

VIA E-MAIL AND US MAIL

September 15, 2008

Jim Luce, Chair
Energy Facility Site Evaluation Council
P.O. Box 43172
Olympia, Washington 98504

Re: Chehalis Generation Facility - Transfer and Amendment of SCA

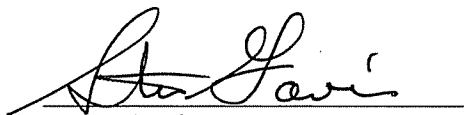
Dear Chair Luce:

Chehalis Power Generating, LLC ("Chehalis Power") and PacifiCorp are pleased to provide notice that the purchase and sale transaction between Chehalis Power's parent company, TNA Merchant Projects, Inc., and PacifiCorp has closed and that Chehalis Power has been merged into PacifiCorp, all as contemplated by Council Order No. 836, a copy of which is attached.

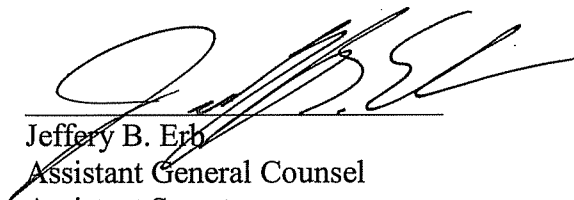
We therefore respectfully request pursuant to Order No. 836 that the Council now issue a resolution that:

- (a) Amends the Chehalis Generation Facility SCA to make PacifiCorp the Certificate Holder and to incorporate the additional greenhouse gas mitigation requirements outlined in Order No. 836.
- (b) Transfers other related permits to PacifiCorp.
- (c) Terminates the TNA Merchant Projects, Inc. guaranty and releases TNA Merchant Projects, Inc., its affiliates and subsidiaries and their respective directors, officers and employees from all obligations under the SCA and Site Restoration Plan.
- (d) Approves the revised Initial Site Restoration Plan submitted by PacifiCorp.

Sincerely yours,



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**BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of:

**CHEHALIS GENERATION
FACILITY**

COUNCIL ORDER No. 836

**Order on Application for Transfer of Site
Certification Agreement and Approval of
Security for Site Restoration**

Background

By letters dated April 30, 2008, PacifiCorp and Chehalis Power Generating, LLC ("Chehalis Power") requested that the Energy Facility Site Evaluation Council ("Council" or "EFSEC") approve the transfer of the Site Certification Agreement ("SCA") for the Chehalis Generation Facility to PacifiCorp pursuant to WAC 463-66-100.

Chehalis Power owns and operates the Chehalis Generation Facility and is currently the Certificate Holder of the SCA. PacifiCorp and TNA Merchant Projects, Inc. have entered into a purchase and sale agreement pursuant to which PacifiCorp would acquire Chehalis Power (hereinafter "the Transaction"). Upon closing of the Transaction, Chehalis Power would then be merged into PacifiCorp. Closing is contingent upon the Council approving the transfer of the SCA, among other things. PacifiCorp and Chehalis Power, therefore, requested that the Council approve the transfer, to be effective upon receiving notice that the Transaction has closed and Chehalis Power has been merged into PacifiCorp.

PacifiCorp also requested that the financial security provisions of the approved Site Restoration Plan for the Chehalis Generation Facility be modified upon closing of the Transaction. PacifiCorp requested that the site restoration obligation become a general obligation of the utility, and that the corporate guaranty provided by TNA Merchant Projects, Inc. be terminated.

PacifiCorp and Chehalis Power also requested that the Council administratively amend Air Operating Permit No. EFSEC/06-01 AOP pursuant to 173-401-720(3), and administratively revise Notice of Construction and Prevention of Significant Deterioration Permit No. EFSEC/95-02 Amendment 1 pursuant to WAC 173-400-750, to make PacifiCorp the holder of both permits, effective upon closing of the Transaction and merger of Chehalis Power into PacifiCorp.

PacifiCorp is a regulated electric utility that provides retail electric service to 1.7 million customers in six western states, including Washington. PacifiCorp conducts its business through three operating divisions: (i) Pacific Power, which provides retail electricity to customers in Washington, Oregon and California; (ii) Rocky Mountain Power, which provides retail electric service to customers in Utah, Wyoming and Idaho; and (iii) PacifiCorp Energy, which conducts electric generation, commercial and energy trading, and plant fueling functions. PacifiCorp is a subsidiary of MidAmerican Energy Holdings Company, which in turn is owned primarily by Berkshire Hathaway, Inc.

PacifiCorp has more than \$15 billion in assets and had operating revenues of more than \$4.2 billion in 2007. PacifiCorp's senior secured debt rating by S&P/Moody is A-/A3; its senior unsecured debt rating by S&P/Moody is BBB+/Baa1; and its commercial paper rating with S&P/Moody is A1/P2. PacifiCorp filed copies of its 2007 Form 10-K with the Council, providing a more detailed description of PacifiCorp's organization and financial condition.

WAC 463-66-100(4) provides that the Council may approve a transfer of an SCA if the Council determines that:

- (a) The applicant satisfies the provisions of WAC 463-60-015 and 463-60-075.
- (b) The applicant is entitled to possession of the energy facility described in the certification agreement; and
- (c) The applicant agrees to abide by all of the terms and conditions of the site certification agreement to be transferred and has demonstrated it has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred.

Procedural Status

EFSEC's procedure to consider and approve the transfer of an SCA is governed by chapter 80.50 RCW, chapter 463-66 WAC, and more specifically WAC 463-66-100.

Pursuant to WAC 463-66-100(1), and through the letters from PacifiCorp and Chehalis Power dated April 30, 2008, PacifiCorp has filed a formal petition to transfer the SCA. PacifiCorp has provided information about the new owner required by WAC 463-60-015 and WAC 463-60-075, as well as information to demonstrate PacifiCorp's organizational, financial, managerial and technical capability to comply with the terms and conditions of the SCA.

Pursuant to WAC 463-66-100(3), and through the letter from Chehalis Power dated April 30, 2008, the current Certificate Holder, Chehalis Power, has provided written consent to the transfer of the SCA to PacifiCorp.

The Council mailed notice of this matter to approximately 380 people. The notice advised that Chehalis Power and PacifiCorp had requested approval of the proposed transfer of the SCA, that a special meeting and informational hearing would be held on June 3, 2008 in Chehalis, Washington, and that comments could be made either orally at that time or in writing received by 5:00 p.m. on June 6, 2008. No persons provided oral comments and no written comment letters were received. EFSEC then considered the request at its June 24, 2008 special meeting.

Findings

The Council has reviewed this request and finds as follows:

- (1) On March 4, 1997, the Governor executed an SCA authorizing construction and operation of the Chehalis Generation Facility. The SCA was amended on March 6, 2001. Chehalis Power is the current Certificate Holder of the SCA for the Chehalis Generation Facility.
- (2) On April 11, 2008, PacifiCorp entered into an agreement to acquire Chehalis Power Generating, LLC, the owner and operator of the Chehalis Generation Facility. After closing of the Transaction, Chehalis Power Generating, LLC will be merged into PacifiCorp and thereafter, PacifiCorp will own and operate the Chehalis Generation Facility.
- (3) PacifiCorp and Chehalis Power request that the Council approve the transfer of the SCA to PacifiCorp and, upon closing of the Transaction and merger of Chehalis Power into PacifiCorp, that the Council issue a resolution amending the SCA to make PacifiCorp the Certificate Holder.
- (4) PacifiCorp also requests that, upon closing of the Transaction, the Council terminate the site restoration guaranty provided by TNA Merchant Projects, Inc., and approve the revised Initial Site Restoration Plan submitted by PacifiCorp, which would make the site restoration obligation and general obligation of PacifiCorp.
- (5) The Council finds that it is appropriate to condition transfer of the SCA from Chehalis Power to PacifiCorp upon a requirement that PacifiCorp provide additional mitigation for greenhouse gas emissions. Upon transfer of the SCA to PacifiCorp:
 - (a) PacifiCorp shall comply with the terms of the *Greenhouse Gas Offset Strategy and Plan*, which was approved by the Council in September 2001;
 - (b) PacifiCorp shall provide \$1.5 million in funding for greenhouse gas mitigation projects. EFSEC staff and PacifiCorp representatives will work together to identify potential mitigation projects and will consult with Washington agencies including the Department of Ecology, the Department of Fish and Wildlife, the Department of Natural Resources and the Department of Community Trade and Economic Development. EFSEC staff and PacifiCorp representatives will

evaluate potential projects, considering among other things, the extent to which the projects would offset CO₂ emissions, the location of the projects (favoring projects that would be implemented in Washington, and if possible near Chehalis) and the availability of matching funds (favoring projects that would combine PacifiCorp's funding with other funding). Based on the recommendations of EFSEC staff and PacifiCorp, the Council will make final decisions selecting projects to be funded out of the \$1.5 million of funding provided by PacifiCorp. The Council may use a portion of the \$1.5 million provided to fund its direct and indirect administrative costs incurred in connection with identifying, evaluating and selecting mitigation projects. In no event, however, shall the total amount of project funding and Council charges exceed \$1.5 million.

- (c) Within 180 days after the SCA is transferred to PacifiCorp, PacifiCorp shall apply for an amendment to any relevant permits to allow the installation and operation of a natural gas-fired auxiliary boiler to produce steam for the heat recovery steam generators and steam turbine. PacifiCorp shall install the auxiliary boiler within eighteen months of obtaining necessary permits and approvals. However, if the proposed addition of an auxiliary boiler would result in any changes to the existing air permit for the Facility other than those specifically related to the new auxiliary boiler, PacifiCorp shall have no obligation to go forward with the proposed auxiliary boiler.

The Council acknowledges that this CO₂ mitigation will constitute the entire mitigation obligation for the Chehalis Generating Facility. In the event that that PacifiCorp requests additional amendments to the SCA in the future, the Council will not require any additional mitigation for the maximum potential CO₂ emissions associated with the existing Facility as a condition of approving any such amendment. Any offsets or credits obtained through PacifiCorp's funding will remain the property of PacifiCorp. The Council will support all reasonable efforts by PacifiCorp to use these same offsets or credits to obtain credit for these early actions under future regulatory programs, and all CO₂ mitigation obligations in the SCA will sunset upon adoption of a future state or federal mitigation requirement applicable to the Facility.

- (6) PacifiCorp satisfies the requirements of WAC 463-66-100(4).
 - (a) PacifiCorp satisfies the provisions of WAC 463-60-015 and 463-60-075;
 - (b) Upon closing of the Transaction, PacifiCorp will be entitled to possession of the energy facility described in the certification agreement; and
 - (c) PacifiCorp agrees to abide by all of the terms and conditions of the SCA. PacifiCorp has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the SCA.

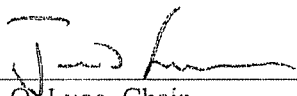
- (7) The Council finds that the applicant has satisfied such other conditions as the Council may place upon the applicant pursuant to WAC 463-66-100(1).
- (8) PacifiCorp's proposal that the site restoration obligation in the SCA shall be a general obligation of PacifiCorp will provide adequate security for site restoration in light of PacifiCorp's assets and credit rating.

THEREFORE, IT IS HEREBY ORDERED that:

- (1) The proposed transfer of the SCA is approved pursuant to WAC 463-66-100.
- (2) Upon the Council's receipt of notification that the Transaction has closed and Chehalis Power has been merged into PacifiCorp, the Council shall issue a resolution that:
 - (a) Amends the Chehalis Generation Facility SCA to make PacifiCorp the Certificate Holder and to incorporate the additional greenhouse gas mitigation requirements outlined above.
 - (b) Transfers other related permits to PacifiCorp.
 - (c) Terminates the TNA Merchant Projects, Inc. guaranty and releases TNA Merchant Projects, Inc., its affiliates and subsidiaries and their respective directors, officers and employees from all obligations under the SCA and Site Restoration Plan.
 - (d) Approves the revised Initial Site Restoration Plan submitted by PacifiCorp.

DATED at Olympia, Washington and effective on this 8th day of July, 2008.

WASHINGTON ENERGY FACILITY
SITE EVALUATION COUNCIL



James O. Luce, Chair