



STATE OF WASHINGTON  
ENERGY FACILITY SITE EVALUATION COUNCIL  
*PO Box 43172 • Olympia, Washington 98504-3172*

January 12, 2010 Monthly Meeting Minutes

**1. CALL TO ORDER**

Acting Chair Richard Fryhling called the January 12, 2010 monthly meeting to order at 905 Plum Street S.E., Room 301, at 1:30 p.m.

**2. ROLL CALL**

Council members present were:

Dick Fryhling	Department of Commerce
Jeff Tayer	Department of Fish and Wildlife
Dick Byers	Utilities and Transportation Commission
Hedia Adelman	Department of Ecology
Mary McDonald (Excused)	Department of Natural Resources
Judy Wilson	Skamania County Representative
Jim Luce (Excused)	Chair

Staff in attendance were:

Allen Fiksdal – EFSEC Manager, Stephen Posner – Compliance Manager, Jim La Spina – EFS Specialist, Mike Mills – EFS Specialist, Tammy Talburt – Commerce Specialist, and Kyle Crews - AAG.

Guests in attendance were:

Travis Nelson – Washington State Fish and Wildlife, Todd Gatewood – GHEC Satsop, Darrel Peebles – Attorney, and Brett Oakleaf – Invenergy and Karen McGaffey – Perkins Coie, Mark Anderson – Department of Commerce, Kevin Warner – GHEC Satsop, Katy Channey – URS, Bruce Marvin – Counsel for the Environment, Joel Rett – Grays Harbor Public Development Association, Judy Sills – Better Way For BPA, Erin Grover – Better Way For BPA, Richard Van Dijk – Better Way For BPA, Patrick Borunda – Better Way For BPA and Sonia Bumpus - Intern.

Guests in attendance via phone:

Don Coody - Energy Northwest.

**3. ADOPTION OF PROPOSED AGENDA**

The agenda was presented to the Council for amendments or additions; the agenda was approved with an addition.

#### 4. MINUTES

Staff presented the December 8, 2009 monthly meeting minutes for the Council's approval.

**Motion: Council member Byers moved the Council approve the minutes. The motion was seconded by Council member Tayer. The motion was approved.**

#### 5. PROJECT UPDATES

##### **Chehalis Generating Facility**

<i>Project Update</i>	<i>Report Submitted</i>
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Mr. Mark Miller submitted the following report via email:

There were no incidents this reporting period and the plant staff has achieved 2640 days (about 7 years) without a Lost Time Accident.

The Plant site continues to be maintained in excellent condition. Storm water and waste water discharge monitoring results are in compliance with the permit limits. Authorized plant staffing level is currently 18 with all 18 positions filled.

December: The plant operated at capacity factor of 58.9 %. Generation for the month was 226,041 megawatt-hours. Year to date the plant has generated 1,764,659 megawatt-hours. Cyber and physical security projects implementing new standards as required by North American Electric Reliability Corporation (NERC) and the Western Electricity Coordinating Council (WECC) are nearing completion in order to meet the compliance date of December 31, 2009.

Sound monitoring: There were no complaints noted during this operating period.

##### **Kittitas Valley Wind Project**

<i>Project Update</i>	<i>Report Submitted</i>
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Ms. Joy Potter, Horizon Wind Energy submitted the following report: Horizon has prepared a short list for a general contractor a final selection should be made in the immediate future. Construction is still planned to begin in April 2010. A meeting with the entire Horizon construction team and EFSEC staff is anticipated for the first part of February.

##### **Desert Claim Wind Power Project**

<i>Project Update</i>	<i>Allen Fiksdal, EFSEC Manager</i>
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Mr. Fiksdal reported to the Council that the package is still with the Governor and there has been no announcement from the Governor.

##### **Wild Horse Wind Power Project**

<i>Project Update</i>	<i>Report Submitted</i>
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Ms. Jennifer Diaz, Puget Sound Energy-Wild Horse, submitted the following report to the Council via email: 2009 generation totaled 638,158 MWh for an average capacity factor of 25%. The Solar Demonstration Project generated 35,700 KWh in December. There have been no lost-time accidents or safety incidents to report for December. A monthly stormwater inspection was completed in the Expansion Area in accordance with the National Pollutant Discharge Elimination System (NPDES) permit. There was no flow at the water quality sampling locations and all BMPs were in good condition. The December Discharge Monitoring Report (DMR) for the Expansion Area was submitted to the Department of Ecology.

## Columbia Generating Station

<i>Project Update</i>	<i>Don Coody, Energy Northwest</i>
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Mr. Don Coody, Columbia Generating Station (CGS), submitted a report to the Council that Columbia Generating Station is currently operating at 100 percent power, producing 1,175 megawatts gross and has been operating for 65 days.

December 13, 2009 marked the 25<sup>th</sup> year of commercial operation for Columbia Generating Station.

An application for Columbia's license renewal will be submitted to the Nuclear Regulatory Commission (NRC) on January 19, 2010. Renewing the license for an additional 20 years will ensure the region continues to benefit from the reliable, affordable, environmentally responsible energy through 2043. As part of the renewal process, members of the NRC Division of License Renewal will be visiting the site on January 13<sup>th</sup> to become familiar with the facility and discuss licensing logistics with Energy Northwest staff. The NRC will also be meeting with local external stakeholders this week to discuss the license renewal process.

NPDES Permit Noncompliance – December 4, 2008. The noncompliance consisted of exceeding the maximum daily effluent limitation in the permit for total residual halogen. All corrective and preventive actions regarding the noncompliance were completed by Energy Northwest, and a letter was received from EFSEC on December 14<sup>th</sup> closing this matter.

## WNP-1/4

<i>Site Certification Agreement Amendment</i>	<i>Stephen Posner, EFSEC Staff</i>
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Mr. Stephen Posner, EFSEC Staff updated the Council concerning the meeting with Energy Northwest and Ecology on January 5<sup>th</sup>, in Yakima. The purpose of the meeting was to discuss the options for obtaining water for the WNP ¼ to support Site Restoration. Options discussed included:

- Modify existing water rights (CGS)
- Acquire an existing water right
- Acquire a new water right – Ecology not currently processing water rights request. Ecology reimbursement program: Ecology hires consultants to review water right applications; ENW pays for the consultant which will review all applications in the queue in front of ENW. No guarantee that ENW will be granted a water right.
- Office of Columbia River – legislation passed a couple of years ago – Ecology has option of providing water conserved through various means to projects that support municipal or industrial use.
- No Net Increase option – CGS gives up water and transfers it to IDC
- EFSEC grants authorization as proposed in the draft SCA submitted by ENW.

Ecology will provide a list of water rights and locations. All options are currently being reviewed by ENW.

Council member Tayer requested clarification of some of the options. He asked if all the options with the exception of the last option concern existing or new water rights. Mr. Posner and Council Member Adelsman confirmed that to be correct. Ms. Adelsman expressed her concern about EFSEC's authority, to authorize the use of surface water on a site that is not producing power. Ms. Adelsman requested that Kyle Crews, Assistant Attorney General (AAG) research the authority of EFSEC when there is no power production involved with the site, and the water is

being used for non-energy producing activities. Mr. Crews agreed to this request and said he would provide information at next month's meeting.

### **Whistling Ridge Energy**

<b><i>Project Update</i></b>	<b><i>Jim La Spina, EFSEC staff</i></b>
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Mr. Jim La Spina, EFS Specialist reported to the Council that staff is planning to issue the Draft Environmental Impact Statement on February 19, 2010. Mr. La Spina stated that Council Order No. 844, granting intervention to the Yakama Cultural Resource committee, was issued on January 5, 2010.

### **Bonneville Power Administration (BPA or Bonneville)**

<b><i>I-5 Work Plan</i></b>	<b><i>Allen Fiksdal, EFSEC Manager</i></b>
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Mr. Allen Fiksdal, Council Manager said that the staff recommends the approval of the I-5 Work Plan as presented in their packet. Mr. Fiksdal invited the public to make comments.

Ms. Judy Sills, Better Way for BPA (Better Way), a citizen group, submitted a letter to Chair Luce which outlined the group's concerns over the plans to construct a major 500 kV transmission line from Castle Rock, Washington to Troutdale, Oregon. In the letter Better Way requested that the Council direct BPA to withdraw its I-5 Corridor reinforcement project work plan agreement at this time and resubmit it to the Council when the serious flaws that Better Way has identified are addressed. The flaws include inadequate time and means for public review and comments and misrepresentation of the projects' need, which negatively impacts the Council's ability to provide the Governor with the facts. From the beginning Better Way feels the project was fraught with miscommunication. There were 5 meetings held, which were more of a show and not so much an opportunity for a question and answer for the public forum. The meetings were compressed into 12 calendar days between October 27<sup>th</sup> and November 7<sup>th</sup>. Thousands of property owners were not adequately notified. The public comment period for the scoping phase originally slated to end November 23<sup>rd</sup> ended December 14<sup>th</sup>, 2009 after a nominal extension. Better Way believes that transparency is lacking especially with regard to the justification for the project.

Ms. Sills stated that BPA has substantially misstated the reasons to justify construction of this line. It asserts the need for the line is to support load growth in the Portland, Vancouver and Longview areas. It states these areas are served by dams, coal and gas-fueled generators, nuclear power and wind farms, but does not add that the majority of these energy sources are both geographically and electrically to the east of the Portland-Vancouver area. Furthermore, the McNary-John Day line being constructed will meet the above needs. BPA does not mention that other local utilities including Portland General Electric, Clark Public Utilities and PacifiCorp area also taking their own steps independent of BPA to meet the area's needs.

BPA fails to mention the existing and future use of the I-5 Corridor transmission path includes the transfer of very substantial amounts of energy from Canada to California. Better Way believes this to be the primary cause of the North-South congestion, which is targeted for relief by this project, and without which there would be sufficient capacity on the existing lines to handle area load growth for several decades.

Better Way respectfully requests that the Council reject the Work Plan as submitted and require BPA to address the following concerns before resubmitting

the Work Plan to the Energy Facility Site Evaluation Council for recommendation to the Governor:

- Address in detail the load growth projections and existing power flows that are causing system congestion in the NW Oregon/SW Washington areas.
- Describe in detail any benefit to Washington State and to Southwest Washington in particular, that will be derived from this project.
- Provide explicit details regarding the impact of Canada-California power transfers on the need for increased capacity on the I-5 Corridor.
- Thoroughly analyze the feasibility of moving power between the proposed substations at Castle Rock, WA and Troutdale, OR (or alternative) by 1) using existing transmission line Rights of Way through Oregon, and 2) creating new segments through uninhabited areas and public lands.
- Address new technologies such as underground cables using the "lifecycle costing" model as opposed to "initial construction" analyses.
- Provide for each proposed alternative a detailed count of the number of properties, residence, and commercial land owners who will be directly impacted. For each segment, it should include computer-generated image overlays similar to those provided by commercial developers in support of wind farm and other project applications submitted to the Council.

Mr. Allen Fiksdal, Council Manager, explained that some of the concerns presented by Better Way will be addressed in the Environmental Impact Statement (EIS). Ms. Sills stated that Better Way feels that now during the public comment period is when BPA should be addressing these concerns. Mr. Fiksdal said the scoping period is a time to consider what should be included in the EIS; a Draft EIS will be issued followed by another public comment period where the public will have any opportunity to comment on the Draft EIS. BPA is required to respond to all comments received on the Draft EIS, before the final EIS is prepared.

Mr. Fiksdal said that EFSEC is hoping BPA will narrow the choice of corridors that they actually examine. Ms. Sills voiced concern that BPA is only looking at the scope of the project on the map, and Better Way for BPA is proposing that BPA look at choices that are not on the map. Better Way is concerned that if EFSEC signs off on the work plan how will the choices to the East and West be considered.

Mr. Fiksdal stated that the work plan between EFSEC and BPA outlines the process for how the Council will work with and coordinate with other state agencies to ensure that Bonneville receives the state agencies' comments on the proposal. He noted that EFSEC has already commented to Bonneville that it should narrow the proposed corridors. Council member Byers stated that the work plan is designed to facilitate the ability of the state to respond to the process that Bonneville has underway. It provides funding for the agencies to review and comment on the BPA proposal.

Ms. Sills asked when the contract ends. Mr. Fiksdal stated that the agreement is based on an earlier Memorandum of Understanding between EFSEC and BPA to work together on the siting of transmission lines and if desired EFSEC and BPA can mutually agree to not continue the work plan.

Mr. Patrick Borunda, Clark County resident member of Better Way for BPA stated that the specific concern is that this work plan commits BPA to examine a series of routes on a certain map. The series of routes chosen by BPA leaves out

important alternatives. Better Way feels that BPA should commit to examine those alternatives not on that map, and by giving them permission to go ahead, there is no way to ensure that BPA will look at options that should be considered as alternatives. Better Way is not asking the Council to stop the project, only that it reject the work plan and request that BPA do a better job of scoping with the alternatives that are not on the map, but east and west of the proposed transmission line.

Council member Tayer stated that the work plan does not affirm, commit or endorse any particular route it provides a conduit for the state agencies, through EFSEC to express concerns about the proposed routes. It doesn't endorse or give permission on any of the options. It is the vehicle that allows citizens to speak to the state as a whole about what the concerns are. Mr. Tayer found it interesting that the County Commissioners are actively engaged in this conversation as well, somehow there should be a way to bridge the gap, not unlike when the Council has an application process that includes a county representative to the Council.

Council member Adelsman stated that EFSEC is representing the state agencies not the state of Washington, the citizens or local government. The way the process normally works is there are several agencies; Ecology, Fish and Wildlife and Department of Natural Resources. Typically the agencies would comment separately to BPA. In this particular case, BPA asked EFSEC to coordinate comments from all the different agencies.

The purpose of the work plan is for EFSEC to coordinate the state agencies individual responses to the proposal, to collect and ensure that state agencies know about the project, and to distribute any information about the proposal as BPA makes it available. EFSEC role will also help to assure that state agencies are responding and to provide funding to the agencies, when necessary. The Council has not taken a position on the substance of BPA's proposal at this time.

Ms. Adelsman suggested the following change to page 4, subsection L. of the work plan agreement with BPA to read as follows: "As appropriate, coordinate and facilitate the agencies' review of construction activities for consistency with applicable substantive standards and mitigation plans." Mr. Fiksdal informed the Council that BPA will need to review the changes. Ms. Adelsman asked that the concerns suggested by the public in today's meeting be addressed.

### Satsop – Grays Harbor

<i>Project Update</i>	<i>Todd Gatewood, Grays Harbor Energy</i>
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Mr. Todd Gatewood, Grays Harbor Energy submitted a monthly report for the Council's review via email. Grays Harbor Energy had no reportable accidents or injuries in 2009.

The facility had the following exceedances on Outfall 001-Process Wastewater:

Three - chloride exceedances - These parameters are monitored on a weekly basis. The process cycles the chlorides up. The raw water has a higher level than anticipated and the permit limit is lower than the predicted level. The facility will be performing an engineering study of the ground water and process water as a requirement of the recently revised permit.

One - Iron exceedances - this is at the discharge of the oil water separator. This collects all floor drains and is due to corrosion in the underground collection piping.

Modifications to the NPDES Permit are in the draft stage. Two priority pollutants scans to characterize the discharge to the river were taken in July that

will be incorporated into the revised permit. The results of those samples were sent to EFSEC Staff on Monday, October 12, 2009.

The unit operated for 15 days in December. The plant generated 180,312 Mw for a capacity factor of 39.1%. The YTD capacity factor is of 31%.

<b><i>Site Certification Amendment Request</i></b>
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<b><i>Allen Fiksdal, EFSEC Manager</i></b>
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Mr. Fiksdal said the first decision the Council needs to make is to determine if the amendment request should be treated as a new application or as an amendment. There are no rules to guide the Council on whether or not a change of this magnitude should be treated as a new application or SCA amendment. Mr. Fiksdal explained the Satsop Project originally started out as a nuclear power plant in the 1980's. In the 1990's Duke Energy proposed to build a combustion turbine on the site and went through the process of changing the SCA from a nuclear plant to a gas-fired, combined-cycle combustion plant. The project was approved and now Invenergy is requesting that the SCA be amended to build units 3 & 4. Ms. Karen McGaffey, Perkins Coie, attorney for Invenergy, spoke to the Council on the request for the SCA amendment. Ms. McGaffey stated she believes it is clear that no matter what process the Council chooses to use, there should be only one SCA. The question that has been raised is what is the appropriate process to consider for an amendment request of this magnitude? Should the Council use the process for a new application or an amendment, which is typically used for minor modifications of a facility? Neither the statute nor the rules define which process should be followed. Ms. McGaffey believed said an argument could be made for either process.

For that reason, the prudent approach would be the submission of an application that is of the same form the Council would normally receive for a new application. One that covers all the regulatory requirements, along with a request for expedited processing to follow the specific framework used for expedited processing. Ms. McGaffey stated that it's legally possible to go with the amendment request, which the regulations say very little about except that the Council must hold at least one public hearing. However, it seems that the process for a new application was the most legally defensible. Then, the Council should consider whether expedited processing would be appropriate in this case, which Invenergy believes it is.

Mr. Fiksdal asked the Council to decide whether this is a new application or an amendment request. If it is a new application then Invenergy will be required to submit the \$25,000.00 application fee, and the Council is required to hire an independent consultant to review the application with a fee of \$20,000.00. This is the new application process. There are additional regulatory requirements that need to be met.

Ms. McGaffey stated that it is important to distinguish between statutory requirement that must be complied with and some common practices that EFSEC has adopted over the years in an ad hoc manner. In the new application process, the applicant provides a deposit, which EFSEC uses to fund activities required to review the application. In the amendment process, rather than providing a deposit, staff typically gives the applicant a budget for activities related to the amendment request. If the Council grants the request for expedited processing an independent consultant would not be retained.

Ms. Adelman stated that the big question is on the environmental documents. The existing Environmental Impact Statement (EIS) was prepared in 1995. Ms. Adelman is concerned that the document is 15 years old and Invenergy proposes to double the generating capacity of the plant. In order to do the

expedited process EFSEC must issue a mitigated determination of non-significance.

Ms. McGaffey stated that certain things under the statute require that an application be submitted. It doesn't say that it's an application for a new site certification or for a new project. It's very clear that Grays Harbor has submitted an application; the question then becomes what is the process for dealing with it. Ms. McGaffey doesn't believe that the statute requires a new application be submitted.

Mr. Byers asked if there is a policy decision as to whether the magnitude of the expansion requires a new application. The application for the amendment is the same as the application for a new project. The idea that continuing to amend an original application for nuclear project, which is now a completely different type of an energy facility seems to be faulted. Mr. Fryhling stated that EFSEC has made this policy decision twice, once with Units 1 & 2 and then 2002 there was the first application for Units 3 & 4. That policy decision has been made twice it is not binding to this Council. Mr. Fryhling suggested that the Council go through a process for an amendment including a SEPA analysis.

Mr. Mike Mills, EFS Specialist reminded the Council that the SCA for the current operating facility is nothing like the SCA as it was written for the nuclear plants that were originally planned for that site. The Council has already revised the SCA for a combustion turbine project not a nuclear plant.

Ms. McGaffey stated that the unique thing about EFSEC process is that EFSEC doesn't issue a permit but a Site Certification that is specific to that site, not the type of plant that is being built on the particular site. The amendment request is amending the site to accommodate the addition of the two additional units, there will be shared facilities, and the expansion will take place on the 22 acres that are governed by the existing SCA. It makes sense that the process leads to an amended SCA.

Ms. McGaffey said the question really comes down to process, historically the way the Council has considered amendment requests that have been smaller in magnitude than this has varied and the Council has developed the pragmatic approach, which has always at least included a public hearing. What further process that has been completed in addition to the public hearing has depended on the concerns of the Council. That process has worked successful in the past for the type of amendments that have been requested. If the Council decides to use the expedited process, the Council would have leeway to determine what the expedited process would be. Invenergy believes it to be a prudent legal position to go through the step of making that decision.

Ms. Adelsman stated that if the Council were to say yes to expedited processing there would be no need for an EIS, as the SEPA determination would be a mitigated determination of non-significance (DNS). Ms. Adelsman sees a mitigated DNS as the way to approach a project of this size. By doubling the plant site Ms. Adelsman believes there will be additional environmental impacts. Mr. Fiksdal recapped that he sensed that the Council isn't concerned whether the submittal is called a new application or an amendment request. He noted that Invenergy has submitted a SEPA checklist. He said that as the SEPA official his responsibility was to review the checklist and make the threshold determination. He said that after the SEPA checklist, the options are a Determination of Significance, which requires an EIS; a Determination of Non-Significance, which doesn't require an EIS; or a Mitigated Determination of Non-Significance, which requires a list of all the measures that would be necessary to mitigate any environmental impacts. Mr. Fiksdal and staff have reviewed the SEPA checklist to



determine the issues that would require mitigation.

Mr. Fiksdal reviewed the elements of the SEPA checklist that might be considered significant in impact. Section B.1.f & h – Earth Erosion is a possibility with any construction there is the potential for erosion. The company will have to apply for coverage under the Construction Stormwater General Permit and prepare a Stormwater Pollution Prevention Plan (SWPPP), which will mitigate any potential erosion. Based upon the permit mitigation there should not be a significant impact to the earth.

Section B.2.a – Air: Odor and Visual Plume – the possible impacts of odor and visual plume during inversion events were not specifically addressed. Opacity, particulate fallout, fugitive dust, and odors is governed by the Ecology Washington Administrative Code (WAC) 173-400-040 and covered under a Best Available Control Technology (BACT) analysis. Predicted emissions are below the limits of the WAC. Meeting the state regulatory requirements should not be an issue.

Concerning the Air portion of the checklist, Ms. Adelman stated that Ecology is in the process of revising the SEPA checklist to address greenhouse gases. A description of anticipated Greenhouse Gases needs to be addressed in the project SCA. Mr. Fiksdal stated that greenhouse gas is addressed in RCW 80.80. Ms. McGaffey stated that the analysis is in the application. Mr. Fiksdal stated that if the plant anticipated Greenhouse Gas emissions are in compliance with state laws there would not be a significant impact. He noted that all of EFSEC's EIS's for thermal plants had determined that there is no environmental impact to the world's climate based on a single plant.

Mr. Tayer asked if odor and visual plume are addressed. Mr. Fiksdal said that they were not specifically addressed but that Invenergy will be required by the SCA to comply with all applicable state regulations.

Mr. Byers asked if the limits apply under conditions of inversion. Mr. La Spina said the SEPA checklist analysis the Council is reviewing stated that the company did all the conventional modeling, but he didn't recall anything for inversion conditions.

Ms. McGaffey reported the application contains and the SEPA checklist summarizes the results of detailed computer modeling of emissions which take into account actual meteorological data and the various meteorological conditions that occur through-out the year. That modeling concludes that the ambient air quality levels of various regulated plumes remain below significant impact levels that are established by ecology regulations. The analysis in the application summarized in the SEPA checklist also does modeling to look at visual impacts and visual plume. There were people at the public meeting in Montesano that were concerned about odors. Odors is an issue being investigated by EFSEC staff and ORCAA staff to determine whether there is any relationship between what residents are observing and the operations of the facility. Most of the emissions that would cause odor are the same kinds of emissions modeled in the application. The company remains committed to following up with any odor issues, even though it doesn't rise to the level of significant impact. Mr. Fiksdal reported that his interpretation of the main limit with an odor component is the sulfur dioxide. Ms. McGaffey concurred with that statement.

Mr. Tayer stated that what he heard at the public meeting in Montesano was that it is a significant impact on them. Mr. Fiksdal stated that odor is subjective and that people can smell odors that are in very small amounts. Mr. Fiksdal suggested that as the Council works through the process, when the time comes to review odor, the Certificate holder could be required to investigate the odors, which

could lead to mitigation of the odors. Mr. Tayer wanted to know what the Clean Air Authority has reported about the odor. Mr. La Spina stated that the Clean Air Authority has jurisdiction over odor and that they are on-call if there were a complaint about odor. To date there has not been a confirmed complaint about the odor.

Section B.3.a.4 – Mr. Fiksdal discussed the service water withdrawal. Currently water withdrawal from the Ranney Wells of 9.2 cfs is authorized by the SCA except during low flow conditions. Grays Harbor Energy (GHE) is requesting an increase to 16.0 cfs but will continue to abide by the low flow conditions and obtain additional water through other water rights that are not subject to low flow restrictions. Ms. McGaffey stated that GHE is not asking for an additional water authorization from the Council. The project has a 9.2 cfs authorization that is subject to base flow limitation. The project has authorization to purchase water from the Public Development Authority (PDA). The PDA has an older water right that is not subject to low flow restrictions. For the expansion GHE is proposing that another 6.5 cfs maximum is to be purchased from an existing water rights holder, either the PDA or the City of Aberdeen, which both hold rights that are older and not subject to low flow limitations. Ms. Adelsman asked if there would be any mitigation whatsoever for the low flow conditions. When Ecology dealt with the application for the Chehalis Generating Facility, CGF bought water rights to mitigate for the impact that was made on the river during low flow conditions. Ms. Adelsman said there needs to be a close look at the water rights of PDA and the City of Aberdeen to verify availability of sufficient water for the expansion.

Mr. Fiksdal asked if the proposed water withdrawal was large enough to be a significant environmental impact or if there is a means to mitigate this water withdrawal to have a significant impact on the fisheries. Ms. McGaffey stated that there are two issues: does the PDA or the City of Aberdeen or Grays Harbor Energy have a legal right to take this water under their existing water rights. The second issue is to determine whether there would significant environmental impacts to the river and aquatic life. The application goes through an analysis of what the flows are on the Chehalis, what the impact of withdrawals would be, and comes up with a worst case scenario. The biologist and fisheries people did an analysis and said that it wouldn't have an impact. Mr. Tayer stated that he hasn't seen anything definitive on this and he shares the concerns of Ms. Adelsman. Ms. Adelsman will be communicating with the regional office to make sure the region office will be taking a careful look at the water rights.

Ms. McGaffey stated that back when Duke was making a similar proposal there were several issues, including water that the Council felt were worthy of having a panel of experts provide information on. At that time the Council didn't believe that it rose to the level of significance requiring an EIS. The Council needs to look at whether an EIS is necessary, and once you are in the EIS process the Council can ask any question it thinks appropriate.

Mr. Byers discussed the two different processes; determining necessary mitigation without the issuance of an EIS and mitigation measures outlined in an EIS. In both cases an evidentiary record would be helpful. Ms. Adelsman stated that she worked on the Chehalis River for a long time and the Chehalis is very low. Ms. Adelsman voiced her concern on the impacts to the river during low flow and that she believed this is a significant impact and will need to be reviewed very closely. Ms. McGaffey said she agreed it is important to look at the current data on low flow to determine if the impacts would be significant. Mr. Fiksdal reiterated that if there is only one item of concern, the Council could focus on that item

through the expert panel approach, thereby eliminating the need for an EIS.

Mr. Fryhling said it would be helpful to see a list of the items that would be addressed in an MDNS. Public hearings would give the public an opportunity to ask questions and speak directly to the Council.

Mr. Bruce Marvin, Counsel for the Environment (CFE), said that his understanding of the SEPA rules is that if there is a question that the Council cannot answer then an EIS must be developed. Mr. Marvin said he is confused about the discussion of the panel of experts. Who would be providing the experts, maybe neutral experts if that is the case, then why not just do the EIS. If it's going to be the applicant's experts then it will be an odd proceeding, it could serve some purpose about informing the public about the project. Mr. Marvin isn't clear that the information would rise to the level of an objective presentation that the Council should be relying on. Mr. Marvin expressed his continued concerns about the alternative processes. He also reminded the Council that the Wild Horse Wind project recently did an expansion amendment and the project produced a Supplement EIS in that case. It is unclear why any other approach would be considered at this point.

Mr. Fryhling stated that this alternate process is a way that the public can get more information about the project and get their voices heard about the project. The adjudicative process doesn't allow for much public input.

Ms. McGaffey apologized for referring to the panels discussions in a shorthand way. When Duke proposed a similar expansion and the Council decided to proceed with the panel in a public hearing setting. The panels would represent different view-points. The CFE was very much involved with the process; there were some incidents on different topics where the CFE had identified different people to be on different panels. Different agencies would send representatives to the panels that would be representative of subjects concerning the agencies such as Ecology and Fish & Wildlife on the water issue. The idea was to provide a range of view-points to the Council.

Ms. McGaffey discussed the doubling in size of the project verses an increase in power production that occurred as a result of the Wild Horse Expansion. It would be a mistake to focus on the size of the increase in capacity of the facility. The right approach is to look for specific environmental impacts. In this case, there is a 22 acre site that is developed, and it doesn't matter how much power is produced at that site. The proposed Satsop project isn't going to affect any wetlands; the site is already zoned for industrial use. There is an additional laydown area that is being considered, but this issue is already addressed in the SEPA checklist. The doubling in generating capacity doesn't necessarily double the impacts.

The fact that the Council is discussing some of the issues does not mean that they rise to the level of significant impact that would warrant an EIS. It's common in the SEPA process for SEPA officials to take a closer look at issues before making a threshold decision. The Council could tell the applicant that they are concerned about an issue and ask the applicant to offer some additional mitigation. This could lead to the issuance of MDNS instead of issuing a new EIS. That kind of back and forth consideration is common under SEPA and it's a good thing, the intent of SEPA is to encourage mitigation. Ms. McGaffey cautioned the Council that even if there are real substantive issues the requirement to issue an EIS is not automatic.

Mr. Fiksdal addressed the comments made during this discussion about Wild Horse's Supplemental EIS. The main difference is that Wild Horse was expanding into undeveloped area, whereas the Satsop project is on mostly developed land. With the exception of the 10 acres of laydown area this site is developed. For the

Wild Horse Wind Project, Puget Sound Energy volunteered to do the Supplemental EIS.

Mr. La Spina asked what the role of the Counsel for the Environment is if this is an amendment request as opposed to a new application. Mr. Marvin said that the CFE does have a role in both processes, even though there are those who have read the statute differently. The CFE participated in developing the original site certification and the CFE should be there for the amendment too. Mr. Marvin anticipates participating in the process whichever path is taken.

Mr. Tayer stated that CFE involvement in the process is important and would influence his opinion on how to process this application. Mr. Fiksdal stated that the Council could invite the CFE to participate in the process. Ms. Adelsman stated that since the public has expressed their interest an MDNS should be issued with a 15 days comment period.

Mr. Byers referred to WAC 436-43-060: "Effect of expedited processing". Mr. Byers said he understood Mr. Fiksdal to say is that if the Council were to adopt a mitigated DNS (MDNS), there wouldn't be any constraints placed on what process the Council would further use for review of the application. His understanding of the rule of expedited processing is that there are two conditions that must be met to get to expedited processing. Those two conditions are (1) that land use be consistent with requirements of the applicable zoning ordinance and (2) issuance of an MDNS. If you get to those two conditions then you get to expedited processing. If you get to expedited processing then you come to subsection -060 which states "... the Council shall not conduct any further review of an application by an independent consultant, however, at the direction of the Council an independent consultant may prepare air or water discharge permits..." It also states "...hold an adjudicative proceeding under Chapter 34.05 RCW or continue an adjudicative proceeding that has commenced." It would seem there are significant implications by issuing a MDNS, including procedural constraints holding the Council accountable. Mr. Byers stated that he doesn't want to eliminate the option of having an independent consultant or an adjudicative hearing as part of this review process. Mr. Tayer and Ms. Adelsman both concurred. Mr. Tayer said that from the public testimony in Montesano the public deserves its day in court. His understanding of the adjudicative process is that the public gets their day in court. Mr. Fiksdal is concerned that the Council will hold an adjudicative proceeding and no one will intervene. Then the Council is locked into the adjudication where the public isn't being heard because they can't afford an attorney, they don't have cross examination, they don't have witnesses. Then the Council doesn't hear the information it is seeking. Mr. Byers said that just because there isn't adjudication doesn't mean there aren't other ways to obtain the information.

Mr. Kyle Crews, Assistant Attorney General for the Council, said that under 030 an application MAY be expedited, it doesn't say SHALL be expedited. Mr. Byers said that 050 says that the Council WILL grant expedited processing when the Council finds that land use is consistent and an MDNS has been issued. Mr. Byers asked if the MDNS precludes other kinds of process that the Council might want to utilize. Mr. Fiksdal said that he doesn't believe that you are precluded from obtaining all information needed. Mr. Fryhling stated that he thinks the Council can get there with the MDNS. The Council isn't in a position to ask questions, the Council just needs to sit and listen to the testimony that is presented. The Council could have a public hearing process in Montesano that would be much more open and transparent than the two hours of public comment meetings held with adjudication. A number of the environmental items have been addressed, look at

them and see if there are additional things that need to be done and can be listed out as mitigation.

Mr. Marvin stated is that he is unclear on what the panel of experts would look like. He doesn't have funds that would allow him to hire experts to appear, it is unclear if the CFE would even have a role if the process were outside of the adjudicative setting. Mr. Fiksdal stated that EFSEC has only granted expedited processing once in 1992, for the Weyerhaeuser Project. The Council found that because the site was a used industrial site there wouldn't be any environmental impacts other than air and water discharge, which is covered under the PSD and NPDES permits.

Mr. Tayer said that whenever Fish & Wildlife and Ecology issue MDNS's, generally there is a draft that can be reviewed before a final determination is made. That is the part that is missing; the Council can't see what the mitigation would be. Mr. Tayer stated that if there were a scenario where the right people were in the room, like settling out of court. There could be an agreement on the issues that could be achieved without an adjudicative process. Different agencies including Ecology, Fish & Wildlife and the CFE could meet to discuss and agree perhaps through a settlement agreement on appropriate mitigation measures. Mr. Fiksdal says that the Council can hear whatever witnesses or experts they want, Fish & Wildlife, Ecology and the Applicant's experts. Based on what the Council hears and determines to be correct they can decide what the conditions of the SCA.

Mr. Tayer believes that the process is backwards to get to an expedited process the Council would have to determine that there is an MDNS which would presume to know what the mitigation would include. Ms. McGaffey stated that she doesn't believe that the Council would know what all the mitigation is. The SEPA official looks at the information and decides what, if any, mitigation is required to get significant impacts below the SEPA threshold. The Council can and has required that mitigation for items that are not significant from a SEPA perspective be mitigated. Different agencies and different proceedings work in different ways, sometimes the MDNS comes out at the same time as the decision document, in which case the permit conditions are identical to the MDNS document. Many local agencies and jurisdictions issue permits where the threshold decision is made earlier and then the final permit document includes the mitigation in the MDNS.

Ms. McGaffey agrees with Mr. Fiksdal that if the Council decides to go the expedited process route there are a number of opportunities other than an adjudicative session for information to become available, not only to the Council but also to the public. The panel hearings could occur in the community, as Mr. Fryhling suggested, with the CFE, applicant and staff members of agencies participating, along with the public being able to ask questions. Ms. McGaffey said that she hadn't thought about whether the panel members would be sworn and would testify under oath. Ms. Adelman said that the Council appears to be divided; there are three members that are concerned about the MDNS and the expedited process. Mr. Fiksdal asked the Council to decide if the MDNS is appropriate, as it is the key. Is it a reasonable track to go down or is the Council opposed to this approach. Mr. Tayer said that based on the information before him now that he isn't comfortable with an MDNS but if there were more information available he could be in favor of the MDNS if the mitigation is appropriate. Mr. Fiksdal asked what areas he is uncomfortable about; Mr. Tayer said the noise, and the water issues. Mr. Tayer believes that the Council could narrow the scope of analysis down to the noise and odor if the water issues were dealt with by Ecology and Fish & Wildlife. Mr. Byers agreed with Mr. Tayer.

Ms Adelsman stated her prospective for having a supplemental EIS that addresses the issues Mr. Tayer is concerned about, having the document available for the public and agencies to comment on. It is unclear whether expedited processing would save much time. She believes that the supplemental EIS would provide analysis, the Council would hear the public, and the Council would be able to make the decision fully informed. Mr. Fiksdal said that if the supplemental EIS is the way to go, the Council is locked into an adjudicative hearing. Ms. Adelsman said that is what we have done in the past.

Mr. Fiksdal stated that the adjudicative process is a long procedural process, and includes prehearing conferences, public meetings, and adjudications. Mr. Byers said that is true and it is a path that the Council has gone down before. He is not clear on what expedited process is or what will come out of, unless there is something that is clear of what the expedited process is and whether it would produce an administrative record.

Ms. McGaffey said that she wanted to make it clear that it is important to Grays Harbor that whichever process is taken that it moves forward in a timely manner. The statute requires a decision in 12 months, 3 of which have already past. She doesn't believe that the timing of an EIS and adjudicative hearing process would be about the same as the expedited process. The Council hasn't ever made the 12 month clock, although at times the delay was caused by the applicant stopping the process. Delays can be caused by the sheer number of hoops, whether it's the staff having to put out RFP's for consultants or the back and forth of prefiled testimony which takes a lot of time. Also, as the discussion has indicated, the adjudication may not be better from the stand point of public participation. The second point Ms. McGaffey wanted to make about environmental impacts is that she appreciates the Council has looked at the application and has thought about some of these issues. EFSEC staff has been looking at the issues in detail and even with that there still may be some uncertainty about the environmental impacts. The application and the SEPA checklist are also sources of information which is useful.

It is typical in the EFSEC process that the Council members have a much more detailed chance to look at some of these issues as the process goes on whether it is an adjudicative process or one such as the panel process. She cautioned the Council about the way SEPA works. SEPA typically designates a staff person to do the homework, to do the detail analysis to make that threshold determination. That is all it is, a threshold decision The Council may or may not be satisfied with the mitigation and you may decide to require more mitigation.

Mr. Tayer asked if there was further mitigation information that could be brought to the Council. Ms. McGaffey Said the normal SEPA process if an issue significant, the SEPA official would say this issue needs to be mitigated with this item, the applicant can then decide if they are willing to do that mitigation. The applicant has tried to identify where the impacts are and to offer appropriate mitigation as described in the application. The Council could look at those and say it is more concerned about something else and require more mitigation. The applicant would be happy to consider other mitigation measures as directed by the Council.

Ms. Adelsman proposed that the Council not vote until they have seen all the mitigation that has been proposed by the applicant and have a public meeting on the mitigation. If all the issues are dealt with in a satisfactory manner then the MDNS is the right process. She is more concerned about what the mitigation package looks like. Ms. Adelsman asked if the Council has a good assessment of

the environmental impacts and the mitigation that needs to be done. If so, a public meeting could be held to inform the public. Ms. Adelsman would then be fine with the expedited process. Mr. Tayer agrees with Ms. Adelsman. Mr. Fiksdal proposed that the agencies work with the applicant to get a list of mitigation, get all the details, on the three specific issues, water, noise and odor.

Mr. Byers said that there needs to be more clarity on what the mitigations are; this would allow the Council to make a better informed decision. Ms. Adelsman asked of the Council, if a MDNS is determined to be appropriate then is the Council prepared to go through the expedited process. Mr. Tayer said that if agreements for mitigations can be met there isn't a need for adjudication. Ms. McGaffey said that it might be helpful to the Council to have a look at a draft MDNS. Mr. Byers wanted to know if Mr. Marvin, CFE, would be willing to look at the mitigation to see if he is satisfied with the mitigation.

The Council directed the staff to prepare a mitigated DNS for the Council's review.

## **6. OTHER**

Mr. Fiksdal reviewed cost allocation with the Council for the new quarter. He also reminded the Council of legislation affecting the Council. HB2516 has to do with small wind. The Council would be issuing permits for small wind, the staff would be permitting and the Council would need to set up a process. HB 2527 changes EFSEC's ability to site and permit power plants of any size, not just the threshold of 350 Megawatts. It also changes the filing cost from \$45,000 to \$50,000; and it requires the CFE to participate in the siting of all alternative energy facilities.

## **7. ADJOURN**

The meeting was adjourned at 4:04 p.m.