

**WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL**

RESOLUTION NO. 314

***MODIFICATIONS TO THE WILD HORSE WIND POWER PROJECT
SITE CERTIFICATION AGREEMENT***

Nature of Action.

Wind Ridge Power Partners, LLC, (Wind Ridge) is the Certificate Holder of the Site Certification Agreement ("SCA") governing the Wild Horse Wind Power Project (WHWPP). By letter dated January 18, 2005, Wind Ridge and Puget Sound Energy advised the Council of a proposed sale that would cause the assets of Wind Ridge to be transferred to PSE. By letter dated August 4, 2005 Wind Ridge and PSE jointly requested that the Energy Facility Site Evaluation Council (Council or EFSEC) approve the transfer in control of the SCA from Wind Ridge to PSE. In addition, PSE requested that pursuant to Article VIII.D.3. of the SCA, the Council consider and approve, as other assurances for the certificate holder's performance, those provided in Section 6.4 of Attachment 4 to the SCA for an investor-owned electrical utility regulated by the Federal Energy Regulatory Commission (FERC) and the Washington Utilities and Transportation Commission (WUTC).

Background.

On July 26, 2005 Governor Christine Gregoire executed on behalf of the State of Washington a Site Certification Agreement authorizing the construction and operation of the Wild Horse Wind Power Project.

In the August 4, 2005 letter, PSE and Wind Ridge notified the Council that Wind Ridge and PSE have entered into an agreement to sell one hundred percent of the ownership interest of Wind Ridge Power Partners LLC, a Delaware limited liability company and owner of the Wild Horse Wind Power Project, to Puget Sound Energy (hereinafter the "Proposed Sale"). Following closing of the Proposed Sale, PSE will cause the assets of Wind Ridge Power Partners, LLC to be transferred to PSE.

PSE is a Washington regulated utility providing electric and natural gas service primarily to the growing Puget Sound, Kittitas County and other regions of western Washington. PSE serves approximately 1 million electric customers and 672,000 natural gas customers. PSE's total assets are \$5,198,087,000, its annual operating revenues are \$2,198,877,000 and it has 2,200 employees.

Procedural Status.

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

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

Pursuant to WAC 463-66-030, the request for amendment of the SCA to reflect ownership of the Project by PSE was submitted in writing, in a letter jointly signed by Wind Ridge and PSE.

The Council considered the request at its August 9, 2005 Monthly Meeting, and scheduled a special meeting to fully consider and act upon the request on August 30, 2005, in Ellensburg, Washington.

Notice of this matter was mailed to approximately 340 people. The Notice advised that Wind Ridge and PSE had requested approval of the proposed transfer of the SCA, that a special meeting would be held on August 30, 2005, in Ellensburg, Washington, and that comments could be made either orally at that time or in writing prior to the conclusion of the public comment portion of the August 30, 2005 meeting. EFSEC considered the request at its August 30, 2005 special meeting. Four persons presented oral comment and one written comment letter was received. The testimony is summarized below.

Mr. Lee Bates expressed concerns that PSE would increase electric rates due to its acquisition of the wind farm. Mr. Hochstetter, though not opposing the wind farm, expressed concern about restrictions to public access through the site on Beacon Ridge road. Mr. Kruse, representing Friends of Wildlife and Windpower ("Friends") summarized a number of agreements that were entered into between Friends and Zilkha Renewable Energy, and which PSE was aware of. He asked that the Council ensure that these agreements be kept in place with the transfer of ownership. Ms. Strand, representing the Economic Development Group of Kittitas County, reiterated her organization's support for the Project, and indicated that additional tax benefits would be created because PSE is a regulated utility. The written comment letter was submitted on behalf of Friends of Wildlife and Windpower, and re-iterated the comments made by Mr. Kruse.

The Council reviewed the request under the procedures outlined in WAC 463-66-040 and WAC 463-66-100. Pursuant to WAC 463-66-100 (5) the Council approved the proposed transfer of control subject to conditions set forth in Council Order No. 815. Pursuant to Article VIII.D.3 of the WHWPP SCA, the Council also approved "other assurances" that would provide for the Certificate Holder's performance of its Decommissioning obligations pursuant to Article VIII.C and VII.D. of the SCA, namely those assurances provided in Section 6.4 of Attachment 4 to the SCA for an investor-owned electrical utility regulated by FERC and WUTC.

On October 10, 2005 the Council received notification that the Proposed Sale of the WHWPP had closed.

Discussion.

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

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

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

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

In reviewing whether a proposed amendment is consistent with the public health, safety, and welfare, the council shall consider the short-term and long-term environmental impacts of the proposal.

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

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

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

The Council finds that this amendment has no effect on the health and safety of the public for the following reasons.

As indicated in its August 4, 2005 request, PSE has agreed to abide by all the terms and conditions of the SCA for the Wild Horse Wind Power Project and does not seek an amendment to the SCA.

As noted in detail in Council Order No. 815, PSE has also:

- Committed to full disclosure as required pursuant to WAC 463-60-065 (previously WAC 463-42-065).
- Agreed to comply with the assurances required by WAC 463-60-075 (previously WAC 463-42-075), and set out in Section 4.1 of the Application for Site Certification (ASC) by Wind Ridge Power Partners, LLC. PSE will substantively meet all the assurances made by Wind Ridge Power Partners, LLC. Because of the nature of PSE as a large utility with much greater assets than the original applicant for the Wild Horse Wind Power Project, PSE self-insures significant portions of its risks. For those applicable insurances listed in Section 4.1 of the ASC that it does not self-insure, PSE will provide separate insurance policies, such as for Pollution Liability coverage committed to in Section 4.1.2 of the SCA. It should be noted, however, that there will be no business interruption insurance

as referred to in Section 4.1.1.3, because PSE is not required to maintain such insurance by its customers and lenders.

- Committed to all the financial assurances required by the Development Agreement between Kittitas County and Wind Ridge Power Partners, LLC, which was approved as a stipulation by EFSEC and attached as Attachment 4 to the SCA together with all other financial requirements set forth in the SCA. Kittitas County has pre-approved the transfer to PSE in the Development Agreement. The financial requirements of the Development Agreement include but are not limited to those requirements related to project site abandonment and restoration.

The Council finds that PSE will be responsible for fulfilling the requirements of the SCA to the same extent as Wind Ridge was prior to the amendment.

The Council further finds that this amendment does not affect the environment in any way. The substance of existing SCA conditions and environmental mitigation requirements is not altered in any manner by the requested amendment.

Finally, the Council finds that its action to amend the SCA to reflect the change in the Project ownership and to identify PSE as the Certificate Holder is strictly technical in nature. No substantive term or condition in the SCA will be affected by the amendment.

B. Consistency with applicable laws and rules.

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

1. Consistency with SEPA (chapter 43.21C RCW and chapter 197-11 WAC).

In general, SEPA requires an agency to perform a threshold determination to determine whether a proposed action will have a significant adverse effect on the environment. See WAC 197-11-310. The Council's SEPA responsible official, EFSEC Manager Allen Fiksdal, has reviewed the proposed changes to SCA and has determined they do not have any probable adverse significant environmental impact. EFSEC issued a Determination of Non-Significance on August 10, 2005.

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

WAC 463-66-080 provides:

An [SCA] amendment which substantially alters the substance of any provision of the SCA or which is determined to have a significant detrimental effect upon the environment shall be effective upon the signed approval of the governor.

On the other hand, WAC 463-66-070 provides:

An amendment request which does not substantially alter the substance of any provisions of the SCA, or which is determined not to have a significant detrimental effect upon the environment, shall be effective upon approval by the council. Such approval may be in the form of a council resolution.

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

C. Consistency with intention of the original SCA.

Under WAC 463-66-040(1), the Council must consider whether the proposed amendment is consistent with the intention of the original SCA.

In general, the intention of every SCA is to grant state authorization to a certificate holder to construct and operate an energy project that has been determined to be in the state interest. Through the SCA, the state grants the certificate holder a "license" for the project; in return, the certificate holder commits itself to comply with the terms of the SCA. The Council finds that the proposed changes to the Certificate Holder are consistent with this intent. The Certificate Holder's legal responsibilities under the SCA will remain the same. The SCA will remain virtually identical.

As the new Certificate Holder, PSE shall be obligated to comply with the terms and conditions of the SCA and any plans approved in connection therewith, including those approved prior to transfer of the SCA during the previous ownership of WHPPP by Wind Ridge Power Partners.

D. Washington Utilities and Transportation Commission

To the extent that a Washington Utilities and Transportation Commission decision might be necessary at a future time, the Utilities and Transportation Commission will make a separate decision on a separate record, using separate evidence, to answer a separate question that would arise from application of another statute or set of statutes. This order is not intended to affect WUTC actions within that agency's jurisdiction.

E. Conclusion.

The Council concludes that the proposed transfer of the WHWPP SCA to PSE is consistent with public health, safety, and welfare; the applicable law; and the intent of the original SCA. The Council, pursuant to WAC 463-66-100, has approved the proposed change in ownership of the SCA subject to conditions specified by Order No. 815, which have now been met. The Council hereby determines that it is appropriate to approve an amendment to the Wild Horse Wind Power Project SCA necessary to reflect the proposed change in the certificate holder.

RESOLUTION

For the foregoing reasons, the Council amends the Wild Horse Wind Power Project SCA to reflect the change in Project ownership to Puget Sound Energy.

DATED at Olympia, Washington and effective on this October 13, 2005.

WASHINGTON ENERGY FACILITY SITE EVALUATION COUNCIL

By: _____

James O. Luce, Chair

Attested: _____

Michael Mills, EFSEC Compliance Manager

Attachments:

1. Wild Horse Wind Power Project Site Certification Agreement, Amendment No. 1, as modified by EFSEC Resolution No. 314.
2. August 4, 2005, Request for approval of the transfer of ownership of Wild Horse Wind Power Project, from Wind Ridge Power Partners, LLC to Puget Sound Energy, Inc.
3. October 3, 2005, Council Transfer of WHWPP to Puget Sound Energy.