

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 330

**AMENDMENT NO. 2
TO THE
WNP 1 AND 4 SITE CERTIFICATION AGREEMENT**

Nature of Action

Energy Northwest¹ is the Certificate Holder of the Site Certification Agreement (SCA) governing the facilities known as Washington Nuclear Projects No. 1 and No. 4 (WNP-1/4), located on the Hanford Site in Benton County, Washington. By letter dated July 13, 2009, Energy Northwest requested that the WNP-1/4 SCA, administered by the state Energy Facility Site Evaluation Council (Council or EFSEC), be amended in order to update the terms and conditions within the agreement to more accurately reflect their plans to pursue facility reuse opportunities and the future final phase of site restoration. The amended SCA would also remove the terms and conditions of the SCA related to the construction and operation of the now terminated WNP-1 and WNP-4 nuclear projects.

The original WNP-1/4 SCA was approved in 1975. The "project" described in the SCA refers to the construction and operation of "two nuclear generating units." Since the construction of these two units was halted in the early 1980's, the Council has retained oversight of the terminated energy facility sites through a succession of preservation and site restoration plans. Presently, the WNP-1/4 site is being maintained in accordance with the restoration plan approved by EFSEC Resolution No. 302 (December 15, 2003).

Energy Northwest has complied with the terms of the approved WNP-1/4 Site Restoration Plan, by completing near-term "health, safety and environmental protection" restoration activities, and an amendment to the SCA is warranted. Energy Northwest is requesting an amendment to the WNP-1/4 SCA to accurately reflect the plans to pursue facility reuse opportunities and the future final phase of site restoration specified in EFSEC Resolution No. 302 - Energy Northwest Nuclear Projects Nos. 1 and 4, Site Restoration Plan (Plan).

Background

As originally permitted, the WNP-1/4 "project" was authorized to be located, constructed and operated on the site described in the SCA on the Hanford Site and was defined as "two nuclear generating units." Each of the units was to include a water reactor with a maximum rated output of

¹ The original WNP 1 and 4 SCA was issued to the Washington Public Power Supply System (Supply System). By Resolution No. 293, the Council recognized the change in the organization's name from the Supply System to Energy Northwest and reference to WNP 1 and WNP 4 would be changed to WNP-1 and WNP-4. For accuracy purposes, the resolution recognized that certain references to the Supply System would remain unchanged.

approximately 3779 megawatts (thermal), and all of the associated facilities required for the potential generation and transmission of electric power of approximately 1267 megawatts.

After Governor Daniel J. Evans approved the combined 1/4 SCA on August 8, 1975, construction began on both projects in late 1975. In May 1981, the Supply System Board of Directors voted to "mothball" WNP-1 for up to five years. That same month, the Supply System initiated a six-month construction slowdown at WNP-4. Those shutdowns were attributed to a growing energy surplus in the region and financial issues.

Based on a comprehensive review of WNP-4 costs and schedules to complete the project, and the lack of funding to maintain a construction preservation program, in January 1982 the Supply System terminated WNP-4. Funds were available to preserve the WNP-1 project and following the halt to construction, WNP-1 entered a preservation mode, where the plant assets and project licenses were maintained to enable the Supply System to resume construction at such time as that action was determined to be appropriate. The construction delay continued through May 1994, when the Supply System terminated WNP-1. Since halting and terminating the construction of both WNP-1 and WNP-4, the WNP-1/4 project site has been managed in accordance with the restoration plans approved by the Council, with a potential for reuse or redevelopment.

In 1995, Energy Northwest submitted an updated site restoration plan for its terminated nuclear power plant projects that the Council approved with the condition that more detailed reviews would be necessary before finalizing restoration plans for the WNP-1 and WNP-4 site. Under this plan, Energy Northwest would pursue complete restoration, but it recognized that if demolition to grade was more difficult than expected, Energy Northwest could seek EFSEC approval of a lesser degree of restoration. The plan also provided that restoration work would be deferred to benefit from the effort at the unfinished nuclear projects 3 and 5 (Satsop) to transfer ownership of the site to allow for conversion to industrial, business, or other uses was concluded, and could be evaluated for possible application to the future use of the 1/4 site.

In June 1999, Energy Northwest submitted a revised restoration plan that evaluated the costs and benefits of a range of options for restoration of the WNP-1 and WNP-4 construction sites, including the identification of Level 3D – Demolition and Seal (with the exception of removing the turbine pedestals) as the preferred alternative. The review focused on five selection criteria, including cost, public health and safety, and environmental impact, and it was determined that the Level 3D alternative would provide the long-term protection of the public health and safety in the most cost effective manner. Council action on the plan was not requested at that time, as Energy Northwest pursued funding approval from the Bonneville Power Administration and concurrence from the landowner, the U.S. Department of Energy.

In December 2002, Energy Northwest submitted for Council approval a final Site Restoration Plan for the WNP-1 and WNP-4 terminated nuclear project construction sites. The plan was based on implementing a revised Level 3D for maintaining the WNP-1/4 site and provides that restoration will occur in two phases (near-term restoration and final restoration). The near-term restoration was to be completed within 18-24 months following the Council's approval of the plan. The plan deferred final restoration to the future, with the second phase to commence in 23 years, and for the final Level 3D restoration activities to be completed in 26 years.

The plan submitted by Energy Northwest also incorporated the points agreed to by the Department of Energy – Richland Operations Office (DOE-RL), Bonneville Power Administration (BPA), the Council, and Energy Northwest, covering the elements of the plan related to funding, mitigation, and future commitments. The WNP-1/4 Site Restoration Funding Agreement, referred to as the Four-Party Agreement, provided funding from BPA to address the immediate health and safety concerns at the site, while recognizing that certain major site restoration activities could be deferred to the future.

By Resolution No. 302², the Council approved Energy Northwest's WNP-1/4 Site Restoration Plan (Plan). The Plan approved in December 2003 adopted the two-phase approach to completing the site restoration work and accepted the terms of the Four-Party Agreement. Following the approval of the Plan, Energy Northwest proceeded to complete near-term Level 3D restoration activities consistent with the Plan. What remains at each site, in varying degrees of completion, are a reactor building, reactor auxiliary building, turbine-generator building, electrical switchyard, pump houses, cooling towers, office and warehouse buildings, storage tanks, and the supporting infrastructure of roads, parking lots, storage yards, and service connections (water, sewer, electricity, and firewater).

The utility infrastructure, warehouses, office buildings, and potentially some of the remaining plant buildings are considered to have a "significant useful life for reuse." Additionally, many of these buildings and other site resources are currently being used to support Columbia Generating Station³ activities.

In its July 13, 2009 request to amend the WNP-1/4 SCA, Energy Northwest stated that the "near-term site restoration work has been completed." As specified in the Plan and Four-Party Agreement, upon completion of the near-term restoration work, Energy Northwest will request that the SCA be amended to set out future restoration requirements. Energy Northwest notes that final restoration is deferred to allow for possible reuse and to accumulate sufficient funds to complete final restoration activities.

The amendment request includes modifications to the requirements and provisions of the existing SCA to pursue reuse opportunities and achieve the future final phase of restoration. Upon approval by the Council, the amended WNP-1/4 SCA will:

- Remove the conditions related to the construction and operation of the WNP-1 and WNP-4 nuclear projects;
- Set out the conditions necessary to comply with maintaining the site pursuant to the approved Site Restoration Plan⁴;
- Modify water withdrawal provisions related to site restoration and industrial development; and generally,

² WAC 463-66-070 states that approval of an amendment request "may be in the form of a council resolution." Also referred to a technical amendment.

³ The Columbia Generating Station is an operating nuclear power plant located adjacent to the WNP – 1/4 site. Energy Northwest was issued a Site Certification Agreement by the State in May 1972 setting out the terms and conditions for constructing and operating the facility.

⁴ Resolution No. 302, approved the Site Restoration Plan, dated December 5, 2003, and the provisions therein were incorporated into the SCA through that technical amendment. The WNP-1/4 site is being managed by Energy Northwest in accordance with the Plan.

- Allow the site to be maintained and utilized for future reuse or development until final restoration occurs.

Procedural Status

EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463 WAC. Pursuant to WAC 463-66-030, in considering Energy Northwest's amendment request, on September 30, 2009, the Council held a public meeting in Richland, Washington to receive public comment on Energy Northwest's request to amend the WNP-1/4 SCA. Notice was mailed to approximately 140 interested persons, agencies, and organizations on September 14, 2009. The Council received no comments from members of the public at the September 30th meeting. The Council did receive one written comment on the proposed amendment from the state Department of Ecology (Ecology). Ecology's comments focused on two provisions of the draft WNP-1/4 SCA – should the WNP-1 reactor building be added to the list of structures subject to restoration; and, are there any existing authorizations to withdraw groundwater from the two on-site wells that supply the 1 and 4 site with water; and provided one editorial comment on the State Environmental Policy Act Checklist that was issued with the Council's Determination of Non-significance (DNS) for the request to amend the WNP-1/4 SCA.

In a separate response to the DNS dated October 7, 2009, Ecology provided additional comments on the groundwater withdrawals and pointed out that the reuse of the 1/4 site for future industrial projects will require a water right permit from Ecology if withdrawals exceed 5,000 gallons per day. Energy Northwest was proposing to withdraw groundwater at a maximum rate of 2.3 cubic feet per second (which is approximately 1030 gallons per minute).

The Council received a third comment letter from Ecology dated November 10, 2009, that reiterates the department's position that a water right is required for the reuse of the site because the authorization in the SCA is only for power production purposes and the "Appropriation of groundwater from the wells for an industrial purpose falls outside the site certification agreement."

The Council's response to Ecology's comments on water withdrawal will be covered in the discussion section of this resolution. The Council does not interpret any of the comments as expressing opposition to the request to amend the WNP-1/4 SCA.

The Council has reviewed Energy Northwest's request for an amendment under the procedures outlined in chapter 463-66 WAC and through this resolution amends the WNP-1/4 SCA as described herein.

Discussion

Chapter 463-66 WAC governs the Council's procedure for amending a Site Certification Agreement. WAC 463-66-040 outlines the relevant factors for consideration prior to a decision to amend an SCA. Specifically,

... [i]n reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

- A. [t]he intention of the original SCA
- B. [a]pplicable laws and rules; and

- C. [t]he public health, safety, and welfare; and
- D. [t]he provisions of chapter 463-72 WAC [Site Restoration and Preservation].

WAC 463-66-050 explains that the Council's consideration of public health, safety, and welfare includes environmental concerns, as follows:

[i]n reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council shall consider the short-term and long-term environmental impacts of the proposal.

A. Consistency with the Intention of the Original SCA.

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA.

In general, the intention of every SCA is to grant state authorization to a certificate holder to construct and operate an energy project that has been determined to be in the state interest. Through the SCA, the state grants the certificate holder a "license" [a site certification agreement] for the project; in return, the certificate holder commits itself to comply with the terms of the SCA.

As the WNP-1/4 certificate holder, Energy Northwest has committed itself to comply with the terms of the SCA, which includes (i) conditions governing construction, (ii) conditions governing operations, (iii) conditions to mitigate for the environmental effects of construction and operations, and (iv) conditions EFSEC may impose for site restoration.

Since construction was halted in the early 1980's, the intent of the original SCA has been modified through adoption of the above-referenced amendments and Council resolutions. Consistent with approved site restoration/preservation plans, activities at the site have been conducted in accordance with those plans and subsequent technical amendments to the WNP-1/4 SCA. Although Energy Northwest chose not to proceed with the construction and operation of the 1 and 4 projects, Energy Northwest has complied with the terms of those plans and SCA, as amended.

The Council concludes that Energy Northwest actions in maintaining the 1 and 4 site during construction and site preservation/restoration phases are consistent with the intent of the original, and later amended SCA. The level of restoration/reuse activity planned for the site through 2029 will be guided by the terms of the amended SCA, consistent with the WNP-1/4 Site Restoration Plan (Resolution No. 302) and the Four-Party Agreement that will both be incorporated into the amended SCA.

B. Consistency with Applicable Laws and Rules.

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including but not limited to RCW 80.50.010; chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and SEPA rules); WAC 463-66-070 through -80; and the Council's rules for site restoration in chapter 463-72 WAC (see D. below).

1. Consistency with RCW 80.50.010 (Legislative Intent)

The legislature's intent in creating EFSEC, as expressed in RCW 80.50.010, was to create a process to balance the need of state citizens for energy and the state's interest in protecting the quality of its environment. When the legislature amended this section in 1996, it acknowledged these interests may include the efficient reuse of resources. Specifically, RCW 80.50.010(4) indicates that the state (through EFSEC's actions) will strive

[t]o avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

While this language addresses the transfer of the WNP-3/5 "unfinished nuclear energy facilities" at the Satsop site, the intent is clear and can be applied to the 1 and 4 site, i.e., using such a site to pursue economic development opportunities is in the state's best interests. The proposed amendment to the WNP-1/4 SCA is consistent with the Legislature's intent, as expressed in RCW 80.50.010, because it allows for the efficient reuse of resources at the WNP-1/4 project site.

With the already approved WNP-1/4 Site Restoration Plan being formally incorporated in the proposed SCA amendment, Energy Northwest, through the amended SCA, will be allowed to continue to pursue economic development, to include reusing structures and infrastructure on the site for commercial and industrial purposes versus the more costly option of returning the site to its original "greenfield" condition.

2. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).

In general, SEPA requires an agency to perform a threshold determination to determine whether a proposed action will have a significant adverse affect on the environment. See WAC 197-11-310. The Council's responsible SEPA official, EFSEC Manager Allen Fiksdal, reviewed the proposed changes to the WNP-1/4 SCA and determined they do not have any probable adverse significant environmental impact. Accordingly, EFSEC issued a Determination of Non-Significance (DNS) on September 14, 2009.

The Council notes that any future industrial development activities on the 1/4 site may be subject to the requirements of SEPA.

3. Consistency with WAC 463-66-070 and -080.

WAC 463-66-080 provides that:

[a]n amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor...

On the other hand, WAC 463-66-070 provides that:

[a]n amendment which does not substantially alter the substance of any provision of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the Council. Such approval may be in the form of a council resolution.

Based on its finding that the proposed amendment has no adverse environmental impact and no impact on public, health, safety, and welfare, the Council finds that this amendment may be approved by council resolution pursuant to WAC 463-66-070.

C. Consistency with Public, Health, Safety, and Welfare.

Under WAC 463-66-040(3) and -050, the Council must consider whether the proposed amendment is consistent with public health, safety, and welfare, including environmental aspects of the public welfare.

The Council finds that this amendment to the WNP-1/4 SCA has no adverse effect on the public health, safety, and welfare. In fact, approval of the proposed amendment recognizes that Energy Northwest has completed the first phase of the WNP-1/4 Site Restoration Plan that included health, safety, environmental, and security restoration activities. The near-term restoration activities completed will ensure that the site remains in a safe condition while reuse/development opportunities are pursued, until the site is fully restored in 2030.

This finding is supported, as noted under B.2 Consistency with SEPA, above, by the Council's issuance of a DNS based on its determination that the proposed action did not have an adverse impact on the environment.

The Council notes that any future industrial development activities on the 1/4 site may be subject to state public health and safety and environmental regulations, and specifically the requirements of SEPA.

D. Consistency with the Council's Rules for Site Restoration (Chapter 463-72 WAC).

WAC 463-72-070 states for terminated project:

[i]n the absence of a council determination as to the level of site restoration, restoration of the site to a reasonable approximation of its original condition prior to construction shall be required.

While WAC 463-72-080 states that:

[w]hen a site is subject to preservation or restoration pursuant to a plan as defined in WAC 463-72-040 through WAC 463-72-060, the certificate holder shall conduct operations within terms of the plan...

In this instance, the Council has approved a Site Restoration Plan for the WNP-1/4 project site, therefore the default to require "greenfield restoration" is not applicable. The Council has established the level of restoration that the site will be returned to with the necessary measures in place to protect the environment and all segments of the public against risks or dangers resulting from conditions or activities at the site.

The approved Plan also allows for economic development to occur at the WNP-1/4 project site in lieu of "greenfield restoration," consistent with the intent expressed in RCW 80.50.010(4).

E. Other Considerations

1. Water Supply and Usage Provisions.

In the original WNP-1/4 SCA, under paragraph IV OPERATION OF THE PROJECT, Energy Northwest was granted the following water authorization for the 1 and 4 projects. In its July 13, 2009 amendment request, Energy Northwest proposed the following changed to that section:

SCA IV. A Water Withdrawal

1. ~~The Supply System is hereby authorized to withdraw a maximum of 72,000,000 gallons per day from the Columbia River and a 30-day average of 55,200,000 gallons per day from the Columbia River for industrial purposes. Deleted~~
2. Energy Northwest is hereby authorized to withdraw groundwater out of the two on-site wells. Withdrawal will occur at a maximum rate of 2.3 cfs (cubic feet per second) and an annual withdrawal of 1,290 acre feet.
3. The above water withdrawal will support the reuse of WNP-1/4 sites as an Industrial Development Complex.

The Council received three separate letters from the state Department of Ecology related to the above water withdrawal provision (#1) of the existing WNP-1/4 SCA and changes offered by Energy Northwest (#2 & #3). In addition, the Council received a legal opinion from its counsel, Assistant Attorney General Kyle Crews, on EFSEC's authority to amend the 1 and 4 SCA to include approval of groundwater withdrawals from the two on-site wells.

The Council will address each of the pertinent issues raised by Ecology regarding water withdrawals and authorizations for the WNP-1/4 site.

a. Authorization for groundwater withdrawals from the two on-site wells.

Ecology comments that the two wells are not identified in the original SCA and the only document referencing authorization of the wells was a "Limited Work Authorization - WNP-1/4" from the Nuclear Regulatory Commission (NRC) dated August 5, 1975. Ecology questions if there are any existing authorizations other than the NRC construction authorization.

Response: Review of WNP-1/4 project records indicates that the two groundwater wells provided water to the site during the entire construction period. Reference to the wells is found in the July 1982 Environmental Report that was an attachment to the Supply System's Application for an NRC Operating License for WNP-1. The groundwater section of that report describes the wells as supplying the potable/sanitary water requirements and providing water to support construction activities (concrete, dust control, pipe flushing, fire suppression, etc.). The report states that when the plant is operating, normal water supply will come from the river and the wells will serve as a stand-by supply for service and supplemental fire protection.

While construction water was being supplied by the two wells up to the time work was halted on the twin projects, it is clear that at the time the state approved the original WNP-1/4 SCA, construction and operation water was intended to come from the Columbia River through the water intake system as authorized by the SCA.

When construction was halted, authorization for water for the WNP-1/4 site shifted to the Council's approval of a succession of site restoration plans, culminating with the adoption of Resolution No. 302 in 2003 that incorporated near-term and final restoration activities into the SCA. These plans included provisions for maintaining certain infrastructure elements (utilities, fire suppression, dust control, etc.) necessary to support implementation of the plans.

Council authorization for water withdrawals is consistent with SCA condition II.A.1 and RCW 80.50.120(3) that provides that issuance of a certification agreement is "in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission or board of this state..."

Therefore, the Council finds that the WNP-1/4 SCA, as amended, authorized the withdrawal of groundwater from the two on-site wells on the WNP-1 site, to support site restoration activities.

b. Water Right or Permit Required.

Ecology states that the appropriation of groundwater from the wells for an industrial purpose falls outside the SCA, and therefore RCW 80.50 no longer applies and the water code under chapters 90.03 and 90.44 RCW is invoked. Ecology points out that a water right (permit) is required if the proposed industrial use exceeds 5,000 gallons per day. [Energy Northwest's proposed withdrawal rate of 2.3 cubic feet per second equals 1,032 gallons per minute.]

EFSEC's counsel provides a similar conclusion that, "The industrial use mentioned in the original SCA paragraph IV.A.1 is only pertinent to the defunct nuclear electric generating project under I.B.1 of the SCA."

Response: The Council concurs that a groundwater water permit or right is required for any industrial or manufacturing activities planned for the WNP-1/4 site. The original authorization was limited to the now terminated 1 and 4 nuclear generating projects and the proposed withdrawal rates for industrial purposes would require a water right.

At its February 9, 2010 meeting, the Council encouraged Energy Northwest to actively work with the state Department of Ecology to examine a number of options and reach agreement on groundwater withdrawal/conditions or other arrangements to provide water to the site to support industrial development activities. The amended SCA will reflect that expectation.

The SCA amendment will delete the original surface water authorization and not include the groundwater withdrawal rate proposed by Energy Northwest. However, the amendment will authorize the continued withdrawal of water from the two on-site groundwater wells, for the site restoration activities identified in the Site Restoration Plan and SCA to support WNP-1/4 site restoration activities and for Columbia Generating Station (CGS) nuclear safety or facilities on the site that are the responsibility of CGS. In contrast, groundwater to support future industrial development activities at the 1/4 site will have to be authorized through a groundwater permit (or other legal authorization, i.e., transfer of existing water rights) to be secured by Energy Northwest from Ecology. Monthly progress reports will be provided to the Council by Energy Northwest on the status of negotiations with Ecology.

2. Project Definition.

As noted above, the SCA defines the WNP-1/4 project as, "The nuclear electric generating project is authorized to be located, constructed and operated on the site described in Section I.A.1. hereof. The "project" consists of two nuclear generating units.

Comment: The Council recognizes that the "Project" definition in the original SCA, "The "project" consists of two nuclear generating units," has changed as the 1 and 4 projects were not completed and have been in a preservation/restoration status since construction was halted in 1981 and 1982.

A more accurate description of the 1 and 4 projects would be "terminated and/or partially completed energy facility projects," or the term used in 80.50.10(4), "unfinished nuclear energy site." Those definitions reflect that construction was started on the 1 and 4 projects and they remain an energy facility site that, through technical amendments, is being managed in accordance with the approved Site Restoration Plan.

Site restoration may also be considered as an extension of construction activity, albeit "deconstruction," but most of the near-term restoration activities are indeed construction tasks, i.e., making improvements to structures to remove safety hazards. The definitions for "site" and "construction" in RCW 80.50 and legislative intent regarding site restoration were considered in deciding how the 1 and 4 site should be defined in the SCA.

The "Project" description in the SCA will be changed to "partially completed, terminated WNP - 1/4 nuclear projects (or project site)", to reflect the current status of the WNP - 1/4 projects.

3. WNP-1/4 Site Restoration and Funding Plan (Four-Party Agreement)

The WNP - 1/4 Site Restoration and Funding Plan includes the following provisions. The current status of each provision is noted.

1. Within 18-24 months of EFSEC approval of a revised Level 3D site restoration plan (Plan) enclosed herein, "health, safety and environmental protection" activities needed to assure that WNP-1 and WNP-4 remain in a "safe state" compatible with reuse shall be completed by Energy Northwest/Bonneville or their designated contractor. The cost for these near-term restoration activities is expected to be between \$3-4 million, with most activities occurring at WNP-4. These tasks are currently being prioritized and their costs estimated. If these costs exceed \$4 million, Energy Northwest/Bonneville may request a reasonable extension of time to complete these tasks. Approval of such extension shall not be unreasonably withheld by EFSEC.
 - i. The revised Level 3D site restoration plan will not require removal of the turbine pedestals for the WNP -1 and WNP -4

Current Status: The near-term restoration activities were completed 2004.

2. Energy Northwest/Bonneville or their designated Contractor shall: 1) commence by no later than 23 years; and 2) complete no later than 26 years from the date of EFSEC's approval of the Plan, all final Level 3D activities; provided, however, that at the request of Energy Northwest/Bonneville or RL if Energy Northwest elects not to maintain site control, EFSEC shall revisit either date without prejudice if facility reuse or sequencing of WNP-1/4 restoration activities with Columbia Generating Station decommissioning activities warrant extending either date. Approval of such extension of time shall not be unreasonably withheld by EFSEC

Current Status: Energy Northwest plans to commence final restoration in 2027 and complete restoration in 2030.

3. Bonneville guarantees funding of restoration activities and environmental mitigation pursuant to the approved Plan and paragraph 6 below. The cost/funding requirement is estimated at \$45 million in 2003 dollars. In the event that the \$45 million estimate (appropriately adjusted for costs incurred) escalated to 2025 dollars proves to be inaccurate and results in insufficient funds being available to complete the restoration activities in 26 years, Bonneville shall make up the shortfall. Bonneville may make up the shortfall by requesting a reasonable extension of time to complete Plan tasks. Approval of such extension shall not be unreasonably withheld by EFSEC.

Current Status: See No. 4

4. Bonneville shall establish an external trust fund, agree to review funding status every five years, and provide EFSEC with annual reports regarding the accumulated funds in the trust. At EFSEC's discretion, it may audit the trust.

Current Status: BPA placed \$18.0M in the trust fund in February 2004 and as of June 30, 2009 there was \$19.2 M in the trust fund.

5. The provisions of paragraphs 1-4 above are included in the Plan that Energy Northwest submitted by letter dated December 5, 2002 for EFSEC approval. Implementation of the near-term "health, safety and environmental protection" activities will be reviewed and monitored by EFSEC.

Current Status: All near-term health, safety and environmental protection activities have been reviewed and monitored by EFSEC.

6. Bonneville shall cause to be paid to EFSEC/the State \$3.5 million for offsite environmental mitigation and other EFSEC activities that improve the environment. This payment is made in recognition of the level of site restoration described in the Plan and the delay allowed for the completion of final site restoration. These funds shall be used in EFSEC's discretion after consultation with the Washington Department of Fish and Wildlife, with the bulk of the funds to be spent for mitigation in Benton County. Payment will be made in a lump sum after EFSEC approval of the Plan and within 30 days of a request for payment by EFSEC. This payment will be deemed to satisfy all requirements for wildlife or wildlife habitat mitigation under EFSEC Resolution No. 296, provided that if additional construction or changes in operation or operational conditions at the Columbia Generating Station result in the loss of additional wildlife or wildlife habitat then EFSEC may require Energy Northwest to undertake appropriate mitigation and Bonneville will guarantee payment pursuant to existing net-billing obligations.

Current Status: BPA funded \$3.5M for offsite environmental mitigation from 2005 through 2007. The following projects/organizations received WNP – 1/4 offsite mitigation funding:

• Badger Mountain	\$ 485,000.00
• Skookumchuck Conservation Project	\$ 1,300,000.00
• Hofer Damn Fish Passage Project	\$ 300,000.00
• Hanford Reach Interpretive (Visitor) Center	\$ 250,000.00
• Umatilla Tribe/WSU Shrub –Steppe Project	\$ 25,000.00
• Amon Creek Basin Conservation Project	
○ Phase I – 60.12 acres	\$ 1,025,000.00
○ Phase II – 15.53 acres	\$ 97,152.08
○ Tapteal – Stewardship	\$ 16,347.92
○ DNR – Appraisal	\$ 1,500.00
TOTAL	\$ 3,500,000.00

7. EFSEC shall amend the Site Certification Agreement (SCA) upon completion of the near term health, safety and environmental protection activities set out in the Plan. The amended SCA shall include only those requirements as EFSEC in the reasonable exercise of its discretion deems necessary to assure completion of Level 3D restoration actions pursuant to paragraph 2. Those requirements will replace any and all requirements in the existing SCA. Further, Bonneville may request Energy Northwest and/or Energy Northwest may request EFSEC to further amend or terminate the SCA to release those portions of the site and/or facilities that are proposed to be: 1) sold, leased or otherwise transferred and used for long-term economic development; and/or 2) no longer intended for the development of

energy facilities larger than 350 MWs. Approval of such SCA amendment or termination shall not be unreasonably withheld by EFSEC.

Current Status: In a letter dated July 13, 2009, Energy Northwest requested an amendment to the WNP 1/4 Site Certification Agreement. The amendment of the SCA is ongoing. This effort is expected to be completed in the spring of 2010.

8. Effective upon execution of this agreement and until final Level 3D restoration activities are completed, Energy Northwest will maintain general liability insurance on the leased property in the minimum amount of \$1,000,000 per incident and \$10,000,000 aggregate limit and will include RL as an additional named insured. Insurance coverage may include a deductible consistent with industry standards. The policy will be funded pursuant to generally accepted accounting principles. Bonneville will guarantee funding for the policy. These obligations shall not apply to any portion of the leased property that RL transfers ownership of, leases or otherwise permits the use of for other than WNP-1/4 purposes.

Current Status: Energy Northwest maintains the general liability policy as stated. A copy of this policy has been provided to EFSEC.

9. Upon approval of the Plan, the State shall provide to Energy Northwest, Bonneville, and the United States Government (including RL, and all other components of the US Department of Energy) an immediate release from all claims, damages, and causes of action, existing or otherwise, related to the restoration of the WNP-1 and WNP-4 sites beyond the level in the approved Plan.

Current Status: EFSEC provided this release to the parties to the Four-Party Agreement on February 19, 2004.

F. Conclusion

The Council finds that the proposed amendment to the WNP-1/4 Site Certification Agreement is consistent with public health, safety, and welfare; the applicable law and regulations; and the intent of the original SCA, as amended. The Council hereby determines that it is appropriate to amend the WNP-1/4 SCA in order to update the terms and conditions within the agreement to more accurately reflect Energy Northwest's plans for the future final phase of site restoration and to pursue reuse of the site.

RESOLUTION

For the foregoing reasons, the Council approves Amendment No. 2 to the WNP-1/4 Site Certification Agreement. The amended SCA will:

- Remove the conditions related to the construction and operation of the WNP-1 and WNP-4 nuclear projects;
- Set out the conditions necessary to comply with maintaining the WNP-1/4 site pursuant to the approved Site Restoration Plan (including the Four-Party Agreement);
- Modify water withdrawal provisions related to site restoration and industrial development;
- Allow the site to be maintained and utilized for future reuse/redevelopment until final site restoration occurs.

Specifically, the amendment modifies the WNP-1/4 SCA as follows:

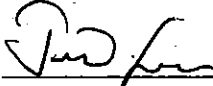
- Revises the SCA (Section I, Part A) to change the description of the "Project"
- Revises the SCA (Section I, Part B) to describe reuse and future final restoration.
- Removes requirements related to the construction of transmission lines (Section III, Part E);
- Removes requirements related to the construction and operation of the intake system from the Columbia River (section III, Part F);
- Removes requirements related to the construction and operation of the discharge system (Section III, Part G);
- Removes requirements related to construction clean-up (Section III, Part H);
- Modifies the requirements for maintaining as-built drawings (Section III, Part I);
- Modifies the requirements for archaeological site protection (section III, Part J);
- Removes the authorization to withdraw water from the Columbia River for the terminated nuclear projects;
- Adds the provisions to authorize the withdrawal of groundwater from two on-site wells to support restoration activities (Section IV, Part A, I);
- Adds the requirement for Energy Northwest to secure a groundwater permit or authorization to support future industrial development activities (Section IV, Part A, 2-5);
- Removes the air discharge provisions (Section IV, Part C);
- Modifies the requirements for ecosystem replacement to align with the provisions in the Four-Party Agreement (Section IV, Part C);
- Removes additional protective measures of wildlife, fish, and other aquatic organisms (Section IV, Part E)
- Removes Emergency Plan, Security Plan, and Monitoring Program requirements (Section V, Part A-C);
- Removes the provisions to allow project visitation (Section VI, Part A);
- Removes the discussion related to social and economic impacts (Section VI, Part B)

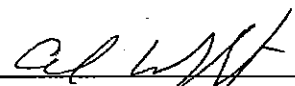
- Removes the NPDES permit (no longer active) as an attachment;
- Removes the Environmental Monitoring Plan as an attachment;
- EFSEC Resolution No. 330 has been added as an attachment to the SCA Amendment;
- EFSEC Resolution 302, has been added as an attachment to the SCA Amendment;
- The Four-Party Funding Agreement for site restoration activities, has been added as an attachment to the SCA Amendment; and
- Removes Amendment No.1 from the SCA related to the operation of emergency diesel generators (copy to be attached to SCA Amendment).

The above cited modifications and any other changes to the amended WNP – 1/4 SCA, apply only to the approved terms and conditions of Amendment No. 2, not to any future activities not covered therein.

DATED and effective at Olympia, Washington, this 13th day of April, 2010.

WASHINGTON STATE ENERGY FACILITY SITE EVALUATION COUNCIL

By: 
James O. Luce, Chair

Attested: 
Al Wright, EFSEC Manager