



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

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### February 13, 2007 draft Monthly Meeting Minutes

#### 1. CALL TO ORDER

Acting Chair Richard Fryhling called the February 13, 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:

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

##### 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 Peeples – Attorney for Horizon Wind, Liz Thomas – Kirkpatrick & Lockhart Preston Gates Ellis LLP, Scott Williams – Puget Sound Energy, Karen McGaffey – Perkins Coie, Tom Donovan – Grays Harbor Energy, David Steeb – Desert Claim, Grant Bailey – Golder & Associates, INC., Mark Anderson – CTED Energy Policy, Irina Makarow – HDR Inc., Katy Chaney – URS Corp.

##### Guests attending via phone:

Mike Tribble – Counsel for the Environment, Laura Schinnell – Energy Northwest, Mot Hedges – Energy Northwest, Jim Hurson – Kittitas County, Ed Garrett - Residents Opposed to Kittitas Turbines, Jesse Jenkins – City of Kalama, Trent Enzsol – BP Cherry Point, Curt Leigh – Dept of Fish and Wildlife.

### 3. ADOPTION OF PROPOSED AGENDA

The agenda was presented to the Council for amendments or additions. The agenda was adopted with an addition.

### 4. MINUTES

Staff presented the following minutes for approval: December 12, 2006 monthly meeting, January 9, 2007 monthly meeting and special meeting, and February 1, 2007 special meeting.

**MOTION – Ms. Wilson made a motion, seconded by Ms. Adelman, that the minutes for December 12, 2006 regular meeting; January 9, 2007 regular and special meeting; and February 1, 2007 special meeting; be approved. The motion passed unanimously.**

### 5. PROJECT UPDATES

#### Wild Horse Wind Power Project

<i>Notice of Incident/Assurance of Compliance</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reported on the activities regarding the Notice of Incident (NOI), and Request for Assurance of Compliance, issued by the Council at its January 9, 2007 meeting. Based on a recommendation from the Department of Ecology, the NOI cited Puget Sound Energy (PSE) for failing to properly implement stormwater pollution prevention practices at the Wild Horse site.

PSE responded to the NOI in a letter dated January 5, 2007, providing the required “Assurance of Compliance” that appropriate measures had been taken to preclude a recurrence of the incident(s). At the January 9 meeting, Ecology staff reported that they had been working with PSE on the maintenance and repair of the check dams that help to control stormwater runoff and they were satisfied that conditions at the site were satisfactory to withstand runoff events.

Mr. Fiksdal stated that based on staff’s review of the assurances provided by PSE, and Ecology’s subsequent inspections of stormwater Best Management Practices (BMP’s) in place at the site, staff is recommending that the Council closeout this matter.

**MOTION: Mr. Tayer made a motion, seconded by Ms. Wilson, that the Council closeout the Notice of Incident by accepting Puget Sound Energy’s Assurance of Compliance for managing stormwater BMP’s at the Wild Horse project site. The motion passed unanimously.**

<i>Site Certification Agreement Amendment Schedule</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Acting Chair Fryhling called a public hearing to order at 2:00 p.m., to consider Puget Sound Energy’s request to amend the Wild Horse Site Certification Agreement (SCA) to allow for the installation of an exempt well at the Operations/Visitors Center. No public comments were received. Staff referred members to three letters that were received on the proposed amendment, that all supported approval of PSE’s request. Acting Chair Fryhling adjourned the hearing at 2:05 pm.

Mr. Stephen Posner, EFSEC staff, reported that PSE was requesting an amendment to install an exempt well at the Operations/Visitors Center to provide bathroom and kitchen water at the facility during operation of the Wild Horse project. Mr. Posner indicated that the original SCA provided for a single Operations and Maintenance (O & M) facility at the site for the present Operations/Visitor Center. The original O & M facility was to have its domestic water supply provided by onsite portable water tanks with water trucked to the site. The Maintenance Facility was subsequently moved to a location near the Vantage Highway pursuant to Amendment No. 1 to the SCA, which then designated the original O & M site for an Operations/Visitors Center, with domestic water still to be provided by onsite portable water tanks. Amendment No. 1 to the SCA also provided that the Maintenance Facility was to be provided water from an exempt well pursuant to RCW 90.44.040. That well has been installed at the site of the Maintenance Facility.

During the design review of the plans for the Operations/Visitors Center, it was determined that Washington State Department of Health (DOH) regulations do not allow the use of trucked in water for a public water system. Although EFSEC was not bound to follow DOH regulations because of its preemptive authority pursuant to RCW 80.50.110, meetings with Puget Sound Energy, DOH, Kittitas County and EFSEC staff established the need to follow the substantive requirements of the DOH regulations.

Based on those meetings, it was agreed that the best option was to install a well at the Operations/Visitors Center and comply with the DOH requirements for a Transient Noncommunity water system. It was also agreed that the well and water system at the Maintenance Facility was to be operated and maintained as a Non-Transient Concommunity water system pursuant to the applicable DOH standards. Kittitas County and DOH have reviewed the proposed installation and are satisfied that it will completed and operated in accordance with applicable state and local procedures and regulations.

Mr. Posner stated staff was recommending that the Council approve Resoultuion No. 319 to allow PSE to proceed with installation of the well. Ms. Adelsman offered three changes or additions to the draft resolution covering:

1. Correct reference – the proposed well should be referred to as a “Permit Exempt Well”;
2. Outside Water Use – add the provision “domestic and other incidental uses” for outdoor watering; and
3. Metering - add “shall be metered in accordance with Ecology regulations.”

Mr. Tayer added that he appreciated the approach chosen to not preempt the well from existing requirements and to follow the laws/rules that would normally apply.

**MOTION: Mr. Tayer made a motion, seconded by Ms. Adelsman, that the Council accept Amendment No. 3 to the Wild Horse SCA by approving Resolution No. 319 – allowing PSE to install a permit exempt well at the Operations/Visitors Center. The motion passed unanimously.**

<b><i>Project Status</i></b>	<b><i>Scott Williams, PSE</i></b>
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Mr. Williams reported that during the month of January 2007, Wild Horse generated 46,268 Megawatt hours, which equates to a 27.2% capacity factor. Mr. Tayer asked if there had been any reports of “Ice Throw” as the Council had heard that was a big problem from the public. Did PSE expect that there would be a need to close the public access roads during the winter months if ice throw became an issue. Mr. Williams stated there had been an incident where ice had dropped off a blade onto a maintenance vehicle that had been parked directly under the blade, a location which is not in a public access area. There were no injuries involved. Mr. Williams stated that he would collect information on possible road closures from technical staff and return with a report for the next Council meeting.

### **Kittitas Valley Wind Power Project**

<b><i>Project Update</i></b>	<b><i>Allen Fiksdal, EFSEC Manager</i></b>
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Mr. Fiksdal reported that the Council is continuing to develop the final order and its recommendation to the Governor on the Kittitas Valley project and it is now anticipated that EFSEC would announce its decision at a special meeting in March 2007.

### **Desert Claim**

<b><i>SEPA Recommendation - Golder Report</i></b>	<b><i>Allen Fiksdal, EFSEC Manager</i></b>
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Mr. Fiksdal stated that Golder Associates Inc. (Golder) had been contracted with to review the Desert Claim Wind Farm Application for Site Certification (ASC) and Final Environmental Impact Statement (FEIS) prepared by Kittitas County, to assist the Council make its State Environmental Policy Act (SPEA) threshold determination. Golder was retained to analyze the ASC and FEIS information and provide recommendations on steps the Council should consider to satisfy its SEPA requirements.

Mr. Grant Bailey, Golder, presented an overview of their report, stating that the review focused on analyzing the current project description as described in the ASC and its potential impacts compared to the original project as described in the Kittitas County FEIS and its impacts. Golder’s review addressed the question whether there was new information in the ASC that indicated the existence of a probable significant adverse environmental impact, to include determining if changes to the project resulted in any new impacts not covered in the FEIS; and was there sufficient information in the FEIS and ASC to assess the significance of the new impacts. In addition, they looked at whether the level of significance of any impacts documented in the FEIS changed as a result of the changes to the project. Mr. Bailey stated that the report does not make a SEPA threshold determination, but it does offer findings and conclusions that the SEPA Responsible Official (EFSEC Manager) can consider while making that determination.

Mr. Bailey highlighted some of the major findings contained in their report:

1. The level of significance of some impacts is reduced by the latest proposal in the ASC due to reduced site footprint, tower number, lighting, wetlands impacts, and shadow flicker. Tower size has increased. Land ownership and tower locations have changed.
2. The most significant impacts to some nearby viewers was reduced or eliminated by relocating and consolidating towers. High impact views, as defined in the FEIS, still remain.

3. A new section at the west end of the site has not been evaluated at the same level of detail as other areas; neither has a proposed new 4,000' long transmission line corridor which was brought up for the first time in the ASC.
4. New information related to visual simulation procedures may indicate a new probable significant adverse impact.
5. Sufficient information was not available to determine whether significance criteria were or were not met for vegetation, habitat or cultural resources. Such information is easily acquired and we have no reason to suspect that results will be significant. The FEIS concluded there were no significant cultural resource impacts from the original project.
6. New information related to potential bat and bird mortality may indicate a new probable significant adverse impact.

Mr. Bailey continued that visual resources was the biggest impact discussed in the FEIS, and that there are no significant new impacts created by the new project – some are less, others are mitigated. The SEPA decision to be made the EFSEC Manager will rest on the determination if there are new impacts or information that would create any new significant adverse impacts. Golder's review indicated that there might be several areas that would qualify as significant adverse impacts that the SEPA Responsible Official will need to consider in making the SEPA decision. There is a potential for an overall increase in viewshed impacts if a 50-55 mm lens is used rather than a 35 mm lens, as was apparently used for the visual simulations; and there is a potential increase in raptor strikes and bird and bat mortality from the turbine blades, based on new procedures and forecast assumptions. Another possible impact is the proposed project's inconsistency with local land use and zoning regulations and how it was addressed in the FEIS.

Mr. Bailey stated that their report identifies the issues/impacts that would need to be addressed in either an Addendum to the FEIS or Supplemental EIS, and they are recommending that the Council adopt the Kittitas County FEIS and then determine whether to issue the addendum or supplemental documents. Acting Chair Fryhling directed Council members to review the report and get any comments back to Mr. Fiksdal.

Ms. Karen McGaffey, Perkins Coie, stated that the current project was consolidated to reduce impacts. Since the reasons the Kittitas County commissioners cited for denying the project were visual impacts and the size of the project, the applicant has decreased the footprint of the project to eliminate most of those impacts. As to the issue of the Council needing to do a Supplemental EIS or an Addendum to the FEIS, Ms. McGaffey stated that there are two triggers that would require a Supplemental EIS - are there new impacts that were significant or was there new information available. Ms. McGaffey stated it is Desert Claim's opinion that the changes identified do not require a Supplemental EIS. Mr. David Steeb of Desert Claim confirmed that the applicant would prefer to have an addendum instead of a supplemental EIS.

Ms. McGaffey provided initial comments on several of the impact areas or issues identified in the Golder report and stated that her client has several consulting firms working on preparing additional information to further clarify the FEIS data. They expect to have that information to the Council within the next week and staff will send it to members as soon as it is received and comments should be returned to Mr. Fiksdal by Friday, April 23, 2007.

Ms. Adelsman expressed concern that if an Addendum is done, then the public will not have an opportunity to comment on the FEIS specifically. Mr. Fiksdal stated that public comment is not required on an Addendum, while a Supplemental EIS would be subject to public review and comment. He stated that the deciding factor is determining whether to issue an Addendum or Supplemental was the determination that new significant adverse impacts existed. He noted that the decision to adopt the FEIS would be done in a public meeting. He reiterated that the key to this decision was if there are new significant adverse impact and he would follow the SEPA regulations in making that determination

Mr. Ed Garrett, ROKT, wanted to know if the Golder report will be posted on the website. Mr. Fiksdal stated that as soon as we receive an electronic copy it will be posted on the website. Acting Chair Fryhling asked if the Kittitas County representative had any comments. Mr. Hurson stated that he would like to read the report and then make comments.

Mr. Fiksdal reported that the Land Use hearing was held on January 30, 2007. Twenty-eight members of the public gave comments at the hearing, in addition to written comments that were received by EFSEC. Judge Torem is working on drafting the order stating the Council's finding that the project is not consistent with the county's land use and zoning ordinances.

### **Pacific Mountain Energy Center**

<i>State Environmental Policy Act Scoping (SEPA) Report</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal informed the Council that Ecology & Environment (E & E) has finished their technical evaluation of the Pacific Mountain Energy Center (PMEC) Application for Site Certification (ASC), and provided a report summarizing the significant issues that should be addressed in a Draft Environmental Impact Statement (DEIS) for the project. Mr. Fiksdal reported that the subcommittee formed to evaluate E & E's Scoping Report and the level of information necessary to review the DEIS, had completed its review and concurred with the issues identified and the approach proposed by E & E. Staff has prepared a draft letter outlining the Council's expectation regarding the direction and contents for the DEIS. The letter identifies five (5) main points of interest to the Council:

1. a clear and comprehensive project description;
2. a complete and detailed assessment of the significant environmental impacts as identified in the Scoping Report;
3. a thorough description and assessment of the other impacts identified in the Scoping Report and a clear and concise evaluation of why they don't need further review;
4. a full assessment and evaluation of possible cumulative impacts; and
5. a clear assessment and evaluation of alternatives not only to the site but of the items listed in Section 3 of the report.

Mr. Tayer suggested that the letter should also express EFSEC's desire that the DEIS detail Energy Northwest's plans for Carbon Dioxide (CO<sub>2</sub>) mitigation, and particularly how sequestration of large amounts of CO<sub>2</sub> would be managed. Mr. Fiksdal indicated he would add that concern to the letter and send it out this week.

Ms. Liz Thomas, Kirkpatrick & Lockhart Preston Gates Ellis LLP & Katy Chaney, URS Corp., responded on behalf of PMEC, presented a scheduling proposal where the SEPA and

Adjudicative processes would occur simultaneously. Ms. Thomas stated that the proposed schedule would allow the Council to be complete its recommendation to the Governor by November or December 2007. Discussion indicated that the Council concurred with the schedule being proposed and it was agreed that Judge Torem would finalize the actual dates.

Acting Chair Fryhling asked Ms. Katy Chaney if Cowlitz County had reached a decision on land use compliance. She replied that a response was expected within the next week and they anticipate that the county will find it consistent. Mr. Fiksdal noted that the Council would reconvene its Land Use Hearing after the county's letter is received.

Ms. Chaney reviewed several other project activities that Energy Northwest is working on. She stated that at the request of the federal land managers, additional air modeling was done, with assistance from the Southwest Clean Air Agency, and they expect to submit a revised application in about a month. They also plan to complete and file the National Pollutant Discharge Eliminating System (NPDES) waste discharge permit application within the next month, and expect that required public hearings for the air and water permits could be held at the same time as the Adjudicative Hearing. She continued that the railroad loop line has been changed and redesigned to reduce the amount of wetlands affected by the project from 3.2 acres to 1.2 acres. They are working on the Joint Aquatic Resource Permits Application (JARPA) to be filed with the Corps of Engineers for the wetlands fill. Ms. Chaney also noted that Energy Northwest has made a design change to add duct firing that will increase the plant's output.

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

*Change in Project Design – Proposed Resolution No. 320*

*Stephen Posner, EFSEC Staff*

Mr. Posner stated that, by letter dated January 24, 2007, BP had notified the Council that they were withdrawing their November 21, 2006 request to amend the BP Cherry Point Cogeneration Project Site Certification Agreement (SCA) to remove Laydown Area 2 as a construction laydown area.

BP's Application for Site Certification(ASC) explained that BP would fill four proposed laydown areas, cover them with a gravel surface, and use them for materials storage, equipment staging and other construction activities. After the completion of construction, Laydown Areas 1, 2 and 3 were to be turned over to the Refinery for further use. Laydown Area 4 was to be restored.

On November 21, 2006, BP notified the Council that they no longer intended to use Laydown Area 2 and wished to finalize that action by amending the SCA. This request was made so that the Refinery could proceed to develop that area and use it for Refinery facilities. In exchange for being able to make immediate use of this area, the Refinery will make existing developed areas south of the Cherry Point Project site available to the Cherry Point Project for use during construction. The Cherry Point Project will comply with the Refinery's existing permit conditions in using those areas.

The request to amend the SCA was made because BP's ASC had identified Laydown Area 2 and the SCA incorporated the ASC by reference.

Further discussions determined that an SCA amendment was not necessary because:

- The SCA does not directly reference or describe the specific laydown areas, and
- The legal description attached to the SCA does not include the areas to be used for temporary construction laydown.

The NPDES permit also does not specifically identify laydown areas. The permit generally authorizes the discharge of stormwater from areas used for construction and requires monitoring with respect to those discharges. Because of this, EFSEC and Ecology staff believes the NPDES permit does not need to be amended.

Instead, it was agreed that BP would provide a letter to EFSEC explaining what areas will be used for laydown and how the Refinery’s activities on Laydown Area 2 may affect the Cherry Point Project’s stormwater treatment system. Such a letter attached to the NPDES application would serve as an amendment to the NPDES application.

EFSEC staff have reviewed the letter from BP dated January 24, 2007, and finds that the letter adequately describes the information necessary to explain the withdrawal of the SCA amendment request and to serve to amend the NPDES application.

**MOTION: Mr. Sweeney made a motion, seconded by Ms. Wilson, that Resolution Number 320 be approved to recognize the withdrawal of BP’s SCA amendment request dated November 21, 2006, and accept their January 24, 2007 letter as an amendment to the Cherry Point Project NPDES application. The motion passed.**

<i>Project Status</i>	<i>Trent Enzsol, BP</i>
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Mr. Trent Enzsol, BP, reported that BP is reviewing plans and evaluating the construction schedule, and at this point believes that an April construction date would be ambitious, therefore and they may now be looking at a later start date, possibly June or July. Mr. Posner added that he is working with Whatcom County to be ready to conduct plan reviews as construction plans become available.

**Columbia Generating Station**

<i>Operational Status</i>	<i>Mot Hedges, Energy Northwest</i>
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Mr. Hedges reported that Columbia has been operating at 100% power for 97 consecutive days. He also indicated that the U.S. Nuclear Regulatory Commission had recently terminated the WNP-1 Operating License, thereby ending their involvement with that project.

**WNP-1 – Offsite Mitigation**

<i>Amon Creek Project Approval</i>	<i>Mike Mills, EFSEC Staff</i>
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Mr. Mills informed the Council that staff is working with The Trust for Public Land (TPL) to finalize the purchase of the Michel/Solbrack property (60.12 acres) as part of the Amon Creek Conservation Project. In cooperation with EFSEC, state Department of Transportation (DOT), City of Richland, and Tapteal Greenway Association (Tapteal), TPL expects to have the arrangements in place by the middle of next month to meet the March 22<sup>nd</sup> closing date. The Council is contributing \$1,025,000 towards the \$1,320,000 purchase price.

Mr. Mills stated that after this purchase, all of the WNP 1 / 4 \$3.5 million mitigation funds will have been expended, with the exception of the \$15,000 that was set aside for administrative costs. Mr. Mills proposed that those funds be awarded to Tapteal to be used for stewardship and/or acquisition costs. The Tapteal organization has contributed a large amount of the time and effort on behalf of this project and the funds would be put to good use to help them with their ongoing commitment to maintain the Amon Creek property.

Mr. Tayer questioned if the appraisal review discussed in December had been completed. Mr. Mills indicated that he had reported that DOT had looked at the appraisal report and they felt that it was okay. Mr. Tayer stated that rather than have all of the \$15,000 go to the Tapteal group, he would like to see funds be made available to conduct a formal review of the appraisal.

**MOTION: Ms. Wilson made a motion, seconded by Mr. Sweeney, that the balance of the \$15,000 be granted to the Tapteal group for stewardship and/or acquisition of the Amon Creek project after the review of the appraisal has been funded. The motion passed.**

**Satsop CT Project**

<i>Project Status</i>	<i>Tom Donovan, Grays Harbor Energy</i>
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Mr. Donovan informed the Council that resumption of construction of the project began on February 5, 2007. Contractors are mobilizing, construction permits were obtained from Grays Harbor County, and construction plans are being reviewed. Mr. Donovan reported that since the January 25<sup>th</sup> press release, there have been six break-ins at the site. Security has been ramped up and management is looking at other more aggressive security measures for the site. Construction activities should not be hampered by these break-ins. Grays Harbor Energy hopes to be at full load testing by January 2008 and operational no later than March 2008. Mr. Donovan added that the local Fire Chief has been to the site for an inspection and is pleased with the condition of the site.

**6. RULEMAKING**

<i>Administrative Rules</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal informed the Council that there were three chapters of EFESC rules that needed to be put into a CR 102. He stated that the Department of Ecology should be out with their CR 102 on the Mercury rules by March 15<sup>th</sup> or shortly thereafter. That would require the Council to hold a special meeting sometime around the 20<sup>th</sup> of March. Members were asked to check their calendars for availability that week.

**7. ADJOURN**

The meeting was adjourned at 3:56pm