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November 22, 2021
XO1-21-004

State of Washington Energy Facility Site Evaluation Council
ATTN: Ami Hafkemeyer, Siting and Compliance Manager
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Subject: **AUTHORIZED ACTIVITIES ON FORMER WNP-1 AND WNP-4 SITES**

- Reference: 1) Energy Northwest New Nuclear Project Update and WNP-1 Site Re-Use Meeting with EFSEC on October 28, 2021
- 2) United States Department of Energy Funding Opportunity Number: DOE-FOA-0002271, Amendment 000003, dated May 14, 2020.
 - 3) Site Certification Agreement Between the State of Washington and Energy Northwest for the WNP-1 and WNP-4 Project Site, Amendment 2 (April 13, 2010)
 - 4) Washington State Energy Facility Site Evaluation Council Resolution No. 330, Amendment No. 2 to the WNP 1 and 4 Site Certification Agreement, April 13, 2010

Dear Ms. Hafkemeyer:

In follow up to our meeting on October 28, 2021 (Ref.1), and in support of the Department of Energy (DOE) Advanced Reactor Development Program (ARDP) (Ref.2), Energy Northwest (EN) is seeking Energy Facility Site Evaluation Council's (EFSEC) concurrence for EN to conduct certain activities outlined in the attachment to this letter on the former WNP-1/4 site in preparation for future industrial use as supported by the existing WNP-1 and 4 Site Certification Agreement (SCA), as amended (Ref. 3).

ARDP is a federally funded effort to support Congressional goals for technological leadership position in the global nuclear industry and to ensure national energy security. As part of the ARDP award, EN has partnered with X Energy, LLC (X-energy) to pursue the development of a new nuclear power facility currently planned for location on the former WNP-1/4 site. In addition to achieving Federal goals, this project would support:

- Washington's 2019 Clean Energy Transformation Act in the development of carbon free generation to replace current carbon emitting energy sources.
- Economic growth in the state of Washington by providing a firm and reliable source of power for the forecasted energy needs in the Pacific Northwest.

This request involves activities that would precede a future Site Certification Application to construct an advanced nuclear power facility on this site with the primary purpose to produce and sell electricity.

To move forward with such a project, there are a number of preliminary (preconstruction) activities that must be undertaken. A list of the preconstruction activities is provided in the attachment to this letter. It should be noted that, in accordance with Title 10 of the Federal Code of Regulations (CFR), the list of preconstruction activities documented in the attachment would not be considered "construction activities" by the Nuclear Regulatory Commission (Ref. 10 CFR 50.10(a)(2)) and would therefore, not be subject to National Environmental Policy Act (NEPA) reviews under the authority of the NRC.

However, it appears that by state standards, as found in the Revised Code of Washington (RCW) 80.50.20(7), 80.50.60(1) and as further expanded upon in the Washington Administrative Code (WAC) 463.68.40, many of these same activities would be considered "construction" activities subject to the requirements for a certification agreement and an appropriate SEPA review.

In recognition of this apparent requirement and in order to move forward and support future industrial activities to prepare the site for a future ARDP funded project (Ref 4), EN has considered a number of paths for proceeding with these activities as outlined below:

1. Make use of the existing SCA provisions to "*allow the site to be maintained and utilized for future reuse or development until final restoration occurs*"
2. Pursue a modification to the existing SCA to recognize the acceptance of conducting the industrial activities that would eventually support a new energy facility
3. Pursue a new SCA altogether, independent of the existing SCA
4. Determine what activities may be categorically excluded from SCA requirements and only perform those at this time

Option 1 - Make use of the existing SCA provisions to allow the site to be maintained and utilized for future reuse or development until final restoration occurs

This option recognizes that a certain set of activities may already be supported under the existing SCA for WNP-1/4 and therefore not require an additional certification agreement. If acceptable, this option would best support ARDP timeliness goals established by US Congress.

As stated in the existing agreement, the SCA was amended, in part, to:

Update the SCA to reflect Energy Northwest's plans to pursue facility reuse/industrial development opportunities and future site restoration activities.

Section C.2 of the agreement states:

This Certification Agreement certifies, to the extent authorized by law, that within and on the above site Energy Northwest may restore and/or reuse the project subject to the terms and conditions of this Certification Agreement.

Furthermore, EFSEC Resolution 330, which supplies background information to the content of the existing site certification agreement, provides the following level of detail:

1. In the "Nature of Action" section of Resolution 330, EFSEC acknowledged EN's intent to pursue re-use opportunities as a basis for the current amendment of the SCA:

Energy Northwest is requesting an amendment to the WNP-1/4 SCA to accurately reflect the plans to pursue facility reuse opportunities...

2. In the "Background" section, the SCA described the outcomes of the amendment:

Upon approval by the Council, the amended WNP-1/4 SCA will:

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

3. In Section B (Consistency with Applicable Laws and Rules) and subsection 1, Consistency with RCW 80.50.010 (Legislative Intent), the following language recognizes EN's economic development pursuit:

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.

4. In Section C "Consistency with Public, Health, Safety, and Welfare", the SCA recognizes that any future development activities on the site "may" be subject to SEPA requirements:

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.

Since the "future industrial development activities" are undefined in Resolution 330 and in the current SCA, it is not known to what extent proposed industrial activities would be subject to new SEPA reviews. It is the belief of EN that

certain industrial development activities assumed to be pursued as described in the current SCA amendment would not need to be subjected to an additional SEPA review since it was considered under the existing SCA. Many of those proposed industrial use activities are similar to site restoration activities as well as activities assumed to support future industrial development. The attachment to this letter provides a breakdown of how EN proposes these activities should be accounted for in the state's site certification process and is seeking EFSEC concurrence because this option is the preferred path.

Option 2 - Pursue a modification of the existing SCA to recognize the acceptance of conducting the industrial activities that would eventually support a new energy facility

This option provides the next best alternative in terms of time frame in the event that Option 1 is considered unacceptable. Although not as timely as Option 1, it is possible that the expedited processing outlined in WAC 463-43 could support the next most timely option for the limited "preconstruction" activities being pursued.

Option 3 - Pursue a new SCA altogether, independent of the existing SCA that recognizes the acceptance of conducting the industrial activities that would eventually support a new energy facility

In terms of impact to the overall project timeline, this could take the longest and it may be best suited to encompass all activities (e.g., "preconstruction" and "construction" activities as defined by the NRC).

Option 4 - Determine what activities may be categorically excluded from SCA requirements and only perform those at this time

This option may result in supporting most activities but there is uncertainty associated for what exactly could be categorically excluded. Per RCW 80.50.20(7) "construction" is defined as the following:

"Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

A few questions need resolution on this definition:

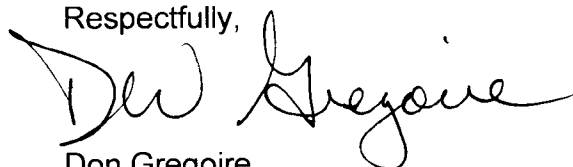
- a) Since the definition of "on-site improvements" is unclear, how would it apply to the list of activities in the attachment to this letter? Would they all be considered improvements or are there some that would not?
- b) Since it is unclear whether the \$250,000 cost for site improvements is an aggregate cost of activities or costs per individual improvement, could individual activities costing less than or equal to \$250,000 be excluded?

The answer to these questions would help identify whether this is option is a workable solution in terms of meeting project timeliness goals.

In summary, EN has identified Option 1 above as its preferred option. EN wishes to work together with EFSEC to achieve common understanding of the path forward to allow the ARDP to maintain its schedule as cited in the DOE ARDP Funding Opportunity Announcement (FOA) (Ref 2). EN requests EFSEC's formal response on this matter by December 31, 2021. We look forward to working with EFSEC on these and related matters as we progress toward fulfilling the ARDP project licensing and permitting requirements of both the State of Washington EFSEC and the United States Nuclear Regulatory Commission.

If there are any questions or if additional information is needed, please contact me at 509-377-8616 or Dave Lanier at 509-377-8542.

Respectfully,



Don Gregoire

Licensing and Environmental Manager, New Nuclear Development

Attachment: List of Proposed Activities to be Performed on Former WNP-1/4 Site in Support of Future Industrial Use

cc: Amy Moon, UTC
Joan Owens, UTC
Brad Barfuss, EN
David Lanier, EN
Darren Gale, X Energy, LLC
Travis Chapman, X Energy, LLC
Milton Gorden, X Energy, LLC
Dave Jensen, Longenecker & Associates
Tim Beville, DOE-NE

Attachment

List of Proposed Activities to be Performed on Former WNP-1/4 Site in Support of Future Industrial Use

Site Exploratory Activities

These activities would not be considered “construction” activities per the state’s definition and categorically excluded from SCA requirements consistent with RCW 80.50.20(7).

- Endangered Species Act survey
- National Historic Preservation Act survey
- Borings for soils/geologic characterization
- Borings for hydrogeologic characterization
- Ecological surveys (includes wetland and aquatic surveys if required)

Improvement Activities Under Existing SCA

These activities would “*Allow the site to be maintained and utilized for future reuse*” consistent with the background section of the existing SCA:

- Installation of a laydown yard
- Roadway/access improvements
- Temporary parking areas
- Placement of industrial trailers
- Tie-ins for utilities for site industrial activities
- Upgrade of site fencing and site entrance to enhance security posture
- Site grading
- Erosion control dust suppression activities
- Hookup to electrical power source
- Lighting installation (poles and foundations), as needed

Energy Facility Activities that may be Subject to New SCA

These activities may be subject to SEPA reviews and further certification requirements.

Construction of:

- Nuclear Island Warehouse
- Helium Service Building
- Security & Access Building Administrative Building(s)
- Turbine Building
- Minor Switch Yard Foundations
- Transformer Foundations and Containment
- Maintenance Building
- Fire Protection/Plant Water Pump House & Tank
- Temporary structures required for laydown
- Concrete-lined shaft for each of the four reactor buildings