



Washington State Energy Facility Site Evaluation Council AGENDA

MONTHLY MEETING
Tuesday, February 16, 2016
1:30 PM

1300 S Evergreen Park Drive SW
Olympia, WA 98504
Hearing Room 206

- 1. Call to Order Bill Lynch, EFSEC Chair
- 2. Roll Call Tammy Mastro, EFSEC Staff
- 3. Proposed Agenda Bill Lynch, EFSEC Chair
- 4. Minutes **Meeting Minutes**..... Bill Lynch, EFSEC Chair
 - December 15, 2015
 - January 19, 2016 NPDES Public Meeting
- 5. Projects
 - a. Kittitas Valley Wind Project
 - Operational Update.....Eric Melbardis, EDP Renewables
 - b. Wild Horse Wind Power Project
 - Operational Update.....Jennifer Diaz, Puget Sound Energy
 - c. Grays Harbor Energy Center
 - Operational Update.....Pete Valinske, Grays Harbor Energy
 - d. Chehalis Generation Facility
 - Operational Update.....Mark Miller, Chehalis Generation Staff
 - e. Columbia Generating Station
 - Operational Update.....Shannon Khounnala, Energy Northwest
 - f. WNP - 1/4
 - Non-Operational Update.....Shannon Khounnala, Energy Northwest
 - g. Tesoro/Savage Vancouver Energy Distribution Terminal
 - Project Update..... Sonia Bumpus, EFSEC Staff
 - Adjudication Update.....Cassandra Noble, Administrative Law Judge
- 6. Other
 - a. EFSEC Council
 - 3rd Quarter Cost Allocations.....Stephen Posner, EFSEC Staff
 - OPMA/Public Records Update.....Ann Essko, Senior Counsel, Attorney General
- 7. Adjourn Bill Lynch, EFSEC Chair

Note: "FINAL ACTION" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance. RCW 42.30.02

WASHINGTON STATE
 ENERGY FACILITY SITE EVALUATION COUNCIL
 Richard Hemstad Building
 1300 South Evergreen Park Drive Southwest
 Conference Room 206
 Olympia, Washington
 Tuesday, December 15, 2015

MONTHLY COUNCIL MEETING
 Verbatim Transcript of Proceedings

REPORTED BY: ELIZABETH PATTERSON HARVEY, RPR, CCR 2731

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A P P E A R A N C E S :

Councilmembers Present:

Bill Lynch Chair
 Liz Green-Taylor, Department of Commerce
 Cullen Stephenson, Department of Ecology
 Joe Stohr, Department of Fish and Wildlife
 Dan Siemann, Department of Natural Resources
 Dennis Moss, Utilities and Transportation Commission

Local Government and Optional State Agency:

Ken Stone, Department of Transportation
 Bryan Snodgrass, City of Vancouver (Via telephone)
 Greg Shafer, Clark County
 Larry Paulson, Port of Vancouver

Assistant Attorney General:

Ann Essko, Assistant Attorney General

Staff in Attendance:

Stephen Posner
 Jim LaSpina
 Tammy Mastro
 Sonia Bumpus
 Kali Waspir
 Joan Aitken

Guests in Attendance:

Richard Downen, Grays Harbor Energy Project
 Mark Miller, PacificCorp

Guests in Attendance Via Telephone:

Kyler Danielson, Port of Vancouver
 Shannon Khounhala, Energy Northwest
 Jennifer Diaz, Puget Sound Energy
 Haley Edwards, Puget Sound Energy

A P P E A R A N C E S (Continued)

Guests in Attendance Via Telephone (Continued)

Eric Melhardis, Horizon Wind Energy
 Tim McMahan, Steel River
 Brooks Johnson, The Columbian
 Tadas Kisielius, Vancouver Energy

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OLYMPIA, WASHINGTON DECEMBER 15, 2015
 1:30 p.m.
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P R O C E E D I N G S

CHAIR LYNCH: Good afternoon. Today is
 December 15th, the regular monthly meeting of the Energy
 Facility Site Evaluation Council.

Will we please have the clerk call the roll.

THE CLERK: Department of Commerce?

MS. GREEN-TAYLOR: Liz Green-Taylor here.

THE CLERK: Ecology?

MR. STEPHENSON: Cullen Stephenson here.

THE CLERK: Fish and Wildlife?

MR. STOHR: Joe Stohr is here.

THE CLERK: Natural Resources?

MR. SIEMANN: Dan Siemann is here.

THE CLERK: Utilities and Transportation

Commission?

MR. MOSS: Dennis Moss is here.

THE CLERK: Local Governments and Optional
 State Agencies for the Tesoro Savage project; Department of
 Transportation?

MR. STONE: Ken Stone is here.

1 THE CLERK: City of Vancouver?
 2 (No response.)
 3 THE CLERK: Clark County?
 4 MR. SHAFER: Greg Shafer present.
 5 THE CLERK: Port of Vancouver?
 6 MR. PAULSON: Larry Paulson's here.
 7 THE CLERK: Chair, there is a quorum for the
 8 regular Council and the Tesoro project.
 9 CHAIR LYNCH: Thank you.
 10 And I think we're having Staff check to see
 11 if the outside phone line is working. I think our outside
 12 phone line might be down, but we'll go ahead and proceed.
 13 And as always, we are joined by our senior
 14 counsel, the inimitable and insightful Ann Essko.
 15 And we have also as our court reporter the
 16 prodigious and productive Liz Patterson Harvey of Buell
 17 Realtime Reporting.
 18 And if we could just have you all take a look
 19 at the proposed agenda and see if there's any proposed
 20 changes?
 21 Hearing none, let's go ahead and proceed.
 22 We've got two sets of meeting minutes for November 24th.
 23 Are there any proposed changes -- let's start
 24 first with the minutes from the executive session. Are
 25 there any proposed changes?

1 MR. SIEMANN: Chair?
 2 CHAIR LYNCH: Yes, Mr. Siemann? If you could
 3 turn on your mic, please.
 4 MR. SIEMANN: I do see one on page 4 where it
 5 says "Chair Lynch: And call D and R" should be "DNR."
 6 CHAIR LYNCH: So that's line 7 on page 4.
 7 MR. SIEMANN: Department of Natural
 8 Resources.
 9 MR. POSNER: Chair Lynch, I'd like to make a
 10 suggestion for your consideration that we hold off for just
 11 a couple minutes, because we have a number of people who
 12 were planning on calling in, and see if we can get the
 13 phones fixed before we go too far into the Council meeting.
 14 CHAIR LYNCH: I thought we could just go
 15 ahead and do the approval of the minutes since there's
 16 nothing substantive there.
 17 MR. POSNER: All right.
 18 CHAIR LYNCH: And then after that, we can
 19 take a short break if we need to.
 20 And I believe there was another one on page--
 21 MR. MOSS: I believe it's three lines down
 22 from where the correction was just made. The word "little"
 23 should be the word "title."
 24 CHAIR LYNCH: I see. And so on line 14,
 25 instead of "sub little" it's "subtile."

1 Any other proposed changes to the minutes
 2 from the November 24th executive session meeting?
 3 If not, I will propose -- I will entertain a
 4 motion for the approval as amended.
 5 MR. MOSS: So moved, Chair Lynch.
 6 CHAIR LYNCH: Do we have a second?
 7 MR. SIEMANN: I'll second.
 8 CHAIR LYNCH: It's been moved and seconded
 9 that the Council meeting minutes from the November 24
 10 executive session be approved.
 11 All those in favor say "aye."
 12 MULTIPLE SPEAKERS: Aye.
 13 CHAIR LYNCH: Motion carries.
 14 Now if we could please have the Council take
 15 a look at the minutes for the regular Council meeting on the
 16 24th. And if no one has any suggested edits, I would
 17 recommend that those be approved.
 18 MR. SNODGRASS: Mr. Chair, I'm not sure you
 19 can hear me. Bryan Snodgrass here. We just got entered
 20 into the meeting.
 21 CHAIR LYNCH: Thank you, Mr. Snodgrass. We
 22 have you marked as present now.
 23 MR. SNODGRASS: And just a small correction
 24 to the regular meeting minutes, which may have been a result
 25 of my either stating it wrong or speaking too quickly, but

1 the top of page 41, the first paragraph, last sentence, is
 2 talking about the CBR history. And in the current minutes
 3 it says "22 CBR accidents involving derailments, of which
 4 there were 12 explosions." The correct number should be 20
 5 CBR accidents involving derailments, of which there were 12
 6 fires and 3 explosions.
 7 CHAIR LYNCH: So what you're saying is that
 8 -- is the question, Mr. Snodgrass, you're not saying what
 9 was -- the minutes are accurate, but you're just noticing
 10 that what you said was slightly incorrect?
 11 MR. SNODGRASS: I don't know if what I said
 12 was incorrect or if it was misrecorded somehow.
 13 CHAIR LYNCH: Okay. So either way, we will
 14 just make that correction to the minutes. It's simpler.
 15 MR. SNODGRASS: Thank you.
 16 MR. SHAFER: Mr. Chair, I believe there's a
 17 grammatical error here on transcript page 32, line 5. The
 18 sentence there, "if there is a spill of this" -- and then
 19 the word is "dilbit." I'm not familiar with that. I think
 20 it was intended to be "oil," "if there's a spill of this oil
 21 in the Columbia" --
 22 CHAIR LYNCH: Actually, "dilbit" was what I
 23 said --
 24 MR. SHAFER: Is that right?
 25 CHAIR LYNCH: -- which is -- it's the diluted

Page 9

1 bitumen. That's the shorthand way it's referred to.
 2 MR. SHAFER: Okay. I stand corrected, then.
 3 CHAIR LYNCH: I think people often, when they
 4 say the word "dilbit," they look at me like I should go by
 5 that name.
 6 All right. Thank you.
 7 Any other suggested edits to the regular
 8 meeting minutes for November 24th?
 9 MR. MOSS: Chair Lynch, subject to the
 10 discussion we just had, I would move that the November 24,
 11 2015 minutes be adopted as corrected.
 12 CHAIR LYNCH: Do we have a second?
 13 MR. STEPHENSON: I'll second.
 14 CHAIR LYNCH: It's been moved and seconded
 15 that the Council approve the November 24th regular meeting
 16 minutes as amended.
 17 All those in favor say "aye."
 18 MULTIPLE SPEAKERS: Aye.
 19 CHAIR LYNCH: Opposed?
 20 Motion carries.
 21 And this should be a -- just for people's
 22 interest today, this should be a rather quick Council
 23 meeting today. We have no action items.
 24 And I think we can -- oh, at this time I'd
 25 like anybody who is on the phone who wishes to identify

Page 10

1 themselves -- and you're not required to identify yourself
 2 -- to do so now.
 3 MS. DANIELSON: Kyler Danielson, attorney for
 4 Port of Vancouver.
 5 MS. KHOUNNALA: Shannon Khounnala, Energy
 6 Northwest.
 7 MS. DIAZ: Jennifer Diaz for Puget Sound
 8 Energy.
 9 MS. EDWARDS: Haley Edwards, Puget Sound
 10 Energy.
 11 MR. MELBARDIS: Eric Melbardis, EDPR.
 12 CHAIR LYNCH: Anyone else on the line who
 13 wishes to identify themselves?
 14 MR. MCMAHAN: Tim McMahan, Stoel Rives.
 15 (Multiple speakers.)
 16 CHAIR LYNCH: I'm sorry. If I could have --
 17 I don't know who to say go first, but there were two people
 18 speaking at the same time. So if you could both decide
 19 who's going first and then we can have you both re-identify
 20 yourselves.
 21 MR. KISIELIUS: Sure. This is Tadas
 22 Kisielius with Van Ness Feldman on behalf of Vancouver
 23 Energy.
 24 MR. JOHNSON: And this is Brooks Johnson.
 25 I'm a reporter at The Columbian newspaper.

Page 11

1 CHAIR LYNCH: Thank you. Anybody else?
 2 Well, let's go ahead and proceed, then, with
 3 updates on our projects.
 4 Mr. Melbardis, the Kittitas Valley Wind
 5 Project.
 6 MR. MELBARDIS: Good afternoon, EFSEC
 7 Council, Chair Lynch.
 8 The Kittitas Valley Wind Power Project has
 9 nothing non-routine to report for the month.
 10 However, I did want to point out that today
 11 is our fifth-year anniversary of commercial operations.
 12 We've spent the past three to four months
 13 going through all of our major maintenance, our five-year
 14 substation maintenance, thorough turbine inspections, and so
 15 wrapping up the year with kind of a milestone for us here.
 16 CHAIR LYNCH: Congratulations. Did you say
 17 it was your fifth-year anniversary? Congratulations.
 18 MR. MELBARDIS: Thank you.
 19 CHAIR LYNCH: Any questions for
 20 Mr. Melbardis?
 21 Thank you.
 22 Let's move on to the Wild Horse power
 23 project. Ms. Diaz?
 24 MS. DIAZ: Thank you, Chair Lynch and
 25 Councilmembers.

Page 12

1 The only non-routine update I have falls
 2 under safety. On November 5th, PSE conducted an internal
 3 safety audit at Wild Horse. Only two minor findings were
 4 listed in the audit report, both of which were corrected
 5 that same day.
 6 And that's all I have for today.
 7 MS. DIAZ: Any questions for Ms. Diaz?
 8 Very good. Thank you.
 9 We turn to Grays Harbor Energy Center.
 10 Mr. Downen?
 11 MR. DOWNEN: Good afternoon, Chair Lynch,
 12 Council, Staff. My name is Rich Downen. I'm the plant
 13 manager at Grays Harbor Energy.
 14 And I have nothing non-routine to report.
 15 Everything included in our monthly report is fairly routine.
 16 CHAIR LYNCH: Very good.
 17 Any questions for Mr. Downen?
 18 We are just on a roll. Thank you, Mr.
 19 Downen.
 20 CHAIR LYNCH: Mr. Miller, the Chehalis
 21 Generation Facility.
 22 MR. MILLER: Good afternoon, Chair Lynch,
 23 Councilmembers, and Staff. I'm Mark Miller, plant manager
 24 for PacifiCorp Chehalis Generating Facility.
 25 I have two non-routine comments to add.

Page 13

1 As mentioned last month, it may have been
 2 confusing. I wanted to clarify that in that report, I
 3 reported on the November wastewater sample results and not
 4 October's.
 5 The October results were within the limits of
 6 0.11 milligrams per liter for zinc.
 7 And the results from the laboratory on a
 8 re-sample taken during the month of November was a zinc
 9 reading of 0.15, for an average of 0.875 milligrams per
 10 liter. The regulatory limit is 1.4 milligrams per liter.
 11 Also, for information, our preliminary
 12 December results show 0.16 milligrams per liter.
 13 So there's an anomaly in there somewhere that
 14 is difficult to sort out.
 15 As noted last month also in this report, the
 16 plant experienced a catastrophic failure of one of the
 17 compressor -- of the compressor section of the Unit 2
 18 combustion turbine. The manufacturer, General Electric, had
 19 their root cause analysis team on site collecting data, and
 20 have not determined the specific cause at this time.
 21 And as of last Wednesday of last week, the
 22 rotor is in Greenville, North Carolina, undergoing complete
 23 rebuild.
 24 Are there any questions?
 25 CHAIR LYNCH: Yes.

Page 14

1 MR. STEPHENSON: Thank you, Chair Lynch. Are
 2 you saying yes to me?
 3 CHAIR LYNCH: Yes. Sorry.
 4 MR. STEPHENSON: Mr. Miller, thank you. So
 5 the first sample didn't pass, and then resampled, and then
 6 that passed?
 7 MR. MILLER: Correct.
 8 MR. STEPHENSON: How do we work with that?
 9 And I know you're going to give us a report,
 10 it sounds like, from here. That's great.
 11 I wonder, we throw the first sample out, we
 12 listen to the second one?
 13 Which one do we listen to, and how do we make
 14 sense of that and do that right?
 15 MR. MILLER: Mr. LaSpina can correct me if
 16 I'm wrong. It's the averaging of the results of the three
 17 samples. I believe that's the way the regulations look at
 18 that.
 19 Mr. LaSapina, do you have a different?
 20 MR. LASPINA: No.
 21 For the Council's information, that permit is
 22 held by the Environmental Protection Agency. So they're the
 23 regulators on that permit.
 24 MR. STEPHENSON: Thanks. So as far as you
 25 know, they're within the permit?

Page 15

1 MR. LASPINA: I honestly haven't looked.
 2 MR. STEPHENSON: Okay.
 3 MR. MILLER: Our first notification goes to a
 4 Mr. Lee at the US EPA. And we update him, contemporaneously
 5 update Mr. LaSpina too.
 6 Earlier on, this has occurred, over the last
 7 decade, maybe two or three times.
 8 In the first investigation, the underground
 9 metal tanks that have sumps in the plants contained zinc
 10 anodes. And those were replaced with manganese anodes for
 11 corrosion protection.
 12 And a second time, it was a zinc chain
 13 hanging in one.
 14 And this time it just seems to be somewhat
 15 seasonal. The catwalks and whatnot around the facility are
 16 all galvanized steel grates. And suspect that, you know,
 17 there's some way that it can make its way into the plant
 18 internal subsystems.
 19 MR. STEPHENSON: Thanks. I'll look forward
 20 to the report.
 21 CHAIR LYNCH: Thank you, Mr. Stephenson.
 22 And just for a little more follow-up on this,
 23 Mr. LaSpina or Mr. Miller, so this is a waste discharge
 24 permit that's EPA as opposed to an NPDES permit that's
 25 issued --

Page 16

1 MR. MILLER: Correct. Our wastewater
 2 discharge system goes to the Chehalis wastewater treatment
 3 facility. They're the publicly owned treatment works.
 4 CHAIR LYNCH: Oh, POTW. That's right. Okay.
 5 So that's -- and my understanding is that
 6 EFSEC does not regulate any discharges to any publicly owned
 7 treatment works at this time; is that correct,
 8 Mr. LaSpina?
 9 MR. LASPINA: Yes, Chair Lynch. We do not
 10 have delegation from the Environmental Protection Agency for
 11 these types of permits. So it's EPA. And the city --
 12 basically, EPA bases the permit limits on what the city's
 13 POTW can handle.
 14 And Mr. Miller is correct. This issue has
 15 come up a couple of times. They've done some work to try
 16 and determine the cause. But once a year or so, or once
 17 every couple of years, it seems to happen.
 18 CHAIR LYNCH: And any enforcement of this
 19 would be by who?
 20 MR. LASPINA: The Environmental Protection
 21 Agency.
 22 CHAIR LYNCH: EPA. What's that I thought,
 23 but I just wanted to understand that. Thank you.
 24 Any further questions for Mr. Miller?
 25 Thank you for being here today.

Page 17

1 MR. MILLER: Thank you.
 2 CHAIR LYNCH: At this point in time, we'll
 3 hear about the Columbia Generating Station. Ms. Khounnala?
 4 MS. KHOUNNALA: Yes. Good afternoon, Chair
 5 Lynch and Councilmembers.
 6 Reporting on Columbia Generating Station this
 7 afternoon, we have no nonroutine items to report.
 8 CHAIR LYNCH: Any questions for Ms. Khounnala
 9 about the Columbia Generating Station?
 10 At this point in time, Mr. LaSpina, do you
 11 want to give us a quick update?
 12 MR. LASPINA: Thank you, Chair Lynch.
 13 Please see the white papers in your handout.
 14 I'm going to share with you an update on the modification of
 15 the NPDES permit.
 16 At last month's meeting, Staff informed the
 17 Council of the need to modify the Columbia Generating
 18 Station NPDES permit to incorporate a recent state appeals
 19 court decision.
 20 A 30-day public comment process is required
 21 prior to finalizing the permit modification.
 22 So what you see on these pieces of paper are
 23 the correction to the permit in strike-through and
 24 underline. It's basically just a couple of sentences that
 25 were modified.

Page 18

1 So the public comment period will begin next
 2 Monday, on December 21st, and end on January 21st, 2016.
 3 A public hearing will be held at 2:00 p.m. on
 4 January 19th during your next Council meeting. At the
 5 January 19th meeting, Staff will request the Council
 6 provisionally approve issuance of the permit, provided EFSEC
 7 does not receive any substantive comments against the
 8 proposed modification.
 9 I am happy to answer any questions or
 10 concerns you may have at this time.
 11 CHAIR LYNCH: Any questions for Mr. LaSpina
 12 regarding the update to our NPDES permit for the Columbia
 13 Generating Station?
 14 You might recall that in the lawsuit
 15 regarding the NPDES permit, the Thurston County Superior
 16 Court judge upheld us across the board on the permit that we
 17 issued, but there was one boilerplate provision that was
 18 contained in the permit that was deemed unconstitutional --
 19 not unconstitutional. It was deemed out of compliance with
 20 the law in a lawsuit -- in another lawsuit in front of the
 21 state Supreme Court. And they threw out this particular
 22 boilerplate language. And this is the language to replace
 23 that boilerplate language.
 24 So we're putting this out for public comment.
 25 And then if it's deemed acceptable, this will be

Page 19

1 incorporated into the existing permit.
 2 Any questions on that?
 3 Let's go ahead and Ms. Khounnala, can you
 4 update us on WPN 1/4?
 5 MS. KHOUNNALA: Certainly. In regard to WPN
 6 1/4, there are essentially no changes from the November
 7 status.
 8 We continue to work with the Department of
 9 Energy and their contractor on finalizing the scope for the
 10 NEPA environmental assessment that will be forthcoming
 11 during the year. We have a meeting planned for late
 12 December. If we can't make that meeting, it will occur in
 13 early January. So our planning phase is still underway.
 14 CHAIR LYNCH: I see.
 15 Any questions for Ms. Khounnala regarding
 16 WNP 1/4?
 17 Okay. Thank you, Ms. Khounnala.
 18 And that brings us to the Tesoro Savage
 19 Vancouver Energy Distribution Terminal update. Ms. Bumpas?
 20 MS. BUMPAS: Good afternoon, Chair Lynch and
 21 Councilmembers.
 22 I wanted to start off by talking about the
 23 permits. I just have a general update about those, that
 24 we're still working on those. We are going back to the
 25 applicant to request some additional information, and we're

Page 20

1 going to continue to work with them to get all the
 2 information we need. And I'll continue to update you as
 3 that progresses.
 4 And the next update is concerning the DEIS.
 5 The Draft Environmental Impact Statement was issued on
 6 November 24, 2015. The comment period is ongoing, and is
 7 scheduled to end on January 22, 2016.
 8 Since the last Council meeting, there have
 9 been some changes to the DEIS meetings and dates, locations
 10 that have changed. And I just want to go over those very
 11 quickly. They are available on the EFSEC website and they
 12 have been noticed.
 13 The first Vancouver meeting, public meeting,
 14 is scheduled for January 5, 2016. There will be an
 15 afternoon session from 1:00 to 4:30 p.m. Then there is a
 16 break, and the meeting will resume for an evening session
 17 from 6:00 to 11:00 p.m.
 18 The next meeting is on January 12, 2016, also
 19 in Vancouver. It's scheduled from 5:00 to 11:00 p.m.
 20 And those are both going to be held at the
 21 Clark County Events Center at the fairgrounds in Hall B.
 22 A Spokane meeting is also scheduled for
 23 January 14, 2016, from 5:00 to 11:00 p.m. And that's going
 24 to be at the CenterPlace Regional Event Center in Spokane
 25 Valley, Washington.

Page 21

1 And that's all I have as far as the updates
 2 for the project.
 3 CHAIR LYNCH: Any questions for Ms. Bumpas?
 4 MS. GREEN-TAYLOR: Chair, I have a question.
 5 CHAIR LYNCH: Yes, Ms. Green-Taylor.
 6 MS. GREEN-TAYLOR: Thank you, Mr. Chair.
 7 Do we have an estimate of how many comments
 8 have been received thus far?
 9 MS. BUMPAS: Yes, we do. Currently, the last
 10 numbers I've seen, which were earlier today, were just over
 11 500 comments.
 12 MS. GREEN-TAYLOR: And at what point in time
 13 will those be available for us to review?
 14 Are you going to post them on an ongoing
 15 basis or wait until the end of the public comment period?
 16 MS. BUMPAS: Well, I think we're still
 17 talking about the time that those comments would be
 18 available. I do think it's reasonable to expect that it
 19 will be after the comment period.
 20 And I think that there's been some discussion
 21 -- and Stephen may want to comment further on this, but
 22 there's been some discussion about posting those on EFSEC's
 23 website once we are done with the comment period.
 24 MR. POSNER: Yes. The plan at this point --
 25 and I think part of it may depend on how many comments we

Page 22

1 receive. But the plan is since we're working with our
 2 consultant, and the majority of the comments are being
 3 received through a website, that we will, when the comment
 4 period is over, make those available to the public. We'll
 5 put them on our website.
 6 But we haven't worked out all the details.
 7 We weren't planning on posting them as they come in because
 8 we're going through a process of review and organizing and
 9 categorizing them, that we want to have all of them in
 10 before we do that. And we are expecting quite a few
 11 comments.
 12 MS. GREEN-TAYLOR: Thank you very much.
 13 CHAIR LYNCH: Mr. Stephenson? No.
 14 Anybody else have -- any other Councilmembers
 15 have questions for Staff?
 16 Thank you.
 17 Turning now to other Council business, I
 18 regret to hear Councilmember Liz Green-Taylor is going to be
 19 leaving the Council. Today is her last Council meeting.
 20 And something about sitting between the two gentlemen that
 21 she does and -- at least that's just a guess on my part.
 22 Ms. Green-Taylor, do you want to say anything
 23 at this time and introduce your replacement?
 24 MS. GREEN-TAYLOR: Yes. Thank you, Chair.
 25 I just want to say how wonderful it's been

Page 23

1 working with you all. And I'm really going to miss it.
 2 But I have a super good replacement coming on
 3 board, Jaime Rossman, and I think Jaime will do an excellent
 4 job and that you'll all enjoy working with him.
 5 I'm kind of sorry to see this come to an end.
 6 But I wanted to make sure that we had a good solid
 7 transition and that it happened in a timely fashion so that
 8 Jaime can get up to speed before the adjudication on the
 9 Tesoro project.
 10 CHAIR LYNCH: Thank you. And it's been a
 11 pleasure working with you. And we hope you can return to
 12 our next Council meeting so that we can give you a more
 13 fitting going away.
 14 MS. GREEN-TAYLOR: I can do that. Thank you.
 15 CHAIR LYNCH: Of course you have to buy your
 16 own coffee then.
 17 Any further business in front of the Council
 18 today?
 19 Seeing none, thank you for your
 20 participation, and we are adjourned.
 21 (Whereupon, the proceedings were
 22 concluded at 1:59 p.m.)
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Page 24

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 5 CERTIFICATE OF REPORTER)
 6 STATE OF WASHINGTON)
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I, Elizabeth Patterson Harvey, a Certified Court
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My license expires December 21, 2015

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL
NATIONAL POLLUTANT DISCHARGE SYSTEM (NPDES) PERMIT
NO. WA-002515-1
PUBLIC HEARING

January 19, 2016
2:00 P.M.

Richard Hemstad Building
1300 South Evergreen Park Drive Southwest
Conference Room 206
Olympia, Washington

REPORTED BY: ANITA W. SELF, RPR, CCR #3032

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OLYMPIA, WASHINGTON, JANUARY 19, 2016
2:00 P.M.

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P R O C E E D I N G S

CHAIR LYNCH: Good afternoon. Today is January 19th, 2016. This is a special meeting of the Energy Facility Site Evaluation Council. It's for the limited purpose of adopting some new permit language that we have for the NPDES permit for the Columbia Generating Station. The regular January EFSEC meeting was cancelled.

So could we please have the clerk call the roll.

MS. MASTRO: Department of Commerce?

MR. ROSSMAN: Jaime Rossman here.

MS. MASTRO: Department of Ecology?

MR. STEPHENSON: Cullen Stephenson here.

MS. MASTRO: Fish and Wildlife?

MR. STOHR: Joe Stohr is here.

MS. MASTRO: Department of Natural Resources?

MR. SIEMANN (telephonically): Dan Siemann is on the phone.

MS. MASTRO: And Utilities and

A P P E A R A N C E S

Councilmembers Present:

Bill Lynch, Chair
Jaime Rossman, Department of Commerce
Cullen Stephenson, Department of Ecology
Joe Stohr, Department of Fish and Wildlife
Dennis Moss, Utilities and Transportation Commission
Dan Siemann, Department of Natural Resources (via phone)

Assistant Attorney General:

Ann Essko, Assistant Attorney General

Staff in Attendance:

Stephen Posner
Jim LaSpina
Tammy Mastro
Sonia Bumpus
Kali Wraspir
Joan Aitken

Guests in Attendance:

None

Guests in Attendance Via Phone:

None

Transportation Commission?

MR. MOSS: Dennis Moss is here.

MS. MASTRO: Chair, there is a quorum.

CHAIR LYNCH: Thank you.

And could we please have Staff give us an overview of where we are.

MR. LASPINA: I got it.

Thank you, Chairman Luce and -- sorry, Chairman Lynch.

CHAIR LYNCH: Somebody was insulted. I'm not sure if it was him or me, but please go ahead.

MR. LASPINA: In September of 2014, EFSEC reissued the National Pollutant Discharge Elimination System Permit to Energy Northwest for its Columbia Generating Station.

At the Council's November 2015 meeting, Staff notified the Council that a recent Court of Appeals decision for another permit required modification of the CGS permit.

The permit modification requires a public comment period and public hearing before the modification process can be completed.

I don't know if you want to -- if you want me to read these several paragraphs.

CHAIR LYNCH: I don't see any reason to do

Page 5

1 that.

2 MR. LASPINA: All right.

3 Public comment for the permit modification

4 began on December 21st, 2015, and will end on

5 January 21st, 2016. At this time, EFSEC Staff has not

6 received any public comments.

7 Today's actions. This is a formal hearing

8 to accept public comment on the permit modification.

9 Public comments will only be accepted on the proposed

10 revisions to conditions S13.B and D.

11 EFSEC Staff requests approval to issue the

12 modified permit provided no substantive comments are

13 received at either today's public hearing or by the

14 close of the public comment period at 5:00 p.m. on

15 January 21st, 2016, which is Thursday afternoon.

16 CHAIR LYNCH: So at this time, you're asking

17 to see if there's anyone on line who wishes to comment

18 from the public?

19 MR. LASPINA: Yes, Chair Lynch. What we're

20 really asking for is provisional approval. And if we

21 get no substantive comments either this afternoon or by

22 5:00 on Thursday, that -- that we can -- the Chairman

23 can sign the permit and we can reissue it.

24 CHAIR LYNCH: And how long is our hearing

25 open today for -- to receive public comment?

Page 6

1 MR. LASPINA: There's no end time. We just

2 specified a start time. And if there's no comments,

3 you're free to close the hearing.

4 CHAIR LYNCH: Are there any questions from

5 councilmembers regarding this proposed action? As

6 Mr. LaSpina said, this is just to bring our current

7 NPDES permit for the Columbia Generating Station into

8 compliance with a recent court decision.

9 And I've had a chance to look at the

10 proposed rule, and it's -- it is a slow read, but once

11 you go through it, you see that it does, in fact, make

12 sense.

13 Are there any questions from councilmembers?

14 MR. MOSS: I have one.

15 CHAIR LYNCH: Yes, Councilmember Moss.

16 MR. MOSS: My question is, assuming you do

17 receive substantive comments before 5:00 p.m. on

18 January 21st, what happens then?

19 MR. LASPINA: If we receive a substantive

20 comment -- and "substantive" means that it's -- it has

21 to do -- it's a meaningful comment about the revision

22 itself, then I would discuss this with my managers then

23 and we would decide what to do.

24 MR. MOSS: Presumably, it would have to come

25 back before the council?

Page 7

1 MR. LASPINA: Yes. Yes.

2 CHAIR LYNCH: And there would be some

3 response to comment, or summary of the comment that

4 would be required because it's a permit.

5 MR. LASPINA: Yes.

6 CHAIR LYNCH: All right. Okay.

7 So I guess at this point in time --

8 MR. ROSSMAN: Well, couple more questions.

9 CHAIR LYNCH: Oh, please, yes.

10 MR. ROSSMAN: I just want to make sure I'm

11 following the change exactly, and I understand it's very

12 small and technical in nature.

13 But looking at the struck-through text on

14 page 29 of the permit, it seemed like previously if

15 there was a -- if there was a negative test result, it

16 refers to a lot of additional testing in Section C.

17 Was that -- was that mislabeled? Was that

18 intending previously to refer to the additional testing

19 in Section D?

20 MR. LASPINA: Could you -- could you repeat

21 the question, please?

22 MR. ROSSMAN: Yes. The struck-through

23 language says that, you know, if the test shows a

24 statistically significant difference in survival between

25 the control and the ACEC, the permittee must immediately

Page 8

1 conduct the additional testing described in Section C,

2 and then goes on to describe the additional testing

3 required by Section C. I'm looking at the

4 struck-through portion here.

5 And I'm wondering if that was -- should that

6 have originally been a reference to Section B, which

7 seems to refer to sort of the additional testing? Or is

8 that a reference -- was that a direct reference back to

9 Section C, which seems to refer to the periodic

10 quarterly testing?

11 MR. LASPINA: Oh, you're saying the language

12 that is struck out?

13 MR. ROSSMAN: Yes.

14 CHAIR LYNCH: I should have -- I'm sorry,

15 Councilmember Rossman, I -- actually, on a piece of

16 paper in my office, I had worked this all out, and I

17 should have brought that with me.

18 But you'll see that there are -- there is

19 different testing provisions in here. And if you look

20 at the top of page 29 there, it talks about "If the test

21 shows a statistically significant difference in survival

22 between the control and the acute critical effluent

23 concentration test," then it says "and EFSEC has not

24 determined the test result to be anomalous under Section

25 D," and then it goes on from there.

1 And then if you were to look at Section D,
2 there's a provision there for -- there's -- under
3 "Anomalous test results," it says, if -- the second
4 paragraph, "If EFSEC determines that the test result was
5 not anomalous," then they have to complete all this
6 additional monitoring and then there's testing.

7 And then [as read] "If EFSEC determines the
8 test result was anomalous, the additional test -- the
9 one additional test result will replace..."

10 So I'm sorry I don't have it all laid out
11 for you, but there is the -- all I can say to you is
12 that the -- how it's written is, in fact, accurate. I'm
13 sorry I don't have -- I should have probably brought
14 that grid with me, but it actually does make sense.

15 MR. LASPINA: Well, actually, I think I
16 could provide some context.

17 The rule says that a failed wet test is a
18 violation of the permit. However, when the permit
19 boilerplate was written, it gave the permittee another
20 chance to prove that it was -- to confirm the failure.

21 MR. ROSSMAN: Okay. So --

22 MR. LASPINA: So the crossed-out text would
23 point you to D or -- to C, which is normal compliance
24 testing, whereas now that -- now that a failed test is a
25 permit violation, now you go into Section D, which is

1 for noncompliance.

2 MR. ROSSMAN: Got it. Okay.

3 MR. LASPINA: Does that make sense?

4 MR. ROSSMAN: So in both the previous and
5 the current case, after a failed test, there would be
6 additional testing. But in the -- the change means that
7 that first one is a violation of the permit.

8 MR. LASPINA: Exactly right.

9 MR. ROSSMAN: Are there any other
10 implications about what then happens with that violation
11 in the permit, or is the additional testing the only
12 remedy that happens at that stage?

13 MR. LASPINA: Well, I can tell you that if
14 the failed test gets failed again, then the permittee is
15 required to do an engineering analysis to figure out
16 where the toxicity's coming from.

17 CHAIR LYNCH: In fact, if you look on the
18 bottom of page 30, it says, If the additional testing in
19 this section shows another violation of the acute
20 toxicity limit, the permittee must submit this
21 particular evaluation plan to EFSEC within 60 days of
22 the sample date.

23 MR. LASPINA: And that's essentially an
24 engineering report that -- to track down where that
25 toxicity's coming from.

1 MR. ROSSMAN: Okay. Thank you. Sorry for
2 belaboring what was probably obvious to everybody else
3 in the room.

4 MR. LASPINA: That's okay.

5 CHAIR LYNCH: Councilmember Stephenson.

6 MR. STEPHENSON: Thank you, Chair Luce.
7 Thank you, Chair Luce -- Lynch.

8 Just to confirm -- and I think Councilmember
9 Rossman was good at trying to parse this out -- I talked
10 to the Ecology folks that are on our side of the
11 firewall who have been working on this, and they've
12 confirmed to me that this is language that is being
13 applied to just a few permits per the Court order, and
14 that they are satisfied that the EFSEC language meets
15 what they're doing with their permits.

16 So I think this is right and appreciate the
17 scrutiny. But when I asked them, they said, yes, this
18 is the right thing.

19 So thanks again.

20 CHAIR LYNCH: All right. Thank you.

21 And I think Mr. LaSpina summarized it well.
22 Section C now is the -- just the regular compliance
23 testing, and Section D is what happens if you have
24 noncompliance. And that contains both situations where
25 it's deemed anomalous and when it is determined not to

1 be anomalous.

2 Any further questions by councilmembers?

3 I guess at this point in time, I would
4 entertain a motion for the Council to give conditional
5 approval to this new permit language, and the condition
6 would be that we would receive no substantive public
7 comments by the time of the close of the public comment
8 period, January 21 of 2016.

9 And if there are no substantive comments,
10 then we would -- the Staff would consider that the
11 permit -- this modification language is adopted and
12 would include it as part of the permit language.

13 MR. STEPHENSON: Chair Lynch, I will so
14 move.

15 CHAIR LYNCH: Do we have a second?

16 MR. MOSS: I'll second that.

17 CHAIR LYNCH: It's been moved and seconded
18 that the Council grant conditional approval of the
19 proposed permit modification.

20 Any further discussion?

21 All those in favor, say "aye."

22 MULTIPLE SPEAKERS: Aye.

23 CHAIR LYNCH: Opposed?

24 Motion carries.

25 MR. LASPINA: Thank you, councilmembers and

1 Chair Lynch.
 2 CHAIR LYNCH: And do we have any further
 3 business in front of us today?
 4 Hearing none, Council's adjourned. I
 5 appreciate all of you being available for this today.
 6 Thank you.
 7 (Hearing adjourned at 2:14 p.m.)

9 -o0o-

1 CERTIFICATE

2
 3 STATE OF WASHINGTON)
 4 COUNTY OF KING)

5
 6
 7 I, ANITA W. SELF, a Certified Shorthand Reporter
 8 in and for the State of Washington, do hereby certify
 9 that the foregoing transcript is true and accurate to
 10 the best of my knowledge, skill and ability.

11 IN WITNESS WHEREOF, I have hereunto set my hand
 12 and seal this 28th day of January, 2016.

13
 14
 15
 16
 17 ANITA W. SELF, RPR, CCR #3032

Kittitas Valley Wind Power Project

Monthly Project Update

January 19, 2016

Project Status Update

December Production Summary:

Power generated: 9656 MWh
Wind speed: 4.3 m/s or 9.6 mph
Capacity Factor: 12.9%

Safety:

No incidents

Compliance:

Project is in compliance as of January 15, 2016.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Kittitas Valley Wind Power Project

Monthly Project Update

February 16, 2016

Project Status Update

January Production Summary:

Power generated: 5587 MWh
Wind speed: 3.6 m/s or 8.1 mph
Capacity Factor: 7.5%

Safety:

No incidents

Compliance:

Project is in compliance as of February 11, 2016.

Sound:

No complaints

Shadow Flicker:

No complaints

Environmental:

No incidents

Wild Horse
December update

Wind Production: December generation totaled 48,717 MWh for an average capacity factor of 24%.

Safety: No lost-time accidents or safety incidents to report in December.

Compliance/Environmental: Nothing to report.

Wild Horse
January update

Wind Production: January generation totaled 40,795 MWh for an average capacity factor of 20.11%.

Safety: No lost-time accidents or safety incidents to report in January.

Compliance/Environmental: A TAC meeting was held on January 27th to provide members with an update on the Eagle Conservation Plan and to share results on sage-grouse habitat monitoring. The TAC also reviewed updates to the written Hunting Plan that includes a new process for issuing permits to hunt at Wild Horse. Hunting permits will now be issued through WDFW's on-line Hunt by Reservation Program and a limited amount of permits will be issued during the Modern Firearm General Elk Season. The TAC unanimously recommended approval of the revised plan which will be implemented in the 2016 hunting season.

EFSEC Monthly Operational Report

December, 2015

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of December.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.

2. Environmental

- 2.1. Submitted the November Discharge Monitor Report (DMR) to WebDMR.
- 2.2. Received and submitted the final RATA Report.
- 2.3. Collected additional raw water samples to better quantify the arsenic level coming into the plant. Those sample results are pending.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 29 days and generated 370,981 MWh during the month of December.
- 3.2. The capacity factor (CF) was 80.4% in December, and 55.6% YTD.
- 3.3. The availability factor (AF) was 100% in December, and 95.6% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of December.

5. Site Visits

- 5.1. There were no site visits during the month of December.

6. Other

- 6.1. Grays Harbor is fully staffed with 22 personnel.

EFSEC Monthly Operational Report

January, 2016

1. Safety and Training

- 1.1. There were no accidents or injuries during the month of January.
- 1.2. Conducted scheduled and required monthly training.
- 1.3. Conducted the scheduled safety committee meeting.

2. Environmental

- 2.1. Submitted the December Discharge Monitor Report (DMR) and the 2015 Annual Priority Pollutant sample results to WebDMR.
- 2.2. Submitted the 2015 Q4 Emissions Data Report (EDR) to EFSEC and ORCAA.
- 2.3. Submitted the 2015 Tier II Hazardous Chemical Inventory to state and local entities.
- 2.4. Submitted the 2015 Base Flow Restriction Report to EFSEC.
- 2.5. Submitted the 2015 Dangerous Waste Report to Department of Ecology.

3. Operations & Maintenance

- 3.1. Grays Harbor Energy (GHE) operated 30 days and generated 382,617 MWh during the month of January.
- 3.2. The capacity factor (CF) was 82.9% in January, and 6.5% YTD.
- 3.3. The availability factor (AF) was 100% in January, and 100% YTD.

4. Noise and/or Odor

- 4.1. There were no complaints made to the site during the month of January.

5. Site Visits

- 5.1. There were no site visits during the month of January.

6. Other

- 6.1. Grays Harbor is staffed with 21 personnel. We have one open position for the Maintenance Manager that we plan to fill with an internal candidate.

Chehalis Generation Facility----Monthly Plant Report - December 2015

Washington Energy Facility Site Evaluation Council

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4792 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month of December 2015.
- Waste water monitoring results were in compliance with the permit limits for the month of December 2015.

Personnel:

- Authorized plant staffing level is currently 19 with 19 positions filled.

Operations and Maintenance Activities:

- The Plant generated 82,609 MWhrs in December. The capacity factor for the year ending December 31, 2015 was 25.4% with a generation total of 1,099,023 MWhrs.

Regulatory/Compliance:

- The Washington State Deputy Fire Marshal completed a follow up site inspection and certified that the plant was in compliance meeting annual inspection and code compliance requirements.

Sound monitoring:

- There were no noise complaints to report.



Carbon Offset Mitigation

- The installation work on the high efficiency lighting Project was completed during the month of December 2015. The Chehalis staff will be filing a certification with EFSEC staff that the lighting efficiency project has been completed with a request that the acquisition commitment requirement be adjusted to reflect the financial expenditure. This project is saving a projected 246 MWh/year energy which corresponds to a reduction of 48.7 tons CO2 emissions per year.
- Design engineering firms and equipment supply vendors are being researched for the variable frequency drives (VFD's) for the water treatment reverse osmosis pumps.
- Design engineering firms and equipment supply vendors are being researched for the VFD's for the closed cooling water system.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Miller".

Mark A. Miller
Manager, Gas Plant

Chehalis Generation Facility----Monthly Plant Report – January 2016

Washington Energy Facility Site Evaluation Council

02-11-2016

Safety:

- There were no recordable incidents this reporting period and the plant staff has achieved 4823 days without a Lost Time Accident.

Environment:

- There were no air emissions or stormwater deviations or spills during the month of January 2016.
- Waste water monitoring results were in compliance with the permit limits for the month of January 2016.

Personnel:

- Authorized plant staffing level is currently 19 with 19 positions filled.

Operations and Maintenance Activities:

- The Plant generated 83,743 MWhrs in January 2016 for a total YTD capacity factor of 22.2%.
- Repair of the unit #2 combustion turbine continues with an expected completion date on or about March 1, 2016.

Regulatory/Compliance:

- No inspections or issues this period.

Sound monitoring:

- There were no noise complaints to report.



Carbon Offset Mitigation

- No updates on the remaining carbon offset mitigation projects.
 - Design engineering firms and equipment supply vendors are being researched for the variable frequency drives (VFD's) for the water treatment reverse osmosis pumps.
 - Design engineering firms and equipment supply vendors are being researched for the VFD's for the closed cooling water system.

Respectfully,

A handwritten signature in black ink, appearing to read "M. Miller".

Mark A. Miller
Manager, Gas Plant

**Energy Northwest
EFSEC Council Meeting
February 16, 2016
(Brad Barfuss)**

I. Columbia Generating Station Operational Status

Columbia is online at 100% power and producing 1158 MWs. The plant has been online for 233 days.

There are no other events, safety incidents, or regulatory issues to report.

II. WNP 1/4 Water Rights

The Department of Energy and Energy Northwest have agreed on a scope of work to complete the NEPA Environmental Assessment (EA) for WNP 1/4. Energy Northwest has the scope of work and cost estimate and are reviewing these documents through the end of February. The NEPA Environmental Assessment will allow a new lease to be signed between EN and the Department of Energy, and thereby allow for use of the water rights obtained in January of last year.

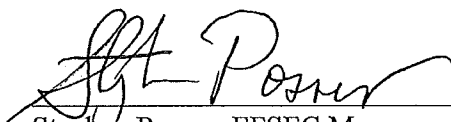
Energy Facility Site Evaluation Council

Non Direct Cost Allocation for 3rd Quarter FY 2016 January 1, 2016 – March 31, 2016

The EFSEC Cost Allocation Plan (Plan) was approved by the Energy Facility Site Evaluation Council in September 2004. The Plan directed review of the past quarter's percentage of EFSEC technical staff's average FTE's, charged to EFSEC projects. This information is used as the basis for determining the non-direct cost percentage charge, for each EFSEC project. In addition, the Plan allows for adjustment due to anticipated work load and the addition of new projects.

Based on the levels of work during the 2nd quarter of FY 2016, using the procedures for developing cost allocation, and allowance for new projects, the following percentages shall be used to allocate EFSEC's non direct costs for the 3rd quarter of FY 2016:

Kittitas Valley Wind Power Project	7%
Wild Horse Wind Power Project	7%
Columbia Generating Station	16%
WNP-1	3%
Whistling Ridge Energy Project	3%
Grays Harbor 1&2	8%
Chehalis Generation Project	8%
Desert Claim Wind Power Project	3%
Grays Harbor Energy 3&4	3%
Tesoro Savage	42%



Stephen Posner, EFSEC Manager

Date: 2/4/16

Summary of FY 2016 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	8%	7%	7%		7.5%
Desert Claim	2%	2%	3%		2.5 %
Whistling Ridge	3%	3%	3%		3.0%
Columbia GS	16%	17%	16%		16.5 %
WNP1	3%	3%	3%		3.0%
G.H. 1&2	9%	9%	8%		8.7%
Chehalis	9%	8%	8%		8.5%
Wild Horse	8%	7%	7%		7.5 %
G.H. 3&4	3%	3%	3%		3.0%
Tesoro Savage	39%	41%	42%		40.6%

Summary of FY 2015 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	5%	6%	6%	6%	5.6%
Desert Claim	2%	2%	2%	2%	2.0%
Whistling Ridge	3%	3%	3%	3%	3.0%
Columbia GS	20%	17%	18%	17%	18.3 %
WNP1	3%	3%	3%	3%	3.0%
G.H. 1&2	9%	10%	8%	9%	9.0%
Chehalis	9%	9%	9%	9%	9.0%
Wild Horse	7%	7%	7%	7%	7.0%
BP	2%	2%	2%	2%	2.0%
G.H. 3&4	3%	3%	3%	3%	3.0%
Tesoro Savage	37%	38%	39%	39%	38.4%

Summary of FY 2014 Non Direct Allocation Rates

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr	Yr Avg
Kittitas Valley	10%	7%	6%	5%	7.0%
Desert Claim	3%	2%	2%	2%	2.3%
Whistling Ridge	9%	4%	3%	3%	4.8%
Columbia GS	33%	22%	23%	21%	24.8%
WNP1	4%	3%	3%	3%	3.3%
Satsop	12%	9%	10%	11%	10.5%
Chehalis	10%	9%	9%	10%	9.5%
Wild Horse	10%	7%	6%	5%	7.0%
BP	3%	2%	2%	2%	2.3%
G.H. Energy	6%	4%	3%	3%	4.0%
Tesoro Savage		31%	33%	35%	33.0%

Open Public Meetings Act
Public Records Act
February 16, 2016

Presented by Senior Counsel Ann Essko

Two Washington “Sunshine” Laws

Open Public Records – Public Records Act (RCW 42.56)

Open Public Meetings – Open Public Meetings Act (RCW 42.30)

Both laws are to be liberally
construed in favor of government
transparency

Both laws are enforced by the courts

Open Public Meetings Act
(OPMA)

Meetings shall be open

Meetings of governing bodies like EFSEC must be open to the public, gavel to gavel, unless exempted from the OPMA or the OPMA allows a closed executive session

- Public can attend (no right to participate)
- Cannot impose conditions on attendance (i.e., e.g. requiring people to sign in or identify themselves)
- Can impose reasonable rules of conduct

What “meetings” are covered?

A “meeting” occurs whenever a quorum
takes “action”

What is a covered “action?”

“Action”=transaction of official EFSEC business, including:

- taking public testimony
- all deliberations
- discussions
- considerations
- reviews
- evaluations
- final action (collective + or – decision, or a vote by the majority of the members)

Thus, an open meeting must occur whenever a quorum takes action, *whether or not final* action is taken, unless subject to an OPMA exemption or the OPMA allows a closed executive session

- Remember that EFSEC currently has two different quorums: General EFSEC; Tesoro EFSEC

Committee meetings must be open, regardless of quorum requirement

The OPMA applies to any committee that:

- acts on behalf of EFSEC
- conducts hearings
- takes testimony or public comment

The committee does not need to contain a quorum of Council members – or any Council members – for this requirement to apply

Voting must take place in public

“Final action” subject to the OPMA includes voting

- All votes must be in public, even if underlying discussions were in a properly closed session.
- Prohibited “votes” include “getting a sense of the room” – or other functional equivalents of voting

Caution about what can constitute a meeting

Meetings include:

- Exchanges of emails by a quorum that = action
- Serial exchanges of emails
 - A → B → C → D
 - A → B then A → C then A → D
- Serial meetings
 - A → B → C → D
 - A → B then A → C then A → D

Reviewing background information and communicating with EFSEC staff

- Council members may review written materials from EFSEC staff without triggering an OPMA meeting
- Council members may individually send emails to EFSEC staff without triggering an OPMA meeting

Types of OPMA meetings

- Two types of meetings: regular special
- Regular meetings – EFSEC doesn't have regular meetings
- Special meetings – EFSEC has special meetings
 - Per EFSEC's rules, the chair or a majority of voting members can call a special meeting at any time

Special meeting notice requirements

- Written notice must be:
 - given to each member
 - given to each local newspaper of general circulation, radio, TV station that has requested notice
- Notice must:
 - be provided at least 24 hours before meeting
 - specify time, place, and *the agenda*

Special meeting agenda limits final action

- *Final action cannot be taken on any matter that isn't on the agenda*
- Notice requirements don't apply to meeting called to address an emergency involving personal injury or property damage when notice is impractical and would increase damage

Executive Sessions

- Executive sessions are the parts of a meeting that can be *closed to the public*
- Limited to a specific topic list in the Act
- Per EFSEC's rules, the chair or a majority of voting members can call an executive session
- When an executive session is held, the presiding officer must announce the purpose of the session and the time it will end

Statutory purposes for executive sessions include:

- Meeting with legal counsel regarding enforcement actions, litigation, or potential litigation when public knowledge is likely to result in adverse legal or financial consequences to the agency.
 - Litigation that has been specifically threatened
 - Litigation that EFSEC reasonably believes will be commenced by or against EFSEC or a Council member.

Exemptions from the OPMA Requirements

- *Matters governed by the APA*
 - *Adjudications, rulemaking, declaratory orders*

Are there penalties for violating the OPMA?

- \$100 civil penalty to be paid by each Council member
 - The Attorney General has proposed legislation this session to raise the penalty to \$500 for 1st offense; \$1000 for repeat offenses
- Costs and attorneys' fees awarded to successful plaintiffs
- Action taken at a meeting that violates the OPMA can be declared void

Public Records Act

General Rule

- All public records must be open and accessible to the public unless within an exemption
- Agency must prove a withheld record is within an exemption

What is a public record?

- Any “writing” that contains information relating to
 - Conduct of government, or
 - Performance of any governmental function
- Include information that the agency:
 - Prepares
 - Owns
 - Uses
 - Retains

What is a public record?

- Includes records in any form:
 - Email and voicemail messages
 - Paper documents
 - Computer data
 - Handwritten notes (including Post-Its)
 - Photographs and file
 - Sound recordings
 - Electronically stored information
 - Metadata

What if the public record is on a non- EFSEC device?

The PRA applies regardless of where the record is located

- private computers
- employing entity computers
- private or employing entity owned hand held devices

How does an agency respond to a request?

- Within 5 days the agency must:
 - Provide the record
 - Deny the request and cite an exemption
 - Acknowledge the request and give a reasonable estimate of response time
- Agency employees and officers must do an adequate search (could be deposed and cross-examined on the issue)

The agency or local government employees
and officers must retain covered records
once disclosure is requested

- Records also cannot be destroyed unless in compliance with the agency's records retention schedule

What records are exempt from disclosure?

Examples include:

- Attorney-client privileged communications
- Preliminary drafts in which opinions are expressed or policies discussed (until decision is made)

But the agency must disclose the existence of the record and explain why an exemption applies

What does this mean for Council members?

- Respond to EFSEC staff requests for records
- Adequate search
- Hold records when asked to do so
 - Address your employing entities' records destruction protocols
- In general – keep EFSEC records separate and secure
- Provide all of your EFSEC records to EFSEC if you leave the Council

Are there penalties for violating the Public Records Act?

Court may order:

- Production of the records
- Payment of attorney's fees and costs to the plaintiff
- Payment of penalties ranging from \$0 to \$100/day

Questions?

Or contact me at:

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