

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 315

***AMENDMENT NO. 2 TO THE WILD HORSE WIND POWER PROJECT
SITE CERTIFICATION AGREEMENT***

Nature of Action.

Puget Sound Energy (PSE) is the Certificate Holder of the Site Certification Agreement ("SCA") governing the Wild Horse Wind Power Project (WHWPP). By letter dated December 13, 2005, PSE requested that the Council amend the SCA for the WHWPP to allow the following changes:

- (1) Relocation of a 12,000 square foot maintenance facility to the project site near Vantage highway, including the informational kiosk and visitor parking, including a separate septic system and an exempt water well;
- (2) A realignment of a portion of the 230 kilovolt (kv) transmission feeder line on the Project Site.

Background.

On July 26, 2005 Governor Christine Gregoire executed on behalf of the State of Washington a Site Certification Agreement authorizing the construction and operation of the Wild Horse Wind Power Project. On August 30, 2005, the Energy Facility Site Evaluation Council (EFSEC or Council) approved the transfer of the WHWPP SCA to PSE. PSE began construction of the WHWPP in October 2005.

Procedural Status.

EFSEC's amendment procedure is governed by chapter 80.50 RCW and chapter 463-66 WAC.

PSE and EFSEC have complied with procedural requirements of Chapter 463-66 WAC as follows:

- Pursuant to WAC 463-66-030, the request for amendment of the SCA was submitted in writing, on December 13, 2005.
- The Council considered the request at its January 13, 2006 Monthly Meeting, and scheduled a special meeting to fully consider and act upon the request on February 2, 2006, in Ellensburg, Washington.
- Notice of this matter was mailed to approximately 340 people. The Notice advised that PSE had requested an amendment to the SCA, that a special meeting would be held on February 2, 2006, in Ellensburg, Washington, and that comments could be made either orally at that time or in writing prior to the conclusion of the public comment portion of

the February 2, 2006 meeting. EFSEC considered the request at its February 2, 2006 special meeting. The Council received the following oral and written comments:

At the Council's January 13, 2006 Monthly Meeting, Mr. Robert Kruse reminded the Council of the agreement between Friends of Wildlife and Windpower (Friends) and Horizon Wind Energy. This agreement is now transferred to PSE. Friends' request is that the Council assure that PSE continue to minimize and reduce public access to the northern portion of the Project Area, and that this SCA amendment not violate this access management philosophy. A further e-mail exchange occurred between Scott Williams of PSE and Mr. Kruse in which PSE's intent to adhere to the agreement and to minimize visitors to the northern portion of the site was confirmed.

In a phone call to Mr. Allen Fiksdal, Mr. Robert Peterson expressed opposition to all wind farms in Kittitas County, and concern that the public meeting was being held during the day which does not allow most people to attend because they are working.

In an e-mail dated January 30, 2006, Mr. Guy Schober expressed general support for the Wild Horse Project.

In a letter dated January 31, 2006, Mr. Ian Kenair representing the Environmental and Natural Resources Department of the Snoqualmie Tribe expressed concerns about the impact of the amendment on environmental and cultural resources.

At the February 2, 2006 meeting, Darryl Piercy, Director of Kittitas County Community Development Services testified that both the realignment of the transmission line and the relocation of the maintenance facility were permitted uses under county code, and were therefore consistent with the county's land use plans and zoning ordinances.

Finally, also at the February 2 meeting, Harold Hochstetter testified that he appreciates the project and that it will provide a good county tax base. He also expressed satisfaction that the road through the project is open for his use.

Discussion.

WAC 463-66-040 outlines the relevant factors that the Council shall consider prior to a decision to amend a SCA:

In reviewing any proposed amendment, the council shall consider whether the proposal is consistent with:

1. The intention of the original SCA;
2. Applicable laws and rules; and
3. The public health, safety, and welfare.

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

In 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.

The Council has considered these factors and has concluded that the proposed amendment would be consistent with each. Each of the Council's conclusions is discussed below.

A. Consistency with the public health, safety, and welfare.

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

1. Consultation with DAHP and WDFW.

In support of their December 2005 request, PSE conducted surveys of cultural and historic properties and habitat and wildlife present on the areas to be impacted by realignment of the transmission feeder lines. The area where the maintenance facility is to be relocated was previously surveyed for the Application for Site Certification. Copies of the studies performed were submitted to EFSEC staff, and as appropriate to the Department of Archeology and Historic Preservation (DAHP), or the Washington Department of Fish and Wildlife (WDFW).

By correspondence dated January 24, 2006, DAHP concurred with the determination that no impact is expected to cultural, historic and archeological properties from realignment of the feeder transmission line. No impact was previously expected from project construction activities at the proposed location of the maintenance facility.

WDFW staff, acting as EFSEC's contractor, reviewed the request for amendment and performed on-site evaluation of the habitat in the area proposed for realignment of the transmission line. WDFW did not report any objections to the relocation of the maintenance facility. However, in a memorandum dated February 1, 2006, WDFW reported the following concerns:

- 1) The areas proposed for the realigned transmission line present qualities favorable for sage grouse winter habitat. Raptor perch guards should be installed to avoid predation of sage grouse in this area.
- 2) WDFW recommends that PSE submit prior to construction in this area a plan for both temporary construction access and long term maintenance access for the line that ensures the least practicable disturbance to shrub steppe vegetation.
- 3) Due to recent warm weather conditions, the project area is very wet and muddy. WDFW recommends that PSE submit for approval a detailed plan for construction in wet conditions that ensures minimum impacts on native vegetation.

PSE proposes to implement measures to address these concerns. These mitigation measures are already required by the SCA.

1) Attachment 4 of the SCA, and the mitigation measures of the Final Environmental Impact Statement require the use of raptor perch guards on all overhead transmission lines.

2) Prior to beginning construction, and in accordance with SCA Article IV.L, Construction Plans and Specifications, PSE will submit to EFSEC and EFSEC's WDFW contractor plans/drawings that indicate the location of all construction and maintenance access roads associated with the realignment of the feeder transmission line. Drawings will indicate access used for each transmission pole location. Construction of the transmission line shall not begin in the realigned area until EFSEC approves the plans/drawings.

3) In accordance with SCA Article IV.F.1, Construction Timing, PSE has been avoiding construction activities in areas of wet soils throughout the project site, and has been restricting contractor access to such areas to avoid habitat damage. PSE shall continue this practice. Prior to beginning construction of the realigned portion of the transmission line, PSE will make a determination in conjunction with EFSEC's WDFW contractor that soil conditions are acceptable. However, should the wet conditions extend in such a manner as to seriously conflict with the transmission line construction schedule, PSE will develop a plan with EFSEC's WDFW contractor for construction practices in wet conditions to ensure minimum impacts on native vegetation. Construction in areas addressed by this plan will not begin until the plan is approved by EFSEC.

2. Consistency with public health, safety, and welfare, including environmental aspects of the public welfare.

This amendment will have no effect on the health and safety of the public. All activities associated with the realignment of the transmission line and relocation of the maintenance facility will be conducted in the Project Area. Public health, safety and welfare will therefore not be affected in any manner not previously analyzed during review of the project application. Furthermore, the activities will not cause any significant adverse environmental impact.

PSE will continue to abide by all the terms and conditions of the SCA for the Wild Horse Wind Power Project. The substance of existing SCA conditions and environmental mitigation requirements is not altered in any manner by the requested amendment.

B. Consistency with applicable laws and rules.

Under WAC 463-66-040(2), the Council must consider applicable laws and rules, including chapter 43.21C RCW and chapter 197-11 WAC (the State Environmental Policy Act and SEPA rules) and WAC 463-66-070 through -080.

1. 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 effect on the environment. See WAC 197-11-310. The Council's SEPA responsible official, EFSEC Manager Allen Fiksdal, has reviewed the

proposed changes to the SCA and has determined they do not have any probable significant adverse environmental impact. EFSEC issued a Determination of Non-Significance on January 23, 2006. EFSEC also issued an Addendum to the Final Environmental Impact Statement on January 23, 2006.

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

WAC 463-66-080 provides:

An [SCA] 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:

An amendment request which does not substantially alter the substance of any provisions 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 previous findings that the (i) the proposed amendment has no environmental impact and no impact on public health, safety, and welfare; and (ii) does not alter the Certificate Holder's legal responsibilities under the SCA, the Council finds that this amendment may be approved by Council resolution pursuant to WAC 463-66-070.

3. Consistency with the requirements of the Site Certification Agreement.

Article III.K of the Wild Horse Site Certification Agreement controls amendment procedures for this SCA. In particular, Article III.K.3 indicates that amendments to the Development Agreement entered into with Kittitas County (Attachment 4 to the SCA) constitute amendments to the SCA. The Certificate Holder has submitted information regarding this request to amend the SCA to representatives of Kittitas County. Darryl Piercy, Director of Kittitas County Development Services testified at the February 2, 2006 hearing that the realignment of the feeder transmission line and the relocation of the maintenance facility are both permitted uses under County code. The County shall therefore not require any amendment to the Development Agreement.

C. Consistency with 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. In return, the certificate holder commits to comply with the terms of the SCA.

The transmission line was already planned but in a different location on the project site. A maintenance facility was also an essential element of the project. Relocation of these facilities does not alter the intent of the SCA in any way. The Certificate Holder would implement the

same mitigation measures identified in the SCA for construction and operation of these facilities in their new location.

The Council finds that the proposed changes to the SCA are consistent with this intent.

D. Conclusion.

The Council concludes that the proposed amendment of the WHWPP SCA to realign a portion of the feeder transmission line and to relocate the maintenance facility and increase its size is consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA. The Council hereby determines that it is appropriate to approve an amendment to the Wild Horse Wind Power Project SCA necessary to reflect the proposed changes to the project; *Provided*, PSE shall continue to implement mitigation measures identified in the SCA, especially as those measures would apply to construction of the realigned portion of the feeder transmission line as explained in Section A.1 of the Discussion above.

RESOLUTION

For the foregoing reasons, the Council amends the Wild Horse Wind Power Project SCA to reflect the following WHWPP project changes:

- (2) Relocation of a 12,000 square foot maintenance facility to the project site near Vantage highway, including the informational kiosk and visitor parking, including a separate septic system and an exempt water well;
- (2) A realignment of a portion of the 230 kilovolt (kv) transmission feeder line on the project site.

DATED at Olympia, Washington and effective on this February 2nd, 2006.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: _____
James O. Luce, Chair

Attested: _____
Allen J. Fiksdal, EFSEC Manager

Attachments:

1. Revised Project Layout Map (January 17, 2006).
2. Wild Horse Wind Power Project Site Certification Agreement, Amendment No. 2, as modified by EFSEC Resolution No. 315