



STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

PO Box 43172 • Olympia, Washington 98504-3172

May 8, 2007 Monthly Meeting Minutes

1. CALL TO ORDER

Chair Jim Luce called the May 8, 2007 monthly meeting to order at 925 Plum Street S.E., Building 4, Room 308, at 1:32 p.m.

2. ROLL CALL

Council members present were:

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

Staff in attendance were:

Mike Mills – Compliance Manager, Stephen Posner, - EFS Specialist, Kyle Crews – Assistant Attorney General, Tammy Talburt – Administrative Secretary, Diane Burnett – Administrative Secretary

Guests in attendance were:

Darrel Peebles – Attorney for Horizon Wind, Scott Williams – Puget Sound Energy, Tim McMahan – Stoel Rives, LLP, Jack Baker – VP Energy Northwest, Tom Kruger - Energy Northwest, Ted Beatty – Energy Northwest, Kirk Deal – Pacific Northwest Regional Council of Carpenters, Tom Donovan – Grays Harbor Energy, Karen McGaffey – Attorney for Desert Claim.

Guests attending via phone:

Laura Schinnell – Energy Northwest, Michael Tribble – Counsel for the Environment, Mot Hedges – Energy Northwest, Liz Thomas – Kirkpatrick & Lockhart Preston Gates Ellis LLP, Chris Taylor – Horizon Wind, Brent Vanderhuevel – The Columbia Riverkeepers, David Steeb – Desert Claim.

3. ADOPTION OF PROPOSED AGENDA

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

4. MINUTES

Staff requested that the April meeting minutes be postponed to the June 12, 2007 meeting.

5. PROJECT UPDATES

Pacific Mountain Energy Center

<i>Project Update</i>	<i>Jack Baker, VP Energy Northwest</i>
------------------------------	-----------------------------------------------

Mr. Jack Baker, Vice President of Business Services Energy Northwest (ENW), presented the Council with a letter requesting a delay in starting the adjudicatory process for the Pacific Mountain Energy Center (PMEC) project. Mr. Baker paraphrasing from the letter stated that with the passing of Senate Bill 6001, "Mitigating the impacts of climate change". Energy Northwest wants to express their critical need for precise clarity on the rules, which will implement this new legislation.

Mr. Baker noted that SB6001 is a significant departure from the CO₂ mitigation bill (RCW 80.70) passed just two years ago. RCW 80.70, the basis for the PMEC development plans, requires a 20% carbon dioxide emissions reduction over the life of the project. It also allows for those reductions through certified mitigation projects.

He noted that the option to mitigate CO₂ was one of the keys to the PMEC planning. It provided project certainty to back up their sequestration efforts as well as actual reductions in greenhouse gas (GHG) emissions beginning at commercial operation. He said that Energy Northwest is continuing to work with the US Department of Energy on sequestration research and a potential pilot sequestration site. However, sequestration research could take several years given the complexity of interactions between CO₂ and geological formations. The public policy questions are no less complex. The new law requires that they submit a PMEC GHG reduction plan to EFSEC during the permitting process. If permanent carbon sequestration is not technically or economically feasible within five years, the new law allows for the purchase of carbon emissions credits from other power plants in the Western Electricity Coordinating Council (WECC) to directly offset PMEC emissions.

Mr. Baker said the legislation's impacts on their plans for the PMEC project are significant and the issue of rules clarity is critical to be able to proceed with financing. Therefore, the present state of uncertain costs and associated risk prevents Energy Northwest from moving forward on their original pace. Consequently, Energy Northwest has elected to slow the development process over the next few months in the hope that clearly defined rules for the implementation of SB6001 for PMEC will occur before mid-summer.

Energy Northwest feels it is their obligation to public power utilities and their ratepayers to continue seeking options for meeting what they believe are inevitable power shortages as early as 2012. Given the uncertainty surrounding SB6001 implementation for PMEC and the time required to build major generation projects, they must immediately begin looking at alternative options for regional power supplies.

Mr. Baker said efforts to delay the process are extremely costly in many respects. He sincerely hoped that they find a predictable, reliable path forward that allows them to keep the substantial economic benefit of a \$1.5 billion construction project in Washington; especially given the economic challenges facing Cowlitz County in recent years. He commended the State for developing a clear environmental performance standard.

In summary, Mr. Baker requested the Council defer the start of the adjudicatory process. Mr. Baker said Energy Northwest looks forward to working with the Council and other stakeholders to expedite the development of a clear path forward for PMEC. He will report on their progress at the Council's June Meeting.

The Council took Mr. Baker's comments under advisement. Chair Luce reassured Mr. Baker that EFSEC will be working hard to establish the rules, working with Ecology and staff to determine the SB6001 implementing and the clarification required for the PMEC project to proceed.

<i>Land Use Consistency</i>	<i>Kyle Crews, AAG</i>
------------------------------------	-------------------------------

Mr. Kyle Crews, Assistant Attorney General, reminded the Council that an action was filed with Superior Court of Washington for Cowlitz County, under RCW 30.70C.020. This was a petition by Columbia River keeper against Energy Northwest, Port of Kalama, and Cowlitz County concerning the County's land use certificate of compliance under WAC 436-26-090. The Monday before last Mr. Crews attended a Superior Court Hearing where a motion was brought to dismiss Columbia Riverkeepers petition. Superior Court Judge Warne ruled that he didn't have jurisdiction because the PMEC application was before EFSEC at this time and he dismissed the Riverkeepers petition.

Desert Claim Wind Power Project

<i>Project Update</i>	<i>Stephen Posner, Staff</i>
------------------------------	-------------------------------------

Mr. Stephen Posner, EFS Specialist, reported on the April 30, 2007 special meeting held at EFSEC offices to consider the applicants request to extend the due date for filing a request for state preemption. That request was unanimously approved by the Council and is reflected in Council Order No. 829, which is included in your packets.

The Order directs Desert Claim and Kittitas County to:

- attempt to reach agreement on land use consistency issues; and
- gives Desert Claim until 6/30/07 to file a written request for state preemption as authorized in WAC 463-28-040.

Upon direction from the Council, Desert Claim is working on completing the supplemental EIS. They expect to have a draft completed in about 6 weeks.

<i>Motion for Determination of WAC 436-28-030(1)</i>	<i>Jim Luce, Chair</i>
-------------------------------------------------------------	-------------------------------

Chair Jim Luce offered some background information regarding the request by the Desert Claim that WAC 463-28-030(1) was satisfied. There have been two rounds of briefing on this issue and two rounds of oral argument. Chair Luce stated that what is at issue is whether Desert Claim needs to file a new application with Kittitas County.

Under WAC 463-28-030, if the Council determines that a purposed energy facility site is not consistent and in compliance with local land use and zoning ordinances, then an applicant must:

- (1) As a condition necessary to continue processing the application, it shall be the responsibility of the applicant to make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve the noncompliance.*

Based upon the Council's previous decision on the Kittitas Valley project and the opinion of our legal counsel, Chair Luce recommended that as a matter of law, the applicant is not required to file an application with Kittitas County under WAC 463-28-030(1). Chair Luce noted that there remains however, in the event the applicant requests preemption, the good faith and other requirements found elsewhere in the WACs specifically 463-28-040 (1) (4) which lays out four different criteria that the applicant must satisfy. Council member Judy Wilson expressed concern over making this decision before the end of the timeframe the applicant has to work with the county to

resolve the land use consistency issues. Clarifying the motion based on the discussion, Chair Luce recommended that the Council grant the applicant's motion that the Council not require the applicant to file an application with Kittitas County, but that the other requirements of the WACs including good faith are still present, and the Applicant has until June 30 or the next business day to work with the county, in such other ways that the applicant believes to be appropriate, to resolve issues. Chair Luce said the Council should not and will not provide substantive guidance for the issues the applicant may wish to address with the county, but would take official notice that in the siting of wind farms there are many important issues including but not limited to viewscape, setback, tower height, and avian wildlife impacts.

Council member Jeff Tayer stated his understandings that the motion does not preclude the applicant from filing an application with the county, but they still need to show "good faith effort" to the Council along with the other requirements for preemption.

Council member Tayer noted that the applicant's motion asked the Council to make a formal determination that it has made "all reasonable efforts to resolve the noncompliance" with local land use requirements, for purposes of WAC 463-28-030(1), and therefore may proceed to file a written request for preemption. Prior to submitting its Application for Site Certification to the Council, Desert Claim applied for local land use approvals required under the Kittitas County Code. Desert Claim made all reasonable efforts to obtain those approvals, but after a more than two-year process, the Kittitas Board of County Commissioners denied its application. It appears Desert Claim has satisfied WAC 463-28-030(1), and it would not be reasonable to require Desert Claim to make further efforts to obtain approval at the county level.

Council member Tayer believes that the burden is on the applicant to prove that they have made good faith efforts to resolve the issues with the county. The applicant needs to build a record of its efforts with the county. Mr. Tayer requested that the Council draft a letter to the Kittitas County Board of County Commissioners reaching out to them to encourage best efforts to work with the applicant and to resolve as many issues as possible in advance of adjudication.

Motion: Chair Luce made a motion, seconded by Mr. Tayer, that the Council grant Desert Claim's (Applicant) motion for a formal determination that the Applicant has made "all reasonable efforts to resolve the noncompliance with the local land use requirements of Kittitas County (County) pursuant to WAC 463-28-030(1), and therefore be allowed to file a formal written request for preemption under WAC 463-28-040. The motion carried by a 5-1 vote, with County representative Patti Johnson voting against approval of the motion.

Wild Horse Wind Power Project

<i>Project Update</i>	<i>Scott Williams, PSE</i>
-----------------------	----------------------------

Mr. Scott Williams, Puget Sound Energy reported that project activity at this point is focused on finishing up construction, by completing the roads and cleaning things up. Wild Horse's April generation totaled 48059-megawatt hours, which translates to a 29.2% capacity factor for the month. Mr. Williams circulated to staff a press release for the solar construction contractor, EI Solutions from San Rafael, California. Their plan is to still start in June and have the solar project completed by the end of the year. The press release reported that 10% of the panels to be used in the project will be manufactured locally by Outback Power Systems of Arlington, Washington and would be a great shot in the arm for the solar industry in this state. Mr. Tayer asked about the progress of the completion of the visitor's center. Mr. Williams said he anticipated that it would be completed this summer, sometime in July.

Kittitas Valley Wind Power Project

<i>Project Update</i>	<i>Jim Luce, Chair</i>
------------------------------	-------------------------------

Chair Luce reported that the Council's recommendation for approval documents were presented to the Governor for her review on May 2, 2007. He noted the EFSEC will be answering any questions the Governor may have. Chair Luce announced to the Council that staff has received a public records request from the Kittitas County Prosecutors office and that the Council members need to be aware that there have been many documents requested. Kyle Crews, EFSEC's AAG, will be looking at the request to advise the Council on how best to meet the request.

<i>Ownership Change</i>	<i>Tim McMahan, Stoel Rives LLP</i>
--------------------------------	--------------------------------------------

Mr. Tim McMahan reported that Goldman Sachs, present owner of Horizon Wind Energy LLC and its affiliate Horizon Wind Energy Company LLC (collectively Horizon), is selling its entire interest to Energias de Portugal, S.A (EDP). In the event that the Governor issues the Site Certification Agreement (SCA), Horizon Energy would be obligated to come in and seek approval for the transfer of ownership. He noted that the WAC seems to be written for upstream ownership transfers, not just where Horizon changes its status or itself changes its composition. Horizon will still be managed by the same people and have the same form of operation. Mr. McMahan said there is an upstream transfer involving many companies and assets.

Mr. McMahan said there is a closing scheduled to occur sometime in the early summer between Goldman Sachs and EDP. They asked Mr. Peeples and Mr. McMahan to bring the matter forward to provide clear early disclosure, that they will be coming in for an ownership transfer change, in the event that the Governor does approve the SCA. They have asked that the doors be opened for some discussion with the Council to give them some sense of where the Council would proceed once the formal request was made. Currently it is viewed as just a transactional issue and Horizon wanted to make sure that the parties understand what is happening

The Council noted they will need to comply with WAC 463-66-100 and it was not inappropriate to come forward with this information now.

BP Cherry Point Cogeneration

<i>Project Status</i>	<i>Stephen Posner, Staff</i>
------------------------------	-------------------------------------

Mr. Stephen Posner reported on the Notice of Construction/Prevention of Significant Deterioration (NOC/PSD) progress. EFSEC and Department of Ecology staff have completed their review of comments received during the public meeting last month. We will be preparing a Responsiveness Summary and plan to present the NOC/PSD to the Council next month for consideration.

<i>Initial Site Restoration Plan</i>	<i>Stephen Posner, Staff</i>
---------------------------------------------	-------------------------------------

Mr. Stephen Posner reported that this matter concerns consideration of the Initial Site Restoration Plan (ISRP) prepared for the BP Cherry Point Project. A copy of the final ISRP is included in your packets. Electronic copies were sent to all Council members last month. Article IV (A) of the SCA requires Council approval of the ISRP prior to site preparation. The necessary elements of the ISRP include:

- timeframes for the project;
- plan for salvage and demolition;
- site remediation including disposal of dangerous wastes;
- initial plan for restoring the site;
- provisions for protecting wetlands;

- provisions for restoring transmission lines and gas pipelines and
- provisions for preserving the site if the project is terminated during construction.

EFSEC staff have reviewed the final plan and recommends that the Council approve the ISRP.

Motion: Council member Tim Sweeney made a motion seconded by Mr. Fryhling that the Council adopt the BP Cherry Point Initial Site Restoration Plan as presented to the Council today. The motion was approved.

Satsop CT

<i>Project Update</i>	<i>Tom Donovan, Grays Harbor Energy</i>
-----------------------	-----------------------------------------

Mr. Tom Donovan, Grays Harbor Energy reported that financing for the construction funding closed on the project the week before last. He thanked staff for expediting review of the Letter of Credit issued by the Royal Bank of Scotland. He noted that there have been no wastewater discharges this month and they are in the process of preparing the NPDES renewal application for submittal in June. Other environmental work includes ordering the inspection of the outfall discharge point and the Chehalis River is down quite a bit, so they hope to get the inspection done in the next couple of weeks.

Construction progress has been good, but could have been better but they have had trouble getting labor because a lot of outage work is going on in the Northwest right now. 260-270 construction workers are on-site, which is about 30-40 workers less than the peak. The project is about 60-63% complete with the construction and they are on track to finish in the first quarter of next year.

Chair Luce noted concern that SB 6001 related time constraints with projects' needing to be completed by June 30, 2008. Mr. Donovan replied that the construction will be completed before the June 30, 2008 deadline.

Mr. Donovan reported that they have moved into start-up mode, by putting two systems in service, partially to support the construction. Mr. Donovan stated that they have hired two plant operators to work on the lockout/tag out program. They will be moving forward in the next couple of weeks into a few more systems, and probably get into start up full mode by the middle of July. A plant operations/maintenance manager has been hired to work with Joe Long and a plant engineer has been hired, who will be reporting in the next two weeks. The plant engineer will be taking over all health, environmental, and safety reporting so he will be coming to future meetings and do the reporting. Project staff have been working closely with Grays Harbor County and they have been very cooperative and have issued a temporary certificate of occupancy for the administration building. The last construction related permit for final grading and paving permit will be submitted this summer.

Security remains an issued and this last month there were 5 attempts to penetrate the site, with one being successful. The sheriff spent three hours chasing the perpetrators through the woods but was unable to capture anyone. One of the security guards was assaulted up on the PDA property. It was pretty bad. They are all chasing copper. It's pretty sad.

Columbia Generating Station

<i>Project Update</i>	<i>Mot Hedges, Energy Northwest</i>
-----------------------	-------------------------------------

Mr. Mot Hedges reported that the plant is operating at 90%; and is starting to run out of fuel in what is called a coast down. Energy Northwest is getting ready for the refueling outage, which starts May 12, 2007. This will be a very aggressive outage as they are projecting to hire 1500 outage workers. There are a specific number of major components that need to be replaced after being in

operation for over 20 years. As part of the refueling, typically, 1/3 of the reactor fuel is replaced. The schedule is to be back online on June 15 and up to full power on June 18.

WNP -1/4 Offsite Mitigation

<i>Project Update</i>	<i>Mike Mills, Staff</i>
-----------------------	--------------------------

Mr. Mike Mills referred the Council to a letter from the Umatilla Tribe indicating that they have completed their native plant project and thanking the Council for support of that project. With the payment to the Tapteal project, it the Council will have allocated the full \$3.5 million that was provided by Energy Northwest for ¼ offsite mitigation. Chair Luce thanked Energy Northwest for the funds and being a great partner for improving the environment and being able to secure and preserve prime recreation and open space lands in Benton County and several surrounding counties. Mr. Baker stated that the company was glad to support this effort, and as residents of the Tri-Cities, they are glad to be a good partner and make a difference in the lives of the residents there. Mr. Tayer stated that the EFSEC mitigation funds were the initial funding for the Skookumchuck Conservation Project, that is the number one project on the Washington Wildlife and Recreation Program’s funding list this year. EFSEC was the first dollar invested in the over 8 million dollar project, which has been supported by all three Kittitas county commissioners and local legislators.

6. ADMINISTRATIVE RULES

<i>CR 102 Issued</i>	<i>Mike Mills, Staff</i>
----------------------	--------------------------

Mr. Mills reported to the Council that the CR-102 has been issued for proposed rules for the 463-28 preemption, 463-47 SEPA rules, and 463-66 amending transferring or termination of the Site Certification Agreements. There are two public comment hearings scheduled on June 12, at 3 pm during the monthly Council meeting and the second in Yakima on June 13 at 2 pm.

Chair Luce stated that there will be rule making to do on the climate change bill SB 6001, and there are rules that need to be developed for HB1037 transmission siting. We are specifically directed to develop rules with regard to the precertification process. We do not have any funding this fiscal year, so beginning July 1, 2007 we will begin the process. HB1038 is the required transmission compact legislation. That bill directs EFSEC to work with other organizations to address the feasibility of interstate compacts for transmission lines.

Chair Luce informed the Council that there is money in the budget for a consultant study to study the pipeline capacity for Southwest Washington. The Council will be working with stakeholders to figure out what the study needs to include.

Chair Luce encouraged Council to look over the gasification conference in San Francisco in October.

7. ADJOURN

The meeting was adjourned at 2:37 pm.