



STATE OF WASHINGTON

## ENERGY FACILITY SITE EVALUATION COUNCIL

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### WASHINGTON STATE

### ENERGY FACILITY SITE EVALUATION COUNCIL

### RESOLUTION NO. 351

### GRAYS HARBOR ENERGY CENTER

#### **Purchasing Emission Allowances under the Climate Commitment Act Will Replace Payment Obligation Under the 2003 Greenhouse Gas Mitigation Plan**

#### **Nature of Action**

Beginning January 2023, the Washington Department of Ecology (Ecology) will launch Washington's first comprehensive greenhouse gas (GHG) cap-and-invest program. Ecology is tasked with implementing a comprehensive carbon reduction program, per mandates in the new Climate Commitment Act (CCA) of 2021, RCW 70A.65. The goal of the CCA, combined with other climate policies, is to facilitate meeting Washington's goal of net zero GHG emissions by 2050.

Generally, facilities emitting greater than 25,000 metric tons of CO<sub>2</sub> equivalent per year will be covered by the program. Consequently, Grays Harbor Energy LLC (GHE) has asked EFSEC to confirm that its compliance with Washington State's CCA will fully satisfy the company's obligation under its current greenhouse gas mitigation plan (GHG plan) that was approved by EFSEC in 2003.

GHE's GHG plan was required as a condition of EFSEC's approval of an SCA amendment in 2001. That amendment authorized an increase to the facility's generating capacity from 490 megawatts to 650 megawatts, and its potential greenhouse gas emissions by 10 percent, when compared with the facility capacity originally approved in 1996.

At the time, there was no statewide GHG reduction or mitigation program. The GHE plan represents an early effort by EFSEC to require an energy facility to address the impacts of a portion of its anticipated carbon emissions. EFSEC realized this relatively novel GHG plan would likely be overtaken by comprehensive state or federal laws addressing greenhouse gases. In anticipation of this, EFSEC approved language in the GHG plan providing for its "sunset" or conclusion in that event.

The CCA represents a comprehensive approach to GHG emission pricing and phased reduction of statewide emissions. The Council concludes that the CCA is the type of comprehensive greenhouse gas reduction and mitigation regulation that EFSEC anticipated in the GHG Plan's sunset provision. In this Resolution, the Council confirms that the certificate holder's purchase of allowances under the CCA will satisfy its obligations under the GHG Plan approved by EFSEC in 2003.

## Background

- 1. EFSEC required the 2003 GHG Plan in an effort to keep pace with the most stringent U.S. state carbon offset requirements then in effect for new fossil fuel generating facilities, and provided for the Plan to conclude if comprehensive state or federal greenhouse gas regulations were adopted.**

To understand the purpose of the 2003 GHG plan, it is necessary to review how the site certification agreement (SCA) for the combined cycle combustion turbine facility at the Satsop site has been amended over time.

In 1996, when EFSEC approved the Washington Public Power Supply System (now Energy Northwest) proposal to construct a natural gas turbine generation facility at the Satsop site, it included language in the site certification agreement directing the holder to develop a GHG mitigation plan before commencing operation:

### E. Greenhouse Gases and Carbon Dioxide Mitigation

1. The Supply System shall prepare and submit a report to the Council no later than one year prior to each turbine coming online, that presents and evaluates possible greenhouse gases and carbon dioxide mitigation techniques, and concentrates on those techniques that can offer cost effective mitigation measures.
2. If a comprehensive federal or state mitigation program is implemented, the Council reserves the right to exercise its authority under that program, considering and appropriately crediting any measures that the Supply System has accomplished.<sup>1</sup>

Before the facility was built, the SCA was transferred to Duke Energy. At that time, Duke sought approval for a change in the authorized equipment and design of the planned facility, and an increase to its authorized generating capacity from 490 to 630 megawatts, representing a 10 percent increase in the potential greenhouse gas emissions. The Council approved the increase stating that:

[A]n increase of 10% in carbon dioxide emissions is not adverse to the environment given the decrease in emission per megawatt, the Council's authority to compel carbon dioxide mitigation consistent with a plan it will approve pursuant to the SCA, and elimination of the use and storage of diesel oil. . . .

[T]he adoption of the amendments is made with the express acknowledgement that the Council is authorized under the SCA to compel Duke to prepare, submit and implement a Council approved greenhouse gas and carbon dioxide mitigation plan. In the event that Duke fails to prepare, submit, and implement the Council-approved mitigation plan, this resolution shall be null and void.<sup>2</sup>

<sup>1</sup>SCA, Amend. 2, Art. 6.E. (May 21, 1996).

<sup>2</sup>Resolution No. 298, pp. 2, 4 (April 13, 2001).

With stakeholder input, Duke and EFSEC developed a plan under which the certificate holder would be required to make payments to a nonprofit organization for greenhouse gas mitigation projects designed to offset a portion of the facility's CO<sub>2</sub> emissions over thirty years of operation. The Satsop Combustion Turbine GHG mitigation plan was approved June 9, 2003.<sup>3</sup> Once the facility began operations, the nonprofit Climate Trust used the payments to fund carbon offset projects, such as methane capture or reduction from dairy farms, composting facilities and landfills to reduce other sources of GHG emissions and forest planting or conservation projects for carbon capture.

The plan was intended to mirror requirements then in place in Oregon for new fossil fuel generating facilities, except that the Oregon regulation required a mitigation payment to be made in a lump sum at the start of operation, rather than annually over thirty years of facility operations.

The record of the Council's deliberations suggest that the Council was attempting to be close to a leading position among states requiring some degree of offset for new GHG emissions, but that the Council was also tempering its requirements based on concern about the costs to be borne by the facility operator. The Council's discussion and the terms of the approved plan reflect an expectation that more comprehensive carbon mitigation or regulation by state or federal rule or statute would likely be forthcoming, and that the holder should, if possible, receive some form of credit under the new scheme in that event.

The GHG plan approved by the Council includes the following sunset provision:

#### PREEMPTION AND SUNSET

If a new state or federal law imposes requirements on the Certificate Holders to limit, mitigate or offset greenhouse gas emissions, EFSEC will support the Certificate Holders in obtaining credit under any such new laws, regardless of preemption, for early action for offsets already funded under this Mitigation Plan.

If any new state or federal law pre-empts this Mitigation Plan, to the extent that any carbon offset or funding obligation hereunder has not been met at the time of such change in law, the Certificate Holders may meet any such obligation through compliance with the new program, and further obligations under this Mitigation Plan will terminate.<sup>4</sup>

Similarly, the GHE's site certification agreement, in Art. VII.B notes that the Council "has approved a mitigation plan for carbon dioxide emissions" and states that "[i]f a comprehensive federal or state mitigation program is implemented, the Council reserves the right to exercise its authority under that program considering and appropriately crediting any measure that the Certificate Holders have accomplished."

<sup>3</sup> Minutes of EFSEC Regular Meeting of June 9, 2003, pp. 9-20.

<sup>4</sup> GHG Plan, p. 5.

GHE has neither requested credit, nor suggested that there would be any way for it to obtain credit, toward its forthcoming CCA obligations based on its past payments under the GHG plan. For purposes of GHE's present request, the important point is that, if comprehensive greenhouse gas regulations were adopted at the state or federal level and impose carbon offset or funding obligations on the facility, further payment obligations under the plan would terminate.

**2. The amount of carbon emissions required to be offset under the plan is only a portion of the facility's potential annual CO<sub>2</sub> emissions, apparently because of concerns about the cost of purchasing offsets for the entire carbon output of the facility.**

When EFSEC conducted its review of the then-certificate holder's initial application to construct a combustion turbine project at the Satsop site in 1996, the Council decided not to impose a greenhouse gas mitigation requirement for the annual 1.778 million tons of greenhouse gases the facility was expected to emit. The Council found that: "the Satsop CT Project uses the latest reasonable technology and that it will produce lower emissions of greenhouse gases than older natural gas combustion turbine facilities or other fossil fuel facilities."<sup>5</sup>

Among other things, the Council concluded that:

[b]urdensome greenhouse gas mitigation . . . could place the Applicant at a competitive disadvantage within the power producing market and deprive the market of a very efficient power producing facility. Balancing the respective interests, and recognizing that emission technology will advance and greenhouse mitigation measures may be enhanced as time passes, the Council will impose no fixed requirement upon the Applicant..... If a comprehensive federal or state mitigation program is implemented, the Council reserves the right to exercise its authority under that program.....<sup>6</sup>

As described above, the occasion for requiring a mitigation plan arose five years later with Duke Energy's request to amend the SCA that had been signed by the governor in 1996, in order to authorize a greater generating capacity than was originally approved, and to mitigate the resulting 10 percent increase in greenhouse gas emissions.<sup>7</sup>

The GHG mitigation plan that the Council eventually approved in 2003 states that: "Duke Energy proposes that the mitigation obligation be based upon the maximum potential CO<sub>2</sub> emissions that exceed a rate of 0.675 pounds of CO<sub>2</sub> per kilowatt hour (lb/kWh) over 30 years of the facility's operation." This formula resulted in the certificate holder paying to offset about 21 percent of the facility's total potential annual CO<sub>2</sub> emissions.<sup>8</sup>

<sup>5</sup>Order No. 694 at 13-14.

<sup>6</sup>Order No. 694 at 25.

<sup>7</sup>Resolution No. 298.

<sup>8</sup> See Grays Harbor Energy Center LLC letter to Jim Luce, EFSEC Chair, February 4, 2008 stating that the maximum annual potential emissions for the project is 2,391,408 million tons, but the amount of emissions to be mitigated each year is just 514,103 tons)

According to GHE's request, GHE made its first mitigation payment to the Climate Trust in April 2008, and over the past 15 years, GHE has provided more than \$5 million in funding to the Climate Trust, with annual payments ranging from approximately \$300,000 to \$450,000.

**3. The Climate Commitment Act is a comprehensive law that requires covered entities emitting GHGs above a specified annual threshold to purchase allowances at auction for their entire GHG output. The revenues thus generated are to be used to reduce other sources of GHG emissions or to mitigate the effects of climate change.**

In 2021, the Washington Legislature passed the Climate Commitment Act, Laws of 2021, ch. 316, a comprehensive law that directs the Department of Ecology to develop and implement a statewide cap-and-invest program to cut carbon pollution.

The law sets a limit on overall carbon emissions in the state and requires emitters (covered entities) to obtain "emission allowances" equal to their covered greenhouse gas (GHG) emissions. The legislation directs the Department of Ecology to establish an emissions baseline based on total GHG emissions from covered entities from 2015-19, with an adjustment by October 1, 2026, to reflect the GHG emissions of newly covered entities. Each covered entity is then assigned a specific GHG allowance based on its proportionate share of GHG emissions compared to the baseline total. Allowances are then adjusted downward annually to achieve the GHG reduction goals set forth in RCW 70A.45.020. That statute sets progressively more strict state GHG reduction goals between now and 2050, culminating in a statewide limit of only five million metric tons of GHG emissions in 2050, equivalent to a 90 percent reduction below the state's 1990 GHG emissions.

The program will cover all entities that emit 25,000 metric tons of carbon dioxide equivalents annually, including entities who in the future build or modify facilities that exceed the metric ton threshold. Grays Harbor Energy's GHG mitigation plan states that the facility's potential annual CO<sub>2</sub> emissions is 2,200,000 tons. GHE's request states that it emitted 980,000 tons CO<sub>2</sub> emissions in 2020. Both numbers are well above the 25,000 metric ton threshold for a covered entity. GHE concedes that it is a covered entity, and is required to purchase emission allowances under the Climate Commitment Act.

Each covered entity must obtain GHG emissions allowances at least equal to its GHG emissions for each four-year compliance period. The first compliance period begins on January 1, 2023. Failure to comply may be punished by fines up to \$10,000 per day.

The CCA also permits carbon offsets to be used for compliance with GHG limits, although a covered entity may use offsets for no more than five percent of its compliance obligation for the first compliance period (2023-27), and four percent in the second compliance period (2028-31), although Ecology may modify these limits.

The CCA directs that funds from the purchase of allowances at auction be deposited into several new accounts that fund measures to reduce GHG emissions. Many, if not most of the authorized uses of the revenues generated by the state from auctioning emissions allowances are of the same general nature as the projects funded through GHE's payments to the Climate Trust.

It is likely that the cost of the emission allowances GHE will be required to purchase under the CCA will be dramatically greater than its payments under the GHG Plan.

GHE made its most recent payment under the GHG Plan in March 2022 for the twelve month period ending March 2023.<sup>9</sup> The CCA will require GHE to purchase greenhouse gas allowances for its emissions starting January 1, 2023. Consequently, there will be an overlap of 2-3 months for which GHE has paid for offsets under the GHG Plan, and will also be purchasing GHG allowances under the CCA.

### **Resolution**

Having considered GHE's request and the recommendation of EFSEC staff, the Council hereby confirms that by purchasing or contracting for allowances under the Climate Commitment Act, Grays Harbor Energy LLC will satisfy the company's obligations under the greenhouse gas mitigation plan approved by the Council in 2003. However, GHE shall remain obligated to make payments in accordance with the 2003 plan if at any time GHE is relieved of, or determined not to be subject to the requirement to provide emissions allowances under the Climate Commitment Act, including during the duration of any delay in implementation of the emissions allowance auction process.

Dated and effective this 20th day of September, 2022.

Washington State Energy Facility Site Evaluation Council By:



Kathleen Drew, EFSEC Chair

Attest: 

Sonia Bumpus, EFSEC Manager

<sup>9</sup>The GHG plan requires payment "on an annual basis *at the start of* each of the first 30 years in which the facility is operating." GHG Plan, p. 4.