

**BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL**

In re Application No. 93-2

KVA Resources, Inc., and<sup>1</sup>  
CSW Energy, Inc.

Northwest Regional Power Facility

COUNCIL ORDER NO. 697

ORDER GRANTING SITE  
CERTIFICATION, ON  
CONDITION

**Nature of the Proceeding:** This matter involves an application for certification of a proposed site at Creston, Lincoln County, Washington for construction and operation of the Northwest Regional Power Facility (NRPF), a natural gas-fueled combustion turbine facility to generate electrical energy. The Applicants, KVA Resources Inc., and CSW Energy, Inc., (KVA or the Applicant), have requested the Energy Facility Site Evaluation Council (EFSEC or the Council) to issue a Site Certification Agreement for the NRPF to permit the construction and operation of two separate and identical combined cycle combustion turbine power plants with a nominal maximum output of 419 megawatts each for a total of 838 megawatts (MW).

**Procedural Setting:** EFSEC's certification process for the NRPF involved the review of KVA's application<sup>2</sup>, conducting hearings to determine whether the proposal complies with local land use regulations, holding both adjudicative and public comment hearings, the issuance of an Environmental Impact Statement (EIS), and the issuance of a permit under the Clean Air Act.

An adjudicative evidentiary hearing began on October 17, 1995, in accordance with the provisions of Chapter 34.05 RCW, the Administrative Procedure Act, following due and proper notice. The Council received oral and written evidence during the adjudicative hearing. The first week of the hearing was held in Olympia, Washington and the second in Creston, Washington. The hearing concluded on October 24, 1995. Counsel for the Environment (CFE), who is appointed by the Attorney General to represent the public and its interest in protecting the quality of the environment, participated in the hearing and filed a post-hearing brief opposing the

<sup>1</sup> The Application was originally submitted by CSW Energy, Inc., and KVA Resources, Inc. as joint applicants. However, subsequent to the hearing the Council reopened the record to submit evidence about the formation of KVA Power, LLC, a limited liability company.

<sup>2</sup> The Applicant submitted its original application on December 13, 1993. The Applicant subsequently revised the Application and submitted a revised Application on November 15, 1994.

certification of the project. In addition, attorneys representing the Washington State Department of Fish and Wildlife (WDFW) and the Washington State Energy Office (WSEO) participated in the hearing and filed post-hearing briefs. Attorneys for the Washington State Department of Ecology (Ecology), the Consolidated Tribes of the Colville Reservation (Colville Tribes), and the Spokane Tribe of Indians (Spokane Tribe) participated in the hearing but did not file a post-hearing brief. The remaining parties granted intervenor status either did not participate in the hearing and/or settled with the Applicant. The issues that remained unresolved at the close of the adjudicative hearing were argued in briefs submitted by the Applicant, CFE, WSEO, and WDFW.

Evidence from the Applicant, Counsel for the Environment, WSEO, WDFW, Ecology and the Spokane Tribe and Colville Tribes was received in Olympia, Washington and Creston, Washington. Testimony from members of the public was taken at Creston, Washington.

Chapter 80.50 RCW, directs the Council to prepare a written report to the Governor recommending whether to approve or deny site certification. The Council enters this final Order containing Findings of Fact, Conclusions of Law, and a proposed Draft Site Certification Agreement, that includes a Clean Air Permit and other attachments. This Order, along with the Council's Draft Site Certification Agreement and its attachments, forms the Council's "report" to the Governor.

**Appearances:** Applicant, KVA Resources, Inc., and CSW Energy, Inc., by Darrell L. Peeples, Attorney, Olympia and Charles W. Lean, Attorney, Tacoma; Counsel for the Environment, Deborah L. Mull, Assistant Attorney General, Olympia; Washington Department of Ecology, by Rebecca Vandergriff, Assistant Attorney General, Olympia; Washington State Energy Office, by Thomas Prud'Homme, Assistant Attorney General, Olympia; Washington Department of Fish and Wildlife, by William C. Frymire, Assistant Attorney General, Olympia; Confederated Tribes of the Colville Reservation, Stephen H. Suagee, Attorney, Nespalem, Spokane Tribe of Indians, by Christopher B. Gray, Attorney, Welpinit. Other parties received intervenor status and participated in various phases of the proceeding, but did not participate in the hearing. These included the United States Department of Interior, by Robert Christensen, Boise; Bonneville Power Administration, by Stephen R. Larson, Assistant General Counsel, Portland; Board of Lincoln County Commissioners, by Ronald Shepard, Attorney, Davenport; Lincoln County Fire Protection District No. 7, by Clarke B. Snure, Attorney, Des Moines; Wilbur Public Schools, by Lester S. Portner, Superintendent, Wilbur; Creston School District No. 73, by Michael E. Crowell, Superintendent, Wilbur; Washington Water Power Company, by Jerry K. Boyd, Attorney, Spokane; and Mr. Daniel C. Boub.

**The Council:** The following Council representatives participated in this proceeding: Chairman Fred Adair, citizen; Department of Agriculture, Walter Swenson; Department of Community, Trade and Economic Development, David McCraney; Department of Ecology, Ron Skinnarland; Washington State Energy Office, Doug Kilpatrick; Department of Fish and Wildlife, Jo Roller; Department of Health, Robert Mooney; Department of Natural Resources, Nancy Joseph; Department of Transportation, Gary Ray; Utilities and Transportation Commission, C. Robert Wallis; and Lincoln County Commissioner, Ted Hopkins.

## MEMORANDUM

The Council sets out its findings and conclusions upon contested issues and the Council's reasons and bases therefor in the memorandum portion of this document.

### **I. INTRODUCTION**

#### **A. The Process**

The Council is obliged to follow relevant Washington law in determining whether to recommend a proposed project to the Governor. In this proceeding, it has determined pursuant to RCW 80.50.090(2) that the NRPF project is consistent with local land use regulations. The Council conducted its review of the application as an adjudicative proceeding pursuant to Chapter 34.05 RCW (the Administrative Procedure Act or APA) as required by RCW 80.50.090(3).

The Council is also bound to comply with Chapter 43.21 RCW, the State Environmental Policy Act, or SEPA. It has complied with SEPA by issuing a determination of significance, holding scoping meetings, issuing a draft environmental impact statement (DEIS), integrating public comments into the DEIS, and issuing a final environmental impact statement (FEIS) on May 31, 1996, pursuant to the provisions RCW 43.12, WAC 197-11, and WAC 463-417. In accordance with SEPA rules, the Council considered the FEIS before it rendered this decision.

#### **B. The Applicant**

The application was originally submitted by KVA Resources, Inc., a Delaware corporation, and CSW Energy, Inc., a Texas corporation, as joint applicants under a development agreement. Subsequent to the hearings, there was a formal transfer of KVA Resources, Inc.'s rights and obligations regarding the NRPF to a newly formed Washington limited liability company, KVA Power, LLC. KVA Power, LLC, is composed of KVA Resources, Inc., and KLT Power, Inc. KLT Power, Inc., is a Missouri corporation, which is a wholly owned subsidiary of KLT, Inc. KLT, Inc., is a wholly owned subsidiary of Kansas City Power and Light Company, that was established as a holding company to own stock of subsidiary corporations, including KLT Power, Inc.

The Applicant presented information about the change in corporate ownership involving KVA Resources, Inc., at the Council's February 12, 1996 regular meeting. The Applicant's report was considered a motion to amend the application and parties were allowed until March 1, 1996 to comment on the proposed reorganization. No comments were received on the proposal. The Council announced its intention to address the changes in ownership in the final order on the project.

### **C. The Project**

The proposed site is an approximate 1,200-acre parcel of land east of Lincoln Road and North of County Road 5078 in Sections 2 and 11, Township 26 North, Range 5 East near the town of Creston, Washington. The power plants and their related facilities will use approximately 75 acres. Of these 75 acres, 70 acres is currently being cultivated and the remaining 5 acres is being used as range land.

The NRPF will be composed of two combined-cycle units, each containing two combustion turbine generators, one steam turbine generator and two heat recovery steam generators. The maximum nominal electrical output of each of the four combustion turbines is 141,700 kilowatts (kW). Exhaust gases from the combustion turbines will be used to produce high energy steam in the four heat recovery steam generators (HRSGs). The steam from the HRSGs will then be piped to one of the two steam turbines in order to produce the remaining one-third of the plant's output.

Natural gas will be delivered to the plants via a new pipeline to be constructed between the Pacific Gas Transmission line near the eastern border of the state and the site. Siting and regulation of the proposed natural gas pipeline falls under the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC).

Water used by the plants will be purchased from the town of Creston. The water will be supplied to the plant via a pipeline to be constructed by the Applicant. The proposed pipeline will leave the town of Creston water system and cross approximately one quarter mile of agricultural land to the Lincoln Road right-of-way and then run along the road to the plant site.

Electrical energy produced by the project will be transmitted from the plants by Bonneville Power Administration (BPA) transmission lines. These off-site transmission facilities fall under the exclusive jurisdiction of BPA.

### **D. Public Appearances**

The Council conducted a hearing and meeting sessions in Lincoln County to hear comments from and provide information to members of the public. These included the initial public information meeting and land use hearing, environmental scoping sessions, a session in the adjudicative hearing specifically set aside for comment from members of the public on any matter related to the application, and a session devoted to comment on the draft Environmental Impact Statement (DEIS) issued by the Council.

At the October 24, 1995 public hearing session in Creston, the Council heard comments from the following members of the public: Frank Ossiander, Kettle Falls, Washington; Bill Grabbel, Odessa, Washington; Deb Copenhaver, Creston, Washington.

Many aspects of the Applicant's proposed project have remained uncontested by all intervenor parties. In fact, all of the intervenors except WSEO and WDFW either settled with the Applicant or chose not to participate in the adjudicative proceedings. CFE and the two remaining state agencies that did not reach an agreement with the Applicant prior to the end of the hearing, filed post-hearing briefs challenging many aspects of the proposed project.

**A. Summary Arguments**

CFE argues that the Council should not recommend site certification because the environmental damage the NRPF will cause outweighs the need for additional power the facility will produce. The Washington State Energy Office (WSEO) has limited its challenge of the NRPF project to the questions of (1) whether there is a "need" for the power to be generated by the proposed facility, and (2) whether the proposed facility is consistent with sound public policy as evidenced by the Northwest Power Planning Council's Power Plan and the Washington State Energy Strategy. The Washington Department of Fish and Wildlife (WDFW) argues that the Council should recommend that the Governor reject and deny the application for site certification. In the alternative, WDFW offers proposed conditions for site certification that it urges the Council to adopt. The WDFW argues that KVA did not meet the requirements for presenting project information through the Council's application process.

The current tenant farmer on the project site, Blake Angstrom, has written the Council to request that the Council's Order not limit his ability to use the site for grazing purposes. Although this issue was not heard as part of the adjudicative proceeding, the Council is aware of this request.

In summary CFE, WSEO, and WDFW argue that the Council should not recommend site certification because of concerns related to damage to the environment and the need for the facility. The Applicant counters that the conditions for certification proposed by CFE, WSEO, and WDFW, are unreasonable, unjustified, and should be rejected by the Council.

In this Order, the Council will individually address the issues raised by the Applicant, Counsel for the Environment, Washington State Energy Office, Washington State Department of Fish and Wildlife, and Mr. Angstrom.

**B. Need for Power**

The Applicant, Counsel for the Environment, and WSEO all addressed the issue of need for power from the NRPF. The issues relate to 1) whether there is need for the project at all; 2) whether the project is consistent with the Northwest Power Planning Council's Power Plan, and 3) whether need for the project justifies the environmental damage it will cause in light of the mitigation and protections that would be ordered.

**1. Need for Power**

The Applicant contends that deregulation and restructuring of the electrical power industry will allow market forces to determine, better than governmental planning could, whether a project can obtain the economic backing necessary to allow construction. The Applicant argues that if new resources can supply power at a price that is competitive with other suppliers, a project will at least cover its variable costs, and noncompetitive plants will not be built.

The Applicant argues that having many available projects competing to be financed and built will help the power market operate efficiently, however, for a project to be competitive it must be licensed and available for timely construction. The Applicant urges that it is in the best interest of consumers in the Northwest to have as many power-producing options available on the supply side in order to facilitate robust competition. In addition, the Applicant argues that the availability of many projects, licensed and ready for construction, will assure that prices do not rise dramatically when demand exceeds supply. It urges the Council to allow the market to determine whether a facility is needed. Counsel for the Environment responds that the record shows that the siting of the NRPF will not have any measurable effect on the efficiency of the market. CFE argues that siting the NRPF simply means there would potentially be another plant to provide power to an already glutted market.

Counsel for the Environment urges that the Council establish a multi-part, plant-specific test of need and require a finding of that need before any Site Certification Agreement may be entered. The Applicant addresses need through evidence of regional energy and load forecasts, a traditional mechanism for assessing need, and by pointing out that the region's energy deficit is masked by recent good water years for hydro power and by the availability of cheap and abundant power from other regions which is imported to meet regional demand.

The Council finds that there is a regional energy deficit that is masked by surplus water and by imported power.<sup>3</sup> The Council also finds that the deficit results in a need for additional generation facilities.

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<sup>3</sup> Under the medium-high growth scenario set forth by the Applicant's witness, Mr. Morland, at a growth rate of 1.7 percent per year, the region requires additional resources of approximately 350 MWa per year just to meet

We decline to go further. First, as we discuss below, the legislature has not directed the Council to establish a needs test for proposed facilities. We decline to assume the mantle of legislative responsibility.

Second, it is clear, as the applicant urges, that in an increasingly deregulated environment, market forces are playing an increasing and appropriate role in many energy decisions. The Council finds that as a licensed facility, the NRPF will help to increase competition in energy production. It will permit power purchasers and investors to choose among a larger number of options. Having it available will enable it to replace less efficient producers and, in the event of a facility shortage, allow it to come to market sooner. Pre-licensing will facilitate market forces' ultimate determination of need for this particular facility; will help to reduce the cost of energy facilities; and will be to the public advantage.

## **2. Consistency with the Regional Power Plan and State Energy Strategy**

The Washington State Energy Office argues that the application fails to serve the broad interests of the public based on its lack of consistency with the Northwest Power Planning Council's Power Plan (Power Plan) and the State of Washington's Energy Strategy (Energy Strategy). It contends that under the admonition in RCW 80.50.010 to consider the "broad interests of the public",<sup>4</sup> the Council should make consistency with the Power Plan and the Energy Strategy a test for site certification, particularly since the Energy Strategy provides that it should be a legislative policy framework for the decisions of state agencies involving energy matters.

The Applicant responds that while the Power Plan applies only to BPA and not to any other entity's resource acquisitions, the NRPF is consistent with the Power Plan and would qualify for BPA acquisition. It contends that the facility is consistent in general terms with the Energy Strategy, particularly when

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normal electric growth. Regional electric loads will exceed the region's firm energy resources and the deficit may reach 2514 MWa by the year 2000 and 4025 MWa by 2005. Other loads, such as various interruptible loads, could increase the deficit to as high as 3279 MWa by the year 2000, and 4790 MWa by the year 2005. The National Marine Fisheries Service's 1995 Biological Opinion may add the equivalent of approximately 2000 MWa to the deficit.

<sup>4</sup> The statute reads in part as follows:

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

- (1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.
- (2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.
- (3) To provide abundant energy at reasonable cost.

examining the relationship among the general policies expressed in the Energy Strategy, the specific policies stated in Chapter 80.50 RCW and the specific provisions and protections in the latter law.

The Council rejects WSEO's argument that the proposed facility is inconsistent with the Power Plan and the Energy Strategy. The Council finds that the facility is consistent in general terms with both the Power Plan and the Energy Strategy.

The Power Plan calls for natural gas combined-cycle combustion turbines as a large part of its recommended resource acquisitions. Presently, these resources consist of only about 2 to 5 percent of the region's overall energy resources. In addition, the 1991 Power Plan specifically envisioned KVA's combined-cycle combustion turbine complex on the Creston site. In general terms, then, the proposal is consistent with the Power Plan.

The need for additional electrical generating facilities is supported by the legislative policy expressed both in RCW 80.50.010 and in the approval of the state Energy Strategy. The Energy Strategy is not a statute and does not have the same effect that the Council's statute does.

WSEO's proposed test would establish need through a regulatory process, similar to the test for need proposed by Counsel for the Environment. Neither the Council's enabling legislation nor the Energy Strategy require that process. The legislature did not assign the Council the task of finding whether proposed projects are required by the public convenience and necessity, as is required in some states. It certainly could have. Instead, it made a legislative determination that need exists.

The Council finds that the Energy Strategy itself contemplates need for construction of additional electrical generating facilities, and that the legislature was aware of the provisions of Chapter 80.50 RCW when it adopted the Energy Strategy. Moreover, we find that the Energy Strategy acknowledges that new gas-fired generation facilities have certain economic, environmental and flexibility advantages, and will supply a significant portion of the region's need for new generation over the next ten years. In the context of this application, the Council reasons that it would be inappropriate for the Council on its own to make the change in state law that the legislature declined to make, by implementing any new regulatory needs review process or plant-specific needs test. The Council will instead consider need when balancing the diverse interests of the public as required in Chapter 80.50 RCW and in its environmental review under Chapter 34.21C RCW, the State Environmental Policy Act or SEPA.

Because the Council is concerned that the NRPF could obtain a buyer, begin construction, and then lose its power purchaser, we address site restoration requirements elsewhere in this Order and in the proposed Site Certification Agreement.

### **3. Environmental Balancing**

#### **a. Displacement of Inefficient Facilities**

The Applicant contends that the NRPF will displace inefficient power facilities, including coal generation and gas-fired California plants built in the 1960s and 1970s. These plants produced more pollution per kilowatt hour generated than would the NRPF. However they are consistently producing surplus energy for export to this region. The Applicant argues that the NRPF is preferable to the continued reliance on these older facilities.

CFE disputes the NRPF's value as a replacement for dirtier coal or less efficient gas powered plants. While CFE admits that a facility such as the NRPF produces less air pollution than a coal plant and is generally more efficient than many older natural gas plants, CFE argues that this does not resolve the question of whether the NRPF is in the public interest. CFE contends that the Applicant has the burden of proving on a more probable than not basis that the NRPF should be built because it is in the public interest. Moreover, CFE argues that the Applicant's reliance on witness Toolson's dispatch study is misplaced because the study is flawed. CFE contends that the Applicant has failed to prove that the NRPF is likely to displace coal plants on a more probable than not basis. Therefore, CFE argues that the dispatch study has failed to make this affirmative showing and the Applicant has failed to meet its burden of proof.

We find that Mr. Toolson's study is credible. The Council finds that the NRPF is not proposed as a specific replacement for facilities that are more environmentally harmful, but that in operation it is likely that the NRPF will displace such facilities.

#### **b. External Costs**

CFE argues that the Council should consider the external costs of the NRPF and require the Applicant to mitigate all such costs. This, CFE argues, will allow the market to function efficiently. In addition, CFE contends that accounting for external costs will not allow the Applicant to gain a competitive advantage over plants in other western states that CFE contends require externalities to be addressed by the siting agency.

The Applicant disputes many of the arguments made by CFE. The Applicant argues that it was inappropriate for CFE to rely upon conservation to free up additional power in the future because the Applicant had already accounted for conservation in its deficit calculations. Thus, the Applicant argues, to include it again would be double counting.

The Council does not believe it appropriate to conduct an accounting regarding external costs. We agree that doing so on a broad basis would assist market efficiencies -- but we find that quantifying such costs is extremely difficult, that doing so raises questions of inequity in application, and that doing so would increase costs and thus operate to keep facilities under EFSEC jurisdiction off the market while favoring smaller, and potentially less efficient, facilities. As in other areas, two factors speak strongly toward this result. First is that the legislature is the proper body to implement a broad policy decision of the type requested, not the Council. Legislative determinations could make the application of such costs more rational and more fair than application in a proceeding such as this.

The Council has considered the externalities that have been discussed in submissions in the environmental review under SEPA in conjunction with the adoption of the final environmental impact statement. Doing so allows appropriate consideration under state law.

#### **4. Conclusion**

The Council finds, consistent with the legislative finding in Chapter 80.50 RCW, there is need for additional energy facilities. It finds that there is no legislative direction to conduct a plant-specific review of need, and finds that market forces can operate efficiently to determine which specific facilities will be built to meet regional need. The proposal is not inconsistent with the regional Power Plan or with the state's Energy Strategy. Environmental externalities may be considered in the SEPA review process. The project is likely to displace less efficient power producers, and the finding of need made herein is sufficient for the Council to balance the interests of the public and to determine appropriate mitigation for the project.

### **C. Environmental Damage -- Air Quality**

#### **1. Impacts**

The combustion of natural gas by the NRPF will result in the emission of several air pollutants including carbon monoxide (CO), nitrous oxides

(NO<sub>x</sub>)<sup>5</sup>, ozone, and carbon dioxide (CO<sub>2</sub>). Except for carbon dioxide, these pollutants are regulated under both state and federal statutes and rules. The Applicant argues that these air emissions will be adequately controlled under these regulations. CFE responds that regulatory requirements such as the Clean Air Act, are not sufficient because the Council must require mitigation for all damages that are found to be significant under SEPA, regardless of whether they are regulated under a different set of rules.

The Applicant argues in its post-hearing brief that the NRPF is subject to several federal and state air emissions control requirements. The Applicant contends that under the Prevention of Deterioration (PSD) rules, the NRPF must use the Best Available Control Technology (BACT), meet New Source Performance Standards (NSPS), meet state opacity limits (WAC 173-460), and comply with state air toxic regulations (WAC 173-460), and odor regulations (WAC 174-400-040). The Applicant further argues that the evidence presented during the adjudicative hearing proves that the facility will operate consistently with the PSD requirements and comply with all federal and state air quality standards.

The Applicant contends that air quality impacts of the NRPF will be minimized by using the least-polluting fossil fuel and BACT controls. The Applicant further contends that the NRPF will use the latest proven combustion turbine technology. The Applicant concludes that the NRPF will result in no unacceptable adverse impacts on air quality or to air quality related values, including visibility, regional haze, plants and soils, and impacts to Class I areas. The Applicant points out that it has entered into stipulations with the Spokane Tribe of Indians and Consolidated Tribes of the Colville Reservation resolving all emission issues with these parties. In sum, the Applicant argues that all applicable federal and state emissions control requirements will be met by large margins.

In response, CFE argues that the environmental damage the plant will cause is significant. CFE argues that the damage from air emissions alone would be from 6-14 million dollars a year. CFE further argues that the Applicant's agreement to meet all regulatory requirements such as the Clean Air Act, is not sufficient because she believes that the Council must require mitigation for all damages that are found to be significant under SEPA, regardless of whether they are regulated under a different set of rules.

CFE requests that the Applicant mitigate several emissions including CO, ozone, and CO<sub>2</sub>. CFE argues that the Applicant should be required to model its CO emissions to fully determine whether they will have an impact on the city of Spokane. CFE also points to the potential of damages associated with

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<sup>5</sup>Nitrous oxides (NO<sub>x</sub>) are precursor pollutants that play a major role in the atmospheric chemical reactions that lead to the formation of ozone.

the NRPF's production of ozone as significant. Lastly, CFE argues that operation of the NRPF will result in damages associated with CO<sub>2</sub> emissions that CFE quantifies at 4-12 million dollars per year.

The Applicant disputes CFE's arguments regarding the NRPF's air impacts. The Applicant argues that the NRPF is subject to and will comply with the all federal and state air emissions control requirements. Those requirements, the Applicant argues, are part of a national program that creates a "playing field that provides a common denominator for understanding, reliance and orderly planning." The Applicant argues that it is inappropriate for CFE to attempt to interject ad hoc requirements related to possible and speculative residual air impacts into this system.

The Applicant disputes CFE's argument that all externalities should be accounted for by the NRPF. The Applicant argues that many states have rejected proposals to place a dollar figure on externalities in the planning process and have concluded that such values are too speculative and likely to simply shift pollution rather than reduce it. The Applicant further argues that no states have used externalities in an individual licensing process. The Applicant asserts that externality theory is a planning device at best and is not suited for use in a case-by-case siting process. Furthermore, the Applicant argues that the use of externality theory if applied, as CFE proposes, would discourage construction of newer, cleaner-burning plants in favor of continuing use of the old, dirty and more-polluting resources. The Applicant asserts that would be totally self-defeating if the ultimate purpose is to lessen environmental pollution.

The Applicant argues that CFE's estimates of air impacts from NO<sub>x</sub>, ozone, and CO were based on unrealistic, speculative and theoretical assumptions. The Applicant further argues that the impact of two pollutants (CO<sub>2</sub> and NO<sub>x</sub>) would occur regardless of where the power plant is sited. In addition, the Applicant argues that restrictions on these pollutants would have to be placed on all new plants which would discourage the development of cleaner new resources and give an economic advantage to new facilities below EFSEC's jurisdictional threshold. Lastly, the Applicant argues that Dr. Butcher, a witness in the adjudicative hearing, admitted that the NO<sub>x</sub>, ozone, and CO<sub>2</sub> are issues of national and international concern and the alleged damage would result from any combined-cycle turbine power plant within or without the State of Washington. The Applicant argues that unilateral actions by individual states or upon individual facilities are worthless and have not been advised by any responsible authority.

Concerning CO<sub>2</sub>, the Applicant argues that its witness, Dr. Balling, testified that while there is much concern regarding the area of global warming, the best evidence presently available cannot establish such an effect. The Applicant argues that the greenhouse gas global warming question is a political and emotional football game, with issues not much related to actual scientific data and

research. The Applicant contends that Dr. Balling's opinion that he did not believe there is any consensus among scientists that global warming will produce disastrous adverse effects, and that such predictions are highly remote and speculative.

The Applicant disputes CFE's argument concerning the environmental effects of  $\text{NO}_x$  emitted by the NRPF. The Applicant argues that the maximum additional ozone produced would be .37 parts per billion (ppb). This, the Applicant argues, would occur 900 kilometers from the plant site. The Applicant argues that placing this against a background concentration of ozone of 35 ppb and 50 ppb, .37 ppb is so small as to be absolutely insignificant and not measurable. Thus, the Applicant concludes that CFE's witnesses are taking an extreme position and advocating possible but highly unlikely and theoretical effects. In sum, the Applicant contends that there will be no actual effects resulting from  $\text{NO}_x$  and ozone production from the minuscule concentrations produced by the NRPF.

Except for  $\text{CO}_2$ , the Council is convinced that the impacts to air quality resulting from the operation of the NRPF will be adequately controlled under requirements set out in the Applicant's PSD permit.<sup>6</sup> The Council is convinced that any regulated pollutants that remain after treatment in accordance with the PSD permit will not pose a significant threat to the quality of the environment. As such, the Council finds it unnecessary to require the Applicant to conduct further studies or implement additional mitigation except as noted for  $\text{CO}_2$ . The Council does, however, reserve the authority to require additional studies and mitigation techniques in a future PSD proceedings or as part of pre-construction review.

## 2. Conditions

The Applicant also disputes the necessity for conditions proposed by CFE regarding  $\text{NO}_x$ , ozone,  $\text{CO}_2$ , and CO. The Applicant argues that the use of a  $\text{NO}_x$  catalyst is not justified. The Applicant argues that the evidence presented by CFE regarding the impact of  $\text{NO}_x$  was speculative, theoretical and unrealistic. The Applicant further argues that while the addition of a  $\text{NO}_x$  catalyst would reduce  $\text{NO}_x$  emissions, it would also add ammonia emissions to the atmosphere and impose risk to local community from transporting and handling bulk ammonia.

The Applicant argues that CFE's request that the Applicant obtain baseline data on background concentration of  $\text{NO}_x$  by use of "SuperNox" type

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<sup>6</sup>The Council notes for the record that the Applicant has entered into stipulations with both the Spokane Tribe of Indians and the Confederated Tribes of Colville Reservation intended to mitigate any additional air quality impacts the NRPF will have on land owned by these parties, and the Council accepts those stipulations.

instruments, and once completed, run an up-to-date Regional Oxidant Model to more fully assess the effects of ozone is also unreasonable. The applicant argues that these "super low" NO<sub>x</sub> instruments have not been commercially available and are currently only being used for research purposes. The Applicant further argues that the concentrations of NO<sub>x</sub> are extremely low in the Creston area and the emission level from the NRPF will be in compliance with all relevant standards. The Applicant points out that the damage alleged by CFE relates to the ozone effects hundreds and thousands of miles away.

The Applicant also disputes CFE's request that the Applicant mitigate for CO emissions and argues that the request to model the CO emissions impact on the city of Spokane is unreasonable. The Applicant argues that CO emissions from the facility cannot be measured at the boundary of the site. The Applicant contends that the maximum one-hour and eight-hour concentration of carbon monoxide have been predicted to be 91 µg/m<sup>3</sup> and 60 µg/m<sup>3</sup>, respectively-and far below the EPA-defined significant impact concentrations of 2000 µg/m<sup>3</sup> and 500 µg/m<sup>3</sup> for the one-hour and eight-hour averaging periods. The Applicant argues that these predicted emission levels do not include, nor take into consideration, the introduction of a CO catalyst which will be required, and will significantly lower the amounts by 80 percent. Based on these numbers, the Applicant argues that CO emissions from the plant fall below federally defined significant levels (49 CFR 51.165(b)(2)), even before installation of the CO catalyst. Thus the Applicant concludes that EPA would consider the impacts from this plant to have insignificant impact on the Spokane non-attainment area, and no additional risk of exceeding the CO standards or costs to Spokane in revising its attainment plan for CO would be reasonably expected.

In summary, the Applicant argues that the conditions proposed by CFE are based on speculative, unrealistic and misleading theoretical assumptions and will accomplish nothing but further delay. The Applicant further argues that these conditions are in effect a disingenuous attempt to keep the hearing process open, and if implemented, would ultimately kill the project.

Except for the emissions of CO<sub>2</sub>, as discussed herein, the Council finds it unnecessary to require the conditions requested by CFE. The Council finds that the NRPF will meet all state and federal requirements under the PSD permit process. As such, it would be inappropriate for the Council to burden the Applicant with additional requirements that have not been substantiated in the record. However, because the Applicant's PSD permit must be reviewed every 18 months, any additional unexpected impacts that may occur can be addressed during the periodic PSD reviews.

#### **D. CO<sub>2</sub> Emissions**

With regard to CO<sub>2</sub>, the Council finds that the evidence demonstrates that the threat of global warming is real. The Council further finds that greenhouse gases

produced by the NRPF will contribute to global warming. The Council finds that the NRPF will use the latest reasonable technology and that it will produce lower emissions of greenhouse gases than older natural gas combustion turbine facilities or other fossil fuel facilities. The Council finds, however, that there is uncertainty regarding how much of the NRPF's emissions will add to the greenhouse effect. The Council further finds that CO<sub>2</sub> is not a regulated pollutant. However, the Council reasons that if it becomes one, it is likely to be regulated by the federal or state government under the Prevention of Significant Deterioration (PSD) permitting process or a similar program.

The issue is to what extent, if at all, the Council should now provide for the mitigation of greenhouse gases produced by the NRPF project.

The Council finds that although there is uncertainty in the scientific community regarding the rate of global warming and the effects warming will have on the environment, the threat of global warming to the quality of the environment that the Council has the duty to protect is substantial. The Council believes that the threat should not be ignored; that it has the authority to address the issues under RCW 80.50.010<sup>7</sup>; and that the Applicant should be required to explore mitigation.

The new technology and the relatively low emission rate for combustion turbines proposed for the NRPF project offer advantages over the use of older, and other fossil fuel facilities. In considering mitigation proposals, the Council does not wish to place the Applicant at a competitive disadvantage within the power producing market.

The Council, therefore, will direct the Applicant to prepare a report to the Council on the state of regulation regarding greenhouse gases at the time the report is prepared, and potential mitigation options that are available, identifying possible reasonable and economical mitigation proposals. The Applicant shall provide this report to the Council no later than one year before construction is scheduled to begin on each of the plants. The Council encourages the Applicant to explore in the report, innovative public or private cost-effective programs that will mitigate portions or all of the CO<sub>2</sub> produced by the NRPF. The Applicant is encouraged to investigate low-cost conservation efforts that will reduce the production of CO<sub>2</sub> and other greenhouse gases emitted from other sources. The Council is willing to facilitate the Applicant's efforts. The Council encourages the Applicant to adopt cost-effective mitigation measures that it identifies in its report.

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<sup>7</sup> RCW 80.50.010 provides in part: "It is the policy of the State of Washington...to ensure through available and reasonable methods that the location and operation of [energy] facilities will produce minimal adverse effects on the environment...." The statute directs the Council to seek courses of action based in part on the premise that "operational safeguards are at least as stringent as the criteria established by the federal government," and states the Council is to "preserve and protect the quality of the environment...." (Emphasis added.) Chapter 43.21C, SEPA, also provides for the mitigation of adverse environmental effects.

Finally, if a federal or state mitigation program is implemented, the Council reserves the right to exercise its authority under that program, considering and appropriately crediting, if permitted by law, any measures that the Applicant has accomplished under this Order.

**E. Environmental Damage--Wildlife Habitat, Wetlands, and Resources**

The Applicant has proposed to build the NRPF on a 1,200-acre parcel of land near the town of Creston, Washington. The power plants and their related facilities will use approximately 75 acres. Approximately 70 acres of the 75 acres is currently being cultivated and the remaining 5 acres are used as range land. The Applicant argues that the project development will have relatively low impact and any damage will be mitigated by its plan to remove grazing from the remaining unused acreage. The Washington State Department of Fish and Wildlife (WDFW) argues that the project will have a substantial impact that it contends the Applicant will not adequately mitigate.

The site is relatively flat and the project will not change the overall topography of the site. The Applicant points out that much of the site is currently vacant and the primary on-site land use is rangeland with three separate areas of cultivated alfalfa totaling 192 acres. In addition, a feed lot, corrals, and cattle chute occupy less than three acres and are located near the southwest corner of the property. According to the Applicant, the only on-site industrial land use consists of the BPA transmission line corridor that crosses the site.

The Applicant has committed that all project components will be constructed in a manner that avoids all wetlands. The Applicant contends that the portion of the site that will not be developed will consist of approximately 122 acres of dry land alfalfa fields located in the southeast corner of the property, and with remainder in range land. The Applicant argues that 70 acres of cultivated land and five (5) acres of range land that will be used for this project have only minimal value as wildlife habitat. The Applicant further argues that the wildlife habitat in the area should significantly improve as a result of the Applicant's proposal to remove grazing for a period of three to five years in order to allow the natural shrub/steppe vegetation to return.

The Applicant argues that it has agreed to and requests a Site Certification Agreement that would involve removal of livestock grazing from the remaining land for a period of three to five years to allow the natural shrub/steppe vegetation to return. This, the Applicant argues, will begin either when the Applicant takes legal ownership in the property or when it makes the business decision to build the project, whichever comes first. The Applicant further states that at the end of the grazing restriction period, it will invite Council comment and actively participate in the formulation of a grazing practices plan for the land.

The Applicant argues that the testimony of Mr. Don Heinle, a witness in the adjudicative hearing, clearly establishes that the minimal loss of habitat land from the use of 70 acres of cultivated dry land agricultural fields and five (5) acres of marginal grazing land is more than offset through the reduction of grazing and application of reasonable grazing practices on the unused portion of the property. The Applicant contends that the reduction in grazing will allow the native shrub/steppe habitat to regenerate while providing some agricultural purposes on the property. The Applicant concludes that any reduction of grazing more than offsets any minimal loss of habitat value due to the change in use of the 75 acres.

The Applicant further represents that it will also incorporate native plants species in the landscape design around the power plant. In addition, the Applicant states that it will design and construct the stormwater retention and evaporation pond(s) in a "wildlife friendly" manner. The Applicant argues that these ponds will be beneficial to waterfowl and other wildlife. Furthermore, the Applicant argues that it will allow wildlife-related recreation such as bird watching, wildlife photography and hiking on the area of the site not used for plant operations. The Applicant requests that it should be allowed to restrict such use to individuals given specific authorization for entry so that it has the ability to protect the potential wildlife habitat. In addition, the Applicant argues that it should be allowed to totally restrict entry into certain areas so that it can assure protection of cultural resources as implemented by this order.

WDFW filed a post-hearing brief asking the Council to deny site certification. WDFW argues that Applicant has not met the requirements for presenting project information through the Council's application process. In addition, the WDFW argues that the Applicant has not met the standards required for the identification, protection, mitigation and enhancement of the environment, specifically wildlife resources and wildlife habitat. Each of these issues is discussed below.

**1. Wildlife Assessment**

**a. Plant and Animals**

WDFW argues that the Council should recommend rejection of the proposed Site Certification Agreement because the Applicant has not met the standard for identification of plant and animal resources and impacts. WDFW argues that the Applicant's review of plant and animal resources does not rise to the level required by the Council's rules. WDFW argues that without a complete and comprehensive assessment of wildlife resources on the site, it is difficult to assess what impacts the proposal will have on those resources. WDFW argues that the Council should not recommend certification until it is satisfied that it has a complete and up-to-date application.

In response, the Applicant argues that counting the number of any species existing on five acres of degraded steppe (or scabland) was not necessary, particularly when the Applicant was proposing mitigation which would "quite easily" make up for the lost habitat. The Applicant further contends that actual counts of density, or mathematical calculations of diversity would not be information "which have a bearing on site certification" as required under the Council's rules WAC 463-42-065.

The Council is satisfied that the application, the environmental impact statement, and testimony in the adjudicative hearing adequately identify plant and animal resources. The Council notes that the land has been somewhat degraded by grazing. Setting aside the land in order to allow the natural habitat to rejuvenate, as has been proposed by the Applicant, would destroy the livelihood of the current tenant farmer on the site. The Council finds that grazing should be permitted on the site provided it is monitored by the Applicant to ensure no further degradation occurs and that existing wetland resources on the site are appropriately protected. The Council rejects the WDFW request to deny site certification because it concludes that an adequate assessment of wildlife resources has been conducted and further studies would be of marginal benefit. The Council is interested in working with the Applicant to see that further degradation of the site is limited.

**b. Wetlands**

WDFW also argues that the Applicant has not yet finished a complete analysis of the location and size of all of the wetlands located on the site. WDFW points out that the Applicant's most recent wetland study report, dated May 31, 1995, states that not all wetlands may have been found. In addition, WDFW points out the report states that for those known wetlands, some, including several very close to the currently proposed construction site, have not yet been delineated to fully locate their boundaries.

WDFW argues that given the Applicant's gaps in knowledge about wetlands on the site, KVA's commitment not to build in a wetland may either be very difficult to maintain, or the Applicant may need to relocate the facility. In sum, WDFW argues that because the Council does not have adequate information related to the number and location of wetlands, it is impossible to determine what impact the facility will have on wetlands. As such, WDFW argues that the Council should determine that it is not in the position to recommend site certification.

The Applicant disputes WDFW contention that the application is incomplete because not all of the "site" has been surveyed for

wetlands. The Applicant contends that the site has been surveyed for wetlands in 1993, 1994, and 1995. The Applicant further contends that because of the nature of the property, and the effects of cattle grazing, some of the wetlands have been difficult to locate. The Applicant argues that it carefully surveyed the western portion of the site, where the facility is proposed to be located, to make sure that all of the wetlands were identified. Furthermore, the Applicant argues that the Department of Ecology, after visiting the site, concluded that the main plant facilities and the evaporation ponds would have no wetland impact, and the other facilities will have no or minimal wetland impacts.

In summary, the Applicant argues that the site has been extensively surveyed and sufficient information has been gathered so that the Applicant can assure EFSEC that there will be no impacts on wetlands from NRPF. The Applicant further argues that it has clearly met the Council's requirements.

The Council finds that the Applicant has located and identified all wetlands near the facility. The Council finds that over 90 percent of the proposed construction site is in a cultivated area wherein any wetlands that may have existed in that area have been eliminated through cultivation. The Council accepts the Applicant's assurance and it requires that the project shall avoid all wetlands. The Council will require the Applicant to construct the project accordingly. If, however, during construction of any part of the project a presently unknown wetland is located, the Applicant shall cease construction near the wetland. The Applicant shall report to the Council how it intends to avoid or mitigate any damage caused in that area, and the Council will determine the appropriate mitigation action.

#### **F. Water Supply/Pipelines**

WDFW challenges the sufficiency of information about the water supply provided by the Applicant. WDFW argues that the Applicant has failed to provide a description of the current location and type of water intakes and associated facilities now needed for the Applicant's revised plan. In addition, WDFW argues that the Applicant has proposed to use a temporary water pipeline during construction but the application provides no discussion of the temporary water pipeline's impacts to wildlife or habitat. WDFW further argues that the application does not describe any vegetation, wildlife, cultural or archaeological survey along the temporary corridor and it appears no assessments have been undertaken.

WDFW also argues the Applicant has failed to submit information regarding a permanent waterline from Creston to provide the water needed for project operation. WDFW argues that the Applicant has either overlooked including this waterline in the application, or it has determined that it does not need to include such facility in its materials to the Council. WDFW contends that because the Council has preemptive jurisdiction over energy and "associated" facilities, it is important that the Council review all attributes and necessary elements of a site certification proposal. WDFW concludes that the Applicants have failed to provide the Council with sufficient detail regarding the specific characteristics of the water pipeline that it now intends to build to its facility.

In response, the Applicant states that the agreement it entered into with the town of Creston to supply water to the NRPF was being negotiated during the course of the hearing.<sup>8</sup> The Applicant argues that the water supply pathway will leave from the town of Creston water system and cross approximately one quarter mile of agricultural land to the Lincoln Road right-of-way and then run along the road to the plant site. The Applicant argues that it has committed that this route will avoid all wetlands, and the final route will be selected after consultation with the Washington State Department of Ecology to avoid any required wetland buffers.

The Council notes that the environmental review process is not a static one. As the process unfolds, different aspects of a proposal change. In the case at hand, the Applicant, in response to concerns expressed by state, federal, tribal, and local groups, changed the project from a water-cooled system to an air-cooled system. Along with this change comes a change in the physical nature of the facility.

The Council concludes that it would be inappropriate and unnecessary to require an Applicant to revise and reissue the Application or to initiate a new environmental review process every time such a change is made. What is important is that the Council's Order and Site Certification Agreement accurately reflect the current proposal.

The Council is satisfied with the Applicant's assurance the proposed water pipeline will avoid all wetlands and will impose such a requirement. In addition, the Council viewed the proposed pipeline path and concluded that it can be constructed and operated without significant adverse effect on the environment. However, the Council will require the Applicant to submit detailed site plans for the proposed pipeline at least six months prior to the beginning of construction of any portion of the proposed pipeline. The Applicant must include details within these plans regarding the location of wetlands in relation to the pipeline path. The Council, will review and approve these plans prior to the commencement of construction of any portion of the water pipeline.

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<sup>8</sup>Exhibit No. 152.

### **G. Water Tower**

WDFW further argues that the Applicant has not met the Council's requirements regarding associated facilities for the proposed new water tank in the town of Creston. WDFW argues that one of the Applicant's witnesses in the adjudication, Mr. Hunter Horvath, stated that the Applicant intends to construct and use a new 300,000 gallon water tank near the town of Creston. WDFW argues that at the hearing, Mr. Horvath testified that the tank is needed for operation of the proposed NRPF. WDFW argues that, other than Mr. Horvath's testimony, the Applicant has not analyzed or even proposed the tank as under the Council's jurisdiction.

WDFW contends that the water tank is an associated facility falling under the Council's jurisdiction, because the tank may relate to wildlife or wildlife habitat. It argues that the following issues need to be addressed: (1) what is proposed?; (2) where will it be constructed?; (3) what wildlife or wildlife habitats are in the area?; what impacts, if any will construction of the water tank cause?; (5) what short or long term impacts will the existence of the new water tank cause to wildlife or habitat?; (6) what protection or mitigation measures is the Applicant proposing?; and (7) what beneficial changes to the environment is KVA proposing associated with the development of the tank? In summary, WDFW argues that the Council does not know the extent of NRPF's proposed facilities or their potential impacts.

In response, the Applicant argues that the water tank is not an associated facility under RCW 80.50.020(10).<sup>9</sup> The Applicant argues that although the need for the water tank may have been triggered by the additional demand to serve NRPF, it will be an integral part of the town's water supply system. Thus, the Applicant argues that the tank meets the criterion for exclusion under the Council's statute.

The Council finds that the water tank falls outside the Council's jurisdiction and concludes that the tank will mainly serve the town of Creston and its customers other than the NRPF. As such, under RCW 80.50.020(10), the Council has no jurisdiction to consider the water tank as part of the Application.

### **H. Protection, Mitigation, and Enhancement of the Environment**

WDFW argues that the Council should not recommend site certification because the Applicant's efforts at the protection, mitigation, and enhancement of wildlife resources and habitat are insufficient. WDFW contends that the Council's governing statute directs it to judge proposals on the applicant's efforts to benefit and enhance the environment, as well as build and operate the project. In addition, WDFW argues that under RCW 80.50.100 the Council is directed to recognize and consider the statutory mandates of the state agencies whose laws are otherwise preempted by the EFSEC

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<sup>9</sup>RCW 80.50.020(10) excludes the following from the provisions of the law:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes....

process. WDFW argues that it is such an agency and under RCW 75.08.012 and RCW 77.12.010 has the mandate to preserve, protect, perpetuate, and manage the wildlife species of the state.

In response, the Applicant argues that WDFW's argument that EFSEC must recognize the purpose of laws or ordinances superseded by Chapter 80.50 RCW would be true but for the fact that no applicable statutes administered by WDFW have been superseded by Chapter 80.50 RCW. The Applicant contends that if it were not for Chapter 80.50 RCW, the WDFW would have no say about the Applicant's proposal or site certification. In addition, the Applicant argues that the statutes cited by WDFW (RCW 75.08.012 and RCW 77.12.010) do not apply to its proposal and have not been superseded by EFSEC's jurisdiction.

WDFW argues that while it disagrees with the Applicant regarding the identification of wildlife resources and habitat, both parties agree wildlife resources are present on the site, and currently, the entire site provides one or another type of wildlife habitat.

WDFW further argues that the Applicant's revised application states that no mitigation is proposed for habitat losses resulting from the construction of their facility. WDFW contends that the revised application makes little mention of what may occur on the portion of the site not needed for their facility. WDFW further contends that the Applicant, at least through the application process, has chosen to disregard the requirement of mitigating their proposed impacts to wildlife resources.

WDFW argues that Council should reject the Applicant's request for site certification because the Applicant failed to sufficiently address wildlife resources and habitat. In addition, the WDFW argues that the Applicant's recent mitigation proposals are vague, without sufficient detail, and not yet definite. Thus, WDFW argues that these proposals should be rejected because the Council is not in the position to accept these ideas as effective mitigation.

In response, the Applicant argues that WDFW presented no witnesses regarding the project's effect on wildlife and wildlife habitat. The Applicant argues that the evidence in the record comes solely from Mr. Heinle. The Applicant contends that Mr. Heinle stated that the 75 acres that will be used for the NRPF has a very low value as habitat. The Applicant points out that Mr. Heinle stated that the reduction in grazing proposed by the Applicant would "quite easily" make up for the reduction in habitat caused by the project.

The Council concludes that the prevention of grazing on the undeveloped portion of the site is unnecessary to provide adequate mitigation for the loss of the 75 acres to be developed, provided the grazing allowed is properly monitored and controlled. The Applicant should work with the existing tenant farmer to develop a grazing plan that allows continuing grazing while ensuring that wetland and sensitive habitat areas are

appropriately protected. Over the longer term, the Council is concerned about what the Applicant intends to do with the remaining undeveloped land. In order to assure that this land is properly managed, the Council directs the Applicant to work with interested state and local agencies to develop a plan for how the land can best be managed. The Council directs the Applicant to submit this plan at the beginning of the fourth year after the effective date of this certification. The Council will work with the Applicant to assure that its undeveloped land is appropriately used.

#### **I. Revised Application**

WDFW argues that EFSEC should condition site certification to clarify its jurisdiction over the site and proposal, and to require full review of a newly revised application. WDFW supports this request by arguing that there is not a clear, detailed and sufficiently analyzed statement of the current KVA proposal. WDFW states that absent detailed information about the full nature of the proposal, including definite descriptions of all actions and commitments proposed or anticipated by the applicant, EFSEC should determine the proposal is not sufficiently firm or detailed to allow a draft Site Certification Agreement to be prepared.

WDFW argues that if the Council decides to recommend site certification, the Council should undertake the following suggested actions: (1) Assert jurisdiction over the entire 1,200 acre site; (2) Require as a condition for certification that within 180 days of certification, the Applicants draft a complete revision to its application; (3) Make the revised application available to the Parties to this proceeding, and provide them an opportunity to review, comment and request additional proceedings, if necessary, prior to EFSEC's acceptance of the revised application; and (4) Require the Applicants to finish the complete wetland analysis, and write a detailed wildlife mitigation and enhancement management plan.

In summary, WDFW asks that the Council recommend to the Governor that site certification be rejected. In the alternative, WDFW argues that the Council should recommend a draft Site Certification Agreement that clearly asserts jurisdiction over the applicant, site and proposal, and requires an immediate revision of Application No. 93-2, consistent with the Council's rules and the intent of the EFSEC process.

The Applicant opposes WDFW's request and asks the Council to recommend approval of the NRPF's application for site certification.

The Council has and will continue to assert its jurisdiction over the entire 1200 acre proposed site. This is not an issue. The Council declines to require the Applicant to draft a complete revision to its application. The Council, as with other proceedings, requires the Applicant to submit revisions to its Application reflecting its stipulated commitments in the form of an addendum to the application. This Applicant will be no exception.

With regard to the WDFW's request regarding wetlands and wildlife mitigation, the Council finds that requiring the Applicant to submit the additional requested information will not further aid the Council in its decision. However, as stated above, the Council has ordered the Applicant to submit a report outlining the water pipeline path and its potential impact on wetlands and to provide guidance on its plans for the use of the remaining undeveloped land.

**J. Use of Natural Gas to Produce Electrical Energy**

In this and other hearings before the Council, members of the public have raised concerns over whether the production of electricity through the combustion of natural gas is the most effective use of this premium fuel. The Council shares this concern. Both national and state policies recognize that natural gas is an appropriate fuel for new generation resources because it is the most efficient, least polluting fossil fuel. It is an important component of a balanced energy plan. For the record, the Council expresses its belief that natural gas should, to the fullest extent possible, be utilized directly by consumers.

**K. Other Issues**

**1. Pipeline and Transmission Grid**

CFE requests that if the Council does decide to site the NRPF project that it include additional conditions in the certification agreement. The first two conditions proposed by CFE would require that EFSEC revisit the site certification: 1) once the Federal Energy Regulatory Commission (FERC) completes its review of the natural gas pipeline; and 2) once BPA completes its review for authorizing use of its transmission grid; to determine whether the certification should be modified or revoked based upon the additional information obtained through these federal processes.

The Applicant argues that it would be inappropriate to revisit the decisions of the two federal agencies. The Applicant contends that even if EFSEC had the authority to consider the impacts resulting from the natural gas pipeline and use of BPA's transmission grid, requiring mitigation for damage caused by this portion of the project is within the exclusive jurisdiction of FERC and BPA.

The Council finds that the review of the natural gas pipeline and the impacts upon the power grid are within the exclusive jurisdiction of FERC and BPA, respectively. All environmental impacts associated with the gas pipeline and the transmission grid will be reviewed by the appropriate federal agencies. Therefore, the Council finds it is unnecessary to adopt CFE's suggestion that it revisit the Site Certification Agreement when these federal processes have been completed. To do so would only delay the site certification without additional benefit to the protection of the quality of the environment.

In addition, the Council has considered the environmental effects of the pipeline and electrical transmission facilities in the environmental review process under SEPA. That is the extent of the Council's authority and its obligation to address these matters.

## **2. Duration of Certification**

Because both site conditions and technology of mitigation and energy production change over time, it is obvious that the Site Certification Agreement approved in this Order should not permit construction of the NRPF to begin at any indefinite time in the future.

The Applicant proposes a ten-year (10) certification period, and suggests that if construction of major components has not commenced within five (5) years the Applicant must report to the Council its intentions and certify whether the statements and conditions specified in the application are still current and applicable. The Council finds the basic suggestion to be acceptable, with the minor modification of providing for Council review to assure that environmental circumstances and technological advances are fully considered.

The Council's proposed certification agreement allows construction of any of the NRPF's units to begin at any time within ten years (10) from the effective date of the Site Certification Agreement, with conditions. The certificate holder may begin construction within the first five (5) years of the Site Certification Agreement upon verifying to the Council that construction and operation will comply with the Site Certification Agreement and that no substantial change in environmental or regulatory conditions has occurred that would require a change in the Site Certification Agreement.

After five (5) years from the effective date of the Site Certification Agreement, before beginning construction, the certificate holder must advise the Council of its intention to begin construction, certify that the representations of the application and supporting materials regarding environmental conditions relevant to the project, pertinent technology, and relevant regulatory conditions all remain current. The certification will be subject to Council review. Prior Council authorization will be required to begin construction, and shall be granted upon the Council's findings that no changes to the Site Certification Agreement are necessary or appropriate or upon the parties' acceptance of any appropriate changes.

## **3. Site Restoration**

The application fails to comply with WAC 463-42-655, requiring an application to contain an initial Site Restoration Plan. Given the nature of this

proposal and the relative scope and complexity of the project, the failure does not require rejection or delay of the application. Instead, the Applicant is required to present its initial Site Restoration Plan (Plan) six (6) months prior to the planned commencement of construction. Doing so will allow the Council to review and approve the proposed initial Plan. The Plan must address site restoration in the event construction is halted prior to completion of the project, and at least that element must be resolved and approved before construction may begin. The Plan will include a provision for financial guarantees to ensure site restoration will take place in the event of a cancellation of the project either during or after completion of project construction.

#### **4. Stipulations**

The Council has reviewed the stipulations entered between the Applicant and the various participants. It finds that the stipulations are sufficiently supported and are consistent with the public interest and protective of public health, safety, and welfare.

#### **L. Other Siting Requirements**

The Council has reviewed the information presented by all parties in light of all the Council's rules on environmental effects and mitigation requirements. The Council has also completed the required review under the State Environmental Policy Act. The Council is satisfied that the Applicant will comply with the appropriate environmental regulations and laws and that impacts to aesthetics, visibility, odor, noise, cultural heritage, recreation, socioeconomic, and health and safety will not adversely impact the environment or the public's welfare or will be properly and sufficiently mitigated through procedures agreed to by the Applicant in the application and conditions of the Site Certification Agreement.

### **FINDINGS OF FACT**

Having heretofore stated the Council's findings and conclusions upon contested issues and the Council's reasons and bases therefor, the Council now enters the following ultimate Findings of Fact and Conclusions of Law based upon the evidence of the record and matters officially noticed. To the extent necessary and appropriate, the Council incorporates the above findings, conclusions, and reasons in the following statement of findings and conclusions.

#### **Part 1: General**

##### **The Applicant, the Application, and the Application Review and Hearing Process**

1. On December 13, 1993, KVA/CSW (the Applicant) filed an Application for Site Certification (the Application), including an application for a PSD permit, with the Energy Facility Site Evaluation Council (Council). The Applicant seeks to construct and operate a 838

megawatt combined-cycle generation facility located east of the town of Creston, in Lincoln County, Washington.

2. On February 1, 1994, the Council held a public informational meeting in Creston, Washington, for the purpose of providing an opportunity for members of the public to discuss their concerns about the proposed NRPF project.

3. On February 1, 1994, the Council convened a land use hearing in Creston, Washington, to determine whether the proposed NRPF project was consistent with Lincoln County's land use plan and zoning ordinances. The hearing was continued over to February 14, 1994.

4. On February 14, 1994, the Council entered Administrative Order No. 666. This order found the NRPF inconsistent with Lincoln County ordinances, but acknowledged that the Applicant had submitted an application to Lincoln County to rezone the site. Upon completion of the rezoning by the county, any party to the land use hearing could petition the Council to reopen the land use proceeding. By letter dated, May 25, 1994, the Applicant notified the Council that Lincoln County had granted conditional use of the proposed NRPF site for industrial use upon certification by the Council and requested reconsideration of Order No. 666.

5. On July 11, 1994, the Council, upon confirmation from Lincoln County that the proposed NRPF project was consistent with local land use and zoning ordinances, adopted Order No. 668, thereby finding the project was now consistent with Lincoln County zoning regulations and land use plans.

6. On November 15, 1994, the Applicant resubmitted its application in response to the Council's review and comments.

7. On October 17, 1995, the Council convened an adjudicative evidentiary hearing in Olympia, Washington. The hearing concluded on October 24, 1995, in Creston, Washington.

8. EFSEC held a public hearing session on October 24, 1995, in Creston, Washington to receive comments on the proposed project.

9. At the time the Application was submitted, the Applicant consisted of CSW Energy, Inc., and KVA Resources, Inc., as joint applicants. Subsequent to the beginning of the adjudicative hearings, there was a change in the corporate structure and the Applicant proposed the addition of a new partner for one of the original applicants for NRPF. KVA Resources, Inc.'s rights and obligations were formally transferred to KVA Power, LLC, a newly formed Washington limited liability company. KVA Power, LLC, is composed of KVA Resources, Inc., and KLT Power Inc. KLT Power Inc., is a Missouri corporation, which is a wholly-owned subsidiary of KLT Inc., a wholly-owned subsidiary of Kansas City Power and Light Company.

10. The Applicant is a non-utility, independent power producer and has received Exempt Wholesale Generator (EWG) status from the Federal Energy Regulatory Commission.

### **Stipulations and Settlement Agreements**

11. The Applicant entered into settlement agreements with Wilbur Public School District No. 200, Washington Water Power Company, Spokane Tribe of Indians, the Consolidated Tribes of the Colville Reservation, and Lincoln County and certain political subdivisions. In exchange for certain conditions in the Site Certification Agreement and the stipulated agreements, the Wilbur School District, Washington Water Power, Spokane Tribe and Colville Tribes found their interests satisfied and withdrew their contentions from the Council's proceedings. Substantial evidence in the record supports the inclusion of the appropriate conditions found in the Northwest Regional Power Facility Mitigation Agreement with Wilbur Public School District No. 200, the Stipulation Between the Applicant and the Washington Water Power Company; the Air Emissions Agreement with the Spokane Tribe; the KVA/CSW Stipulation and Agreement with the Spokane Tribe of Indians for the Northwest Regional Power Facility; the Northwest Regional Power Facility Air Emission Agreement with the Confederated Tribes of the Colville Reservation; and the Socioeconomic Impact Mitigation and Interlocal Cooperation Agreement with Lincoln County and certain political subdivisions of the county; in the proposed Site Certification Agreement.

### **Fees**

12. The Applicant has paid all fees required by RCW 80.50.070 in conjunction with the filing of the Application that have been presented for payment to the date of this Order, pursuant to Chapter 80.50 RCW and WAC 463-08-020.

### **Environmental Documentation**

13. The Council is the lead agency in Washington under the State Environmental Policy Act (SEPA) for the development of Environmental Impact Statement (EIS) for the proposed NRPF project.

14. The Bonneville Power Administration (BPA) was identified as the lead federal agency under the National Environmental Policy Act (NEPA) for the proposed NRPF project.

15. The Council's SEPA responsible official determined that the proposed action might have a significant adverse environmental impact, and therefore, as EIS would be required.

16. The Council, in cooperation with BPA, entered into an agreement to prepare and issue a joint EIS document pursuant to section 102(2)(c) of NEPA at 42 U.S.C. 4321 et seq. and under SEPA as provided by RCW 43.21C.030(2)(c).

17. In October 1995, the Council and BPA issued a draft EIS (DEIS) for the NRPF project. The DEIS was prepared pursuant to SEPA and NEPA and applicable regulations. The DEIS analyzes the environmental effects of construction and operating the NRPF project.

18. A joint SEPA/NEPA public hearing was held on the DEIS in November 1995 in Creston, Washington. Written comments were received through December 4, 1995.

19. EFSEC independently reviewed the content of the joint DEIS, along with the testimony and evidence admitted during the adjudicative hearing. EFSEC determined that the materials meets EFSEC's environmental review standards and needs for NRPF.

20. EFSEC issued the FEIS on the NRPF on May 31, 1996, pursuant to the requirements of Chapter 463-47 WAC, Chapter 197-11 WAC, and Chapter 80.50 RCW. The FEIS responded to public and agency comments received on the DEIS. The Council takes official notice of the adopted documents.

## **Part 2: Project Description**

### **Project Description**

21. The Northwest Regional Power Facility (NRPF) will consist of two natural gas combined-cycle units, each containing two combustion turbine generators, one steam turbine generator, and two heat recovery steam generators.

22. Nitrogen oxides (NO<sub>x</sub>) exhaust gases will be controlled with advanced dry low NO<sub>x</sub> combustors. Carbon Monoxide (CO) will be controlled by a CO catalyst.

23. Cooling of heated water vapor will be provided by two air-cooled condensers, each with approximately 24 cells.

24. Natural gas will be supplied by a gas pipeline extension between the Pacific Gas Transmission line and the site and will be licensed under the exclusive jurisdiction of Federal Energy Regulatory Commission.

25. The electrical output of the NRPF will be delivered through the Bonneville Power Administration (BPA) high-voltage transmission system. Construction of a substation at the site, possible replacement of two existing transmission lines which now cross the site, and other modifications to the BPA system will allow delivery of power to the BPA Grand Coulee substation.

### **Site Characteristics**

26. The site chosen by the Applicant for NRPF consists of approximately 1200-acres in Lincoln County, Washington, approximately 0.4 miles east of the town of Creston. The Application provides a legal description of the power plant site location. The power plant and associated facilities are expected to occupy approximately 75 acres of the site.

27. The present uses of the portion of the site to be utilized for NRPF are agricultural, consisting of non-irrigated alfalfa fields (70 acres), and grazing land for cattle (5 acres).

28. The Applicant considered an alternative location for the proposed NRPF. The Applicant determined that the Creston site would be the best location for the project. The site is located near existing BPA transmission lines. The Site is not near any populated areas with major air pollution problems. It is of relatively low habitat value. A nearby site had previously been certified by the state for location of a major coal-fired generating plant proposed by Washington Water Power Company.

#### **Associated Transmission Lines**

29. Although BPA has not made final decisions at this time, based on a February 1994 study there will be some changes to the existing transmission system. These will include a substation on the Creston site which will step up generation voltage to 500 kV. This substation will be owned and operated by BPA. KVA will pay BPA to replace two existing 115 kV transmission lines between the project and the Grand Coulee substation with structures for a single-circuit 500 kV radial feed transmission line and a double-circuit 115 kV transmission line. It will be necessary for BPA to construct new facilities and to acquire approximately 6 km (3.5 miles) of new right-of-way. Upgrading U.S. Bureau of Reclamation's (USBR's) substation at Grand Coulee will also be required. There will also be additions which may be necessary to avoid unacceptable restrictive operation limitations on the generating facilities, such as the installation of series capacitors on BPA's Coulee/Hanford line. All modifications required by the interconnection of the NRPF will be paid for by the Applicant.

#### **Part 3: Need for Power**

30. There is a present or future need for additional power resources in the Pacific Northwest. Considerable uncertainty exists about an adequate supply of electricity, including the possibility of further restrictions on hydroelectric power generation to protect threatened or endangered fish species, the continued availability of hydro power in coordination with Canadian resources, the continued availability of power from the WNP-2 nuclear plant, and the continued availability losses of supply resources. Increases in demand for electricity, and potential losses of supply resources, alone or in concert, may lead to an immediate need to construct additional generating facilities.

31. The electrical power industry is currently in the middle of restructuring and deregulation similar to those that have or are occurring in telecommunications, airlines, trucking, and natural gas. The market for electrical energy will determine, to a large extent, which generating facilities will be constructed to supply power to the region. The Council finds, consistent with prudent policy, that the more plants licensed and available to compete in the marketplace will enhance the opportunity for abundant electrical energy at reasonable cost.

32. The NRPF is generally consistent with the Northwest Power Plan and the State Energy Strategy. The Power Plan provides for natural gas combined-cycle combustion turbines as a large part of its resource acquisition. Presently these resources consist of 2 percent to 5 percent of the overall energy supply. The Power Plan encourages the pre-licensing of generation facilities so adequate, reliable, lowest-cost, and competitive facilities will be available to meet the

demand. The 1991 Power Plan also envisioned an option for a combined-cycle combustion turbine complex on the Creston site.

33. Neither the State Energy Strategy nor Power Plan would require the Applicant to meet the test for need and consistency proposed by WSEO. The regulatory environment governing the nation's and the region's electric industry is currently changing. Many elements of current processes came into being to protect ratepayers from needless investments that could become a burden on ratepayers via regulatory action. This project is proposed by an independent power producer whose management and financial supporters bear the financial risk for constructing this project. Accordingly, ratepayer protection concerns are less germane to this application. Unless there currently is, or will be in the future, a profound and obvious glut of surplus power, the proper question then becomes, is this a state-of-the-art plant in efficiency and environmental impacts? An important task of the Council is to examine site-specific matters and prescribe conditions, where appropriate. The Council finds that the plant proposed is state-of-the-art and that appropriate and sufficient site-specific requirements are established.

#### **Part 4: Environmental Impact of Project**

##### **Land**

34. The application contains a geologic evaluation that defines the conditions of the site.

35. There are no prominent geographic features on the site which is largely flat. The only visually prominent feature associated with the project site is a set of BPA transmission lines that cross the center of the site from east to west.

36. Generally, the impact of the project development on the site will be low. The overall change of topography needed to accommodate the proposed facility will be relatively small.

37. The proposed site is an approximately 1,200 acre parcel of land east of Lincoln Road and North of County Road 5078 in Sections 2 and 11, Township 26 North, Range 5 East near the town of Creston, Washington. The power plants and their related facilities will use approximately 75 acres. Of these 75 acres, 70 acres are currently being cultivated and the remaining 5 acres are being used as range land. A feed lot, corrals and cattle chute occupy less than 3 acres and are located in the southwestern corner off the property. The only on-site industrial land use consists of the BPA transmission line corridor that crosses the site. The rangeland has been used for grazing, and thus, may not provide its full potential for wildlife habitat.

38. Wetlands have been identified on the site. Some wetlands have been identified in the general area of the proposed plant location. All major components will be located to avoid all of the wetlands and their buffers. The 70 acres of cultivated land and 5 acres of shrub/steppe land to be developed have only minimal value as wildlife habitat. An improvement for the wildlife and habitat in the area will result from the condition for site certification requirement

that the Applicant develop a plan to assure that grazing is limited. This improvement will offset any loss of habitat resulting in the change of use of the 75 acres of land to be developed.

39. At the time the Applicant takes a legal ownership interest in the property, or at the time the Applicant makes the business decision to build the project, whichever comes first, it shall renegotiate the lease agreement with the existing tenant farmer. The revised lease shall include provisions that prohibit grazing practices that would lead to additional degradation of the site.

40. The Applicant will incorporate native plant species into landscape design around the power plant. The Applicant shall design and construct the stormwater retention and evaporation pond(s) in a "wildlife friendly" manner. Such conditions will include, but are not limited to, shallow shoreline slopes, shallow water along the shoreline (depth two to six inches), and earthen berms planted with native species.

41. The stormwater retention pond will be used only to store surface runoff water as needed, and may be dry for portions of the year. The evaporation pond will be constructed with an impervious lining, to avoid infiltration into the groundwater. It will be cleaned periodically. Aquatic and terrestrial vegetation will be allowed to naturally become established in and around the evaporation ponds; however, the Applicant will have no obligation to revegetate the ponds after cleaning.

42. The Applicant may allow wildlife-related recreation such as bird watching, wildlife photography, and hiking on the area of the site not used for plant operation; it may restrict such use to individuals given specific authorization for entry; and it may totally restrict entry into certain areas as may be required to comply with cultural resource protection measures established by the Council.

43. Stormwater Pollution Prevention Plans that detail the Best Management Practices will be implemented during construction and operation. Stormwater Pollution Prevention Plans will be designed to prevent pollution from getting into the stormwater, and then to control the quantity and quality of water discharging from the site. Best Management Practices will consist of controls to minimize erosion, sedimentation, fuels, oils, lubricants, and runoff. Controls will consist of early construction of the stormwater pond and perimeter collection ditches, construction of an enclosure fence, silt fences, and evaporation ponds. Best Management Practices will include procedures for storing and dispensing of fuel, oils, and other contaminants. The Applicant will also assure the proper maintenance of portable toilets and garbage receptacles, temporary silt fencing, etc., to control sediment discharges to the retention basins, and temporary slope protection.

#### **Water Quantity**

44. In order to mitigate concerns over the proposed withdrawal of water from the Columbia River, the Applicant changed its proposal from a wet-heat rejection system to a dry system, utilizing an air-cooled condenser. This has reduced the proposed consumption of water

from 4000 gallons per minute (gpm) to 200 gpm, with the average water usage expected to be in the range of 70 gpm.

45. Needed water will be supplied to the project by the town of Creston. Creston has adequate existing water rights to supply the needs of the project. The wells that the town takes its water are adequate to supply project demand. The town's existing storage tank (a 95,000-gallon storage tank) will be replaced with a 300,000-gallon storage tank in order to assure additionally reliability of adequate water distribution. The Applicant has agreed to pay Creston up to 1 million dollars for the improvements necessary to allow the city's water system to serve the needs of the NRPF.

46. Water will be carried to the plant via a pipeline to be constructed by the Applicant. The proposed pipeline will leave the town of Creston water system and cross approximately one quarter mile of agricultural land to the Lincoln Road right-of-way and then run along the road to the plant site. The pipeline path will avoid all wetlands and their associated buffers, or will be modified accordingly. The pipeline will be constructed with suitable cover in order to not interfere with any farming or other use on the land upon which it is located.

47. The Applicant will present a detailed pipeline design for Council review and approval no later than six (6) months before beginning construction of the pipeline. The Applicant may not begin construction or operation, respectively, until the Council has approved the pertinent plan.

48. The largest water right certificate held by the town of Creston authorizes that water be used for municipal purposes within the area served by the town of Creston. The Department of Ecology includes service to industries under a municipal water right certificate. State law also authorizes delivery of water by a town within ten miles of its boundaries.

#### **Water Quality**

49. A package sewage treatment system will be used for domestic wastewater. The plant's wastewater stream to the evaporation pond will average approximately 50 gpm. The evaporation ponds will be lined and monitored so that none of this water will reach the groundwater. The water will be brackish in nature and will provide some wildlife habitat. The ponds will be cleaned when needed, with spoils disposed of off-site at a certified landfill as solid waste.

#### **Air Quality**

50. The NRPF is subject to federal and state air emissions control requirements: Prevention of Significant Deterioration (PSD) which requires the use of Best Available Control Technology (BACT), New Source Performance Standards (NSPS), visibility requirements and air toxics standards. If the NRPF is operated in accordance with the terms of the PSD permit, it will

comply with all federal and state air quality requirements and will not result in any significant air quality impacts.

51. The Council completed a Final Fact Sheet for Prevention of Significant Deterioration (PSD) Permit for the NRPF. The Final Fact Sheet explained the nature of the proposed discharge, the Council's decisions on limiting the pollutants in the discharges to the atmosphere, and the regulatory and technical bases for those decisions. The Council received an earlier version of the fact sheet into evidence. The Council takes official notice of the Final Fact Sheet and the facts contained therein as part of the factual bases of its decision to issue the PSD permit.

52. Federal and state law require the NRPF to implement Best Available Control Technology to control air emissions. Available control technologies are ranked in descending order of effectiveness. The most effective alternative must be implemented unless a less effective control technology can be justified on technological, energy, environmental or economic grounds. The NRPF, operated in compliance with PSD requirements, will comply with BACT requirements. The PSD permit will undergo review every 18 months.

53. Stipulations have been entered into with the Confederated Tribes of the Colville Reservation and Spokane Tribe of Indians resolving all air emissions issues relating to those parties.

54. The Applicant has entered into a stipulation with the Spokane Tribe of Indians agreeing to provide funding to establish baseline studies, air monitoring or for any other purpose at the Spokane Tribe's discretion; to limit emission levels of specific pollutants to specified levels; and to conduct additional stack monitoring of specified pollutants.

### **Carbon Dioxide**

55. Operation of the power plants will result in carbon dioxide (CO<sub>2</sub>) emissions. Although carbon dioxide has been associated with the greenhouse effect and global warming, it is not regulated under either federal or state law. The proposed gas-fired combustion turbine plants emit substantially less CO<sub>2</sub> than many other power plants burning fossil fuels, including older natural gas-fired plants.

56. The threat of global warming is real and should not be ignored. The production and release of greenhouse gases pose a real threat to the quality of the environment that the Council has the duty to protect. Burdensome greenhouse gas mitigation, however, could place the Applicant at a competitive disadvantage within the power producing market and deprive the market of a very efficient power producing facility. Balancing the respective interests, and recognizing that emission technology will advance and greenhouse mitigation measures may be enhanced as time passes, the Council will impose no fixed requirement upon the Applicant. The Council orders the Applicant to provide a report to the Council no later than one (1) year before construction is scheduled to begin on the two plants, that presents and evaluates possible mitigation techniques, and concentrates on those techniques that can offer cost-effective

mitigation measures. If a comprehensive federal or state mitigation program is implemented, the Council reserves the right to exercise its authority under that program, considering and appropriately crediting any measures required under this Order.

### **Vegetation, Fish and Animal Life**

57. Construction and operation of the NRPF will not have a significant effect on wildlife or wildlife habitat. The 70 acres of cultivated agricultural and 5 acres of range land that will be converted to industrial use are already disturbed and provide only minimal value for wildlife. Wildlife will benefit from the requirements in the Site Certification Agreement.

58. All wetlands and wetland setbacks shall be avoided.

59. The Council is satisfied that the Application, the environmental impact statement, and testimony in the adjudicative hearing adequately identify plant and animal resources. The proposed site has been somewhat degraded by grazing. Setting aside the land in order to allow the natural habitat to rejuvenate as has been proposed by the Applicant would destroy the livelihood of the current tenant farmer on the site. The Council finds that grazing may be permitted on the site provided it is monitored by the Applicant to ensure no further degradation occurs and that existing wetland resources on the site are appropriately protected.

## **Part 5: Health and Safety**

### **Health and Safety Standards**

60. The methods of power plant construction and operation are detailed in the application and the testimony at the hearings, and are sufficient to ensure compliance with federal, state and local health and safety standards. Substantial evidence in the record demonstrates that the risk of significant explosion during the power plant construction and operation is extremely low. The Applicant will comply with applicable federal and state regulatory requirements to minimize such risk. The Applicant will develop a Hazardous Substance Prevention and Control Plan. Handling, storing and disposal of toxic and hazardous materials used in the construction and operation will be in accordance with all applicable state federal regulations. A Spill Prevention Control and Countermeasure Plan will be developed for the facility for both construction and operation. Measures will be developed to control spills of oil and other hazardous materials. Transformers and oil tanks will be diked to contain leaks, and provided with alarms to warn operators of leaks.

### **Noise**

61. The noise analysis presented substantial evidence that the project will comply with all state noise regulations, and that the predicted sound levels will still be considered quiet during the operation of the NRPF.

**Part 6: Built Environment**

**Land Use**

62. The NRPF site is located in an area granted conditional use for industrial use by Lincoln County upon certification of NRPF by the Council

63. The Council determined in Council Order 668 (July 11, 1994) that the NRPF is consistent with Lincoln County zoning regulations and land use plans. This determination was based on information by Lincoln County officials and confirmed by Deral Bolenus, Chairman of the Lincoln County Board of Commissioners.

**Aesthetics, Visibility, and Odor**

64. The NRPF will not have a significant visual impact on rural residences in the surrounding area. Other landscape features provide partial screening of plant facilities from local residences. In addition, the facility is a significant distance from the closest residences. Views from State Route 2 and the town of Creston will be slightly reduced by the construction of the NRPF. The application commits the Applicant to the use of numerous design features, including painting the facility in natural tones to blend with surrounding landscape and planting trees as a partial screen, to reduce visual impacts.

65. The Applicant has evaluated the effect of operating the proposed power plant on the visibility of Class I areas, including Alpine Lakes Wilderness Area, Glacier Peaks Wilderness Area, Pasayten Wilderness Area, North Cascades National Park, and Spokane Indian Reservation. The visibility impacts were estimated using screening techniques developed by EPA. Using Level 1 visibility screening criteria, no adverse impacts were predicted for the Alpine Lakes Wilderness Area, Glacier Peaks Wilderness Area, Pasayten Wilderness Area, North Cascades National Park. For the Spokane Indian Reservation Class I area, potential adverse impacts were identified using Level 1 visibility screening techniques. The possible visibility effects would be extremely minor and very difficult to perceive. It would not be haze, but a potentially noticeable difference in color contrast when viewing objects through the plume. The impacts created would not be significant.

66. Substantial evidence in the application and testimony demonstrates that the construction and operation of the power plant will not result in any odor detectable at or beyond the site boundary.

### **Part 7: Recreation and Cultural Heritage**

67. The NRPF project will be constructed on 70 acres of cultivated alfalfa land and 5 acres of rangeland. The project will have no direct impact on recreational resources. The Applicant will develop a plan to limit grazing on the remainder of the land to prevent additional degradation of the site from grazing. The construction and operation of the plant with its limited number of employees is not predicted to have an adverse effect on the use of parks or recreational facilities in the vicinity.

68. The site was subjected to extensive cultural resource assessment. Only one hunter/gatherer site (45-LI-138) was found to be potentially eligible for listing on the National Register of Historic Places (NRHP). This site will not be directly affected by construction and operation of the NRPF.

69. The Applicant has entered into an agreement and stipulation with the Spokane Tribe of Indians regarding cultural and archaeological issues. The Site Certification Agreement contains detailed mitigation requirements necessary to protect known and potential cultural resource sites.

### **Part 8: Socioeconomic Impact**

70. Socioeconomic evidence in the record demonstrates that the proposed project will have a positive overall impact on the local socioeconomic environment. The NRPF will generate local employment, additional business for local service and material providers, and substantial additional tax revenues for Lincoln County and local municipalities.

71. The Applicant has entered into an agreement and stipulation with Lincoln County and certain political subdivisions within the county for the prepayment of taxes to mitigate potential adverse impacts regarding the construction phase. It is not anticipated that there will be any adverse impacts during operation because the NRPF would generate approximately \$5 million worth of property taxes while employing a maximum of approximately 29 employees, only a portion of whom would live in the county.

72. The Applicant entered into a mitigation agreement with the Wilbur School District, which is outside of the taxing areas related to the project, to compensate for any adverse effects during construction.

### **Part 9: Certification Duration**

73. The Applicant is not expected to begin construction of either unit immediately upon execution of the Site Certification Agreement. The appropriate duration of the Site Certification Agreement entered pursuant to the Order is a maximum of ten (10) years, i.e., construction of any generation unit authorized in the Site Certification Agreement must begin within ten (10) years of the effective date of the Site Certification Agreement. The interests of the public and the environment will be protected from unforeseen changes in conditions if, six (6)

months before beginning construction, the site certificate holder (a) during the first five (5) years following execution of the Site Certification Agreement identifies to the Council any substantial relevant change or verifies the lack of substantial change in relevant environmental conditions, regulatory environment, or economically available technology, and (b) during the second five (5) years certifies that the representations of the application, environmental conditions, pertinent technology, and regulatory conditions remain current, or identifies any changes and proposes appropriate resulting modifications in the Site Certification Agreement. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to the Site Certification Agreement are necessary or appropriate or upon findings concerning the effect of any appropriate changes.

#### **Part 10: Site Restoration**

74. The application does not contain an initial Site Restoration Plan. The certificate holder shall cure the failure by presenting its initial Site Restoration Plan six (6) months prior to the planned commencement of construction.

#### **Part 11: Summary Findings**

75. The terms and conditions of the attached Site Certification Agreement, provisions in the Revised Application for Site Certification No. 93-2, commitments made on the record of the hearing, and provisions in Council's PSD permit and other Attachments of the Site Certification Agreement assure the Council and the public that citizens of the state of Washington will be adequately protected during construction and operation of the NRPF Project.

76. Construction, maintenance, and operation of the proposed NRPF project, according to the terms and conditions of the attached Site Certification Agreement, provisions found in the Revised Application for Site Certification No. 93-2, commitments made on the record of the hearing, and the PSD permit issued in this matter, will not detract from the public's opportunity to enjoy the aesthetic and recreational benefits of air, water, or land resources, will not impair air quality, and will cause no significant detrimental changes in the environment.

77. Construction and operation of the proposed NRPF Project will help to provide abundant energy at reasonable cost.

78. Any and all fees required by RCW 80.50.070 in connection with the filing of Application No. 93-2 pursuant to the provisions of Chapter 80.50 RCW and WAC 463-08-020 that have been heretofore charged to the Applicant have been paid and received by the State Treasurer.

79. Each and every condition stated in the attached Site Certification Agreement is within the Council's scope of authority and is found essential to the lawful construction and operation of the proposed NRPF Project.

80. Each and every condition stated in the PSD permit issued by the Council in this proceeding is found to be essential to the lawful operation of the proposed NRPF Project.

81. The parties agree and the Council finds that the Applicant is not expected to begin construction of either unit immediately upon execution of the Site Certification Agreement. The duration of the Site Certification Agreement entered pursuant to this Order is ten (10) years, i.e., construction of any generation unit authorized in the Site Certification Agreement must begin within ten (10) years of the effective date of the Site Certification Agreement. The interests of the public and the environment will be protected from unforeseen changes in conditions if, six (6) months before beginning construction, the site certificate holder: (a) during the first five (5) years following execution of the Site Certification Agreement identifies to the Council any substantial relevant change or verifies the lack of substantial change in relevant environmental conditions, regulatory environment, or economically available technology, and (b) during the second five (5) years certifies that the representation of the Application, environmental conditions, pertinent technology, and regulatory environment remain current, or identifies any changes and proposes appropriate resulting modifications in the Site Certification Agreement. Construction during the second five (5) year period may begin only upon prior Council authorization.

82. The Council has complied with the processes required in Chapter 43.21C RCW, the Washington State Environmental Policy Act, by issuing a determination of significance, holding scoping meetings, issuing a draft environmental impact statement (DEIS), integrating public comments into the DEIS, and issuing a final environmental impact statement (FEIS). The Council has utilized the FEIS during its environmental review process prior to this decision. Pursuant to RCW 34.05.452(5), the Council takes official notice of the Final Environmental Impact Statement (FEIS) that the Council issued pursuant to Chapter 43.21 RCW.

83. Balancing the interests protected and promoted by Chapter 80.50 RCW in light of all the evidence and environmental review documents, the Council finds that issuing the Applicant a site certificate for the Northwest Regional Power Facility, as set forth in the attached draft Site Certification Agreement, will promote the public interest.

84. The Governor of the State of Washington will act within the purposes of Chapter 80.50 RCW by approving the attached Site Certification Agreement, conditioned upon the implementation of its terms and upon provisions of the Revised Application for Site Certification No. 93-2, the Applicant's commitments made upon the record of the hearing, and the Approval of the Notice of Construction and Prevention of Significant Deterioration Application.

Based on the above Findings of Fact, the Council hereby makes and enters the following Conclusions of Law:

### CONCLUSIONS OF LAW

1. Jurisdiction. The Washington State Energy Facility Evaluation Council has jurisdiction over the persons and the subject matter of Application No. 93-2, pursuant to Chapter 80.50 RCW and Chapter 34.05 RCW.

2. Applicant. KVA Power, LLC, may properly be substituted for KVA Resources, Inc., as one of the joint applicants and certificate holder for the NRPF project.

3. Stipulations. The Stipulations entered into between the Applicant and other parties to this proceeding are approved and accepted by the Council and by this Order are made conditions of the Site Certification Agreement. Note: The stipulation agreement reached between the Applicant and the Washington Water Power Company is not a part of the Site Certification Agreement.

4. Compliance with regulation. Application No. 93-2, as amended to reflect all commitments made by the Applicant during the adjudicative proceeding, complies with the requirements of Chapter 463-12 WAC.

5. Site restoration. Given the nature of this proposal and the relative scope and complexity of the NRPF project, the Applicant shall comply with WAC 463-42-655 by presenting its initial Site Restoration Plan (Plan) six (6) months prior to planned commencement of construction and allow the Council to review the proposed initial Plan before beginning construction. The initial Plan must address aspects of site restoration, including funding, in the event construction is halted prior to completion of the NRPF project, and at least that element shall be resolved and approved before construction may begin.

6. Duration of certificate. The Site Certification Agreement will allow construction to begin within ten (10) years of the execution of the Site Certification Agreement, with appropriate conditions as set out in the Finding of Fact No. 75 to assure that the terms and conditions of the Site Certification Agreement remain sufficient to protect the public and the environment. The Site Certification Agreement shall provide that during the second five (5) year period, Council authorization is required prior to beginning construction.

7. The Site Certification Agreement shall provide that the certificate holder will be bound by future Council rules adopted under the state Administrative Procedure Act and by lawfully prepared policy or interpretive statements, unless the NRPF project is specifically exempted in the rule or under waiver requested by the certificate holder and granted by the Council.

8. Having evaluated Application No. 93-2, as amended, and the oral and documentary evidence on the hearing record, the Council concludes that construction and operation of the proposed NRPF project, pursuant to the terms and conditions of the Site Certification Agreement, will comply with the Council's topical guidelines and will produce

minimal adverse effects on the environment, ecology of the land and its wildlife, and ecology of state waters and their aquatic life.

9. State Environmental Policy Act (SEPA). The Council is the SEPA lead agency for the proposed action. The Council Manager, Jason Zeller, is the SEPA responsible official pursuant to WAC 463-47-051. Because the SEPA responsible official determined that the proposed action may have a significant adverse environmental impact, an environmental impact statement (EIS) is required. The Council satisfied the SEPA EIS requirement by issuing its Final Environmental Impact Statement on May 31, 1996, pursuant to the appropriate regulations.

The FEIS issued by the Council is adequate and meets all the Council's responsibilities under SEPA, satisfying the requirements of Chapter 43.21 RCW, Chapter 463-47 WAC, and Chapter 197-11 WAC. The Council's FEIS reasonably discusses and substantiates the probable significant adverse impacts of the Northwest Regional Power Facility and alternatives and describes potential measures to mitigate those impacts. The cumulative impacts of the NRPF project are adequately addressed by the environmental review and mitigated by the conditions contained in the Site Certification Agreement.

10. Recommendation. Having balanced the demands for energy facility location and operation with the broad interests of the public, the Council should recommend that the Governor of the State of Washington approve Application No. 93-2, as revised, and approve the attached Site Certification Agreement, including all Attachments, between the State of Washington and the Applicant to permit construction and operation of the Northwest Regional Power Facility. The effect of the Site Certification Agreement is contingent upon execution by the Governor and the Applicant.

Based on the foregoing Findings of Fact and Conclusions of Law and the record in this proceeding, the Council makes and enters the following Recommendation and Order:

## **RECOMMENDATION AND ORDER**

The Energy Facility Site Evaluation Council Orders:

1. The Council hereby Reports to the Governor the State of Washington that Application No. 93-2 as revised for Site Certification for Northwest Regional Power Facility is in compliance with applicable laws and regulations.
2. The Council recommends that the Governor approve the Site Certification Agreement, with all Attachments, upon the terms and conditions set out therein, and in so doing approve the certification for the construction and operation of the Northwest Regional Power Facility Site at Creston, Washington.
3. The Council authorizes the substitution of KVA Power, LLC, for KVA Resources, Inc., as a joint applicant and certificate holder for the Northwest Regional Power Facility.
4. This Report and Recommendation, along with the attached draft Site Certification Agreement and its Attachments, shall be and the same are hereby forwarded to the Governor of the State of Washington for his consideration and action.

### **NOTICE TO PARTIES**

**This is a final order of the Council. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within ten (10) days of the service of this order, pursuant to RCW 34.05.470 and filed with the Council Manager pursuant to WAC 463-30-335.**

SIGNATURES

DATED at Olympia, Washington and effective this 10th day of June, 1996.

THE WASHINGTON STATE ENERGY  
FACILITY SITE EVALUATION COUNCIL

*Frederick S. Adair*

Frederick S. Adair, Chair

*Walter Swenson*

Walter Swenson, Department of Agriculture

*Bob Mooney*

Bob Mooney, Department Health

*R Skinnarland*

Ron Skinnarland, Department Ecology

*Gary Ray*

Gary Ray, Department of Transportation

*Doug Kilpatrick*

Doug Kilpatrick, Washington State Energy Office

*C. Robert Wallis*

C. Robert Wallis, Utilities and Transportation Commission

*Jo Roller*

Jo Roller, Department of Fish and Wildlife

*David McCraney*

David McCraney, Department of Trade and Economic Development

*Nancy Joseph*

Nancy Joseph, Department of Natural Resources

*Ted Hopkins*

Ted Hopkins, Lincoln County