BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

| In the Matter of:<br><br>APPLICATION NO. 2009-02<br><br>GRAYS HARBOR ENERGY LLC<br>And GRAYS HARBOR ENERGY II LLC<br><br>GRAYS HARBOR ENERGY CENTER | **COUNCIL ORDER No. 860**<br><br>**Order Recommending Approval of Amendment No. 5[1] of Site Certification Agreement of the Satsop CT Project (Grays Harbor Energy Center)** |
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**Executive Summary**

In this Order, the Energy Facility Site Evaluation Council (EFSEC or Council) recommends that the Governor, on behalf of the State of Washington, approve expansion of operations on a previously certified site in Grays Harbor County near Satsop, Washington, for the construction and operation of Units 3 and 4, collectively consisting of two combustion turbines and one steam turbine, with a combined 650 MW capacity, and to rename the Satsop CT Project as the Grays Harbor Energy Center. The proposed expansion would double the existing capacity of the facility.

EFSEC is the state agency charged with making a recommendation to the Governor as to whether a new major energy facility should be sited in the state of Washington.[2]

Units 3 and 4 would be located entirely within the boundaries of the previously permitted site and on land that has already been disturbed and developed for industrial use. The proposed expansion, as well as the existing Project, will be sited on approximately 22 acres of previously developed land that was earlier approved for nuclear and combustion turbine power facility development. The entire generation facility will be fueled by natural gas, with no backup fuel source proposed. The Grays Harbor Energy Center will continue to utilize the natural gas pipeline installed for the existing facility.

All power produced by the Grays Harbor Energy Center will be routed to the Bonneville Power Administration (BPA) transmission system. The power from Units 3 and 4 will be exported on lines to be installed on the existing tower structures constructed for Units 1 and 2,

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[1] Amendment No. 4 was filed November 2001 but for reasons unrelated to the request was never acted upon.

[2] RCW (Revised Code of Washington) 80.50

from the facility site to the BPA Satsop substation, which is located approximately 4,000 feet east of the site.

The Council has reviewed Grays Harbor Energy's Application for Amendment (Application), No. 2009-02; it has conducted public meetings and hearings;[3] and by this Order it recommends approval of the Application to the Governor of the State of Washington.

Operation of the planned Project, consistent with the protections provided in the Application and the Mitigated Declaration of Non-Significance (MDNS) and with the commitments made in the proposed Site Certification Agreement (SCA), is expected to produce minimal adverse impacts on the environment, the ecology of the land and its wildlife, and the ecology of the state waters and their aquatic life.

The Council has carefully considered the state's need for energy at reasonable cost[4] and the need to minimize environmental impacts. The Council determines that this facility will provide the region with significant energy benefits without significant adverse environmental impacts. Thus, the proposed Project meets the requirements of applicable law and is consistent with the policy and intent of RCW 80.50.

The Council therefore recommends that the Governor APPROVE the siting of this Project, as set out in this Order and the accompanying draft Site Certification Agreement.

## I. INTRODUCTION

### A. Procedural Setting

**1. Application:** This is an application for Amendment No. 5 of a Site Certification Agreement to allow the Applicants, Grays Harbor Energy LLC and Grays Harbor Energy II LLC,[5] to expand a commercial natural gas-fired electric generation facility in Grays Harbor County, Washington.

**2. Process:** This matter was conducted using an expedited, non-adjudicative process, as

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[3] The Council granted the Applicant's request for a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) and authorized consideration of the application as an expedited proceeding, outside the adjudicative process, See, RCW 80.50.075, WAC Chapter 463-43 and WAC 463-43-060.

[4] *See,* RCW 80.50.010.

[5] Unless specifically required in the context, any reference to one of the entities or to "applicant" or "applicants," whether singular or plural, unless the context clearly indicates otherwise, refers to both applicants as their interests appear in the Application, so as to provide seamless authority and responsibility for all regulatory purposes.

provided by RCW 80.50.075 and RCW 80.50.090(3). The Washington State Energy Facility Site Evaluation Council (EFSEC) convened public information sessions on July 13, 14, 15, and August 10, 2010, in Montesano, Washington and conducted deliberative sessions that were open to the public on August 11, and September 15, 2010 in Montesano and September 29 and October 19, 2010 in Olympia, Washington, before Council Members James O. Luce, Council Chair; Richard Fryhling, Department of Commerce[6]; Hedia Adelsman, Department of Ecology; Mary McDonald, Department of Natural Resources; Jeff Tayer, Washington Department of Fish and Wildlife; Dennis J. Moss, Washington Utilities and Transportation Commission; and Terry Willis, Grays Harbor County. The Council retained C. Robert Wallis, Administrative Law Judge, as moderator and to assist with this proceeding.

The participants were represented as follows:

Applicant, Grays Harbor Energy Center: Karen McGaffey and Kelly Moser, Attorneys at Law, Perkins Coie LLP, Seattle

Counsel for the Environment: Bruce Marvin, Assistant Attorney General, Office of the Attorney General, Olympia, Washington.

**3. Decision:** In this Order, the Council recommends to the Governor of the State of Washington that the Application be approved; consistent with the terms of this Order, and that the Governor and the Applicant enter into an Amended Site Certification Agreement as proposed in Attachment I to this Order.

## B. The Applicants and the Project

The Applicants are Grays Harbor Energy LLC and Grays Harbor Energy II LLC, (collectively referred to as Grays Harbor Energy, GHE or Applicants). They are wholly-owned subsidiaries of Invenergy, LLC. The Applicants are Delaware limited liability companies, created for the sole purpose of developing, permitting, financing, constructing, owning and operating the Grays Harbor Energy Center.

The existing project is situated on a 22-acre site of developed land. Among the modifications proposed to the existing Project are the following:

- Applicant proposes to double the nominal capacity of the facility, from 650 to 1300 MW, by adding Units 3 and 4 to the existing Units 1 and 2.
- The proposed addition would be virtually identical to the existing facility. Units 3 and 4 would be combustion turbines in a combined cycle configuration with an additional on-site steam turbine.

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[6] The Department of Community, Trade and Economic Development was renamed as the Department of Commerce in the 2009 legislative session.

The Project site is near Satsop, Washington. The Project will require the use of existing access roads, underground and overhead electrical lines, a grid interconnection substation, a step-up yard to prepare the power for interconnection with the power grid, and associated supporting infrastructure such as safety and control systems and an internal electrical system. The project is located within the boundaries of a site originally authorized for construction and operation of two nuclear plants, WNP-3 and WNP-5. Both projects were terminated before completion, but partially-completed facilities remain. The entire site was subsequently transferred to ownership of Grays Harbor County. Applicant now owns its 22-acre site. The remainder of the former nuclear plant site is under the jurisdiction of the Grays Harbor Public Development Agency (PDA), a division of the County, under which it is operated as an industrial park.

The project will also require the construction of new foundations, combustion and steam turbines, and related facilities.

Units 3 and 4 will be constructed on the 22-acre site previously licensed by EFSEC. The laydown yard, to be used only until construction is complete, will be located on nearby land leased from the PDA. Water required for construction of the Project will be provided by the PDA. Sanitary waste water produced during construction will be disposed of via an on-site septic facility authorized to accept such wastes, and portable toilets as needed. Water needs during operation will be supplied by Ranney wells. Storm water discharges generated during construction and operation of the Project will be managed in accordance with the applicable National Pollutant Discharge Elimination System (NPDES) Permits.

Electricity generated by the Amendment to the Project will be transmitted to the Bonneville Power Administration (BPA) electrical transmission system on the existing site via connector lines to be constructed.

## C. <u>The Council and the EFSEC Review Process</u>

EFSEC was created to advise the Governor in deciding which proposed locations are appropriate for the siting of large energy facilities.[7] It is the policy of the state of Washington to recognize the pressing need for energy facilities and to ensure, through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.[8]

The Council has a comprehensive mandate to balance the State's need for abundant energy at a reasonable cost with the broad interests of the public. The Council is also charged with protecting the health of citizens and recommending site approval for power facilities where minimal adverse effects on the environment can be achieved.[9]

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[7] RCW 80.50.

[8] RCW 80.50.010.

[9] RCW 80.50.010; WAC 463-47-110.

The Council conducted its review of this Application in a proceeding under the Washington State open meetings act, chapter 42.30 RCW, pursuant to RCW 80.50.075, as required by RCW 80.50.075(2)(b) and WAC 463-43-060.

## D. Compliance with the State Environmental Policy Act

The Council is charged with the responsibility to review proposed projects under the State Environmental Policy Act (SEPA), RCW 43.21C. This law provides for the consideration of probable adverse environmental impacts and possible mitigation measures. WAC 463-47-140. Pursuant to SEPA, EFSEC is the lead agency for environmental review of projects under the jurisdiction of RCW 80.50; the Council Manager is the SEPA responsible official. WAC 463-47-051.

In this proceeding, the Council complied with SEPA requirements by considering, and then issuing on February 12, 2010, a Mitigated Determination of Non-Significance (MDNS).

## E. Administrative Proceeding

Issuance of the MDNS brought the Application within RCW 80.50.075 and WAC 463-43-060. Those provisions exempt projects for which an MDNS is issued from the requirement of an adjudicative proceeding under RCW 80.50.090(3).

The Council accordingly considered the Application through the open meeting process under chapter 42.30 RCW. It convened evening open meetings in Montesano, Washington on July 13, 14 and 15, 2010 at which panels of experts submitted papers and made oral presentations. Council members and members of the public had the opportunity to ask questions and receive answers to technical questions. In addition, members of the public presented oral comments to the Council about the application. The Council also received 30 written comments regarding the Project from members of the public before the deadline for such comments on August 2, 2010.

The Attorney General appointed H. Bruce Marvin, Assistant Attorney General, as Counsel for the Environment. Mr. Marvin attended and participated in the public meetings, commented on proposals, and submitted materials regarding the project.

The Council held open public deliberative meetings to consider the application on August 11and September 15, 2010, in Montesano, Washington and on September 29 and October 19, 2010 in Olympia, Washington.

The Council on December 21, 2010 adopted the proposed amendment, with modifications, and directed that the agency order and resulting site certification agreement be forwarded to the Governor of the State of Washington for consideration pursuant to RCW 80.50.100.

## F. Land Use Consistency

The Council is required to hold a formal public adjudicative hearing to determine

whether a proposed Project's use of a site is consistent with local or regional land use plans as well as zoning ordinances in effect at the time the Application was submitted to the Council.[10] A land use consistency hearing was conducted on December 15, 2009, in Montesano, Washington. During the hearing, all participants agreed that the proposed project Amendment was consistent with all applicable land use requirements, and the Council so determined.

## G. Public Comment

The Council held sessions in which any person could present information and comment about the proposed project either supporting or opposing the Application.[11] The Council provided an opportunity for public witnesses to testify during the hearing (comment during the meeting) on the request for a Mitigated Declaration of Non-Significance, the hearing on land use consistency, and the public meetings on the proposed Project.

EFSEC issued public notices of the following events: receipt of the Application; public meetings; land use hearing; the open meetings to consider the application; Mitigated Determination of Non-Significance and the meeting to announce the Council's final decision to recommend approval to the Governor.

The Council received comment from members of the public at these procedural stages and during the meetings or portions of meetings set specifically to receive public comment.

The Council received oral comments on the amendment application in an open meeting setting and at a separate Land Use hearing, both conducted in Montesano, Washington on December 15, 2009.

The Council received 16 comment letters from members of the public regarding the Application, no written submissions regarding land use consistency, and 5 letters regarding the Mitigated Determination of Non-Significance.

The Council considered the oral and written comments submitted by the public as indications of topics and views significant to the public. The Council appreciates the witnesses' efforts in presenting testimony and written comments.

## H. Council Action on Recommendation to Governor

In accordance with the requirements of RCW 34.05 and RCW 80.50, on December 21, 2010, at a duly noticed regular Meeting convened in Olympia, Washington, the Council voted unanimously to recommend approval of the Project to the Governor of Washington state. The Council memorializes its action in this Order, Council Order No. 85X.

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[10] RCW 80.50.030(2), WAC 463-14-030(2).

[11] RCW 80.50.090; WAC 463-14-030.

## II. ELEMENTS FOR CONSIDERATION

Notwithstanding adoption of the MDNS, the Council still must consider whether the information presented meets the Applicant's obligation to demonstrate that applicable environmental standards are met. The applicant has the burden of demonstrating through its information that the Project meets the requirements of law, consistent with the legislative policy and intent of RCW 80.50. In addition, the Council is required to review the information, even when uncontested, to ensure that it meets the requirements of law and rule. We have done so, and enter this Order as our acknowledgment and review of all the information of record.

EFSEC is also responsible for complying with the State Environmental Policy Act (SEPA), set out in RCW 43.21C. SEPA requires consideration of a project's probable significant adverse environmental impacts. WAC 463-47-140. The Council must also consider all public comment received on proposed power facilities. RCW 80.50.090; WAC 463-14-030.

## III. ENVIRONMENTAL DETERMINATIONS

### A. Air

Modeling analysis indicates that maximum ambient concentrations of criteria pollutants will be below "significant impacts level" and concentrations of toxic pollutants will be below acceptable source impact levels. The operation of all four units will not cause ambient air quality standards to be exceeded. Operation of Units 3 and 4 will result in the emission of CO2. Whether or not it results in a net increase in CO2 emissions will depend upon whether its operation displaces other higher CO2-emitting facilities.

**Mitigation Measures**

Units 3 and 4 will include best available emission control technology (BACT). The PSD permit will establish operational conditions and emission limitations. The Certificate Holder will comply with RCW 80.80 emission performance standards. Finally, the Certificate Holder will mitigate CO2 emissions in accordance with RCW 80.70's monetary path.

### B. Water

Units 3 and 4 are proposed to withdraw up to 6.8 cfs of water in addition to the water withdrawals already authorized by the SCA. The flow in the Chehalis River near the Project site occasionally falls below the base flow levels established in WAC 173-522-020. In the five years from 2005 through 2009, the river at Station 12.0350.02 has experienced flows below regulatory base flow levels from 13 to 44 days per year. However, many of those days occur during times of the year when the regulatory base flow is relatively high. The flows on these "below base flow" days range from a high of 3,770 cfs to a low of 594 cfs. The average flow on these days was 2,118 cfs. The withdrawal of an additional 6.8 cfs of water is not expected to have a measurable impact on aquatic habitat, fish, or other aquatic species. The operation of Units 3 and 4 will result in the discharge of waste water to the Chehalis River that is similar in quality to the water

discharged by the existing Units 1 and 2. Discharge of this waste water will not result in the exceedance of water quality standards in the Chehalis River.

On days in which the flow in the Chehalis River at station 12.0350.02 is below regulatory base flows, the Project will use water withdrawn pursuant to water rights that are not subject to base flow limitations. Discharges will be subject to the requirements of the NPDES permit, which are designed to protect water quality and aquatic habitat. Sampling and reporting requirements in the permit will be used to monitor compliance.

## C. Animals

### 1. Potential Impacts:

The Certificate Holder originally proposed to expand the site by ten acres, with the additional area to be used for construction laydown and access. Approximately half of the ten acre area is conifer forest and the other half is grassland that until recently was mowed annually. WDFW expressed concerns about clearing the forested area and suggested that use of PDA property on the north side of the access road (lots W-9, W-10, and W-11) that is already cleared.

### 2. Mitigation Measures:

In response to WDFW concerns, the Certificate Holder withdrew its proposal to expand the site and will not clear the forested acreage as originally proposed. Instead, the Certificate Holder will enter into a short-term lease to utilize other PDA property for construction laydown. For construction laydown, the Certificate Holder will use some or all of three lots north and east of the project site, W-9, W-10, and W-11, which have already been cleared for future development, and if necessary, portions of the grass covered acreage originally proposed as part of the expansion area.

WDFW supports the Certificate Holder's use of these areas for laydown as an alternative to the original proposal to clear and use the forested area east of the project site. WDFW has agreed that some trees may be removed in order to improve the road to County standards to be used as a two-way access road. The amount of tree removal would be the minimum required for roadway widening and drainage. WDFW has also suggested that, if needed for construction access, a new roadway may be constructed in the grassland east of the forested area to connect the access road on the north side of the site to the south property line.

## D. Light and Glare

### 1. Potential Impacts:

The existing Grays Harbor Energy Center is lighted for the purposes of general operator access and safety. Some additional lighting will be installed for Units 3 and 4. Light poles will be standard street light height, in the range of 20 to 50 feet. Outside lighting around the exterior of buildings and ancillary equipment would likely be attached to walls. This lighting may be seen

from nearby residences, and has the potential to affect viewing of the night sky. During construction, there would be some lighting associated with construction machinery. During operation, the most visible points of illumination would be small, lights on the emission stacks. These lights are intermittent and would be similar to warning lights present on the nearby WNP-3 and WNP-5 cooling towers and on the existing cooling towers for the Satsop Combustion Turbine Project.

2. **Mitigation Measures:**

The existing 25-foot-high wall and vegetated berm located along Keys Road will reduce the light from Units 3 and 4. Additional screening is provided by high trees located along the residential road since the residences are set back an estimated 50 to 75 feet.

With the exception of minimal lighting on the top of each boiler and stairway lighting for night-time access, existing lighting on high elevation access platforms has been turned off, and will only be turned on in the event that night-time access to towers or stacks is required. In those cases, the lighting will remain on only as long as necessary for repair or investigation work.

Lighting that is needed for night-time security or safe access will be directed downward and shielded to prevent light from spilling over the property line.

## E. Transportation

1. **Potential Impacts:**

Without mitigation, construction traffic could cause delays at the Highway 12 – Keys Road intersection.

2. **Mitigation Measures:**

The Certificate Holders shall develop a Traffic Management Plan in consultation with the Grays Harbor County Department of Public Works, and submit it to the Council for approval. The plan shall include measures to encourage construction traffic to use the Wakefield/Lakefield corridor to minimize traffic at the Highway 12 – Keys Road intersection, address pedestrian traffic leaving the construction site and provide for reasonable access to side roads during periods when project-related traffic or construction equipment may impede such access.

## F. Noise

1. **Potential Impacts:**

Computer modeling predicts that the total noise produced with all four units operating will be less than 50 dBA at nearby residential properties and less than 70 dBA at adjacent industrial properties to the north, south, and west. See Application Section 4.1. Neighbors, however, have found the noise generated during testing and operations of Units 1 and 2 to be

quite noticeable in some conditions. Certain noise reduction efforts are required under the current SCA. In addition, the Applicant has offered a number of sound-related mitigation measures, which the Council accepts, with the understanding that the operating regulatory standard for the GHEC after completion of Units 3 and 4 will be the Council's regulation, WAC 463-62-030.

2. **Mitigation Measures:**

Site Certification Agreement Article IV.F. currently requires that Units 1 and 2 include the following noise attenuation features:

1. The combustion turbines and other major sources of sound shall be enclosed within structures in which acoustical damping has been installed.
2. Acoustically absorptive silencers shall be installed on the combustion turbine air intake system, enclosure ventilating systems, and emergency relief valves.
3. Separate acoustical enclosures shall be installed for major noise sources including each combustion turbine and generator.
4. Acoustically absorptive insulation shall be installed in duct walls of the combustion turbine air intake and exhaust systems.

As set forth in Applicant's letters of July 9, 2010 and August 30, 2010, which are shown in Attachment IV to the Site Certification Agreement, the Certificate Holder has agreed to install the following additional acoustical mitigation devices on Units 1 and 2 by June 15, 2011:

- Acoustical walls around the combustion turbine exhaust transition pieces.
- Silencers in four combustion turbine enclosure ventilation systems.
- Silencers on one auxiliary steam relief valve and four cold reheat steam valves.

Within six months after installation of additional acoustic devices specified above, the Certificate Holder shall conduct a least-cost verification noise study of Units 1 & 2. Prior to conducting the study, the Certificate Holder shall submit the least cost verification study plan to the Council for approval.

In connection with the construction of Units 3 and 4, the Applicant has proposed the following mitigation measures:

1. Before commencement of construction of Units 3 and 4, and in adequate time to incorporate sound suppression measures into the development of design of units 3 and 4, the Certificate Holders have agreed to retain a qualified acoustical specialist to conduct a field study of Units 1 and 2 to identify additional, reasonable, cost-effective mitigation measures that could be implemented with the construction of Units 3 and 4 to further reduce project noise. The Certificate Holders have agreed to retrofit Units 1 and 2 with the additional reasonable cost-effective mitigation measures determined in this field study. The field study shall focus on reducing or avoiding sounds annoying nearby residents, rather than

merely on reducing A-weighted decibel levels. The Certificate Holder shall submit the draft study report to the Council for its review.

2. The Certificate Holder has agreed to retain an acoustical specialist to take noise measurements during performance testing of Units 3 and 4 prior to commercial operation. The results of these measurements will be used to determine whether additional acoustical barriers are necessary along the property boundaries or if waivers are needed from adjacent property owners.

3. After commencement of commercial operation of Units 3 and 4, the Certificate Holder has agreed to retain a qualified acoustical specialist to conduct a noise monitoring study to determine whether the expanded facility complies with the maximum noise limits set forth in WAC 173-60-040, as adopted by the Council in WAC 463-62-030.

4. The Certificate Holders have implemented a procedure for recording and responding to communications from nearby residents concerning project noise. The Certificate Holder shall continue to report to the Council on a monthly basis regarding noise complaints, responses and follow-up actions.

In addition, the Site Certification Agreement will require, irrespective of whether the volume of resulting sound is above or below the pertinent regulatory noise levels, that all noise suppression equipment and features shall be maintained in good working order and shall be used during all relevant operations of the Project.

## G. Health and Safety

### 1. Fire Hazards

Combustion turbines by definition require the use of highly combustible fuels. Grays Harbor Energy Center must update its Fire Control Plan in coordination with pertinent local and state agencies and response organizations.

### 2. Health and Safety Plans

The Applicant shall update Health and Safety, and emergency plans for both the construction and operation phases. This is to protect public health, safety and the environment on and off the site. The Applicant shall prepare and address in its plans a comprehensive list of major natural disasters or industrial accidents that could relate to or affect the proposed Project. The Applicant will be responsible for implementing the plans in coordination with the local emergency response organizations. The Project operating and maintenance group and all contractors must receive emergency response training as part of the regular safety-training

program to ensure that effective and safe response actions would be taken to reduce and limit the impact of emergencies at the Project site.

## H. Carbon Emissions.

Applicant is required under the provisions of Chapter 80.70 RCW and Chapter 463-80 WAC to provide mitigation for carbon emissions created by operation of the expanded facilities. Under WAC 463-80-060(2), it has chosen to provide the prescribed funding to a qualified third-party project manager, to determine and manage the necessary mitigation projects. The prescribed requirements for calculations of necessary funding and for the selection process of a qualified third party are outlined in Appendix VII of the SCA.

Questions were raised during the proceeding regarding the possibility of ensuring that local qualified mitigation projects could be given a priority consideration. Grays Harbor County expressed that such mitigation projects would enhance the local benefits from the projects and should be given priority. Grays Harbor County has been encouraged to explore opportunities with the qualified third party contractor selected by the Applicant to ensure that local qualified projects are considered with some priority. In addition, the Council urges the Applicant to include in its contract(s) with the qualified third party strong encouragement to give priority to qualified local projects.

The Council has some oversight responsibilities under the Administrative Code for the selection and management of the final mitigation projects and can select a three-person oversight committee to carry out these responsibilities. The Council's selection of the committee members will have considerable input from Grays Harbor County.

## I. Socioeconomics

The Project will result in increased employment in Grays Harbor County, both during construction and during operation. It is not expected that the majority of workers will be chosen from persons now residing in Grays Harbor County; skills required for much of the work may not readily be found within the County. However, the Project's economic impacts are not expected to be limited to jobs and the salaries of employees. The Project and its employees will purchase goods and services. The Project will increase the total valuation of real property in Grays Harbor County. It will pay increased taxes as a result. The resulting revenues will be available for schools and local public services in the area, including county roads and county government.

## J. Site Restoration

WAC 463-42-655 requires an Applicant to provide a plan for site restoration in sufficient detail to identify, evaluate, and resolve all anticipated major environmental, public health, and safety issues. The rule requires that this plan address provisions for funding or bonding

arrangements to meet the site restoration and management costs. Such arrangements are now in effect for Units 1 and 2 and the remainder of the existing site.

The Applicant has committed to posting additional funds or guarantees sufficient for decommissioning of the facilities approved in this Order, to ensure the availability of decommissioning funds when needed.

The Council has considered the Applicant's commitments and finds them to be appropriate. A detailed site restoration plan must be approved by the Council prior to decommissioning at the end of the useful life of the Project.

## K. Cumulative Impacts

Potential impacts of the proposed Project were considered cumulatively with other potential development in the surrounding areas. On balance, the impacts are adequately mitigated.

## L. Exceptions from specific requirements

The Council recognizes that during the construction and operation of a complex project such as the one proposed, circumstances may rarely arise where literal adherence to SCA requirements would operate to raise costs unnecessarily or could actually produce a result counter to the interests of the public or the environment or the intent of the Council. An example might be taking advantage of weather conditions to do minor preparation work that could be more difficult if delayed *and* that would not run counter to the intent of regulation or of the SCA if performed early.

The Council authorizes the Council Manager to allow such exceptions, provided that a record is kept and that Council members are immediately notified. Within seven days of the notice, any Council member may request the Council Manager to put the item on the next Council open meeting agenda for review.

# IV. PROJECT CONSTRUCTION

The Council finds that there is a benefit to the public to have permitted facilities ready to be constructed whenever it becomes known that more generation capacity is needed. As noted above, it is in the state's declared interest to secure abundant energy at reasonable cost. Nonetheless, the Council recognizes that an unlimited "build window" for a proposed project is not appropriate as, over time, technology or mitigation measures presented in an application may no longer be protective of environmental standards and conditions at the time the facility is constructed.

The construction and operation standards set forth in the SCA shall control Units 3 and 4 for the first five years of the build window, commencing with the execution of Amendment No. 5. If construction of Units 3 and 4 is not commenced within five years of execution of Amendment No. 5, and the Council has adopted by rule changes to WAC chapter 463-62, the construction and operation of Units 3 and 4 shall be governed by the regulations in effect at the

time the Council authorizes construction to proceed and by other pertinent changes in applicable law.

The SCA authorizing construction of Units 3 and 4 provides a ten-year build window for the Project. If construction has not begun in the first five years, prior to beginning construction, the Applicant must certify that the representations of the application, environmental conditions, pertinent technology, and regulatory conditions remain current, or identify any changes and propose appropriate revisions in this Site Certification Agreement to respond to changes. Construction may begin only upon prior Council authorization, upon the Council's finding that no changes to this Site Certification Agreement are necessary or appropriate, or upon the Council's approval and completion of any changes that the Council finds necessary or appropriate.

The Applicant expects to complete construction in approximately twenty-two months after it begins.

The above measures provide flexibility for construction but also address needs to complete the project in a timely manner.

## A. Community Involvement.

It was suggested that the Council direct creation of a "community involvement committee" to draw on community members' experiences and to address matters of mutual concern relative to the plant. Unlike technical advisory groups in other proceedings (*e.g.*, the technical advisory council created in Order No. 826), no circumstances here require technical advice for adaptive management of sensitive resources.

However, the Council notes with approval the improvements in community relationships that occurred when the Applicant began consulting regularly with neighbors about noise and lighting issues. Construction activities may bring up matters that could similarly benefit the community and the Applicant through discussions and informal efforts to resolve any problems that arise. The Applicant is not opposed to such efforts.

Therefore, the Council directs the Applicant to develop, in consultation with Grays Harbor County, a community communication plan. It should include the development and maintenance of a community mailing list, a community discussion forum event at least twice a year, and a regular e-mail or other-medium newsletter from the project owner to the community mailing list; and a steering committee to oversee implementation of the plan, comprised of three representatives, one each from the project applicant, from Grays Harbor County, and from the community at large. The project applicant will bear the cost of the plan's development and implementation. GHEC will present the plan to the Council and will notify the Council of any subsequent changes to the plan. Modification of the plan will require consultation with the steering committee, and termination of the plan will require Council approval at an open public meeting.

## B. Conformity with Law

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent of the law 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. RCW 80.50.010.

Consistent with legislative intent, the Council must consider whether an energy facility at a particular site will produce a net benefit after balancing the legislative directive to provide for abundant energy at a reasonable cost with the impact to the environment and the broad interests of the public. Here, the Council finds that the Project conforms to the legislative intent expressed in RCW 80.50.010.

The Applicant proposes to construct the Project in accordance with applicable building codes. The Applicant proposes to implement a comprehensive employee safety plan during construction and operation of the Project. The Council therefore finds that operational safeguards will be technically sufficient to protect the public and the public welfare. RCW 80.50.010 (1).

This Project will produce electrical energy while generating fewer greenhouse gas emissions than obtained with alternative fossil fuels. As a reduced-emission resource, the Project will minimize disruptions in the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources. RCW 80.50.010.

Finally, the evidence in the record supports the conclusion that the region needs to continue to add electrical generation capacity. The Project will contribute to the diversification and reliability of the state's electrical generation capacity, and will therefore support the legislative intent to provide abundant energy at a reasonable cost.

## V. CONCLUSION

The Council has carefully considered its statutory duties, applicable administrative rules, and all of the evidence in the record in exercising its duty to balance the state's need for energy at a reasonable cost with the need to protect the environment and the health and safety of the residents of the local area.

One of the Council's principal duties is to ensure that the location of energy facilities will produce minimal adverse effects on the environment. We have considered the information provided by experts and members of the public, as well as the Mitigated Determination of Non-Significance (MDNS), in determining whether this Project, with its proposed mitigation measures, is appropriate for this location.

Based on the record before us, we conclude that the mitigations and protective measures that the Applicant commits to are adequate to protect the public, including members of the public who reside in and use the areas near the Project.

As currently proposed, and with mitigation for a number of impacts and the conditions of

the Site Certification Agreement, the Project will have a minimal impact on the environment.

One of the Council's statutory duties is to ensure that the supply of energy, at a reasonable cost, is sufficient to ensure people's health and economic welfare. The record shows that this Project would serve those goals. The Council considered whether the total package of mitigation measures offset the environmental impacts of the Project. Viewed on balance, with respect to this Project, and in the context of mitigation proposed, the package for the Grays Harbor Energy Center Project satisfies the legislative policy of RCW 80.50.

For all of the reasons discussed in the body of this Order, and the Council recommends to the Governor that this Project be APPROVED, subject to agreement to the attached Site Certification Agreement.

## VI. FINDINGS OF FACT

The Council makes the following summary Findings of Facts and Conclusions of Law.

### A. Nature of the Proceeding

1. This matter involves Application No. 2010-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Grays Harbor Energy Center, seeking authority to construct an additional 650 MW natural gas-powered electrical generation facility resulting in a maximum installed nameplate capacity of 1300 MW for the completed GHEC. The Project is to be located in Grays Harbor County, Washington.

### B. The Applicants and the Application

2. The Applicants, Grays Harbor Energy LLC and Grays Harbor Energy II LLC, are Delaware Limited Liability Companies (LLCs) formed to develop, permit, finance, construct, own and operate the Project. The Applicants, which are also jointly referred to in the singular in this order, are owned by Invernergy LLC, and thus bound by obligations defined therein.

3. The Council concludes that the Project is consistent with local land use plans and zoning ordinances. On October 30, 2009 the Applicant submitted an Application for Site Certification to the Council seeking amendment of a Site Certification Agreement, pursuant to the RCW 80.50.060, to construct and operate Units 3 and 4 of the Grays Harbor Energy Center in Grays Harbor County, Washington.

### C. Compliance with the State Environmental Policy Act (SEPA)

4. EFSEC is the lead agency for environmental review of project proposals within its jurisdiction under terms of the State Environmental Policy Act, RCW 43.21C. The Council Manager is the SEPA responsible official. WAC 463-47-051.

5. On February 12, 2010, the Council's responsible official issued a Mitigated Determination of Non-Significance (MDNS).

## D. The Administrative Proceeding

6. The Council duly published and mailed required notices of receipt of the Application, of public meetings, land use hearings, and opportunities to comment regarding Application No. 2010-01.

7. The Attorney General of the State of Washington appointed H. Bruce Marvin as Counsel for the Environment (CFE) for this proceeding. Mr. Marvin attended meetings and provided oral and written comments regarding this proceeding that the Council has considered in its deliberations.

8. The Council held public meetings (also constituting and noticed as open meetings under Washington's Open Meetings law, Chapter 42.30 RCW) and four deliberative open meetings regarding Application 2009-02 in Montesano and Olympia, Washington.

9. During the Council's public meetings, it received testimony from members of the public about Application 2009-02 in Montesano, Washington. Nineteen members of the public commented at the Montesano meetings on July 13, 14, 15 and August 1, 2010.

10. On December 21, 2010, the Council voted unanimously to recommend approval of the Project to the Governor of the state of Washington.

## E. Project Description and Configuration

11. The Grays Harbor Energy Center is a natural gas-powered electrical generation facility in Grays Harbor County, Washington. Prior to submission of this Application, the site was approved for construction of Units 1 and 2, consisting or two combustion turbines and one steam generator with a capacity of 650 MW. Those Units were completed and are in commercial operation. This Application seeks to double the rated capacity of the facility to 1300 MW by adding Units 3 and 4, consisting of two combustion turbines and one steam generator.

12. Units 3 and 4 are to be constructed in accordance with the Application, within ten years from execution of the amended SCA. Applicant will make its best efforts to complete construction within 22 months of beginning construction.

## F. Site Characteristics

13. The Project is located near Satsop, in Grays Harbor County, Washington.

14. The Project will be constructed within a land area of approximately 22 acres.

15. The proposed site is located within the Satsop Development Park on land that is zoned for industrial development.

16. The Council set out its findings regarding environmental effects and consequences in Section III of this order, and incorporates those findings here.

## G. Health and Safety

17. The Project site is disturbed and cleared of significant vegetation. The risk of fire is not a significant health and safety concern associated with the construction of the proposed Project.

18. The Applicant will maintain an approved fire control plan and an emergency plan, coordinated with local and state agencies to ensure efficient response to emergency situations.

19. Construction and operation of the Project will require the use of hazardous materials such as diesel and gasoline fuels for operating construction equipment and vehicles; lubricating oils; transformer mineral oils; and cooling, lubricating and hydraulic fluids used in the turbines. The Applicant has proposed various supply and storage mechanisms depending on the type of fluid being handled.

20. The Applicant will maintain and implement as needed, Spill Prevention Control and Countermeasures Plans for both construction and operation phases of the Project.

21. Construction and operation of the Project will not result in the generation of any hazardous wastes in quantities regulated by state or federal law.

22. With the mitigation measures provided, the Council finds that the Project will not cause a significant adverse health or safety impact.

## H. Socioeconomics

23. Project construction and operation will result in increased employment in Grays Harbor County

24. Project-related spending will generate direct and indirect income during construction.

25. Adequate local housing supplies exist to accommodate the Project's demand for

temporary rental housing.

26. Construction of the Project will increase the total valuation of real property in Grays Harbor County. Based on the assessed value of its property, the Project will become an increasingly significant taxpayer in Grays Harbor County. The additional tax revenues will benefit local and state schools, county government, county roads, and other local services.

27. The Project will not have any significant negative impact on overall property values in Grays Harbor County.

## I. Public Services

28. The Project is not anticipated to have a significant adverse effect on any public services, including law enforcement, fire, water, medical, recreational, or schools.

29. The Project will not have any significant adverse impact on communication facilities or services in the area.

## J. Site Restoration

30. Prior to starting construction activities, the Applicant must post sufficient additional security to ensure complete decommissioning of the Project and restoration of the site.

## K. Cumulative Impacts

31. Potential cumulative impacts of the development of the Grays Harbor Energy Center, as well as other economic and residential growth in Grays Harbor County, were considered. The construction of the Project, in conjunction with other development actions, is not expected to result in significant adverse cumulative impacts.

## L. Term of the Site Certification Agreement

32. The Site Certification Agreement will require the Certificate Holder to commence construct the Project within ten years.

33. Construction of the entire Project shall be completed within approximately twenty-two (22) months after beginning construction.

34. The Site Certification Agreement, as it may be amended from time to time, will continue in effect for the life of the Project and until the completion of site restoration unless terminated earlier by agreement between the Certificate Holder and the State.

## M. Conformity with Law

35. The Applicant proposes to construct the Project in accordance with applicable building codes, and to implement a comprehensive employee safety plan. The Council finds that operational safeguards will be at least as stringent as the criteria established by the federal government and will be technically sufficient for welfare and protection of the public. RCW 80.50.010 (1).

36. The Applicant has agreed to appropriate environmental mitigation requirements. The mitigation package preserves and protects the quality of the environment.

37. Using an energy source for power generation with relatively low carbon emissions, the Project will contribute to the diversification and reliability of the state's electrical generation capacity, and will therefore support legislative intent to provide abundant energy at a reasonable cost. RCW 80.50.010(3)

38. The Council finds that approving the Application as provided in this Order and entering the Site Certification Agreement will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

## VII. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the comments received, and information received during the administrative and land use hearings, the environmental documents and environmental determinations made by the Council, and the entire record in this matter, the Council makes the following ultimate Conclusions of Law:

1. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the Applicant and entities with ownership interests in the Applicant, and the Council has jurisdiction over the subject matter of Application No. 2010-01, pursuant to RCW 80.50.

2. The Council conducted its review of the Grays Harbor Energy Center (GHEC) Application 2009-02 as an expedited proceeding. RCW 80.50. 075 and WAC chapter 463-43.

3. EFSEC is the lead agency for environmental review of the GHEC Application pursuant to the requirements of RCW 43.21C. Because the SEPA responsible official determined that the proposed action, if mitigated, would have no significant adverse environmental impacts, a Mitigated Determination of Non-Significance (MDNS) was properly issued.

4. The Council is required to determine whether a proposed Project site is consistent with county or regional land use plans or zoning ordinances. RCW 80.50.090; WAC 463-14-030. The Council concludes that the proposed use of the site is consistent and is in compliance with all applicable Grays Harbor County land use plans and zoning laws.

5. The legislature has recognized that the selection of sites for new large energy facilities will have a significant impact upon the welfare of the population, the location

and growth of industry, and the use of the natural resources of the state. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities and to ensure through available and reasonable methods that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. RCW 80.50.010.

6. The certification of the Grays Harbor Energy Center, as described in Application 2009-01, including the requirements of the terms of this Order, will further the legislative intent to provide abundant energy at reasonable cost. At the same time, the mitigation measures and the conditions of the proposed Site Certification Agreement ensure that through available and reasonable methods, the construction and operation of the Project will produce minimal adverse effects to the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

7. The Application should be granted, as provided in this Order, and the Council should recommend approval of the attached Site Certification Agreement.

## VIII. RECOMMENDATION AND ORDER

Based on the Findings of Fact, Conclusions of Law, the MDNS, and the full administrative record in this matter, the Council makes and enters the following Order:

1. The Council recommends that the Governor of the state of Washington APPROVE certification for the construction and operation of the Grays Harbor Energy Center, including the addition of Units 3 and 4, located in Grays Harbor County, Washington.

2. The Council orders that its recommendations as set out in this Order, together with the proposed Site Certification Agreement appended hereto, be reported and forwarded to the Governor of the State of Washington for consideration and action.

IX SIGNATURES

DATED and effective at Olympia, Washington, this 21st day of December, 2010.

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| | James Oliver Luce, Chair |

James O. Luce,
Council Chair

Richard Fryhling,
Department of Commerce

Excused
Hedia Adelsman,
Department of Ecology

Dennis Moss,
Utilities and Transportation Commission

Mary McDonald,
Department of Natural Resources

Jeff Tayer,
Department of Fish and Wildlife

Terry Willis
Grays Harbor County