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BEFORE THE STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of Application No. 2006-01:  
ENERGY NORTHWEST;  
PACIFIC MOUNTAIN ENERGY CENTER.

ENERGY NORTHWEST'S MOTION  
FOR CLARIFICATION AND  
REVISIONS OF ORDER No. 833

**INTRODUCTION**

On November 27, 2007, the Energy Facility Site Evaluation Council ("EFSEC" or the "Council") issued Council Order No. 833 (the "Order"), which stayed the adjudicative proceedings for Energy Northwest's Pacific Mountain Energy Center ("PMEC"). The Order provides the Council's evaluation of the Greenhouse Gas Reduction Plan ("GGRP") that Energy Northwest developed for PMEC.

Energy Northwest believes that certain aspects of the Order are unclear or are subject to multiple interpretations. The Council's clarification of some matters addressed in the Order would assist Energy Northwest in taking action that will enable the Council to resume processing of

1 PMEC's application. As a result, Energy Northwest respectfully requests that the Council provide  
2 clarification for the following matters.<sup>1</sup>

### 3 REQUESTS FOR CLARIFICATION

4 1. **Final Order.** The Order reports that the Council made its decision regarding the  
5 GGRP "as a Council, and without dissent...." Order at 4. Energy Northwest infers, but would  
6 appreciate confirmation, that EFSEC does not intend the Order to be a "final" order within the  
7 meaning of chapter 34.05 RCW. *See* WAC 463-30-020 (confirming applicability of chapter 34.05).  
8 Energy Northwest reserves its rights to appeal from any final order.

9 2. **Matters Decided.** The Council states that the sufficiency of the GGRP is "the only  
10 question posed to the parties that the Council will address in this order." Order at 4. This statement  
11 is incorrect. The Order actually answers several other of the questions posed to the parties, albeit  
12 without detailed analysis of these matters. Energy Northwest believes that the Council's evaluation  
13 of these and other questions posed to the parties is, in many cases, necessary for the Council's  
14 evaluation of the GGRP's adequacy or appropriate to define the contours of an acceptable  
15 sequestration plan. Energy Northwest requests that the Council correct the statement on page 4 of  
16 the Order and/or withdraw the rulings that go beyond the sufficiency of the GGRP. These rulings  
17 include:

18 a. **Rulemaking.** The Council posed the question of whether rulemaking is  
19 required. Order, App. I, § 1.a. The Council answers this question in the negative. Order at 2.  
20 Energy Northwest agrees with this conclusion.

21 b. **Timing of GGRP analysis.** The Council posed several questions regarding the  
22 relationship between GGRP sufficiency and the processing of PMEC's application. *See* Order, App.  
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24 \_\_\_\_\_  
25 <sup>1</sup> Energy Northwest respectfully submits that a motion for clarification or revision is an appropriate  
26 procedure in this matter, although the Order did not specify a particular mechanism for agency  
review. *See* RCW 34.050.461(3) (orders to include a statement of procedures available to seek  
reconsideration or other administrative relief).

1 I, § 3. In issuing the Order and staying the adjudicative process, the Council clearly determined that  
2 further processing of PMEC's application should be halted because the GGRP was insufficient. As a  
3 result, the Council did decide many of the aspects of the questions posed to the parties regarding the  
4 timing of GGRP support.

5 c. *Vesting under RCW 80.80.040(5)(13)*. The Council asked whether an  
6 applicant would remain vested under the provisions of RCW 80.80.040(5)(13) even if the Council  
7 determined that a sequestration plan is deficient. *See* Order, App. I, § 3.c. On page 4 of the Order,  
8 the Council directs Council staff to suspend application processing until Energy Northwest cures the  
9 flaws associated with the GGRP. As a result, the Council has apparently decided that PMEC  
10 remains vested under RCW 80.80.040(5)(13). Energy Northwest agrees with this conclusion.

11 d. *Conditional permit possibility*. The Council posed questions related to its  
12 authority to recommend a site certification agreement with conditions related to compliance with  
13 chapter 80.80 RCW that must be met prior to construction and operation. *See* Order, App. I, § 4. By  
14 requiring an expanded plan prior to the issuance of a site certification agreement, the Council has  
15 implicitly decided that it can not issue a site certification agreement conditioned on subsequent  
16 completion of elements of a GGRP.

17 3. *Preparation of a Geological Sequestration Plan*. The Council states, "The GGRP  
18 explained ENW's view that a plan such as contemplated by the statute is impossible to prepare at  
19 present based on the technological and economic infeasibility of geographic sequestration." Order at  
20 2. Energy Northwest believes that this statement over-simplifies and mischaracterizes the analysis  
21 set forth in the GGRP and related prefiled testimony, and requests that the Council withdraw the  
22 statement or supplement it with citations to specific statements in the GGRP or testimony. *See* RCW  
23 34.05.461(3) (requiring that initial orders contain a statement of findings and conclusions, including  
24 reference to underlying evidence).

1           4.       **Sequencing and Prerequisites to Purchasing Emission Reduction Credits.** The  
2 Order states that RCW 80.80.040 defers the determination of feasibility until “after preparing a  
3 detailed sequestration plan, receiving a site certification agreement, and making a good faith effort to  
4 implement the plan...” Order at 2. Energy Northwest disagrees with this conclusion and the  
5 Council’s determination that the statute is unambiguous in its requirements, and requests that the  
6 Council clarify the reasoning behind the conclusion.

7           5.       **Good Faith Effort.** The Council states that the GGRP “does not identify specific  
8 steps it will take to implement sequestration.” Order at 4; *see also id.* at 6 (The GGRP “does not  
9 detail specific actions ENW will take.”). However, Energy Northwest believes it did propose certain  
10 specific actions, not recognized by the Order, that it would take to implement sequestration. Energy  
11 Northwest prescribed a 3-step process to implement sequestration. GGRP at 4 (flow chart) and 19.  
12 First, it proposed a plant design that is capture ready at an anticipated cost of \$50 million. GGRP at  
13 2. Then, it proposed spending \$10 million to evaluate the potential for geological sequestration  
14 opportunities at or near the Kalama site. *Id.* at 3 and 19. In fact, this evaluation process has begun  
15 through preparation and submittal of the URS report, Preliminary Evaluation of CO<sub>2</sub> Sequestration  
16 (Nov. 7, 2007), which screened options for sequestration within a 100-mile radius of the PMEC site  
17 and identified two areas for further evaluation as sequestration reservoirs. As a result, Energy  
18 Northwest believes the Order is incorrect in stating that Energy Northwest has not proposed any  
19 specific steps to implement sequestration and Energy Northwest requests that the Council clarify its  
20 basis for these statements. *See* RCW 34.05.461(3) Without clarification, Energy Northwest is at a  
21 loss as to how to proceed.

22           Energy Northwest also proposed that the \$60 million investment described above would  
23 represent its good faith effort to implement sequestration. *Id.* at 7. The Council’s rejection of the  
24 sequestration activities proposed in the GGRP suggests that the Council concluded the proposed  
25 investment is not a sufficient good faith effort to implement sequestration. The Order does not  
26

1 articulate the Council's reasoning for this implicit decision. Energy Northwest is therefore faced  
2 with two possible conclusions: (1) the proposed level of investment is insufficient to represent a  
3 good faith effort to implement sequestration or (2) the level of investment necessary to constitute a  
4 good faith effort cannot be specified prior to the issuance of a site certification agreement.<sup>2</sup> Energy  
5 Northwest requests clarification in this regard so that it can determine how to proceed.

6         6.         **Determination of Infeasibility.** The Order states that Energy Northwest may proceed  
7 with the purchase of verifiable emissions reductions "only after the Council has agreed that  
8 implementation is 'not feasible'...." Order at 4. Energy Northwest believes that under RCW  
9 80.80.040(13), although it must furnish related documentation to the Council, the determination of  
10 feasibility is for the applicant and not the Council to make. Thus, again Energy Northwest disagrees  
11 with the Order's conclusion and requests that the Council clarify the reasoning behind the  
12 conclusion.<sup>3</sup>

13         7.         **Financial Assurances.** The Council's discussion of financial assurances on page 6 of  
14 the Order omits discussion of the \$200 million reserve proposed by Energy Northwest as an element  
15 of financial assurance. Energy Northwest requests that the Council revise this discussion to clarify  
16 whether it finds both the bonding capacity and the reserve account to be insufficient, and if so, why  
17 the reserve account does not suffice.<sup>4</sup> See RCW 34.05.461(3)

18 \_\_\_\_\_  
19 <sup>2</sup> The statute does not bar specification of the actions necessary to demonstrate an applicant's good  
20 faith efforts to implement sequestration prior to the issuance of a site certification agreement. See  
21 RCW 80.80.040(5)(13).

22 <sup>3</sup> Energy Northwest's position is based on the statutory language: "If the project owner determines  
23 that implementation is not feasible, the project owner shall submit documentation of that  
24 determination to the energy facility site evaluation council. The documentation shall demonstrate  
25 the steps taken to implement the sequestration plan and evidence of the technological and economic  
26 barriers to successful implementation. The project owner shall then provide to the energy facility  
site evaluation council *notification* that they shall implement the plan that requires the project owner  
to meet the greenhouse gases emissions performance standard by purchasing verifiable greenhouse  
gases emissions reductions from an electric generating facility located within the western  
interconnection, where the reduction would not have occurred otherwise or absent this contractual  
agreement, such that the sum of the emissions reductions purchased and the facility's emissions  
meets the standard for the life of the facility." RCW 80.80.040(13) (emphasis added).

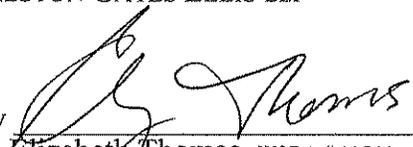
<sup>4</sup> See GGRP at 5; Testimony of Theodore J. Beatty at 5.



1 P MEC. As a result, Energy Northwest respectfully requests that the Council provide clarification of  
2 these matters.

3  
4 DATED this 7th day of December, 2007.

5 KIRKPATRICK & LOCKHART  
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