on wind projects.

Chair Luce asked to postpone acting on the motion until Mr. Crews could provide legal advice on the following subjects: jurisdiction; waiver the essence of a useless act; and the land use process of the county as a useless act; and a review of attempts of the applicant to contact the county regarding the process that the county requires. Chair Luce indicated that after the Council receives the legal advice, they would meet again at some point in the next two weeks, to make a determination on this motion.

Chair Luce said he would like to give Kittitas County an opportunity to respond to what they have heard today and requested the County to please present a response by April 17. Chair Luce said the Council would set a public meeting for April 19 to determine the outcome of this motion.

**Pacific Mountain Energy Center**

*Land Use Consistency*

*Jim Luce, Chair*

Chair Luce asked for a motion based on the morning discussion on the land use consistency of the Pacific Mountain Energy Center (PMEC).

Discussion ensued on the issue of Critical Area Ordinances being part of the land use determination. Several members expressed concern that the Critical Area Ordinances needs to be included in a land use consistency determination. Other members expressed that, as stated in the morning discussion, the Critical Areas will be addressed in the adjudication process.

The Columbia River Keeper's representative Brett Vanderheuel stated that the issue the Council is struggling with is whether the term land use plan or zoning ordinance includes Critical Area Ordinances. Both of the terms were discussed in the morning meeting and are defined under 36-70A, the Growth Management Act (GMA). It was noted in the morning, Cowlitz County is not a GMA county. Mr. Vanderheuel noted that Critical Areas Ordinances apply to all counties whether they are GMA counties or not. He also noted that RCW 80.50.020 (15) and (16) defines the terms "land use plan" and "zoning ordinance" for EFSEC specifically as a "comprehensive plan or land use element thereof adopted by a unit of local government pursuant ...". He said the Riverkeepers would like to make it clear that they object to any determination that says EFSEC does not need to determine at this time whether it's consistent with Critical Areas Ordinance.

Ms. Liz Thomas – Kirkpatrick & Lockhart Preston Gates Ellis LLP, representing the applicant, stated that the applicant is comfortable with the motion. She said the issue is a complicated one. The county, and city both agree that the project is consistent with the land use plan and zoning ordinances within the area. She urged the Council to go ahead and make a determination. She said she didn't believe that EFSEC's Cherry Point decision wasn't relevant because the applicant and Whatcom County needed to work things out, however because Cowlitz County and the Energy Northwest agree in this case there is no reason to delay the determination. She respectfully suggest that EFSEC doesn't need to treat critical areas ordinance as part and parcel of the land use and comprehensive planning because the county has said the proposal is consistent with county plans and .that the county is comfortable with recognition that EFSEC is reserving for another day what conditions, if any, should be imposed to rectify the critical areas ordinances.

**Motion: Ms. Wilson made a motion, seconded by Mr. Fryhling, that Council directs staff to develop an order stating that based on the letters from Cowlitz County and the City of Kalama and based on RCW 80.50.090(2),WAC 463-143-030 and WAC 463-26-110, that the Council find the PMEC project is consistent with land use and zoning. The Council's analysis of land use consistency does not include environmental review or the Cowlitz County Critical Area Ordinance. These issues will be reviewed as part of the adjudication process. The Motion passed by a vote of 7 to 1 with Ms. Adelsman dissenting.**

#### **BP Cherry Point Cogeneration Project**

<i>NOC/PSD</i>	<i>Stephen Posner, EFSEC Staff</i>
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Mr. Posner reported that on April 3, 2007 a public meeting was held by EFSEC in Blaine to discuss the amended NOC/PSD permit for the Cherry Point Cogeneration Project. EFSEC staff facilitated the meeting and included and he and Allen Fiksdal along with Bob Burmark, Department of Ecology (DOE) permit writer, attended the meeting.

Ten people along with five (5) representatives of BP attended the meeting. Two oral comments were received - one in favor and one opposed. The oral comment in favor was also submitted in writing. Two written comments have been received from Canadian Agencies. The public

comment period closed on April 6. Comments are currently under review by EFSEC and DOE staff.

Staff will bring this matter back to the Council for consideration next month.

### **Initial Site Restoration Plan (ISRP)**

A final version of the ISRP has been received from BP. This version includes updates based on EFSEC comments to the draft ISRP. Copies of the ISRP will be sent electronically to Council members for their review. Article IV Section A of the Site Certification Agreement (SCA) requires the Council to approve the ISRP. This matter will be scheduled for Council action at next month's monthly meeting.

### **WNP-1 – Offsite Mitigation**

<b><i>Amon Creek Project</i></b>	<b><i>Dick Fryhling, Councilmember</i></b>
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Mr. Fryhling reported that he, and Mr. Mills attended a celebration ceremony for the Amon Creek project in Richland on March 31. It was a very positive experience and the Tapteal Greenway Association recognized all the project participants for their contribution to the purchase of the Amon Creek 60-acre property. He felt it was "a very good day all around."

### **6. RULEMAKING**

<b><i>Chapters 463-28, 47, 66 Issuance of CR 102 &amp; Setting Hearing Schedule</i></b>	<b><i>Allen Fiksdal, EFSEC Manager</i></b>
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Mr. Fiksdal informed the Council that staff was prepared to issue a CR 102 for proposed rulemaking involving three chapters of EFSEC administrative rules – Chapter 463-28 WAC State Preemption (All Subsections); Chapter 463-47 SEPA Rules (Subsections 060, 090, 110, and 140); and Chapter 463-66 Amending, Transferring, or Terminating a Site Certification Agreement (Subsections 040, 070, and 080). The dates to hear comments on the proposed rule changes have been set for June 12, 2007 at 3 pm at the EFSEC offices, with a second meeting to be held on June 13, 2007 at 2 pm at the Yakima Arboretum in Yakima.

### **7. CHAIR'S REPORT**

<b><i>Legislation</i></b>	<b><i>Jim Luce, Chair</i></b>
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Chair Luce reviewed the status of several bills that the Council is following:

- SHB 1037- Transmission Siting: the primary issue is should the lines sited by EFSEC be 115 kv or 115 kv and above. Mr. Luce feels that most organizations are supporting this bill with the exception of the City of Kent, but the bill is high centered with other energy legislation at the moment, and while this bill has lots of support, the outcome is uncertain.
- SB 6001 – Carbon Dioxide (CO2) Mitigation – This bill is still being actively pursued, but it is hard to say at this point if the bill will pass or not.

### **8. OTHER**

Mr. Fiksdal presented the Council with the non-direct costs breakout for the fiscal quarter starting April 1, 2007.

Ms. Adelman asked why WNP-1 was still be charged such a high amount. Mr. Mills explained that the percentage reflects last quarter's off-site mitigation activities and there is still work to be done on the SCA for WNP-1.

**9. ADJOURN**

The meeting was adjourned at 3:16pm