

DUKE ENERGY GRAYS HARBOR, LLC
P.O. Box 26
Elma, Washington 98541

January 18, 2005

Jim Luce, Chair
Energy Facility Site Evaluation Council
925 Plum Street SE Building 4
P.O. Box 43172
Olympia, WA 98504-3172

Re: Satsop CT Project - Transfer of Control

Dear Chair Luce:

I am writing pursuant to Washington Administrative Code 463-66-100 to formally request the Council's approval of a transfer of control of the Site Certification Agreement ("SCA") for the Satsop Combustion Turbine Project. Duke Energy Grays Harbor, LLC ("DEGH") hereby submits this request that the Council approve a transfer of control over DEGH from Duke Energy North America, LLC ("DENA") to Invenergy Grays Harbor LLC ("IGH"). In approving this transfer, we ask also that the Council change the name of the certificate holder from Duke Energy Grays Harbor, LLC to Invenergy Grays Harbor, LLC and release DENA from any and all obligations under the SCA and related plans. Finally, DEGH also joins in Energy Northwest's request that the Council remove it from the SCA.¹

IGH Purchase of DEGH

The SCA for the Satsop Project is currently held jointly by DEGH and Energy Northwest. DEGH is a limited liability corporation that is wholly owned by DENA.

DEGH began construction of the Satsop Project in September 2001 with the hope completing construction and beginning commercial operation in 2003. As a result of significant changes in the power markets, however, DEGH deferred construction of the Project in September 2002, pending changes in the power market that would make the completion of the Project feasible.

¹ A copy of Energy Northwest's request is found at Exhibit B.

On December 27, 2004, DENA entered into an agreement ("the Agreement") with IGH, pursuant to which IGH would acquire all of DENA's interest in DEGH at closing. Although the limited liability corporation DEGH would continue to own the Satsop Project and would continue to be the Certificate Holder of the SCA, the ownership and control of DEGH would change from DENA to IGH. Under the terms of the Agreement, IGH would also be required to change the name of DEGH within forty-five days of closing and cease using any of the Duke Energy names or marks.

The Council's regulations address transfers and assignments in WAC 436-66-100:

No site certification agreement, any portion of a site certification agreement, nor any legal or equitable interest in such an agreement issued under this chapter shall be transferred, assigned, or in any manner disposed of (including abandonment) either voluntarily or involuntarily, directly or indirectly, through transfer of control of the certification agreement or the site certification agreement owner or project sponsor without express council approval of such action. In the event a site certification agreement is to be acquired via a merger, leveraged buy-out, or other change in corporate or partnership ownership, the successor in interest must file a formal petition under the terms of this section to continue operation or other activities at the certificated site.

We understand that the Council interprets this regulation to require Council approval of a stock sale transaction being pursued by DENA and IGH, even though the same corporate entity, DEGH, will continue to own the Project and hold the SCA after closing.

Requirements for Council Approval

The Council's regulation concerning the transfer or assignment of an SCA or the transfer of control is found at WAC 463-66-100. Subsection (1) identifies the information that should accompany a request for Council approval as follows:

A certificate holder seeking to transfer or otherwise dispose of a site certification agreement must file a formal application with the council including information about the new owner required by WAC 463-60-015 and 463-60-075 that demonstrate the transferee's organizational, financial, managerial, and technical capability to comply with the terms and conditions of the original

site certificate agreement including council approved plans for termination of the plant and site restoration.

Subsection (4) provides that the Council may grant approval if it determines the following:

- (a) The applicant satisfies the provisions of WAC 463-60-015 and 463-60-075.
- (b) The applicant is entitled to possession of the energy facility described in the certification agreement.
- (c) The applicant agrees to abide by all of the terms and conditions of the site certification agreement to be transferred and has demonstrated it has the organizational capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred.

Each of these elements is addressed below.

Compliance with WAC 463-60-015

WAC 463-60-015 states that "The applicant shall provide an appropriate description of the applicant's organization and affiliations for this proposal."

IGH is a limited liability corporation formed under the laws of the State of Delaware, for the purpose of constructing, owning and operating the Satsop Project. IGH is wholly owned by Invenergy LLC ("Invenergy").

Invenergy is a private company owned by Polsky Energy Investments LLC (an investment company headed by Michael Polsky, Invenergy's President) and GTCR Golder Rauner, LLC, a leading private equity firm that manages more than \$6 billion of equity capital. Invenergy's main headquarters are located in Chicago, Illinois.

More information regarding IGH and its corporate affiliates is provided in Appendix A.

Compliance with WAC 463-60-075

WAC 463-60-075 provides that:

The application shall set forth insurance, bonding or other arrangements proposed in order to mitigate for damage or loss to the physical or human environment caused by project construction, operation, abandonment, termination, or when operations cease at the completion of a project's life. The application shall describe the applicant's commitment to the requirements of chapter 463-72 WAC, Site restoration and preservation.

Pursuant to the DENA-IGH Agreement, DEGH is required to maintain its current insurance policies in effect until the closing of the sale, and IGH is required to maintain the insurance for the Project following the closing,

With respect to site restoration, the Council approved an Initial Site Restoration Plan prior to the commencement of construction in 2001. The plan describes the steps to be taken to preserve and restore the site under various circumstances, and provides financial assurances to secure those obligations. Specifically, the Plan required the Certificate Holder to provide a corporate guarantee from DENA in the amount of \$5 million. *See Initial Site Restoration Plan at 6.*

Under the terms of the DENA-IGH Agreement, IGH has agreed to provide financial assurances for site restoration to replace the DENA guarantee. In order for the transaction to proceed to closing, the Council must approve IGH's alternative financial assurances and release DENA from its corporate guarantee and any obligation toward restoration of the Satsop site.

The financial assurances offered by IGH are detailed in its letter attached as Appendix A. DEGH requests that the Council accept those assurances as adequate security, and release DENA from the corporate guarantee and any further obligation regarding restoration of the Satsop site as part of its approval of the transfer of control described above.

IGH is entitled to possession.

DEGH is a current certificate holder that has possession of the Satsop Project. If the DENA-IGH transaction proceeds to closing, the corporate entity DEGH will remain in possession of the Project, although both the ownership of that corporate entity and its name will change. By this letter, DENA certifies that, upon closing, IGH will own DEGH, and DEGH will be entitled to possess the Project.

By letter, attached as Appendix B hereto, Energy Northwest also requests to be removed from the SCA as a certificate holder and certifies that Energy Northwest has no remaining ownership interest in the Satsop Project.

IGH agrees to abide by SCA.

DEGH has already agreed to abide by the terms and conditions of the SCA, and related plans that have been approved by the Council.

Upon the closing of the IGH-DENA transaction, DEGH will remain the certificate holder (although its corporate name will change) and will remain bound by the terms and conditions of the SCA. By letter, attached as Appendix A hereto, IGH indicates its understanding and agreement that the corporate entity it is purchasing, currently known as DEGH, is and will continue to be bound by the terms and conditions of the SCA and related plans.

IGH has capability to comply with SCA.

Invenergy is a developer, owner and operator of power generation facilities with the organizational, financial, managerial and technical capability to comply with the terms of the SCA. Invenergy currently owns, operates or has under development energy facilities with a combined capacity of more than 5,000 MW, and is actively evaluating other projects for acquisition and development.

Invenergy has an experienced management team with a track record of resounding successes in developing owning and operating more than 15,000 MW of power generation projects, primarily natural gas fueled. Partnered with GTCR Golder Rauner LLC, a leading private equity firm, Invenergy is rapidly building a portfolio of successful energy projects. GTCR, founded in 1980, manages more than \$6.0 billion in equity and mezzanine capital invested in a wide range of companies and industries.

The Company has a superior track record in the energy industry and a highly experienced management team. The members of Invenergy's management team have an average experience of approximately 20 years in diverse areas of the energy market including development, engineering, construction, finance, operations, asset management, and energy trading and contracting.

Invenergy's resources, expertise and experience are described in greater detail in Appendix A.

Conclusion

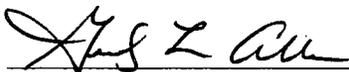
DEGH and its affiliates have enjoyed working with the Council for the past several years. Although we are disappointed not to see the Satsop Project through construction and into commercial operation, we believe that the transaction between DENA and IGH presents an opportunity for the Satsop Project to move forward.

In order for DENA's transaction with IGH to proceed to closing, we ask that the Council (a) approve the transfer of control over DEGH pursuant to WAC 463-66-100, (b) accept the financial assurances offered by IGH, and release DENA from its corporate guarantee and all obligations regarding site restoration, and (c) remove Energy Northwest from the SCA and change the name of the certificate holder to Invenegy Grays Harbor, LLC.

Please let us know if you have further questions regarding this request.

Sincerely,

DUKE ENERGY GRAYS HARBOR, LLC

By: 
Name: GRADY L. ALLEN
Title: PROJECT DIRECTOR

Jim Luce, Chair
Energy Facility Siting Evaluation Council
January 18, 2005
Page 7 of 8

Appendix A: Invenergy Letter

Invenergy Grays Harbor LLC

Appendix A

Mr. Jim Luce, Chair
Energy Facility Site Evaluation Council
925 Plum Street SE Building 4
P.O. Box 43172
Olympia, WA 98504-3172

Re: Satsop CT Project

Dear Chair Luce,

Invenergy Grays Harbor LLC ("IGH") has entered into an agreement with Duke Energy North America, LLC ("DENA") to purchase DENA's wholly-owned subsidiary Duke Energy Grays Harbor, LLC ("DEGH"), which owns the Satsop Combustion Turbine Project. We join in DEGH's request that the Council approve the transfer of control of DEGH to IGH, accept IGH's financial assurances and release DENA from all obligations regarding the Satsop Project, and remove Energy Northwest from the Site Certification Agreement ("SCA")

This letter provides some background about Invenergy and certifies IGH's willingness to abide by all of the conditions of the SCA and related plans that have been approved by the Council.

Invenergy Overview

Invenergy Grays Harbor LLC ("IGH") is a limited liability corporation formed under the laws of the State of Delaware for the purpose of constructing, owning and operating the Satsop CT Project. IGH is a subsidiary of Invenergy Investment Company LLC ("Invenergy"). Invenergy is a developer, owner and operator of power generation facilities and currently owns, operates or has under development energy facilities with a combined capacity of more than 5,000 MW, and is actively evaluating other projects for acquisition and development.

Invenergy is a private company owned by Polsky Energy Investments LLC, an investment company headed by Michael Polsky, Invenergy's President, and GTCR Golder Rauner, LLC, a leading private equity firm that manages more than \$6 billion of equity capital. Invenergy's main headquarters are in Chicago, Illinois and has professional staff located in Denver, Milwaukee, Toronto and outside of Washington, D.C.

Invenergy has an experienced management team with a track record of resounding successes in developing, owning and operating more than 15,000 MW of power generation projects, primarily natural gas fueled. The Company has a superior track record in the energy industry and a highly experienced management team. The members of Invenergy's management team have an average experience of approximately 20 years in diverse areas of the energy market including development, engineering, construction, finance, operations, asset management, and energy trading and contracting. More details on the management team are provided below.

Invenergy is in the process of building a portfolio of energy projects in North America by:

- Acquiring operating power and energy projects
- Acquiring projects in late construction and late stage development
- Developing greenfield projects

Invenergy Grays Harbor LLC

In September 2003, Invenergy completed the acquisition of the Hardee Power Station from TECO Energy. The 370 MW Hardee Power Station is currently in commercial operation and is similar in general technology to the Satsop CT Project. The Hardee facility is located in Bowling Green, Florida, approximately 40 miles east of Tampa. All of the plant's capacity and energy is sold to Seminole Electric Power Cooperative and Tampa Electric Company under two separate long-term Power Purchase Agreements. Invenergy is responsible for all asset management, operations and expansions planned for the facility. The enterprise acquisition value of the Hardee facility was in excess of \$250 million.

In August of 2004, Invenergy completed the acquisition of the partially constructed Nelson Power Generating Facility located in Illinois. The Nelson facility is a four unit 1,160 MW power project designed around General Electric 7FA gas turbine technology, the same technology utilized in the Satsop CT Project. The facility is approximately 60% complete with construction. Invenergy's plan is to identify power buyers that will provide long term contracts for power sales from the facility and complete construction for long term operation.

Invenergy Management Team

Collectively, the principals of Invenergy bring more than 150 years of energy industry experience. The CEO and President of Invenergy, Michael Polsky, is a widely recognized leader in the energy industry, who successfully founded and managed two independent power companies, SkyGen Energy LLC and Indeck Energy Services, Inc.

Summary profiles of the senior executives at Invenergy are provided below:

- Michael Polsky, President and Chief Executive Officer - Mr. Polsky has nearly 30 years of experience in the energy industry and previously founded SkyGen Energy LLC in 1991. At SkyGen, Mr. Polsky guided the efforts to develop a 12,000 MW portfolio of power generating projects. The value of this portfolio was realized in 2000 with the sale of SkyGen to Calpine Corporation, yielding \$650 million net proceeds to stakeholders (\$2.4 billion total transaction value). Prior to forming SkyGen, Mr. Polsky co-founded and was the President of Indeck Energy Services Inc., where he led the development and financing of one of the first portfolios of independent power generating assets in the US. Mr. Polsky holds an MBA from the University of Chicago and a Masters in Mechanical Engineering from Kiev Polytechnic Institute.
- Kevin Smith, Senior Vice President Business Development - Mr. Smith is responsible for all new project business development and the management of the acquisition activities at Invenergy. Prior to joining Invenergy Mr. Smith was President of Insight Energy, Chief Operating Officer of London-based Rolls-Royce Power Ventures and General Manager & Vice President of Indeck Energy. In the last 20 years Mr. Smith has actively managed the successful acquisition, development and construction of more than thirty power facilities in the US and internationally with total capital costs in excess of US\$3 billion. Mr. Smith has an MBA in Finance from the University of Chicago, a BS in Mechanical Engineering from Purdue University and is a licensed Professional Engineer.
- Jim Murphy, Senior Vice President and Chief Financial Officer - Mr. Murphy is responsible for all investment transactions, corporate and project finance efforts, and general management of the company. Prior to joining Invenergy, he was responsible for all project and corporate finance activities at SkyGen successfully closing more than ten transactions

Invenergy Grays Harbor LLC

for debt and equity financing totaling approximately \$1.5 billion and ultimately led the sale of SkyGen to Calpine Corporation, a \$2.4 billion total transaction. Mr. Murphy holds a BS, magna cum laude, from the University of Illinois and is a Certified Public Accountant.

- Alex George, Vice President Operations and Asset Management - Mr. George is responsible for operations and asset management of the power plants after purchase as well as evaluation during the development and acquisition stage. Prior to joining Invenergy, Mr. George was Vice President of Operations and Asset Management at Calpine, fulfilling the same role he had at SkyGen. Mr. George holds an MBA from the University of Illinois and a BS in Mechanical Engineering from the University of Illinois. He is a licensed Professional Engineer in the State of Illinois.
- Douglas B. Carter, Director Development - Mr. Carter is responsible for Invenergy's energy development business in the Western United States. He has 18 years of broad experience in the energy industry, including business development, project development, engineering and construction. Prior to joining Invenergy, Mr. Carter was Director of Development, Mergers and Acquisitions for Kinder Morgan where he concluded the closing of 2,200 megawatts of power plants and managed the due diligence plus integration of over \$3 billion in acquisitions. Early in his career Mr. Carter was an engineer for Bechtel Power Corporation. Mr. Carter holds a BS in Industrial Construction Management from Colorado State University.
- Mark Leaman, Vice President Power Marketing and Contracting - Mr. Leaman is responsible for the marketing and contracting of power sales. Prior to joining Invenergy, Mr. Leaman was Vice President of Energy Management at Calpine and SkyGen. During his tenure with SkyGen, Mr. Leaman was responsible for the negotiation and closing of more than 4,000 MW of long-term power purchase and sales transactions. Mr. Leaman holds an MS in Industrial Administration and a BS in Mechanical Engineering from Purdue University.
- Jerry Levy, Vice President and Controller - Mr. Levy is responsible for accounting, tax and financial compliance for the company and its subsidiaries. Prior to joining Invenergy, Mr. Levy served as Regional Controller for the Illinois office of Calpine, fulfilling the same role he had at SkyGen as Controller. While at Calpine, Mr. Levy was responsible for all accounting and cash management for two major portfolios consisting of 23 power plants funded by \$3.5 billion in borrowings. Mr. Levy holds an MBA in Finance and a BS in Accounting from the University of Illinois and is a Certified Public Accountant.
- Bryan Schueler, Vice President Project Management - Mr. Schueler is responsible for project management during development and construction and supporting evaluation of acquisition projects. Prior to joining Invenergy, Mr. Schueler was a Project Director at Calpine, fulfilling the same role he had at SkyGen. While at SkyGen and Calpine, Mr. Schueler was responsible for the project development and construction of combustion turbine peaking and cogeneration power projects totaling in excess of 1300 MW. Mr. Schueler holds an MBA from the University of Illinois and a BS in Mechanical Engineering from Purdue University.

The majority of the Invenergy team has worked together more than 10 years, and has a highly successful track record. The principals formed and built SkyGen Energy LLC ("SkyGen") into a company with energy generation projects totaling nearly 12,000 MW in operation, construction and

Invenergy Grays Harbor LLC

advanced stages of development at the time SkyGen was acquired by Calpine Corporation. The table below lists examples and summary information on 13 of a total of 25 projects developed by the Invenergy team while at SkyGen. These projects are all in operation today and many are very similar to the Satsop CT Project.

Project Summary				
Project	Location	Capital Cost	SkyGen Ownership	Size of Facility
De Pere	Wisconsin	\$165 MM	100%	255 MW
Androscoggin	Maine	\$127 MM	49 1/2%	160 MW
Broad River	S. Carolina	\$300 MM	100%	850 MW
Pine Bluff	Arkansas	\$142 MM	66 2/3%	220 MW
Hog Bayou	Alabama	\$139 MM	66 2/3%	240 MW
RockGen	Wisconsin	\$220 MM	100%	513 MW
Santa Rosa	Florida	\$150 MM	100%	240 MW
Carville	Louisiana	\$250 MM	100%	540 MW
Corpus Christi	Texas	\$275 MM	100%	550 MW
Zion	Illinois	\$200 MM	100%	450 MW
Columbia	S. Carolina	\$260 MM	100%	550 MW
Blue Spruce	Colorado	\$150 MM	100%	300 MW
Riverside	Wisconsin	\$260 MM	100%	600 MW

The SkyGen Energy projects were of exceptionally high quality as nearly all of the projects had long-term power sales and/or steam sales agreements in place with a variety of power and steam purchasers. Many of these long-term power sales agreements were negotiated and executed with investor owned utilities resulting from RFP competitive bid arrangements. Every project where SkyGen executed a Power Purchase Agreement ("PPA") was successfully built and commissioned.

SCA Terms & Conditions

DEGH, the corporate entity IGH has agreed to purchase, is and will continue to be bound by the terms and conditions of the SCA. IGH has reviewed the SCA for the Satsop Project and, by this letter, certifies that it is willing and able to comply the terms and conditions of the SCA and related plans.

IGH is confident that it has the "organizational, financial, managerial, and technical capability" to comply with the SCA. The members of IGH's management team have an average of twenty years of experience working in the energy industry. Invenergy currently owns, operates or has under development energy facilities with a combined capacity of more than 5,000 MW, and is actively evaluating other projects for acquisition and development. Invenergy's principals were formerly with SkyGen Energy LLC, where they created a power generation portfolio of more than 12,000 MW that they eventually sold to Calpine Corporation in 2000.

Financial Assurances

The Council's regulations require that a certificate holder demonstrate insurance or other financial arrangements necessary to address damages or losses that might result from project construction, operation, abandonment or termination. See WAC 463-60-075. Under IGH's ownership, DEGH will continue to maintain general liability, property and environmental insurance at levels customary for this type of facility.

Invenergy Grays Harbor LLC

The Council has already approved an Initial Site Restoration Plan for the Satsop Project. The Plan includes a \$5 million corporate guarantee from DENA as security for the restoration obligations. In connection with our agreement with DENA, IGH has agreed to provide alternative financial assurances to the Council. In order to secure the site restoration obligations, IGH proposes to provide the Council with a corporate guarantee from IGH's parent, Invenergy Investment Company LLC.

IGH respectfully requests that the Council approve this alternative security for the obligations under the Initial Site Restoration Plan, and release DENA from its corporate guarantee.

Conclusion

Invenergy has entered into this acquisition with the expectation of completing construction and entering the facility into commercial operation as power markets in the region recover. Invenergy's plan is to identify power buyers that will provide long term contracts for power sales from the facility and complete construction for long term operation. We have acquired similar partially completed facilities with this same goal in mind. We look forward to working with the Council to achieve this goal at the Satsop CT Project.

Yours truly,



Kevin B. Smith
Senior Vice President
Invenergy LLC

Jim Luce, Chair
Energy Facility Siting Evaluation Council
January 18, 2005
Page 8 of 8

Appendix B: Energy Northwest Letter

January 18, 2005
GOCT-05-003

Allen Fiksdal, EFSEC Manager
Energy Facility Site Evaluation Council
Post Office Box 43172
Olympia, Washington 98504-3172

Subject: **SATSOP COMBUSTION TURBINE PROJECT
AMENDMENT TO SITE CERTIFICATION AGREEMENT**

- References:
- 1) Letter dated January 9, 2001, Douglas W. Coleman to D.J. Ross, Request to Add Duke Energy Grays Harbor to the Satsop Power Plant Site Certification Agreement
 - 2) Letter dated January 12, 2001, Kevin R. Johnson to Debra J. Ross, Amendment to Site Certification Agreement

Mr. Fiksdal:

In 2001 (see references), Energy Northwest and Duke Energy Grays Harbor LLC (DEGH) asked the Energy Facility Site Evaluation Council (Council) to add DEGH to the Site Certification Agreement and related permits for the Satsop Combustion Turbine (CT) Project. The request was made because DEGH purchased the CT Project from Energy Northwest and agreed that Energy Northwest and DEGH were to jointly operate the facility. The Council subsequently amended the Site Certification Agreement to make DEGH and Energy Northwest co-certificate holders and co-permittees on the National Pollutant Discharge Elimination Permit and Notice of Construction/Prevention of Significant Deterioration Permit.

The Operations and Maintenance contract between Duke Energy North America, LLC (Duke) and Energy Northwest was recently terminated, and Energy Northwest no longer has an interest in the project. In addition, DEGH has been purchased by Invenenergy Grays Harbor LLC (IGH), and DEGH and IGH have requested the Council's approval to transfer control of DEGH. As a result, and in connection with the sale of DEGH to IGH, Energy Northwest, IGH and Duke are requesting Council approval to remove Energy Northwest as a co-certificate holder and co-permittee from the Site Certification Agreement and related permits.

Mr. Allen Fiksdal
SATSOP COMBUSTION TURBINE PROJECT
AMENDMENT TO SITE CERTIFICATION AGREEMENT
Page 2

We look forward to the Council's timely action on this matter. Should you have any questions or require additional information, please contact Ms. Laura Schinnell at (509) 372-5123.

Respectfully submitted,



Duke Energy Grays Harbor, LLC
By Grady L. Allen, Project Director



Energy Northwest
By Douglas W. Coleman, Manager, Regulatory Programs